

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	No. 4:16-CV-469-K
	§	
MAURA TRACY HEALEY, Attorney	§	
General of Massachusetts, in her	§	
official capacity,	§	
	§	
Defendant.	§	

**APPENDIX IN SUPPORT OF PLAINTIFF EXXON MOBIL CORPORATION'S  
MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
A	Exxon Mobil Corporation's Proposed First Amended Complaint for Declaratory and Injunctive Relief
B	Exxon Mobil Corporation's Proposed Appendix in Support of First Amended Complaint for Declaratory and Injunctive Relief
C	Proposed Order Granting Motion for Leave to File an Amended Complaint

Dated: October 17, 2016

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon  
Patrick J. Conlon  
*pro hac vice*  
State Bar No. 24054300  
patrick.j.conlon@exxonmobil.com  
Daniel E. Bolia  
State Bar No. 24064919  
daniel.e.bolia@exxonmobil.com  
1301 Fannin Street  
Houston, TX 77002  
(832) 624-6336

/s/ Nina Cortell  
Nina Cortell  
State Bar No. 04844500  
nina.cortell@haynesboone.com  
HAYNES & BOONE, LLP  
2323 Victory Avenue  
Suite 700  
Dallas, TX 75219  
(214) 651-5579  
Fax: (214) 200-0411

/s/ Theodore V. Wells, Jr.  
Theodore V. Wells, Jr.  
*pro hac vice*  
twells@paulweiss.com  
Michele Hirshman  
*pro hac vice*  
mhirshman@paulweiss.com  
Daniel J. Toal  
*pro hac vice*  
dtoal@paulweiss.com  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3000  
Fax: (212) 757-3990

/s/ Ralph H. Duggins  
Ralph H. Duggins  
State Bar No. 06183700  
rduggins@canteyhanger.com  
Philip A. Vickers  
State Bar No. 24051699  
pvickers@canteyhanger.com  
Alix D. Allison  
State Bar. No. 24086261  
aallison@canteyhanger.com  
CANTEY HANGER LLP  
600 West 6th Street, Suite 300  
Fort Worth, TX 76102  
(817) 877-2800  
Fax: (817) 877-2807

Justin Anderson  
*pro hac vice*  
janderson@paulweiss.com  
2001 K Street, NW  
Washington, D.C. 20006-1047  
(202) 223-7300  
Fax: (202) 223-7420

*Counsel for Exxon Mobil Corporation*



**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2016, a copy of the foregoing instrument was served on the following party via the Court's CM/ECF system in accordance with the Federal Rules of Civil Procedure:

Maura Healey  
Massachusetts Attorney General's Office  
One Ashburton Place  
Boston, MA 02108-1518  
Phone: (617) 727-2200

/s/ Ralph H. Duggins

Ralph H. Duggins

# **Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
ERIC TRADD SCHNEIDERMAN,	§	NO. 4:16-CV-469-K
Attorney General of New York, in his	§	
official capacity, and MAURA TRACY	§	
HEALEY, Attorney General of	§	
Massachusetts, in her official capacity,	§	
	§	
Defendants.	§	
	§	

**EXXONMOBIL’S FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Exxon Mobil Corporation (“ExxonMobil”) brings this action seeking declaratory and injunctive relief against Eric Tradd Schneiderman, the Attorney General of New York, in addition to Maura Tracy Healey, the Attorney General of Massachusetts. Attorneys General Schneiderman and Healey have joined together with each other as well as others known and unknown to conduct improper and politically motivated investigations of ExxonMobil in a coordinated effort to silence and intimidate one side of the public policy debate on how to address climate change. ExxonMobil seeks an injunction barring the enforcement of a subpoena issued by Attorney General Schneiderman and a civil investigative demand (“CID”) issued by Attorney General Healey to ExxonMobil, and a declaration that the subpoena and CID violate ExxonMobil’s rights under federal and state law. As demonstrated in this amended pleading, the same claims and arguments asserted against Attorney General Healey apply

with equal force against Attorney General Schneiderman. For its First Amended Complaint, ExxonMobil alleges as follows based on present knowledge and information and belief:

### **INTRODUCTION**

1. Frustrated by the federal government's apparent inaction on climate change, Attorney General Schneiderman assembled a coalition of state attorneys general, including Attorney General Healey, to use law enforcement powers as a means of promoting a shared political agenda. According to an agreement executed by its members, this coalition embraced two goals.<sup>1</sup> First, it sought to "limit[] climate change" by pressing for a reduction in the use of fossil fuels.<sup>2</sup> Second, the coalition explicitly advocated for restrictions on speech and debate to accomplish that political agenda, listing as an objective "ensuring the dissemination of accurate information about climate change."<sup>3</sup> The coalition's agreement was concealed from the public until third parties recently obtained it from one coalition member under public records laws. Other coalition members continue to resist similar demands for transparency.

2. The coalition first publicly surfaced when Attorney General Schneiderman hosted a press conference in New York City on March 29, 2016,<sup>4</sup> with former Vice President and private citizen Al Gore as the featured speaker.<sup>5</sup> Attorney General Schneiderman pledged that the coalition would "deal with the problem of climate

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<sup>1</sup> See Paragraphs 52 to 53 below; *see also* Ex. R at App. 171–74.

<sup>2</sup> Ex. V at App. 196.

<sup>3</sup> *Id.*

<sup>4</sup> See Paragraphs 27 to 39 below.

<sup>5</sup> A transcript of the AGs United for Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>. A copy of this transcript is attached as Exhibit B and is incorporated by reference.

change” by using law enforcement powers “creatively” and “aggressively” to force ExxonMobil<sup>6</sup> and other energy companies to support the coalition’s preferred policy responses to climate change.<sup>7</sup> Considering climate change to be the “most pressing issue of our time,” Attorney General Schneiderman said the coalition was “prepared to step into this [legislative] breach.”<sup>8</sup>

3. Attorney General Healey similarly pledged “quick, aggressive action” by her office to “address climate change and to work for a better future.”<sup>9</sup> She announced an investigation of ExxonMobil that she had already determined would reveal a “troubling disconnect between what Exxon knew” and what it “chose to share with investors and with the American public.”<sup>10</sup> The statements of Attorney General Schneiderman, Attorney General Healey, Mr. Gore and others made clear that the press conference was a purely political event.

4. It was also the result of years of planning and lobbying by private interests.<sup>11</sup> For nearly a decade, climate change activists and certain plaintiffs’ attorneys have sought to obtain the confidential records of energy companies as a means of pressuring those companies to change their policy positions. A 2012 workshop examined ways to obtain the internal documents of companies like ExxonMobil for the purpose of “maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming.”<sup>12</sup> The attendees at that

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<sup>6</sup> ExxonMobil was formed as a result of a merger between Exxon and Mobil on November 30, 1999. For ease of discussion, we refer to the predecessor entities as ExxonMobil throughout the Complaint.

<sup>7</sup> Ex. B at App. 9 –10.

<sup>8</sup> *Id.* at App. 9, 11.

<sup>9</sup> *Id.* at App. 21.

<sup>10</sup> *Id.* at App. 20.

<sup>11</sup> See Paragraphs 40 to 51 below.

<sup>12</sup> Ex. C at App. 56.

workshop concluded that “a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.”<sup>13</sup>

5. In the months leading up to the press conference, these activists and attorneys met at the offices of the Rockefeller Family Fund in New York to discuss the “[g]oals of an Exxon campaign,” which included to “delegitimize [it] as a political actor” and to “force officials to disassociate themselves from Exxon.”<sup>14</sup>

6. The leadership of this group of activists and attorneys attended a meeting with “sympathetic state attorney[s] general” prior to the March 29 press conference. While this Court and the public have not been told what was discussed, a copy of the agenda for the meeting includes presentations on the “imperative of taking action now on climate change” and on “climate change litigation.”<sup>15</sup>

7. Members of the coalition recognized that the behind-the-scenes involvement of these individuals—especially a private attorney likely to seek fees from any private litigation made possible by an attorney general-led investigation of ExxonMobil—could expose the special interests behind their so-called investigations and the bias underlying their deployment of law enforcement resources for partisan ends. When that same private attorney asked Attorney General Schneiderman’s office what he should tell a reporter if asked about his involvement, Lemuel Srolovic, Chief of the Environmental Protection Bureau, asked the private attorney not to confirm his attendance at the conference.<sup>16</sup>

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<sup>13</sup> *Id.* at 40.

<sup>14</sup> Ex. D at App. 67.

<sup>15</sup> Ex. E at App. 70.

<sup>16</sup> Ex. F at App. 80.

8. The investigations launched by Attorneys General Schneiderman and Healey amount to nothing more than an unlawful exercise of government power to further political objectives. The shifting justifications they have presented for their investigations are pretexts that have become more and more transparent over time.<sup>17</sup> Invoking state laws with limitations periods no longer than six years, the Attorneys General claim to be investigating whether ExxonMobil committed consumer or securities fraud by misrepresenting its knowledge of climate change.

9. But for more than a decade, ExxonMobil has widely and publicly confirmed<sup>18</sup> that it “recognize[s] that the risk of climate change and its potential impacts on society and ecosystems may prove to be significant.”<sup>19</sup> ExxonMobil has also publicly advocated a tax on carbon emissions since 2009.<sup>20</sup> Moreover, in conducting its business, ExxonMobil addresses the potential for future climate change policy by estimating a proxy cost of carbon, which seeks to reflect potential policies governments may employ related to the exploration, development, production, transportation or use of carbon-based fuels.<sup>21</sup> This cost, which in some regions may approach \$80 per ton by 2040, has been included in ExxonMobil’s Outlook for Energy for several years.<sup>22</sup> Further, ExxonMobil requires all of its business lines to include, where appropriate, an estimate of greenhouse gas-related emissions costs in their economics when seeking funding for capital investments.<sup>23</sup> Despite the applicable limitations periods and ExxonMobil’s longstanding

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<sup>17</sup> See Paragraphs 74 to 76 below.

<sup>18</sup> See Paragraphs 63 to 64 below.

<sup>19</sup> Ex. G at App. 93; *see also* Ex. H at App. 103 (“Because the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant, strategies that address the risk need to be developed and implemented.”).

<sup>20</sup> Ex. T at App. 182.

<sup>21</sup> Ex. T at App. 190.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

public recognition of the risks associated with climate change, the subpoena and the CID seek documents going back nearly four decades, seeking anything having to do with the issue.

10. Worse still, the New York Attorney General's subpoena and the Massachusetts Attorney General's CID target ExxonMobil's communications with those who the Attorneys General perceive to have different political viewpoints in the climate change debate. The subpoena seeks ExxonMobil's communications with oil and gas trade associations and industry groups that advocate on energy policy, and the CID demands ExxonMobil's communications with a list of organizations labeled by the coalition as so-called "climate deniers," *i.e.*, those who have expressed skepticism about the science of climate change or the coalition's preferred policies regarding climate change.<sup>24</sup> The CID also identifies statements made by ExxonMobil about the tradeoffs inherent in climate change policy and demands that ExxonMobil produce records supporting those disfavored statements.

11. Recent events have fully unmasked the pretextual nature of these investigations and the improper bias and unconstitutional objectives animating them.<sup>25</sup> When Attorney General Schneiderman launched his investigation, he claimed to be investigating ExxonMobil's scientific research in the 1970s and 1980s. Subject to the assertion of privilege, including First Amendment privileges, ExxonMobil initially provided documents to Attorney General Schneiderman with the expectation that his office would conduct a neutral, even-handed investigation. As events unfolded over the

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<sup>24</sup> See Paragraphs 66 and 73 below.

<sup>25</sup> See Paragraphs 74 to 76 below.



ensuing months—including the politicized press conference in March and the secret agreement’s coming to light over the summer—that expectation has evaporated.

12. Within the last month, and well after ExxonMobil commenced this action, Attorney General Schneiderman continued his practice of providing unprecedented briefings to the press on the status of his “investigation” of ExxonMobil and announced his expectation that a “massive securities fraud” will be uncovered. During one of those briefings, Attorney General Schneiderman conceded that he has abandoned his original inquiry into ExxonMobil’s historical scientific research and is now pursuing a new theory of investor fraud. That shift further demonstrates that Attorney General Schneiderman is simply searching for a legal theory—any legal theory—to continue his efforts to pressure ExxonMobil and intimidate one side of a public policy debate.<sup>26</sup>

13. It is now indisputable that the subpoena and the CID were issued in bad faith to deter ExxonMobil from participating in ongoing public deliberations about climate change and to fish through decades of ExxonMobil’s documents in the hope of finding some ammunition to enhance the coalition’s, and its climate activist confederates’, position in the policy debate over climate change. Through their actions, Attorneys General Schneiderman and Healey have deprived and will continue to deprive ExxonMobil of its rights under the United States Constitution, the Texas Constitution, and the common law.

14. ExxonMobil therefore seeks a declaration that the subpoena and the CID violate its rights under Articles One and Six of the United States Constitution; the First, Fourth, and Fourteenth Amendments to the United States Constitution; Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution; and constitutes an abuse of

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<sup>26</sup> See Paragraphs 74 to 81 below.

process under the common law. ExxonMobil also seeks an injunction barring further enforcement of the subpoena and the CID. Absent an injunction, ExxonMobil will suffer imminent and irreparable harm for which there is no adequate remedy at law.

### **PARTIES**

15. ExxonMobil is a public, shareholder-owned energy company incorporated in New Jersey with principal offices in the State of Texas. ExxonMobil is headquartered and maintains all of its central operations in Texas.

16. Defendant Eric Tradd Schneiderman is the Attorney General of New York. He is sued in his official capacity.

17. Defendant Maura Tracy Healey is the Attorney General of Massachusetts. She is sued in her official capacity.

### **JURISDICTION AND VENUE**

18. This Court has subject matter jurisdiction over this action pursuant to Sections 1331 and 1367 of Title 28 of the United States Code. Plaintiff alleges violations of its constitutional rights in violation of Sections 1983 and 1985 of Title 42 of the United States Code. Because those claims arise under the laws of the United States, this Court has original jurisdiction over them. 28 U.S.C. § 1331. Plaintiff also alleges related state law claims that derive from the same nucleus of operative facts. Each of Plaintiff's state law claims—like its federal claims—is premised on statements by Attorneys General Schneiderman and Healey at the press conference and during the course of their investigations, their issuance of the subpoena and the CID, the demands made therein, and their intention to muzzle ExxonMobil's speech in Texas. This Court therefore has supplemental jurisdiction over those claims. 28 U.S.C. § 1367(a).

19. Venue is proper within this District pursuant to Section 1391(b) of Title 28 of the United States Code because all or a substantial part of the events giving rise to the claims occurred in the Northern District of Texas. The subpoena was emailed to ExxonMobil in Texas, and both the subpoena and CID target and seek to suppress speech emanating from Texas. They also require ExxonMobil to collect and review a substantial number of records stored or maintained in the Northern District of Texas.

### **FACTS**

#### **A. Attorney General Schneiderman Opens His Investigation of ExxonMobil with a Press Leak Followed by a Television Interview.**

20. In November 2015, ExxonMobil received Attorney General Schneiderman's subpoena at its corporate headquarters in Irving, Texas.<sup>27</sup> Within hours, the press was reporting on the subpoena's issuance and its contents. An article in *The New York Times* reported that the subpoena "demand[ed] extensive financial records, emails and other documents" and that the "focus" of the investigation was on "the company's own long running scientific research" on climate change.<sup>28</sup> The article identified as sources "people with knowledge of the investigation," all of whom "spoke on the condition of anonymity saying they were not authorized to speak publicly about investigations."<sup>29</sup> To state the obvious, ExxonMobil did not alert *The New York Times* or any other media to the subpoena's existence or its contents.

21. This press leak was unsettling. It is customary for law enforcement officials to maintain confidentiality of their investigations, both to protect the integrity of the investigative process and to avoid unfair prejudice to those under investigation. But

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<sup>27</sup> Ex. I at App. 108.

<sup>28</sup> Ex. A at App. 2.

<sup>29</sup> *Id.* at App. 2–3.

Attorney General Schneiderman's investigation of ExxonMobil has been conducted with a marked disregard for traditional concerns about confidentiality or unfair prejudice. Before ExxonMobil had even accepted service of the subpoena, it had received multiple media inquiries about the subpoena and could read about the investigation in online news accounts.<sup>30</sup>

22. Within a week of issuing the subpoena, Attorney General Schneiderman appeared on a *PBS NewsHour* segment, entitled "Has Exxon Mobil misle[d] the public about its climate change research?"<sup>31</sup> During that appearance, Attorney General Schneiderman described the focus of his investigation on ExxonMobil's purported decision to "shift[] [its] point of view" and "change[] tactics" on climate change after "being at the leadership of doing good scientific work" on the issue "[i]n the 1980s."<sup>32</sup> Attorney General Schneiderman said his probe extended to ExxonMobil's "funding [of] organizations."<sup>33</sup> While he did not refer to them expressly as his political adversaries, he derided them as "climate change deniers" and "climate denial organizations."<sup>34</sup> Those organizations included the "American Enterprise Institute, . . . the American Legislative Exchange Council, . . . [and the] American Petroleum Institute."<sup>35</sup>

23. Renewable energy was another focus of the interview. Attorney General Schneiderman said he was "concerned about" ExxonMobil's purported "overestimating the costs of switching to renewable energy," but he did not explain how any supposed error in that estimate could conceivably constitute a fraud or mislead any consumer.<sup>36</sup>

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<sup>30</sup> Ex. A at App. 2–7; Ex. J at App. 110–112.

<sup>31</sup> Ex. K at App. 114.

<sup>32</sup> *Id.* at App. 115.

<sup>33</sup> *Id.* at App. 116.

<sup>34</sup> *Id.* at App. 116, 118.

<sup>35</sup> *Id.* at App. 116.

<sup>36</sup> *Id.* at App. 117.

24. Attorney General Schneiderman did not discuss ExxonMobil's oil and gas reserves or its assets at all during this interview.

25. Later that month at an event sponsored by *Politico* in New York, Attorney General Schneiderman said that ExxonMobil appeared to be "doing very good work in the 1980s on climate research" but that its "corporate strategy seemed to shift" later.<sup>37</sup> Attorney General Schneiderman claimed that the company had funded organizations that he labeled "aggressive climate deniers," again specifically naming his perceived political opponents at the American Enterprise Institute, the American Legislative Exchange Council, and the American Petroleum Institute.<sup>38</sup> Attorney General Schneiderman admitted that his "investigation" of ExxonMobil was merely "one aspect" of his office's efforts to "take action on climate change," commenting that society's failure to address climate change would be "viewed poorly by history."<sup>39</sup>

26. After this initial flurry of statements to the press, relative quiet followed, and ExxonMobil attempted in good faith to produce records demanded by the subpoena. It provided Attorney General Schneiderman with documents related to its historical research on global warming and climate change.

**B. The "Green 20" Coalition Plans to Use Law Enforcement Tools for Political Goals.**

27. The playing field changed on March 29, 2016, when Attorney General Schneiderman hosted a press conference in New York City. Calling themselves the "AGs United For Clean Power" and the "Green 20," Attorneys General Schneiderman and Healey were joined by other state attorneys general and Al Gore to announce their

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<sup>37</sup> Ex. L at App. 123.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at App. 124.

plan to take “progressive action to address climate change” by investigating ExxonMobil.<sup>40</sup> Attorneys general or staff members from over a dozen other states were in attendance, as was Claude Walker, the Attorney General of the United States Virgin Islands.

28. Expressing dissatisfaction with the supposed “gridlock in Washington” regarding climate change legislation, Attorney General Schneiderman said that the coalition had to work “creatively” and “aggressively” to respond to “th[e] most pressing issue of our time,” namely, the need to “preserve our planet and reduce the carbon emissions that threaten all of the people we represent.”<sup>41</sup>

29. Attorney General Healey agreed, opining that “there’s nothing we need to worry about more than climate change.”<sup>42</sup> She considered herself to have “a moral obligation to act” to remedy what she described as a threat to “the very existence of our planet,” and she vowed to take “quick, aggressive action” to “address climate change and to work for a better future.”<sup>43</sup>

30. Echoing those themes, Attorney General Walker stated that “the American people . . . have to do something transformational” because “[w]e cannot continue to rely on fossil fuel.”<sup>44</sup> In private communications with other members of the Green 20 coalition, Attorney General Walker expressed his hope that the coalition’s efforts would “identify[] other potential litigation targets” and “increase our leverage” against

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<sup>40</sup> Ex. M at App 127.

<sup>41</sup> Ex. B at App. 9–11.

<sup>42</sup> *Id.* at App. 20.

<sup>43</sup> *Id.* at App. 20–21.

<sup>44</sup> Ex. B at App. 24.

ExxonMobil to replicate or improve on an \$800 million settlement he had previously obtained against another energy company.<sup>45</sup>

31. For the Green 20, the public policy debate on climate change was over and dissent was intolerable. Attorney General Schneiderman declared that he had “heard the scientists” and “kn[e]w what’s happening to the planet.”<sup>46</sup> To him, there was “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.”<sup>47</sup> Clearing up that “confusion”—what the First Amendment safeguards as protected political speech—was an express objective of the Green 20.

32. According to Attorney General Healey, “[p]art of the problem has been one of public perception,” causing “many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts.”<sup>48</sup> She promised that those who “deceived” the public—by disagreeing with her about climate change—“should be, must be, held accountable.”<sup>49</sup> Mr. Gore agreed, denouncing those he accused of “deceiving the American people . . . about the reality of the climate crisis and the dangers it poses to all of us.”<sup>50</sup>

33. The attorneys general embraced the renewable energy industry, in which Mr. Gore is a prominent investor and promoter, as the only legitimate response to climate change. Attorney General Schneiderman said, “We have to change conduct” to “mov[e] more rapidly towards renewables.”<sup>51</sup> Attorney General Healey promised to “speed our

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<sup>45</sup> Ex. N at App. 131, 134.

<sup>46</sup> Ex. B at App. 10.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at App. 20.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at App. 14.

<sup>51</sup> *Id.* at App. 27–28.

transition to a clean energy future”<sup>52</sup> According to Attorney General Walker, “[w]e have to look at renewable energy. That’s the only solution.”<sup>53</sup> Mr. Gore urged the coalition of state attorneys general to investigate his business competitors for “slow[ing] down this renewable revolution” by “trying to convince people that renewable energy is not a viable option.”<sup>54</sup>

34. The assembled attorneys general had nothing but praise for Mr. Gore, whose financial interests aligned with their political agenda. Attorney General Schneiderman enthused that “there is no one who has done more for this cause” than Mr. Gore, who recently had been “traveling internationally, raising the alarm,” and “training climate change activists.”<sup>55</sup> Equally embracing the public support of Mr. Gore, Attorney General Healey praised him for explaining so “eloquently just how important this is, this commitment that we make,” and she thanked him for his “inspiration” and “affirmation.”<sup>56</sup> Virgin Islands Attorney General Walker hailed the former Vice President as one of his “heroes.”<sup>57</sup>

35. In an effort to legitimize what the attorneys general were doing, Mr. Gore cited perceived inaction by the federal government as the justification for action by the Green 20. He observed that “our democracy’s been hacked . . . but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level.”<sup>58</sup> Reading from the same script, Attorney General Schneiderman pledged that the Green 20 would “step into th[e] [legislative]

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<sup>52</sup> *Id.* at App. 21.

<sup>53</sup> *Id.* at App. 24.

<sup>54</sup> *Id.* at App. 17.

<sup>55</sup> *Id.* at App. 13.

<sup>56</sup> *Id.* at App. 20.

<sup>57</sup> *Id.* at App. 23.

<sup>58</sup> *Id.* at App. 17.



breach” created by this alleged federal inaction.<sup>59</sup> He then showed that his subpoena was a tool for achieving his political goals:

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.<sup>60</sup>

36. Attorney General Schneiderman linked the coalition’s political efforts to his investigation of ExxonMobil, reminding the audience that he “had served a subpoena on ExxonMobil” to investigate “theories relating to consumer and securities fraud.”<sup>61</sup> He also suggested that ExxonMobil faced a presumption of guilt in his office, arguing that ExxonMobil had been “using the best climate models” to determine “how fast the sea level is rising” and to “drill[] in places in the Arctic where they couldn’t drill 20 years ago” while telling “the public for years that there were no ‘competent models,’ . . . to project climate patterns, including those in the Arctic.”<sup>62</sup> Attorney General Schneiderman went on to suggest there was something illegal in ExxonMobil’s alleged support for “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.”<sup>63</sup>

37. Attorney General Healey was equally explicit in her prejudgment of ExxonMobil. She stated that there was a “troubling disconnect between what Exxon

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<sup>59</sup> *Id.* at App. 11.

<sup>60</sup> *Id.* at App. 12.

<sup>61</sup> *Id.* at App. 11.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public.”<sup>64</sup> Those conclusions were announced weeks before she even issued the CID to ExxonMobil.

38. The political motivations articulated by Attorneys General Schneiderman, Healey, and Walker, Mr. Gore, and the other press conference attendees struck a discordant note with those who rightfully expect government attorneys to conduct themselves in a neutral and unbiased manner. The overtly political tone of the conference even prompted one reporter to ask whether the press conference and the investigations were “publicity stunt[s].”<sup>65</sup>

39. Even some members of the coalition were apprehensive about the expressly political focus of its ringleader. Attorney General Schneiderman’s office circulated a draft set of “Principles” for the “Climate Coalition of Attorneys General” that included a “[p]ledge” to “work together” to enforce laws “that require progressive action on climate change.”<sup>66</sup> Recognizing the overtly political nature of that pledge, an employee of the Vermont Attorney General’s Office wrote: “We are thinking that use of the term ‘progressive’ in the pledge might alienate some. How about ‘affirmative,’ ‘aggressive,’ ‘forceful’ or something similar?”<sup>67</sup>

**C. In Closed-Door Meetings, the Green 20 Meet with Private Interests.**

40. The impropriety of the statements made by Attorneys General Schneiderman and Healey and the other members of the Green 20 at the press conference is surpassed only by what is currently known about what they said behind closed doors.

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<sup>64</sup> *Id.* at App. 20.

<sup>65</sup> *Id.* at App. 25.

<sup>66</sup> Ex. M at App. 127.

<sup>67</sup> *Id.* at App. 126.

41. During the morning of the press conference, the attorneys general attended two presentations. Those presentations were not announced publicly, and they were not open to the press or general public. The identity of the presenters and the titles of the presentations, however, were later released by the State of Vermont in response to a request by a third party under that state's Freedom of Information Act.

42. The first presenter was Peter Frumhoff, the Director of Science and Policy for the Union of Concerned Scientists.<sup>68</sup> His subject was the "imperative of taking action now on climate change."<sup>69</sup>

43. According to the Union of Concerned Scientists, those who do not share its views about climate change and responsive policy make it "difficult to achieve meaningful solutions to global warming."<sup>70</sup> It accuses "[m]edia pundits, partisan think tanks, and special interest groups" of being "contrarians," who "downplay and distort the evidence of climate change, demand policies that allow industries to continue polluting, and attempt to undercut existing pollution standards."<sup>71</sup>

44. Frumhoff has been targeting ExxonMobil since at least 2007. In that year, Frumhoff contributed to a publication issued by the Union of Concerned Scientists, titled "Smoke, Mirrors, and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science."<sup>72</sup> This essay brainstormed strategies for "[p]utting the [b]rakes" on ExxonMobil's alleged "[d]isinformation [c]ampaign" on climate change.<sup>73</sup>

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<sup>68</sup> Ex. O at App. 138.

<sup>69</sup> Ex. E at App. 70.

<sup>70</sup> Ex. P at App. 146.

<sup>71</sup> *Id.* at App. 146–47.

<sup>72</sup> Ex. Q at App. 160, 163.

<sup>73</sup> *Id.* at App. 166.

45. Matthew Pawa of Pawa Law Group, P.C., hosted the second presentation on the topic of “climate change litigation.”<sup>74</sup> The Pawa Law Group, which boasts of its “role in launching global warming litigation,”<sup>75</sup> previously sued ExxonMobil and sought to hold it liable for causing global warming. That suit was dismissed because, as the court properly held, regulating greenhouse gas emissions is “a political rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts.”<sup>76</sup>

46. Frumhoff and Pawa have sought for years to initiate and promote litigation against fossil fuel companies in the service of their political agenda and for private profit. In 2012, for example, Frumhoff organized and Pawa presented at a workshop entitled “Climate Accountability, Public Opinion, and Legal Strategies.”<sup>77</sup> The workshop’s goal was to consider “the viability of diverse strategies, including the legal merits of targeting carbon producers (as opposed to carbon emitters) for U.S.-focused climate mitigation.”<sup>78</sup>

47. The 2012 workshop’s attendees discussed at considerable length “Strategies to Win Access to Internal Documents” of fossil fuel companies like ExxonMobil.<sup>79</sup> Even then, “lawyers at the workshop” suggested that “a single sympathetic state attorney general might have substantial success in bringing key internal documents to light.”<sup>80</sup> The conference’s attendees were “nearly unanimous” regarding “the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, *in maintaining pressure on the industry*

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<sup>74</sup> Ex. E at App. 70.

<sup>75</sup> Ex. S at App. 176.

<sup>76</sup> Ex. C at App. 41; *see also Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 871–77 (N.D. Cal. 2009), *aff’d*, 696 F.3d 849 (9th Cir. 2012).

<sup>77</sup> Ex. C at App. 30–31, 61, 63.

<sup>78</sup> *Id.* at App. 32–33.

<sup>79</sup> *Id.* at App. 40–41.

<sup>80</sup> *Id.* at App. 40.

*that could eventually lead to its support for legislative and regulatory responses to global warming.*”<sup>81</sup>

48. In January 2016, Pawa and a group of climate activists met at the Rockefeller Family Fund offices to discuss the “[g]oals of an Exxon campaign.”<sup>82</sup> The goals included:

- 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.
- To delegitimize [ExxonMobil] 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 drive divestment from Exxon.
- To drive Exxon & climate into [the] center of [the] 2016 election cycle.<sup>83</sup>

49. The investigations by the New York and Massachusetts Attorneys General and the Green 20 press conference represented the culmination of Frumhoff and Pawa’s collective efforts to enlist state law enforcement officers to join them in a quest to silence political opponents, enact preferred policy responses to climate change, and obtain documents for private lawsuits.

50. The attorneys general in attendance at the press conference understood that the participation of Frumhoff and Pawa, if reported, could expose the private, financial, and political interests behind the announced investigations. The day after the

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<sup>81</sup> *Id.* at App. 56 (emphasis added).

<sup>82</sup> Ex. D at App. 67.

<sup>83</sup> *Id.*; *see also* Ex. U at App. 192–94.

conference, a reporter from *The Wall Street Journal* contacted Pawa.<sup>84</sup> Before responding, Pawa dutifully asked Lemuel Srolovic, Chief of Attorney General Schneiderman’s Environmental Protection Bureau, “[w]hat should I say if she asks if I attended?”<sup>85</sup> Mr. Srolovic—the Assistant Attorney General who had sent the New York subpoena to ExxonMobil in November 2015—encouraged Pawa to conceal from the press and the public the closed-door meetings. He responded, “[m]y ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.”<sup>86</sup>

51. The press conference, the closed-door meetings with activists, and the activists’ long-standing desire to obtain ExxonMobil’s “internal documents” as part of a campaign to put “pressure on the industry,” inducing it to support “legislative and regulatory responses to global warming,”<sup>87</sup> form the partisan backdrop against which the New York and Massachusetts investigations must be considered.

**D. The Green 20 Attempt to Conceal their Misuse of Power from the Public.**

52. Recognizing the need to avoid public scrutiny, Attorneys General Schneiderman, Healey, and fifteen others entered into an agreement pledging to conceal their activities and communications in furtherance of their political agenda from the public. In April and May of 2016, the Green 20 executed a so-called “Climate Change Coalition Common Interest Agreement,” which memorialized the twin goals of this illicit enterprise.<sup>88</sup> The first goal listed in the agreement, “limiting climate change,” reflected the coalition’s focus on politics, not law enforcement.<sup>89</sup> The second goal, “ensuring the dissemination of accurate information about climate change,” confirmed the coalition’s

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<sup>84</sup> Ex. F at App. 80.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Ex. C at App. 40, 56.

<sup>88</sup> Ex. V at App. 196–214.

<sup>89</sup> *Id.* at App. 196.

willingness to violate First Amendment rights to carry out its agenda.<sup>90</sup> They appointed themselves as arbiters of what information is “accurate” as regards climate change and stood ready to use the full arsenal of law enforcement tools at their disposal against those who did not toe their party line.

53. To conceal communications concerning this unconstitutional enterprise from public disclosure, the signatories agreed to maintain the confidentiality of their communications by pledging that, “unless required by law,” the parties “shall . . . refuse to disclose” any “(1) information shared in organizing a meeting of the Parties on March 29, 2016, (2) information shared at and after the March 29 meeting . . . and (3) information shared after the execution of this Agreement.”<sup>91</sup> The common interest agreement stifles not only public debate about the motivations and legality of the Green 20, but also prevents the public from learning of the political genesis of the Green 20.

**E. The Attorneys General of Other States Condemn the Green 20’s Investigations.**

54. The overtly political nature of the March 29 press conference drew a swift and sharp rebuke from other state attorneys general who criticized the Green 20 for using the power of law enforcement as a tool to muzzle dissent and discussions about climate change. The attorneys general of Alabama and Oklahoma stated that “scientific and political debate” “should not be silenced with threats of criminal prosecution by those who believe that their position is the only correct one and that all dissenting voices must therefore be intimidated and coerced into silence.”<sup>92</sup> They emphasized that “[i]t is

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at App. 196–97

<sup>92</sup> Ex. X at App. 225.

inappropriate for State Attorneys General to use the power of their office to attempt to silence core political speech on one of the major policy debates of our time.”<sup>93</sup>

55. The Louisiana Attorney General similarly observed that “[i]t is one thing to use the legal system to pursue public policy outcomes; but it is quite another to use prosecutorial weapons to intimidate critics, silence free speech, or chill the robust exchange of ideas.”<sup>94</sup> Likewise, the Kansas Attorney General questioned the “unprecedented” and “strictly partisan nature of announcing state ‘law enforcement’ operations in the presence of a former vice president of the United State[s] who, presumably [as a private citizen], has no role in the enforcement of the 17 states’ securities or consumer protection laws.”<sup>95</sup> The West Virginia Attorney General criticized the attorneys general for “abusing the powers of their office” and stated that the desire to “eliminate fossil fuels . . . should not be driving any legal activity” and that it was improper to “use the power of the office of attorney general to silence [] critics.”<sup>96</sup>

56. In addition, on June 15, 2016, attorneys general from thirteen states wrote a letter to their “Fellow Attorneys General,” in which they explained that the Green 20’s effort “to police the global warming debate through the power of the subpoena is a grave mistake” because “[u]sing law enforcement authority to resolve a public policy debate undermines the trust invested in our offices and threatens free speech.”<sup>97</sup> The thirteen attorneys further described the Green 20’s investigations as “far from routine” because (i) they “target[] a particular type of market participant,” namely fossil fuel companies; (ii) the Green 20 had aligned itself “with the competitors of [its] investigative targets”;

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<sup>93</sup> *Id.*

<sup>94</sup> Ex. Y at App. 227.

<sup>95</sup> Ex. QQ at App. 435.

<sup>96</sup> Ex. RR at App. 438–39.

<sup>97</sup> Ex. SS at App. 444.



and (iii) “the investigation implicates an ongoing public policy debate.”<sup>98</sup> In conclusion, they asked their fellow attorneys general to “[s]top policing viewpoints.”<sup>99</sup>

57. The actions of Defendants and their Green 20 allies caught the eye of Congress. The Committee on Science, Space, and Technology of the United States House of Representatives launched an inquiry into the investigations undertaken by the Green 20.<sup>100</sup> That committee was “concerned that these efforts [of the Green 20] to silence speech are based on political theater rather than legal or scientific arguments, and that they run counter to an attorney general’s duty to serve as the guardian of the legal rights of the citizens and to assert, protect, and defend the rights of the people.”<sup>101</sup> Perceiving a need to provide “oversight” of what it described as “a coordinated attempt to attack the First Amendment rights of American citizens,” the Committee requested the production of certain records and information from the attorneys general.<sup>102</sup> The attorneys general have thus far refused to voluntarily cooperate with the inquiry.<sup>103</sup>

58. After Attorney General Schneiderman refused to turn over documents requested by the House Committee and criticized its “unfounded claims about the NYOAG’s motives,”<sup>104</sup> the House Committee issued subpoenas to Attorney General Schneiderman, Attorney General Healey, and eight environmental organizations in order to “obtain documents related to coordinated efforts to deprive companies, nonprofit organizations, scientists and scholars of their First Amendment rights.”<sup>105</sup> It further

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at App. 447.

<sup>100</sup> Ex. Z at App. 229.

<sup>101</sup> *Id.* (internal quotation marks omitted).

<sup>102</sup> *Id.* at App. 232.

<sup>103</sup> *See, e.g.*, Ex. TT at App. 449; Ex. UU at App. 453.

<sup>104</sup> Ex. AA at App. 237.

<sup>105</sup> Ex. BB at App. 240.

criticized the attorneys general for “hav[ing] appointed themselves to decide what is valid and what is invalid regarding climate change.”<sup>106</sup>

59. Several senators have urged United States Attorney General Loretta Lynch to confirm that the Department of Justice is not investigating, and will not investigate, United States citizens or corporations on the basis of their views on climate change.<sup>107</sup> The senators observed that the Green 20’s investigations “provide disturbing confirmation that government officials at all levels are threatening to wield the sword of law enforcement to silence debate on climate change.”<sup>108</sup> The letter concluded by asking Attorney General Lynch to explain the steps she is taking “to prevent state law enforcement officers from unconstitutionally harassing private entities or individuals simply for disagreeing with the prevailing climate change orthodoxy.”<sup>109</sup>

**F. The Subpoena and the CID Reflect the Improper Political Objectives of the Green 20 Coalition.**

60. The twin goals of the Green 20—advancing a political agenda and trammeling constitutional rights in the process—are fully reflected in the subpoena and the CID.

**The New York Subpoena**

61. Attorney General Schneiderman is authorized to issue a subpoena only if (i) there is “some factual basis shown to support the subpoena”;<sup>110</sup> and (ii) the information sought “bear[s] a reasonable relation to the subject matter under investigation and the public purpose to be served.”<sup>111</sup> Neither standard is met here.

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<sup>106</sup> *Id.*

<sup>107</sup> Ex. DD at App. 248.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Napatco, Inc. v. Lefkowitz*, 43 N.Y.2d 884, 885–86 (1978).

<sup>111</sup> *Myerson v. Lentini Bros. Moving & Storage Co.*, 33 N.Y.2d 250, 256 (1973).

62. The New York subpoena purports to investigate whether ExxonMobil violated New York State Executive Law Article 5, Section 63(12), General Business Law Article 22-A or 23-A and “any related violation, or any matter which the Attorney General deems pertinent thereto.”<sup>112</sup> These statutes have at most a six-year limitations period.<sup>113</sup>

63. During the six-year limitations period, however, ExxonMobil made no statements that could give rise to fraud as alleged in the subpoena. For more than a decade, ExxonMobil has publicly acknowledged that climate change presents significant risks that could affect its business. For example, ExxonMobil’s *2006 Corporate Citizenship Report* recognized that “the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant” and reasoned that “strategies that address the risk need to be developed and implemented.”<sup>114</sup> In addition, in 2002, ExxonMobil, along with three other companies, helped launch the Global Climate and Energy Project at Stanford University, which has a mission of “conduct[ing] fundamental research on technologies that will permit the development of global energy systems with significantly lower greenhouse gas emissions.”<sup>115</sup>

64. ExxonMobil has also discussed these risks in its public SEC filings. For example, in its 2006 10-K, ExxonMobil stated that “laws and regulations related to . . . risks of global climate change” “have been, and may in the future” continue to impact its operations.<sup>116</sup> Similarly, in its 2015 10-K, ExxonMobil noted that the “risk of climate

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<sup>112</sup> Ex. EE at App. 251.

<sup>113</sup> See, e.g., *State ex rel. Spitzer v. Daicel Chem. Indus., Ltd.*, 840 N.Y.S.2d 8, 11–12 (1st Dep’t 2007); *Podraza v. Carriero*, 630 N.Y.S.2d 163, 169 (4th Dep’t 1995); *State v. Bronxville Glen I Assocs.*, 581 N.Y.S.2d 189, 190 (1st Dep’t 1992).

<sup>114</sup> Ex. H at App. 103.

<sup>115</sup> Ex. FF at App. 270.

<sup>116</sup> Ex. GG at App. 277–78.

change” and “current and pending greenhouse gas regulations” may increase its “compliance costs.”<sup>117</sup> Long before the six-year statute of limitations period, ExxonMobil disclosed and acknowledged the risks that supposedly gave rise to Attorney General Schneiderman’s investigation.

65. Notwithstanding that six-year limitations period and the absence of any conduct within that timeframe that could give rise to a statutory violation, the document requests in the subpoena span 39 years and extend to nearly every document ExxonMobil has ever created that in any way concerns climate change. For example, the subpoena demands “[a]ll Documents and Communications” from 1977 to the present, “[c]oncerning any research, analysis, assessment, evaluation, modelling or other consideration performed by You, on Your behalf, or with funding provided by You Concerning the causes of Climate Change.”<sup>118</sup>

66. The subpoena includes 10 other similarly sweeping requests, such as (i) a demand for all documents and communications that ExxonMobil has produced since 1977 relating to “the impacts of Climate Change”; and (ii) exemplars of all “advertisements, flyers, promotional materials, and informational materials of any type” that ExxonMobil has produced in the last 11 years concerning climate change.<sup>119</sup> Other requests target Attorney General Schneiderman’s perceived political opponents in the climate change debate by demanding ExxonMobil’s communications with trade associations and industry groups that seek to promote oil and gas interests.<sup>120</sup>

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<sup>117</sup> Ex. HH at App. 284.

<sup>118</sup> Ex. II at App. 257–58 (Request No. 1).

<sup>119</sup> *Id.* at App. 258–59 (Request Nos. 2, 8).

<sup>120</sup> *Id.* at App. 258 (Request No. 6).

67. In response to some of these requests, ExxonMobil asserted First Amendment privileges, including in connection with ExxonMobil scientists' participation in non-profit research organizations.

68. Moreover, almost all of the sweeping demands in the subpoena reach far beyond conduct bearing any connection to the State of New York. Ten of the eleven document requests make blanket demands for all of ExxonMobil's documents or communications on a broad topic, with no attempt to restrict the scope of production to documents or communications having any connection to New York.<sup>121</sup> Only two of the requests even mention New York.<sup>122</sup> And, while the subpoena seeks ExxonMobil's communications with five named organizations, only one of them is based in New York.<sup>123</sup>

#### **The Massachusetts CID**

69. The CID was served by Attorney General Healey on ExxonMobil's registered agent in Suffolk County, Massachusetts, on April 19, 2016. According to the CID, there is "a pending investigation concerning [ExxonMobil's] potential violations of [Mass. Gen. Laws] ch. 93A, § 2."<sup>124</sup> That statute prohibits "unfair or deceptive acts or practices" in "trade or commerce"<sup>125</sup> and has a four-year statute of limitations.<sup>126</sup> The CID specifies two types of transactions under investigation: ExxonMobil's (i) "marketing and/or sale of energy and other fossil fuel derived products to consumers in the Commonwealth," and (ii) "marketing and/or sale of securities" to Massachusetts

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<sup>121</sup> *Id.* at App. 258–59 (Request Nos. 1, 10).

<sup>122</sup> *Id.* at App. 259 (Request Nos. 9, 11).

<sup>123</sup> *Id.* at App. 258 (Request No. 6).

<sup>124</sup> *Id.* at App. 286.

<sup>125</sup> Mass. Gen. Laws ch. 93A, §2(a).

<sup>126</sup> Mass. Gen. Laws ch. 260, § 5A.

investors.<sup>127</sup> The requested documents pertain largely to information related to climate change in the possession of ExxonMobil in Texas where it is headquartered and maintains its principal place of business.

70. ExxonMobil could not have committed the possible offenses that the CID purports to investigate for at least two reasons. First, at no point during the past five years—more than one year before the limitations period began—has ExxonMobil (i) sold fossil fuel derived products to consumers in Massachusetts, or (ii) owned or operated a single retail store or gas station in the Commonwealth.<sup>128</sup> Second, ExxonMobil has not sold any form of equity to the general public in Massachusetts since at least 2011, which is also well beyond the limitations period.<sup>129</sup> In the past decade, ExxonMobil has sold debt only to underwriters outside the Commonwealth, and ExxonMobil did not market those offerings to Massachusetts investors.<sup>130</sup>

71. The CID's focus on events, activities, and records outside of Massachusetts is demonstrated by the items it demands that ExxonMobil search for and produce. For example, the CID demands documents that relate to or support 11 specific statements.<sup>131</sup> None of those statements were made in Massachusetts.<sup>132</sup> The CID also seeks ExxonMobil's communications with 12 named organizations,<sup>133</sup> but only one of these organizations has an office in Massachusetts and ExxonMobil's communications

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<sup>127</sup> Ex. II at App. 86.

<sup>128</sup> Any service station that sells fossil fuel derived products under an "Exxon" or "Mobil" banner is owned and operated independently. In addition, distribution facilities in Massachusetts, including Everett Terminal, have not sold products to consumers during the limitations period.

<sup>129</sup> Ex. JJ at App. 317.

<sup>130</sup> *Id.* This is subject to one exception. During the limitations period, ExxonMobil has sold short-term, fixed-rate notes, which mature in 270 days or less, to institutional investors in Massachusetts, in specially exempted commercial paper transactions. *Id.*; see Mass. Gen. Laws ch. 110A, § 402(a)(10); see also 15 U. S. C. § 77c(a)(3).

<sup>131</sup> Ex. II at App. 299–300 (Request Nos. 8–11).

<sup>132</sup> *Id.* (Request Nos. 8–11).

<sup>133</sup> *Id.* at App. 298 (Request No. 5).

with the other 11 organizations likely occurred outside of Massachusetts. Finally, the CID requests all documents and communications related to ExxonMobil's publicly issued reports, press releases, and Securities and Exchange Commission ("SEC") filings, which were issued outside of Massachusetts,<sup>134</sup> and all documents and communications related to ExxonMobil's climate change research, which also occurred outside of Massachusetts.<sup>135</sup>

72. The absence of any factual basis for investigating ExxonMobil's alleged fraud is glaring, particularly in light of the heavy burden imposed by the CID. Spanning 25 pages and containing 38 broadly worded document requests, the CID unreasonably demands production of essentially any and all communications and documents relating to climate change that ExxonMobil has produced or received over the last 40 years. For example, the CID requests all documents and communications "concerning Exxon's development, planning, implementation, review, and analysis of research efforts to study CO<sub>2</sub> emissions . . . and the effects of these emissions on the Climate" since 1976 and all documents and communications concerning "any research, study, and/or evaluation by ExxonMobil and/or any other fossil fuel company regarding the Climate Change Radiative Forcing Effect of" methane since 2010.<sup>136</sup> It also requests all documents and communications concerning papers and presentations given by ExxonMobil scientists since 1976<sup>137</sup> and demands production of ExxonMobil's climate change related speeches, public reports, press releases, and SEC filings over the last 20 years.<sup>138</sup> Moreover, it fails

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<sup>134</sup> *Id.* at App. 301–03 (Request Nos. 15–16, 19, 22).

<sup>135</sup> *Id.* at App. 297–98, 300–03 (Request Nos. 1–4, 14, 17, 22).

<sup>136</sup> *Id.* at App. 297, 302 (Request Nos. 1, 17).

<sup>137</sup> *Id.* at App. 297–98. (Request Nos. 2–4).

<sup>138</sup> *Id.* at App. 299 (Request No. 8 (all documents since April 1, 1997)); *id.* at App. 302–03 (Request No. 22 (all documents since 2006)); *id.* at App. 299–302 (Request Nos. 9–12, 14–16, 19 (all documents since 2010)). The CID also demands the testimony of ExxonMobil officers, directors, or managing

to reasonably describe several categories of documents by, for example, requesting documents related to ExxonMobil’s “awareness,” “internal consideration,” and “decision making” with respect to certain climate change matters.<sup>139</sup>

73. The CID’s narrower requests, however, are in some instances more troubling than its overly broad ones. They appear to target groups simply because they hold views with which Attorney General Healey disagrees. All 12 of the organizations that ExxonMobil is directed to produce its communications with have been identified by environmental advocacy groups as opposing policies in favor of addressing climate change or disputing the science in support of climate change.<sup>140</sup> The CID also targets statements that are not in accord with the Green 20’s preferred views on climate change. These include statements of pure opinion on policy, such as the suggestion that “[i]ssues 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.”<sup>141</sup>

**G. Attorney General Schneiderman Shifts Investigative Theories in a Search for Leverage over ExxonMobil in a Public Policy Debate.**

74. After receiving Attorney General Schneiderman’s subpoena, ExxonMobil made a good-faith effort to comply with his request for information about its climate change research in the 1970s and 1980s. ExxonMobil provided his office with well over one million pages of documents, at substantial cost to the Company, with the expectation that a fair and impartial investigation would be conducted. Less than a month ago, and well after ExxonMobil commenced this action against Attorney General Healey, the

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agents who can testify about a variety of subjects, including “[a]ll topics covered” in the CID. *Id.* at App. 306 (Schedule B).

<sup>139</sup> *Id.* at App. 298–99, 302 (Request Nos. 7–8, 18).

<sup>140</sup> *See, e.g.*, Ex. VV at App. 455–57.

<sup>141</sup> *See, e.g.*, Ex. II at App. 299–300 (Request No. 9).



spokesman for Attorney General Schneiderman stated that ExxonMobil's "historic climate change research" was no longer "the focus of this investigation."<sup>142</sup>

75. Rather than close the investigation, however, Attorney General Schneiderman simply unveiled another theory. As he explained in a lengthy interview published in *The New York Times*, Attorney General Schneiderman now focused on the so-called "stranded assets theory." His office intended to examine whether ExxonMobil had overstated its oil and gas reserves and assets by not accounting for "global efforts to address climate change" that might require it in the future "to leave enormous amounts of oil reserves in the ground"—*i.e.*, cause the assets to be "stranded."<sup>143</sup> Without offering—or possessing—any supporting evidence whatsoever, Attorney General Schneiderman inappropriately opined that there "may be massive securities fraud" at ExxonMobil based on its estimation of proved reserves and the valuation of its assets.<sup>144</sup>

76. Attorney General Schneiderman has directed ExxonMobil to begin producing documents on its estimation of oil and gas reserves, and ExxonMobil has engaged in a dialogue with his office about that request. It is now apparent that Attorney General Schneiderman is simply searching for a legal theory, however flimsy, that will allow him to pressure ExxonMobil on the policy debate over climate change. With the filing of this lawsuit, ExxonMobil is challenging what has now been revealed as a manifestly improper investigation being conducted in bad faith.

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<sup>142</sup> Ex. KK at App. 321.

<sup>143</sup> Ex. MM at App. 351.

<sup>144</sup> *Id.*

**H. An Investigation of ExxonMobil's Reporting of Oil and Gas Reserves and Assets Is a Thinly Veiled Pretext.**

77. Attorney General Schneiderman's decision to investigate ExxonMobil's reserves estimates under a stranded asset theory is particularly egregious because it cannot be reconciled with binding regulations issued by the SEC, which apply strict guidelines to the estimation of proved reserves.

78. Those regulations prohibit companies like ExxonMobil from considering the impact of future regulations when estimating reserves. To the contrary, they require ExxonMobil to calculate its proved reserves in light of "*existing* economic conditions, operating methods, and *government regulations*."<sup>145</sup> The SEC adopted that definition of proved reserves as part of its efforts to provide investors with a "comprehensive understanding of oil and gas reserves, which should help investors evaluate the relative value of oil and gas companies."<sup>146</sup> The SEC's definition of proved oil and gas reserves thus reflects its reasoned judgment about how best to supply investors with information about the relative value of energy companies, as well as its balancing of competing priorities, such as the agency's desire for comprehensive disclosures, that are not unduly burdensome, and which investors can easily compare. Attorney General Schneiderman's theory of "massive securities fraud" in ExxonMobil's reported reserves cannot be reconciled with binding SEC regulations about how those reserves must be reported.

79. The same rationale applies to Attorney General Schneiderman's purported investigation of the impairment of ExxonMobil's assets. The SEC recognizes as authoritative the accounting standards issued by the Financial Accounting Standards

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<sup>145</sup> *Modernization of Oil & Gas Reporting*, SEC Release No. 78, File No. S7-15-08, 2008 WL 5423153, at \*66 (Dec. 31, 2008) (emphasis added).

<sup>146</sup> *Id.* at \*1.

Board (“FASB”).<sup>147</sup> The FASB’s rules concerning the impairment of assets require ExxonMobil to “incorporate [its] own assumptions” about future events when deciding whether its assets are impaired.<sup>148</sup> Contravening those rules, the Attorney General’s theory requires that ExxonMobil adopt his assumptions about the likelihood of possible future climate change regulations and then incorporate those assumptions into its determination of whether an asset has been impaired. Attorney General Schneiderman cannot hold ExxonMobil liable for complying with federal law.

80. Attorney General Healey’s investigation also purports to encompass the same unsound theory of fraud.<sup>149</sup> The decision to embrace this theory speaks volumes about the pretextual nature of the investigations being conducted by Attorneys General Schneiderman and Healey. To read the relevant SEC rules is to understand why ExxonMobil may not account for future climate change regulations when calculating its proved reserves. And to read the applicable accounting standards is to understand why it is impermissible for the Attorneys General to impose their assumptions about the financial impact of possible future climate change regulations on companies that are required to develop their own independent assumptions. The Attorneys General’s claims that they are conducting a bona fide investigation premised on ExxonMobil’s supposed failure to account for the Attorneys Generals’ expectations regarding the financial impact of future regulations thus cannot be taken seriously. Their true objectives are clear: to

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<sup>147</sup> See Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, 68 Fed. Reg. 23,333–401 (May 1, 2003).

<sup>148</sup> See FASB Accounting Standards Codification 360-10-35-30; see also Statement of Financial Accounting Standards No. 144 ¶ 17.

<sup>149</sup> Ex. NN at App. 367, 372; Opp’n. of Att’y Gen. Maura Healey to Pl. Exxon Mobil Corp.’s Mot. for Prelim. Inj. at 8, *ExxonMobil v. Healey*, No. 4:16-cv-00469-K (N.D. Tex. Aug. 8, 2016) (Dkt. No. 43) (“If substantial portions of Exxon’s vast fossil fuel reserves are unable to be burned due to carbon dioxide emissions limits put in place to stabilize global average temperature, those assets—valued in the billions—will be stranded, placing shareholder value at risk.”).

fish indiscriminately through ExxonMobil's records with the hope of finding some violation of some law that one of them might be empowered to enforce, or otherwise to harass ExxonMobil into endorsing the Green 20's policy views regarding how the United States should respond to climate change.

81. The desire of Attorneys General Schneiderman and Healey to impose liability on ExxonMobil for complying with SEC disclosure requirements, and the accounting methodologies incorporated in them, would create a direct conflict with federal law. Even if the New York or Massachusetts Attorneys General were to seek only to layer additional disclosure requirements beyond those imposed by the SEC, this would frustrate, and pose an obstacle to, Congress's and the SEC's efforts to create a uniform market for securities and provide consistent metrics by which investors can measure oil and gas companies on a relative basis.

**I. ExxonMobil Files Suit to Protect its Rights.**

82. ExxonMobil has challenged members of the Green 20 for violating its constitutional rights. Attorney General Walker issued a subpoena to ExxonMobil on March 15, 2016.<sup>150</sup> ExxonMobil responded by seeking a declaratory judgment that Attorney General Walker's subpoena was illegal and unenforceable because it violated ExxonMobil's rights under the United States and Texas constitutions.<sup>151</sup>

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<sup>150</sup> Ex. WW at App. 459–77.

<sup>151</sup> Ex. LL at App. 323–49.

83. The Attorneys General of Texas and Alabama intervened in that action in an effort to protect the constitutional rights of their citizens. They criticized Attorney General Walker for undertaking an investigation “driven by ideology, and not law.”<sup>152</sup> The Texas Attorney General called Attorney General Walker’s purported investigation “a fishing expedition of the worst kind” and recognized it as “an effort to punish Exxon for daring to hold an opinion on climate change that differs from that of radical environmentalists.”<sup>153</sup> The Alabama Attorney General echoed those sentiments, stating that the pending action in Texas “is more than just a free speech case. It is a battle over whether a government official has a right to launch a criminal investigation against anyone who doesn’t share his radical views.”<sup>154</sup>

84. On June 30, 2016, Attorney General Walker and ExxonMobil entered into a joint stipulation of dismissal, whereby the Attorney General agreed to withdraw his subpoena and ExxonMobil agreed to withdraw its litigation challenging the subpoena.

85. ExxonMobil commenced this action on June 15, 2016, seeking a preliminary injunction from this Court that would bar Attorney General Healey from enforcing the CID. In an attempt to defend Attorney General Healey’s constitutionally infirm CID, Attorney General Schneiderman, along with other attorneys general, filed an amicus brief on August 8, 2016.<sup>155</sup> They argued that Attorney General Healey has a

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<sup>152</sup> Ex. OO at App. 395.

<sup>153</sup> Ex. CC at App. 244–45.

<sup>154</sup> Ex. W at App. 216.

<sup>155</sup> Mem. of Law for *Amici Curiae* States of Maryland, New York, Illinois, Iowa, Maine, Minnesota, Mississippi, New Mexico, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia and the U.S. Virgin Islands in Support of Def.’s Mot. to Dismiss and in Opp’n. to Pl.’s Motion for a Prelim. Inj. at 1, *Exxon Mobil Corp. v. Healey*, No. 4:16-CV-469-K (N.D. Tex. Aug. 8, 2016) (Dkt. No. 47).

“compelling interest in the traditional authority” of her office “to investigate and combat violations of state law.”<sup>156</sup>

86. Recognizing that there was nothing “traditional” about Attorney General Healey’s use of state power, attorneys general from eleven states filed an amicus brief in support of ExxonMobil’s preliminary injunction motion.<sup>157</sup> “As chief legal officers” of their respective states, they explained that their investigative power “does not include the right to engage in unrestrained, investigative excursions to promulgate a social ideology, or chill the expression of points of view, in international policy debates.”<sup>158</sup> As a result, they noted that “[u]sing law enforcement authority to resolve a public policy debate undermines the trust invested in our offices and threatens free speech.”<sup>159</sup> They concluded, “Regrettably, history is embroiled with examples where the legitimate exercise of law enforcement is soiled with political ends rather than legal ones. Massachusetts seeks to repeats that unfortunate history. That the statements and workings of the ‘AG’s United for Clean Power’ are entirely one-sided, and target only certain participants in the climate change debate, speaks loudly enough.”<sup>160</sup>

87. ExxonMobil’s motion for a preliminary injunction against Attorney General Healey has been briefed and argued and is now submitted before this Court.

#### **THE SUBPOENA AND CID VIOLATE EXXONMOBIL’S RIGHTS**

88. The facts recited above demonstrate the pretextual nature of the stated reasons for the investigations conducted by Attorneys General Schneiderman and Healey.

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<sup>156</sup> *Id.*

<sup>157</sup> Br. of Texas, Louisiana, South Carolina, Alabama, Michigan, Arizona, Wisconsin, Nebraska, Oklahoma, Utah, and Nevada as *Amici Curiae* in Supp. of Pl.’s Mot. for Prelim. Inj. at Attachment 2, *Exxon Mobil Corp. v. Healey*, No. 4:16-CV-469-K (N.D. Tex. Sept. 8, 2016) (Dkt. No. 63).

<sup>158</sup> *Id.* at 1.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 9.

The statements Attorneys General Schneiderman and Healey made at the press conference and after, the climate change coalition common interest agreement, and recently released emails reveal the improper purpose of the investigations: to change the political calculus surrounding the debate about policy responses to climate change by (1) targeting speech that the Attorneys General perceive to support political perspectives on climate change that differ from their own, and (2) exposing ExxonMobil's documents that may be politically useful to climate activists.

89. The pretextual character of the investigations is brought into sharp relief when the scope of the subpoena and the CID—which demand nearly 40 years of records—are contrasted with the, at most, six-year limitations periods of the statutes that purportedly authorize the investigations.

90. Neither Attorney General Schneiderman nor Attorney General Healey (nor, indeed, any other public official) may use the power of the state to prescribe what shall be orthodox in matters of public concern. By deploying the law enforcement authority of their offices to target one side of a political debate, their actions violated—and continue to violate—the First Amendment.

91. It follows from the political character of the subpoena and the CID and their remarkably broad scope that they also violate the Fourth Amendment. Their burdensome demands for irrelevant records violate the Fourth Amendment's reasonableness requirement, as well as its prohibition on fishing expeditions. Indeed, the evolving justifications for the New York and Massachusetts inquiries confirm that they are investigations driven by the identity of the target, not any good faith belief that a law was broken.

92. The investigations also fail to meet the requirements of due process. Attorneys General Schneiderman and Healey have publicly declared not only that they believe ExxonMobil and other fossil fuel companies pose an existential risk to the planet, but also the improper purpose of their investigations: to silence ExxonMobil's voice in the public debate regarding climate change and to pressure ExxonMobil to support policies the Attorneys General favor. Even worse, Attorney General Schneiderman has publicly accused ExxonMobil of engaging in a "massive securities fraud" without any basis whatsoever, and Attorney General Healey declared, before her investigation even began, that she knew how it would end: with a finding that ExxonMobil violated the law.<sup>161</sup> The improper political bias that inspired the New York and Massachusetts investigations disqualifies Attorneys General Schneiderman and Healey from serving as the disinterested prosecutors required by the Constitution.

93. In the rush to fill what Attorney General Schneiderman described as a "[legislative] breach" in Congress regarding climate change, both he and Attorney General Healey have also openly and intentionally infringed on Congress's powers to regulate interstate commerce. Their investigations seek to regulate speech and conduct that occur almost entirely outside of New York and Massachusetts. Where a state seeks to regulate and burden out-of-state speech, as the subpoena and the CID do here, the state improperly encroaches on Congress's exclusive authority to regulate interstate commerce and violates the Dormant Commerce Clause.

94. Attorneys General Schneiderman and Healey's new focus on ExxonMobil's reporting of proved reserves and assets is equally impermissible. They seek to hold ExxonMobil liable for not taking into account possible future regulations

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<sup>161</sup> Ex. B at App. 20–21.



concerning climate change and carbon emissions when estimating proved reserves and reporting assets. But that theory cannot be reconciled with the SEC's requirement that ExxonMobil calculate its proved reserves based only on "existing" regulations, not future regulations. This facet of the investigation, therefore, impermissibly conflicts with, and poses an obstacle to, the goals and purposes of federal law. That conflict is also present in the Attorneys General's investigation of how ExxonMobil determines under binding accounting rules whether an asset has become impaired.

95. The subpoena and the CID also constitute an abuse of process because they were issued for the improper purposes described above.

96. ExxonMobil asserts the claims herein based on the facts available to it in the public record from, among other things, press accounts and freedom of information requests made by third parties. ExxonMobil anticipates that discovery from Attorneys General Schneiderman and Healey, as well as third parties, will reveal substantial additional evidence in support of its claims.

**EXXONMOBIL HAS BEEN INJURED BY THE SUBPOENA AND THE CID**

97. The subpoena and the CID have injured, are injuring, and will continue to injure ExxonMobil.

98. ExxonMobil is an active participant in the policy debate about potential responses to climate change. It has engaged in that debate for decades, participating in the Intergovernmental Panel on Climate Change since its inception and contributing to every report issued by the organization since 1995. Since 2009, ExxonMobil has publicly advocated for a carbon tax as its preferred method to regulate carbon emissions. Proponents of a carbon tax on greenhouse gas emissions argue that increasing

taxes on carbon can “level the playing field among different sources of energy.”<sup>162</sup> While Attorneys General Schneiderman and Healey and the other members of the Green 20 are entitled to disagree with ExxonMobil’s position, no member of that coalition is entitled to silence or seek to intimidate one side of that discussion (or the debate about any other important public issue) through the issuance of baseless and burdensome subpoenas. ExxonMobil intends—and has a constitutional right—to continue to advance its perspective in the national discussions over how best to respond to climate change. Its right to do so should not be violated through this exercise of government power.

99. As a result of the improper and politically motivated investigations launched by Attorneys General Schneiderman and Healey, ExxonMobil has suffered, now suffers, and will continue to suffer violations of its rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution and under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution. Attorneys General Schneiderman’s and Healey’s actions also violate Articles One and Six of the United States Constitution and constitute an abuse of process under common law.

100. Acting under the laws, customs, and usages of New York and Massachusetts, Attorneys General Schneiderman and Healey have subjected ExxonMobil, and are causing ExxonMobil to be subjected, to the deprivation of rights, privileges, and immunities secured by the United States Constitution and the Texas Constitution. ExxonMobil’s rights are made enforceable against Attorneys General Schneiderman and Healey, who are acting under the color of law, by Article One, Section Eight of the United States Constitution, and the Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution, all within the meaning and

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<sup>162</sup> Ex. PP at App. 402.

contemplation of 42 U.S.C. § 1983, and by Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution.

101. Absent relief, Attorneys General Schneiderman and Healey will continue to deprive ExxonMobil of these rights, privileges, and immunities.

102. In addition, ExxonMobil is threatened with further imminent injury that will occur if it is forced to choose between conforming its constitutionally protected speech to Attorneys General Schneiderman and Healey's shared political views or exercising its rights and risking sanctions and prosecution.

103. The subpoena and the CID also threaten ongoing imminent injury to ExxonMobil because they subject ExxonMobil to an unreasonable search in violation of the Fourth Amendment. Complying with this unreasonably burdensome and unwarranted fishing expeditions would require ExxonMobil to collect, review, and produce millions more documents, and would cost millions of dollars.

104. If ExxonMobil's request for injunctive relief is not granted, and Attorneys General Schneiderman and Healey are permitted to persist in their investigations, then ExxonMobil will suffer these imminent and irreparable harms. ExxonMobil has no adequate remedy at law for the violation of its constitutional rights.

### **CAUSES OF ACTION**

#### **A. First Cause of Action: Conspiracy**

105. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

106. The facts set forth herein demonstrate that, acting under color of state law, Attorneys General Schneiderman and Healey have agreed with each other, and with others known and unknown, to deprive ExxonMobil of rights secured by the law to all,

including those guaranteed by the First, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution.

107. In furtherance of these objectives, Attorneys General Schneiderman and Healey have, among other things, issued the unlawful subpoena and CID and entered the common interest agreement described above at paragraphs 52–53. The subpoena and CID were issued without having a good faith basis for conducting any investigation, and with the ulterior motive of preventing ExxonMobil from enjoying and exercising its rights protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution.

108. ExxonMobil has been damaged, and has been deprived of its rights under the United States and Texas Constitutions, as a proximate result of the unlawful conspiracy entered into by Attorneys General Schneiderman and Healey. The conduct of Attorneys General Schneiderman and Healey therefore violates both 42 U.S.C. § 1985 and the Texas common law.

**B. Second Cause of Action: Violation of ExxonMobil’s First and Fourteenth Amendment Rights**

109. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

110. The focus of the subpoena and the CID on one side of a policy debate—in an apparent effort to silence, intimidate, and deter those possessing a particular viewpoint from participating in that debate—contravenes, and any effort to enforce the subpoena or CID would further contravene, the rights provided to ExxonMobil by the First

Amendment to the United States Constitution, made applicable to the State of New York and the Commonwealth of Massachusetts by the Fourteenth Amendment, and by Section Eight of Article One of the Texas Constitution.

111. The subpoena and the CID are impermissible viewpoint-based restrictions on speech, and they burden ExxonMobil's political speech. Attorneys General Schneiderman and Healey issued the subpoena and the CID based on their disagreement with ExxonMobil regarding how the United States should respond to the risks of climate change. And even if the subpoena and the CID had not been issued for that illegal purpose, they would still violate the First Amendment, because they burden ExxonMobil's political speech without being substantially related to any compelling governmental interest.

**C. Third Cause of Action: Violation of ExxonMobil's Fourth and Fourteenth Amendment Rights**

112. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

113. The issuance of the subpoena and the CID contravenes, and any effort to enforce the subpoena would further contravene, the rights provided to ExxonMobil by the Fourth Amendment to the United States Constitution, made applicable to the State of New York and the Commonwealth of Massachusetts by the Fourteenth Amendment, and by Section Nine of Article One of the Texas Constitution, to be secure in its papers and effects against unreasonable searches and seizures.

114. The subpoena and CID are each unreasonable searches and seizures because each of them constitutes an abusive fishing expedition into 40 years of ExxonMobil's records, without any legitimate basis for believing that ExxonMobil

violated New York or Massachusetts law. Their overbroad and irrelevant requests impose an undue burden on ExxonMobil and violate the Fourth Amendment's reasonableness requirement, which mandates that a subpoena be limited in scope, relevant in purpose, and specific in directive.

**D. Fourth Cause of Action: Violation of ExxonMobil's Fourteenth Amendment Rights**

115. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

116. The investigations conducted by Attorneys General Schneiderman and Healey contravene the rights provided to ExxonMobil by the Fourteenth Amendment to the United States Constitution and by Section Nineteen of Article One of the Texas Constitution not to be deprived of life, liberty, or property without due process of law.

117. The subpoena and CID deprive ExxonMobil of due process of law by violating the requirement that a prosecutor be disinterested. The statements by Attorneys General Schneiderman and Healey at the Green 20 press conference and elsewhere make clear that they are biased against ExxonMobil.

**E. Fifth Cause of Action: Violation of ExxonMobil's Rights Under the Dormant Commerce Clause**

118. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

119. Article I, Section 8 of the United States Constitution grants Congress exclusive authority to regulate interstate commerce and thus prohibits the States from doing so. The issuance of the subpoena and the CID contravenes, and any effort to enforce the subpoena and the CID would further contravene, the rights provided to ExxonMobil under the Dormant Commerce Clause.

120. The subpoena and the CID effectively regulate ExxonMobil's out-of-state speech while only purporting to investigate ExxonMobil's marketing and/or sale of energy and other fossil fuel derived products to consumers in New York and Massachusetts and its marketing and/or sale of securities to investors in New York and Massachusetts.

121. The subpoena and the CID demand documents that relate to (1) statements ExxonMobil made outside New York and Massachusetts, and (2) ExxonMobil's communications with organizations residing outside New York and Massachusetts. The subpoena and CID therefore have the practical effect of primarily burdening interstate commerce.

**F. Sixth Cause of Action: Federal Preemption**

122. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

123. Article VI, Clause 2 of the United States Constitution provides that the laws of the United States "shall be the supreme law of the land." Any state law that imposes disclosure requirements inconsistent with federal law is preempted under the Supremacy Clause.

124. Federal law requires ExxonMobil to calculate and report its proved oil and gas reserves based on "existing economic conditions, operating methods, and government regulations." This requirement reflects the SEC's reasoned judgment about how best to supply investors with information about the relative value of oil and gas companies, as well as its balancing of competing priorities, such as the agency's desire for comprehensive disclosures, that are not unduly burdensome, and which investors can easily compare. Similarly, accounting standards recognized as authoritative by the SEC

require ExxonMobil to use its own assumptions about future events when determining whether assets are impaired, not the assumptions of the Attorneys General. Attorneys General Schneiderman and Healey have stated that they seek to impose liability on ExxonMobil for failing to account for what they believe will be the financial impact of as-yet-unknown “carbon dioxide emissions limits put in place to stabilize global average temperature” in estimating and reporting ExxonMobil’s proven reserves and valuing its assets. The Attorneys General therefore would seek to punish ExxonMobil for complying with federal law and the accounting standards embedded therein.

125. Even if the New York or Massachusetts Attorneys General were to seek only to layer additional disclosure requirements concerning oil and gas reserves and asset valuations beyond those imposed by the SEC, this would frustrate, and pose an obstacle to, Congress’s and the SEC’s efforts to create a uniform market for securities and provide consistent metrics by which investors can measure oil and gas companies on a relative basis.

126. Because these investigations under New York and Massachusetts law create a conflict with, and pose an obstacle to, federal law, the application of New York and Massachusetts law to this case is preempted.

**G. Seventh Cause of Action: Abuse of Process**

127. ExxonMobil repeats and realleges paragraphs 1 through 104 above as if fully set forth herein.

128. Attorneys General Schneiderman and Healey committed an abuse of process under common law by (1) issuing the subpoena and the CID to ExxonMobil without having a good faith basis for conducting an investigation; (2) having an ulterior motive for issuing and serving the subpoena and the CID, namely, an intent to prevent



ExxonMobil from exercising its right to express views with which they disagree; and  
(3) causing injury to ExxonMobil's reputation and violating its constitutional rights.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that Attorneys General Schneiderman and Healey be summoned to appear and answer and that this Court award the following relief:

1. A declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that the subpoena and the CID violate ExxonMobil's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution; violate ExxonMobil's rights under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution; and violate the Dormant Commerce Clause and the Supremacy Clause of the United States Constitution;

2. A declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that the issuance of the subpoena and the CID constitute an abuse of process, in violation of common law;

3. A preliminary and permanent injunction prohibiting enforcement of the subpoena and of the CID;

4. Such other injunctive relief to which Plaintiff is entitled; and

5. All costs of court together with any and all such other and further relief as this Court may deem proper.

Dated: October 17, 2016

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon  
Patrick J. Conlon  
(*pro hac vice*)  
State Bar No. 24054300  
patrick.j.conlon@exxonmobil.com  
Daniel E. Bolia  
State Bar No. 24064919  
daniel.e.bolia@exxonmobil.com  
1301 Fannin Street  
Houston, TX 77002  
(832) 624-6336

/s/ Nina Cortell  
Nina Cortell  
State Bar No. 04844500  
nina.cortell@haynesboone.com  
HAYNES & BOONE, LLP  
2323 Victory Avenue  
Suite 700  
Dallas, TX 75219  
(214) 651-5579  
Fax: (214) 200-0411

/s/ Theodore V. Wells, Jr.  
Theodore V. Wells, Jr.  
(*pro hac vice*)  
twells@paulweiss.com  
Michele Hirshman  
(*pro hac vice*)  
mhirshman@paulweiss.com  
Daniel J. Toal  
(*pro hac vice*)  
dtoal@paulweiss.com  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3000  
Fax: (212) 757-3990

/s/ Ralph H. Duggins  
Ralph H. Duggins  
State Bar No. 06183700  
rduggins@canteyhanger.com  
Philip A. Vickers  
State Bar No. 24051699  
pvickers@canteyhanger.com  
Alix D. Allison  
State Bar. No. 24086261  
aallison@canteyhanger.com  
CANTEY HANGER LLP  
600 West 6th Street, Suite 300  
Fort Worth, TX 76102  
(817) 877-2800  
Fax: (817) 877-2807

Justin Anderson  
(*pro hac vice*)  
janderson@paulweiss.com  
2001 K Street, NW  
Washington, D.C. 20006-1047  
(202) 223-7300  
Fax: (202) 223-7420

*Counsel for Exxon Mobil Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2016, a copy of the foregoing instrument was served on the following party via the Court's CM/ECF system in accordance with the Federal Rules of Civil Procedure:

Maura Healey  
Massachusetts Attorney General's Office  
One Ashburton Place  
Boston, MA 02108-1518  
Phone: (617) 727-2200

/s/ Ralph H. Duggins

Ralph H. Duggins

# **Exhibit B**

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
ERIC TRADD SCHNEIDERMAN,	§	NO. 4:16-CV-469-K
Attorney General of New York, in his	§	
official capacity, and MAURA TRACY	§	
HEALEY, Attorney General of	§	
Massachusetts, in her official capacity.	§	
	§	
Defendants.	§	

**APPENDIX IN SUPPORT OF EXXON MOBIL CORPORATION’S  
 FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Page(s)</u></b>
N/A	Declaration of Justin Anderson (Oct. 13, 2016)	ix – xvii
A	Justin Gillis & Clifford Krauss, <i>Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General</i> , N.Y. Times (Nov. 5, 2015)	App. 1 – App. 7
B	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 <a href="http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across">http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across</a>	App. 8 – App. 28
C	Seth Shulman, Union of Concerned Scientists and Climate Accountability Institute, <i>Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control</i> (October 2012)	App. 29 – App. 65

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
D	E-mail from Kenny Bruno to Lee Wasserman et al. (January 5, 2016, 4:42 PM)	App. 66 – App. 67
E	E-mail from Wendy Morgan, Chief of Public Protection, Office of the Vermont Attorney General, to Michael Meade, Director, Intergovernmental Affairs Bureau, Office of the New York Attorney General (Mar. 18, 2016, 6:06 PM)	App. 68 – App. 78
F	E-mail from Lemuel Srolovic, Bureau Chief, Environmental Protection Bureau, Office of the New York Attorney General, to Matthew Pawa, President, Pawa Law Group, P.C. (Mar. 30, 2016, 9:01 PM)	App. 79 – App. 80
G	Exxon Mobil Corp., <i>Corporate Citizenship in a Changing World</i> (2002)	App. 81 – App. 98
H	Exxon Mobil Corp., <i>2006 Corporate Citizenship Report</i> (2006)	App. 99 – App. 106
I	Redacted e-mail from Lemuel Srolovic, Bureau Chief, Environmental Protection Bureau, Office of the New York Attorney General, to Jack Balagia, Vice President and General Counsel, ExxonMobil (Nov. 4, 2015)	App. 107 – App. 108
J	Alan Neuhauser, <i>Exxon Mobil on Hot Seat for Global Warming Denial</i> , U.S. News & World Report (Nov. 5, 2015)	App. 109 – App. 112
K	Judy Woodruff, <i>Has Exxon Mobil Mislead the Public About Its Climate Change Research?</i> , PBS NewsHour (Nov. 10, 2015, 6:45 PM)	App. 113 – App. 121
L	<i>New York Attorney General Comments on Exxon Probe</i> , Oil Daily (Nov. 13, 2015)	App. 122 – App. 124

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
M	E-mail 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, and Wendy Morgan, Chief of Public Protection, Office of the Vermont Attorney General (Mar. 22, 2016,4:51 PM)	App. 125 – App. 128
N	E-mail from Peter Washburn, Policy Advisor, Environmental Protection Bureau of the New York Attorney General, to Lemuel Srolovic, Bureau Chief, Environmental Protection Bureau, Office of the New York State Attorney General; Scot Kline, Assistant Attorney General, Office of the Vermont Attorney General; and Wendy Morgan, Chief of Public Protection, Office of the Vermont Attorney General (Mar. 25, 2016, 11:49 AM)	App. 129 – App. 136
O	Union of Concerned Scientists, <i>Peter Frumhoff</i> , <a href="http://www.ucsusa.org/about/staff/staff/peter-frumhoff.html#.WAO9oYMrKGo">http://www.ucsusa.org/about/staff/staff/peter-frumhoff.html#.WAO9oYMrKGo</a> (last visited Oct. 12, 2016)	App. 137 – App. 144
P	Union of Concerned Scientists, <i>Global Warming Solutions: Fight Misinformation</i> , <a href="http://www.ucsusa.org/our-work/global-warming/solutions/global-warming-solutions-fight-misinformation#.WAO944MrKGo">http://www.ucsusa.org/our-work/global-warming/solutions/global-warming-solutions-fight-misinformation#.WAO944MrKGo</a> (last visited Oct. 12, 2016)	App. 145 – App. 158
Q	Union of Concerned Scientists, <i>Smoke, Mirrors &amp; Hot Air: How ExxonMobil Uses Big Tobacco’s Tactics to Manufacture Uncertainty on Climate Science</i> (2007)	App. 159 – App. 169
R	Valerie Richardson, <i>Democrat AGs Signed Secrecy Pact to Hide Details of Probe into Climate Change Dissent</i> , Wash. Times (Aug. 4, 2016)	App. 170 – App. 174

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
S	<i>Practice Areas</i> , Pawa Law Group, P.C., <a href="http://www.pawalaw.com/practice-areas">http://www.pawalaw.com/practice-areas</a> (last visited Oct. 12, 2016)	App. 175 – App. 177
T	ExxonMobil Corporation, <i>2015 Corporate Citizenship Report</i> (2015)	App. 178 – App. 190
U	Alana Goodman, <i>Memo Shows Secret Coordination Effort Against ExxonMobil by Climate Activists, Rockefeller Fund</i> , Wash. Free Beacon (Apr. 14, 2016, 5:00 PM)	App. 191 – App. 194
V	Climate Change Coalition Common Interest Agreement	App. 195 – App. 214
W	Press Release, Office of the Attorney General of the State of Alabama, <i>Alabama Joins Intervention in Case to Protect First Amendment Right of Businesses from Government Threats of Criminal Prosecution</i> (May 16, 2016)	App. 215 – App. 223
X	Press Release, State of Alabama Office of the Attorney General, <i>State AG’s Strange, Pruitt Condemn Attempts to Silence Those Who Disagree with President Obama’s Energy Agenda</i> (Mar. 30, 2016)	App. 224 – App. 225
Y	Press Release, State of Louisiana Office of the Attorney General, <i>Attorney General Jeff Landry Slams Al Gore’s Coalition</i> (Mar. 30, 2016)	App. 226 – App. 227
Z	Letter from Lamar Smith, Chairman, House Committee on Science, Space, and Technology, et al. to Eric Schneiderman, Attorney General of New York (May 18, 2016)	App. 228 – App. 234
AA	Letter from Leslie B. Dubeck, Counsel, New York Attorney General’s Office, to Representative Lamar Smith, Chairman, House Committee on Science, Space, and Technology (May 26, 2016)	App. 235 – App. 238



<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
BB	Press Release, House Committee on Science, Space, & Technology, <i>Smith Subpoenas MA, NY Attorneys General, Environmental Groups</i> (July 13, 2016)	App. 239 – App. 242
CC	Press Release, Ken Paxton, Attorney General of Texas, <i>Attorney General Paxton Intervenes in First Amendment Case</i> (May 16, 2016)	App. 243 – App. 245
DD	Letter from Mike Lee, U.S. Senator, et al. to Loretta Lynch, U.S. Attorney General (May 25, 2016)	App. 246 – App. 249
EE	The New York Attorney General’s Subpoena to ExxonMobil, dated November 4, 2015	App. 250 – App. 268
FF	Stanford University Global Climate & Energy Project, <i>About Us</i> , <a href="https://gcep.stanford.edu/about/index.html">https://gcep.stanford.edu/about/index.html</a> (last visited Oct. 12, 2016)	App. 269 – App. 271
GG	Exxon Mobil Corp., <i>Annual Report (Form 10-K)</i> (Feb. 28, 2007)	App. 272 – App. 278
HH	Exxon Mobil Corp., <i>Annual Report (Form 10-K)</i> (Feb. 24, 2016)	App. 279 – App. 284
II	The Massachusetts Attorney General’s Civil Investigative Demand to ExxonMobil, dated April 19, 2016	App. 285 – App. 314
JJ	Declaration of Robert Luetttgen (June 14, 2016)	App. 315 – App. 317
KK	Christopher M. Matthews, <i>New York AG Employs Powerful Law in Exxon Probe</i> , Wall St. J. (Sept. 16, 2016)	App. 318 – App. 321
LL	Plaintiff’s Original Petition for Declaratory Relief, <i>Exxon Mobil Corp. v. Walker</i> (Tex. Dist. Ct. Apr. 13, 2016) (No. 017-284890-16)	App. 322 – App. 349
MM	John Schwartz, <i>Exxon Mobil Fraud Inquiry Said to Focus More on Future than Past</i> , N.Y. Times, B1 (Aug. 19, 2016)	App. 350 – App. 353

<u>Exhibit</u>	<u>Description</u>	<u>Page(s)</u>
NN	Letter from Richard A. Johnston, Chief Legal Counsel, Massachusetts Attorney General’s Office, to Lamar Smith, Chairman, House Committee on Science, Space, and Technology (July 26, 2016)	App. 354 – App. 392
OO	Plea in Intervention of the States of Texas and Alabama, <i>Exxon Mobil Corp. v. Walker</i> (Tex. Dist. Ct. May 16, 2016) (No. 017-284890-16)	App. 393 – App. 400
PP	Jeremy Carl & David Fedor, Hoover Institution at Stanford University: Shultz-Stephenson Task Force on Energy Policy, <i>Revenue-Neutral Carbon Taxes in the Real World: Insights from British Columbia and Australia</i> (2012)	App. 401 – App. 433
QQ	Michael Bastasch, <i>Kansas AG Takes on Al Gore’s Alarmism – Won’t Join Anti-Exxon ‘Publicity Stunt,’</i> Daily Caller (Apr. 4, 2016)	App. 434 – App. 436
RR	Kyle Feldscher, <i>West Virginia AG ‘Disappointed’ in Probes of Exxon Mobil</i> , Wash. Examiner (Apr. 5, 2016)	App. 437 – App. 440
SS	Press Release, Luther Strange, Alabama Attorney General, <i>Attorney General Strange Leads Dear Colleague Letter to Fellow Attorneys General Opposing Use of Subpoenas to Enforce Their Climate Agenda Views</i> (June 16, 2016)	App. 441 – App. 447
TT	Steven Mufson, <i>Environmental Groups Reject Rep. Lamar Smith’s Request for Information on ExxonMobil Climate Case</i> , Wash. Post (June 1, 2013)	App. 448 – App. 451
UU	Associated Press, <i>AG Won’t Send Documents on Probe of Exxon Mobil</i> , N.Y. L.J. (June 3, 2016)	App. 452 – App. 453
VV	Greenpeace, <i>ExxonMobil Climate Denial Funding 1998- 2014</i> , <a href="http://www.exxonsecrets.org/html/index.php">http://www.exxonsecrets.org/html/index.php</a> (last visited Oct. 12, 2016)	App. 454 – App. 457

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Page(s)</u></b>
WW	The Virgin Islands Attorney General's Subpoena to ExxonMobil, dated March 15, 2016	App. 458 – App. 477

Dated: October 17, 2016

EXXON MOBIL CORPORATION

Patrick J. Conlon  
(patrick.j.conlon@exxonmobil.com)  
State Bar No. 24054300  
(*pro hac vice*)  
Daniel E. Bolia  
(daniel.e.bolia@exxonmobil.com)  
State Bar No. 24064919  
1301 Fannin Street  
Houston, TX 77002  
(832) 624-6336

Theodore V. Wells, Jr.  
(twells@paulweiss.com)  
(*pro hac vice*)

Michele Hirshman  
(mhirshman@paulweiss.com)  
(*pro hac vice*)

Daniel J. Toal  
(dtoal@paulweiss.com)  
(*pro hac vice*)  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3000  
Fax: (212) 757-3990

Justin Anderson  
(janderson@paulweiss.com)  
(*pro hac vice*)  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
2001 K Street, NW  
Washington, D.C. 20006-1047  
(202) 223-7300  
Fax: (202) 223-7420

*Counsel for Exxon Mobil Corporation*

/s/ Ralph H. Duggins  
Ralph H. Duggins  
(rduggins@canteyhanger.com)  
State Bar No. 06183700  
Philip A. Vickers  
(pvickers@canteyhanger.com)  
State Bar No. 24051699  
Alix D. Allison  
(aallison@canteyhanger.com)  
State Bar. No. 24086261  
CANTEY HANGER LLP  
600 W. 6th St. #300  
Fort Worth, TX 76102  
(817) 877-2800  
Fax: (817) 877-2807

Nina Cortell  
(nina.cortell@haynesboone.com)  
State Bar No. 04844500  
HAYNES & BOONE, LLP  
2323 Victory Avenue  
Suite 700  
Dallas, TX 75219  
(214) 651-5579  
Fax: (214) 200-0411

**CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2016, a copy of the foregoing instrument was served on the following party via the Court's CM/ECF system in accordance with the Federal Rules of Civil Procedure:

Maura Healey  
Massachusetts Attorney General's Office  
One Ashburton Place  
Boston, MA 02108-1518  
Phone: (617) 727-2200

/s/ Ralph H. Duggins

Ralph H. Duggins

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
ERIC TRADD SCHNEIDERMAN,	§	NO. 4:16-CV-469-K
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 as follows:

1. My name is Justin Anderson. I have been admitted to practice law *pro hac vice* in the U.S. District Court for the Northern District of Texas and am an attorney with the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel of record for Exxon Mobil Corporation (“ExxonMobil”) in this matter. I am over 18 years of age and am fully competent in all respects to make this Declaration. 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. I submit this declaration in support of ExxonMobil’s First Amended Complaint for Declaratory and Injunctive Relief.

3. Attached to this declaration as Exhibit A is a copy of an article by Justin Gillis and Clifford Krauss published in the *New York Times* on November 5, 2015,

obtained from <http://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html>.

4. Attached to this declaration as Exhibit B 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>.

5. Attached to this declaration as Exhibit C is a copy of report published by the Union of Concerned Scientists and Climate Accountability Institute in October 2012, obtained from [http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct 12](http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct%2012).

6. Attached to this declaration as Exhibit D is a copy of an email from Kenny Bruno to Matthew Pawa, dated January 5, 2016, obtained from <http://freebeacon.com/wp-content/uploads/2016/04/scan0003.pdf>.

7. Attached to this declaration as Exhibit E is a 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 to this declaration as Exhibit F is a copy of an email from Lemuel Srolovic 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?custom\\_click=rss](http://www.washingtonexaminer.com/ny-atty.-general-sought-to-keep-lawyers-role-in-climate-change-push-secret/article/2588874?custom_click=rss).

9. Attached to this declaration as Exhibit G is an excerpt of ExxonMobil Corporation's *Corporate Citizenship in a Changing World* report, dated 2002, obtained from ExxonMobil's files.

10. Attached to this declaration as Exhibit H is an excerpt of ExxonMobil Corporation's *2006 Corporate Citizenship Report*, dated 2007, obtained from [http://www.socialfunds.com/csr/reports/Exxon\\_Mobil\\_2006\\_Corporate\\_Citizenship\\_Report.pdf](http://www.socialfunds.com/csr/reports/Exxon_Mobil_2006_Corporate_Citizenship_Report.pdf).

11. Attached to this declaration as Exhibit I is a copy of a redacted email from Lemuel M. Srolovic, Bureau Chief, Environmental Protection Bureau, New York State Attorney General, to Jack Balagia, Vice President and General Counsel, ExxonMobil, dated November 4, 2015.

12. Attached to this declaration as Exhibit J is a copy of an article by Alan Neuhauser published in *U.S. News & World Report*, on November 5, 2015, obtained from <http://www.usnews.com/news/articles/2015/11/05/exxon-mobil-under-investigation-for-climate-change-denial>.

13. Attached to this declaration as Exhibit K is a transcript from the Public Broadcasting Service program *NewsHour*, dated November 10, 2015, obtained from <http://www.pbs.org/newshour/bb/exxon-mobil-mislead-public-climate-change-research>.

14. Attached to this declaration as Exhibit L is a copy of an article published in *Oil Daily*, dated November 13, 2015.

15. Attached to this declaration as Exhibit M is a copy of an e-mail chain, the last of which is from Michael Meade to Scot Kline and Wendy Morgan, and is



dated March 22, 2016, obtained from <http://eelegal.org/wp-content/uploads/2016/04/Gore-is-adding-star-power-and-words-to-avoid.pdf>.

16. Attached to this declaration as Exhibit N is an email from Peter Washburn to Lemuel Srolovic, Scot Kline, and Wendy Morgan, dated March 25, 2016, obtained from <http://eelegal.org/wp-content/uploads/2016/04/Questionnaire-responses.pdf>.

17. Attached to this declaration as Exhibit O 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#.VyT3oYSDFHw> on October 12, 2016.

18. Attached to this declaration as Exhibit P is an article published by the Union of Concern Scientists, obtained from [http://www.ucsusa.org/our-work/global-warming/solutions/global-warming-solutions-fight-misinformation#.Vx-PC\\_krJpg](http://www.ucsusa.org/our-work/global-warming/solutions/global-warming-solutions-fight-misinformation#.Vx-PC_krJpg) on October 12, 2016.

19. Attached to this declaration as Exhibit Q is a report published by the Union of Concerned Scientists, dated January 2007, obtained from [http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global\\_warming/exxon\\_report.pdf](http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/exxon_report.pdf).

20. Attached to this declaration as Exhibit R is a copy of an article by Valerie Richardson, published in the *Washington Times*, dated August 4, 2016, obtained from <http://www.washingtontimes.com/news/2016/aug/4/dem-ags-signed-secrecy-pact-climate-change-probe>.

21. Attached to this declaration as Exhibit S is a copy of the Pawa Law Group's description of its practice areas, obtained from <http://www.pawalaw.com/practice-areas> on October 12, 2016.

22. Attached to this declaration as Exhibit T is a copy of ExxonMobil Corporation's 2015 *Corporate Citizenship Report*, obtained from [http://cdn.exxonmobil.com/~media/global/files/corporate-citizenshipreport/2015\\_corporate\\_citizenship\\_report\\_full\\_approved-pdf.pdf](http://cdn.exxonmobil.com/~media/global/files/corporate-citizenshipreport/2015_corporate_citizenship_report_full_approved-pdf.pdf).

23. Attached to this declaration as Exhibit U is a copy of an article by Alana Goodman, published in the *Washington Free Beacon* on April 14, 2016, obtained from <http://freebeacon.com/issues/memo-shows-secret-coordination-effort-exxonmobil-climate-activists-rockefeller-fund>.

24. Attached to this declaration as Exhibit V 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>.

25. Attached to this declaration as Exhibit W is a copy of a press release issued by the Attorney General of Alabama, dated May 16, 2016, obtained from <http://www.ago.state.al.us/News-837>.

26. Attached to this declaration as Exhibit X is a copy of a press release issued by the Alabama Attorney General's Office, dated March 30, 2016, obtained from <http://www.ago.state.al.us/News-800>.

27. Attached to this declaration as Exhibit Y is copy of a press release by the Louisiana Attorney General's Office, dated March 30, 2016, obtained from <https://www.ag.state.la.us/Article.aspx?articleID=2207&catID=2>.

28. Attached to this declaration as Exhibit Z is a copy of a letter from Representative Lamar Smith to New York Attorney General Eric Schneiderman, dated May 18, 2016, obtained from <https://science.house.gov/sites/republicans.science.house.gov/files/documents/05.18.16%20SST%20Letter%20to%20NY%20AG.pdf>.

29. Attached to this declaration as Exhibit AA is a copy of a letter from Leslie B. Dubeck to Representative Lamar Smith, dated May 26, 2016, obtained from [https://ag.ny.gov/sites/default/files/2016\\_07\\_26\\_nyoag\\_letter\\_to\\_sst\\_objecting\\_to\\_subpoena.pdf](https://ag.ny.gov/sites/default/files/2016_07_26_nyoag_letter_to_sst_objecting_to_subpoena.pdf).

30. Attached to this declaration as Exhibit BB is a copy of a press release issued by the House Committee on Science, Space, & Technology, dated July 13, 2016, obtained from <https://science.house.gov/news/press-releases/smith-subpoenas-many-attorneys-general-environmental-groups>.

31. Attached to this declaration as Exhibit CC is copy of a press release issued by the Attorney General Texas, dated May 16, 2016, obtained from <https://texasattorneygeneral.gov/news/releases/attorney-general-paxton-intervenes-in-first-amendment-case>.

32. Attached to this declaration as Exhibit DD is a copy of a letter from Senator Mike Lee to U.S. Attorney General Loretta Lynch, dated May 25, 2016, obtained from [http://www.cruz.senate.gov/files/documents/Letters/20160526\\_Climate\\_Change\\_Letter.pdf](http://www.cruz.senate.gov/files/documents/Letters/20160526_Climate_Change_Letter.pdf).

33. Attached to this declaration as Exhibit EE is a copy of the New York Attorney General's Subpoena to Exxon Mobil for Production of Documents, dated November 4, 2015.

34. Attached to this declaration as Exhibit FF is a copy of Stanford University's Global Climate & Energy Project's "About Us" webpage, obtained from <https://gcep.stanford.edu/about/index.html>.

35. Attached to this declaration as Exhibit GG is an excerpt of ExxonMobil Corporation's *Annual Report (Form 10-K)*, dated February 28, 2007.

36. Attached to this declaration as Exhibit HH is an excerpt of the ExxonMobil Corporation's *Annual Report (Form 10-K)*, dated February 24, 2016.

37. Attached to this declaration as Exhibit II is a copy of the Massachusetts Attorney General's Civil Investigative Demand to ExxonMobil, dated April 19, 2016.

38. Attached to this declaration as Exhibit JJ is a copy of the Declaration of Robert Luetzgen, dated June 14, 2016.

39. Attached to this declaration as Exhibit KK is a copy of an article by Christopher Matthews, published in the Wall Street Journal on September 16, 2016, obtained from <http://www.wsj.com/articles/new-york-ag-employs-powerful-law-in-exxon-probe-1474061881>.

40. Attached to this declaration as Exhibit LL is a copy of Plaintiff's Original Petition for Declaratory Relief, filed in *Exxon Mobil Corp. v. Walker* (Tex. Dist. Ct. Apr. 13, 2016) (No. 017-284890-16).

41. Attached to this declaration as Exhibit MM is a copy of an article by John Schwartz, published in *The New York Times* on August 19, 2016, obtained from <http://www.nytimes.com/2016/08/20/science/exxon-mobil-fraud-inquiry-said-to-focus-more-on-future-than-past.html>.

42. Attached to this declaration as Exhibit NN is a copy of a letter from Richard A. Johnston to Representative Lamar Smith, dated July 26, 2016.

43. Attached to this declaration as Exhibit OO is a copy of Plea in Intervention of the States of Texas and Alabama, *Exxon Mobil Corp. v. Walker* (Tex. Dist. Ct. May 16, 2016) (No. 017-284890-16).

44. Attached to this declaration as Exhibit PP is a copy of an essay by Jeremy Carl and David Fedor, published by the Hoover Institute in 2012, obtained from [http://media.hoover.org/sites/default/files/documents/CarlFedor\\_HooverETF2012\\_RevenueNeutralCarbonTaxesInBCandAUS.pdf](http://media.hoover.org/sites/default/files/documents/CarlFedor_HooverETF2012_RevenueNeutralCarbonTaxesInBCandAUS.pdf).

45. Attached to this declaration as Exhibit QQ is a copy of an article by Michael Bastasch published in the Daily Caller on April 4, 2016, obtained from <http://dailycaller.com/2016/04/04/kansas-ag-takes-on-al-gores-alarmism-wont-join-ant Exxon-publicity-stunt>.

46. Attached to this declaration as Exhibit RR is a copy of an article by Kyle Feldscher published in the Washington Examiner on April 5, 2016, obtained from <http://www.washingtonexaminer.com/west-virginia-ag-disappointed-in-probes-of-exxon-mobil/article/2587724>.

47. Attached to this declaration as Exhibit SS is a copy of a letter from Luther Strange to “Fellow Attorneys General,” dated June 15, 2016, obtained from <http://www.ago.state.al.us/news/852.pdf>.

48. Attached to this declaration as Exhibit TT is a copy of an article by Steven Mufson published in the *Washington Post* on June 1, 2013, obtained from

<https://www.washingtonpost.com/news/powerpost/wp/2016/06/01/environmentalgroups-reject-rep-smiths-request-for-information-on-exxon-mobil-climate-case/>.

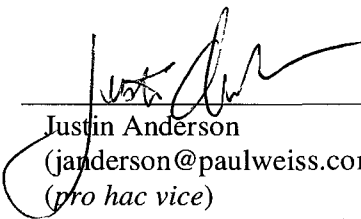
49. Attached to this declaration as Exhibit UU is a copy of an article by the Associated Press published in the *New York Law Journal* on June 3, 2016, obtained from <http://www.newyorklawjournal.com/home/id=1202759197079/AG-Wont-Send-Documents-on-Probe-of-Exxon-Mobil?mcode=1202615069279&curindex=1&slreturn=20160503101116>.

50. Attached to this declaration as Exhibit VV is a copy of a list of so-called climate “deniers” gathered by Greenpeace, obtained from <http://www.exxonsecrets.org/html/index.php>.

51. Attached to this declaration as Exhibit WW is a copy of the Virgin Island Attorney General’s subpoena to ExxonMobil, dated March 15, 2016.

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

Executed on October 16, 2016.

  
Justin Anderson  
([janderson@paulweiss.com](mailto:janderson@paulweiss.com))  
(*pro hac vice*)  
Paul, Weiss, Rifkind, Wharton &  
Garrison LLP  
2001 K Street, NW  
Washington DC 20006-1047  
(202) 223-7321  
Fax: (202) 204-7394

# **Exhibit A**

**The New York Times** | <http://nyti.ms/1WzznSi>

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SCIENCE

# Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General

By JUSTIN GILLIS and CLIFFORD KRAUSS NOV. 5, 2015

The New York attorney general has begun an investigation of Exxon Mobil to determine whether the company lied to the public about the risks of climate change or to investors about how such risks might hurt the oil business.

According to people with knowledge of the investigation, Attorney General Eric T. Schneiderman issued a subpoena Wednesday evening to Exxon Mobil, demanding extensive financial records, emails and other documents.

The investigation focuses on whether statements the company made to investors about climate risks as recently as this year were consistent with the company's own long-running scientific research.

The people said the inquiry would include a period of at least a decade during which Exxon Mobil funded outside groups that sought to undermine climate science, even as its in-house scientists were outlining the potential



consequences — and uncertainties — to company executives.

Kenneth P. Cohen, vice president for public affairs at Exxon Mobil, said on Thursday that the company had received the subpoena and was still deciding how to respond.

“We unequivocally reject the allegations that Exxon Mobil has suppressed climate change research,” Mr. Cohen said, adding that the company had funded mainstream climate science since the 1970s, had published dozens of scientific papers on the topic and had disclosed climate risks to investors.

Mr. Schneiderman’s decision to scrutinize the fossil fuel companies may well open a new legal front in the climate change battle.

The people with knowledge of the New York case also said on Thursday that, in a separate inquiry, Peabody Energy, the nation’s largest coal producer, had been under investigation by the attorney general for two years over whether it properly disclosed financial risks related to climate change. That investigation was not previously reported, and has not resulted in any charges or other legal action against Peabody.

Vic Svec, a Peabody senior vice president, said in a statement, “Peabody continues to work with the New York attorney general’s office regarding our disclosures, which have evolved over the years.”

The Exxon inquiry might expand further to encompass other oil companies, according to the people with knowledge of the case, though no additional subpoenas have been issued to date.

The people spoke on the condition of anonymity, saying they were not authorized to speak publicly about investigations that could produce civil or criminal charges. The Martin Act, a New York state law, confers on the attorney general broad powers to investigate financial fraud.

To date, lawsuits trying to hold fuel companies accountable for damage

they are causing to the climate have failed in the courts, but most of those have been pursued by private plaintiffs.

Attorneys general for other states could join in Mr. Schneiderman's efforts, bringing far greater investigative and legal resources to bear on the issue. Some experts see the potential for a legal assault on fossil fuel companies similar to the lawsuits against tobacco companies in recent decades, which cost those companies tens of billions of dollars in penalties.

"This could open up years of litigation and settlements in the same way that tobacco litigation did, also spearheaded by attorneys general," said Brandon L. Garrett, a professor at the University of Virginia School of Law. "In some ways, the theory is similar — that the public was misled about something dangerous to health. Whether the same smoking guns will emerge, we don't know yet."

In the 1950s and '60s, tobacco companies financed internal research showing tobacco to be harmful and addictive, but mounted a public campaign that said otherwise and helped fund scientific research later shown to be dubious. In 2006, the companies were found guilty of "a massive 50-year scheme to defraud the public."

The history at Exxon Mobil appears to differ, in that the company published extensive research over decades that largely lined up with mainstream climatology. Thus, any potential fraud prosecution might depend on exactly how big a role company executives can be shown to have played in directing campaigns of climate denial, usually by libertarian-leaning political groups.

For several years, advocacy groups with expertise in financial analysis have been warning that fossil fuel companies might be overvalued in the stock market, since the need to limit climate change might require that much of their coal, oil and natural gas be left in the ground.

The people with knowledge of the case said the attorney general's investigation of Exxon Mobil began a year ago, focusing initially on what the company had told investors about the risks that climate change might pose to its business.

News reporting in the last eight months added impetus to the investigation, they said. In February, several news organizations, including The New York Times, reported that a Smithsonian researcher who had published papers questioning established climate science, Wei-Hock Soon, had received extensive funds from fossil fuel companies, including Exxon Mobil, without disclosing them. That struck some experts as similar to the activities of tobacco companies.

More recently, Inside Climate News and The Los Angeles Times have reported that Exxon Mobil was well aware of the risks of climate change from its own scientific research, and used that research in its long-term planning for activities like drilling in the Arctic, even as it funded groups from the 1990s to the mid-2000s that denied serious climate risks.

Mr. Cohen, of Exxon, said on Thursday that the company had made common cause with such groups largely because it agreed with them on a policy goal of keeping the United States out of a global climate treaty called the Kyoto Protocol.

"We stopped funding them in the middle part of the past decade because a handful of them were making the uncertainty of the science their focal point," Mr. Cohen said. "Frankly, we made the call that we needed to back away from supporting the groups that were undercutting the actual risk" of climate change.

"We recognize the risk," Mr. Cohen added. He noted that Exxon Mobil, after an acquisition in 2009, had become the largest producer of natural gas in the United States.

Because natural gas creates far less carbon dioxide than coal when burned for electricity, the company expects to be a prime beneficiary of President Obama's plan to limit emissions. Exxon Mobil has also endorsed a tax on emissions as a way to further reduce climate risks.

Whether Exxon Mobil began disclosing the business risks of climate change as soon as it understood them is likely to be a major focus of the New York case. The people with knowledge of the case said the attorney general's investigators were poring through the company's disclosure filings made since the 1970s, but were focusing in particular on recent statements to investors.

Exxon Mobil has been disclosing such risks in recent years, but whether those disclosures were sufficient has been a matter of public debate.

Last year, for example, the company warned investors of intensifying efforts by governments to limit emissions. "These requirements could make our products more expensive, lengthen project implementation times and reduce demand for hydrocarbons, as well as shift hydrocarbon demand toward relatively lower-carbon sources such as natural gas," the company said at the time.

But in another recent report, Exxon Mobil essentially ruled out the possibility that governments would adopt climate policies stringent enough to force it to leave its reserves in the ground, saying that rising population and global energy demand would prevent that. "Meeting these needs will require all economic energy sources, especially oil and natural gas," it said.

Wall Street analysts on Thursday were uncertain whether the case would inflict long-term damage on the company, which has already suffered from a plunge in commodity prices.

"This is not good news for Exxon Mobil or Exxon Mobil shareholders," said Fadel Gheit, a senior oil company analyst at Oppenheimer & Company. "It's a negative, though how much damage there will be to reputation or



performance is very hard to say.”

John Schwartz contributed reporting.

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# **Exhibit B**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

**AG Sorrel:**

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

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

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

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

[Laughter]

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

[Laughter]

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

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

[Applause]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

[Laughter]

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

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

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financial fraud issues, Massachusetts Attorney General Maura Healey.

**AG Healey:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Moderator:** Please just say your name and publication.

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

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

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

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

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

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

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

**VP Gore:**

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



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

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

**Moderator:** Last one.

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

**Moderator:** What's your name and . . .

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

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

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

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

# Exhibit C



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

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

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

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**Report Author**

This workshop summary was written by Seth Shulman, senior staff writer at the Union of Concerned Scientists.

**Workshop Organizers**

The workshop was conceived by Naomi Oreskes of the University of California–San Diego, Peter C. Frumhoff and Angela Ledford Anderson of the Union of Concerned Scientists, Richard Heede of the Climate Accountability Institute, and Lewis M. Branscomb of the John F. Kennedy School of Government at Harvard University and the Scripps Institution of Oceanography. Alison Kruger of the Union of Concerned Scientists coordinated workshop logistics.

*Organizational affiliations are for identification purposes only. The opinions expressed in this report are the sole responsibility of the participants quoted.*

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

**F**or 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.

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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.

**Naomi Oreskes**

*University of California–San Diego*

**Peter C. Frumhoff**

*Union of Concerned Scientists*

**Richard Heede**

*Climate Accountability Institute*

**Lewis M. Branscomb**

*Scripps Institution of Oceanography*

**Angela Ledford Anderson**

*Union of Concerned Scientists*

## 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.<sup>1</sup> 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."<sup>2</sup> 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.<sup>3</sup>

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.

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**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.**

**W**orkshop 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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

### **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.<sup>7</sup>

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

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

Today, the documents that have emerged from tobacco litigation have been collected in a single searchable, online repository: the so-called Legacy Tobacco Document Library (available at [legacy.library.ucsf.edu](http://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.<sup>8</sup> 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.<sup>9</sup>

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."<sup>10</sup>

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.<sup>11</sup> 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*.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> Mashey noted that looking closely at the relationships between these parties—via documents, meetings, e-mails, and other sources—can help clarify the extent of collusion involved in sowing confusion on the issue. Mashey cited, for instance, memos that have surfaced from a 1998 “climate denial” plan involving most of the major oil companies (under the auspices of the American Petroleum Institute) that set the

stage for much of the disinformation of the past 10 years.<sup>17</sup>

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

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

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

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



## 5. Public Opinion and Climate Accountability

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

—Peter Frumhoff

**T**hroughout 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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

### 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.<sup>22</sup> 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."

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**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.<sup>23</sup> 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,”<sup>24</sup> “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.**

**W**orkshop 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.

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

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

- <sup>1</sup> Terry, L., et al. 1964. *Smoking and health: Report of the Advisory Committee to the Surgeon General of the United States*. Public Health Service publication no. 1103. Department of Health, Education, and Welfare. Online at <http://profiles.nlm.nih.gov/ps/retrieve/ResourceMetadata/NNBBMQ>.
- <sup>2</sup> Brown and Williamson. 1969. Internal memo. Online at <http://legacy.library.ucsf.edu/tid/ty93f00>.
- <sup>3</sup> See, for instance: Oreskes, N., and E.M. Conway. 2010. *Merchants of doubt: How a handful of scientists obscured the truth on issues from tobacco smoke to global warming*. New York: Bloomsbury Press. Also: Hoggan, J., and R. Littlemore. 2009. *The climate cover-up: The crusade to deny global warming*. Vancouver, Canada: Greystone Books.
- <sup>4</sup> *Austin v. State of Tennessee*. 179 U.S. 343 (1900). Online at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=179&invol=343>.
- <sup>5</sup> U.S. Department of Health and Human Services. 2010. Medicare national coverage determinations. Online at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R126NCD.pdf>. Also: U.S. Centers for Disease Control and Prevention. 2011. Targeting the nation's leading killer. Online at <http://www.cdc.gov/chronicdisease/resources/publications/aag/osh.htm>.
- <sup>6</sup> Proctor, R. 2012. *Golden holocaust: Origins of the cigarette catastrophe and the case for abolition*. University of California Press.
- <sup>7</sup> *State of Minnesota and Blue Cross Blue Shield v. Philip Morris et al.* 1998. Summary judgment. Online at <http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/minnesota-litigation-and-settlement>.
- <sup>8</sup> See, for instance: Brandt, A.M. 2007. *The cigarette century: The rise, fall, and deadly persistence of the product that defined America*. New York: Basic Books.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> United Nations Framework Convention on Climate Change. 1992. Article 2. Online at [http://unfccc.int/essential\\_background/convention/background/items/1353.php](http://unfccc.int/essential_background/convention/background/items/1353.php).
- <sup>11</sup> Michaels, D. 2008. *Doubt is their product: How industry's assault on science threatens your health*. Oxford University Press. Also: Proctor 2012.
- <sup>12</sup> United Nations, General Assembly, Human Rights Council. 2010. Report of the United Nations High Commissioner for Human Rights on the outcome of the seminar addressing the adverse impacts of climate change on the full enjoyment of human rights. Twentieth session, agenda items 2 and 3. Online at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-7\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-7_en.pdf).
- <sup>13</sup> Rahmstorf, S., and D. Coumou. 2011. Increase of extreme events in a warming world. *PNAS*. October 24. Also: Coumou, D., and S. Rahmstorf. 2012. A decade of weather extremes. *Nature Climate Change*. March 25.
- <sup>14</sup> Kunreuther, H., and E. Michel-Kerjan. 2009. *At war with the weather: Managing large-scale risks in a new era of catastrophes*. Cambridge, MA: MIT Press.
- <sup>15</sup> 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.). 2012. *Managing the risks of extreme events and disasters to advance climate change adaptation: A special report of Working Groups I and II of the Intergovernmental Panel on Climate Change*. Cambridge, UK: Cambridge University Press.
- <sup>16</sup> See, for instance: Mashey, J.R. Crescendo to Climategate cacophony: Behind the 2006 Wegman report and two decades of climate anti-science. Online at <http://www.desmogblog.com/crescendo-climategate-cacophony>.
- <sup>17</sup> See: American Petroleum Institute. 1998. Global climate science communication plan. April. Online at [http://www.euronet.nl/users/e\\_wesker/ew@shell/API-prop.html](http://www.euronet.nl/users/e_wesker/ew@shell/API-prop.html).
- <sup>18</sup> Hearing of the U.S. House Energy and Commerce Committee, Subcommittee on Health and the Environment, April 14, 1994.
- <sup>19</sup> Kahneman, D. 2011. *Thinking, fast and slow*. New York: Farrar, Straus and Giroux.
- <sup>20</sup> See, for example: Kahan, D.M., et al. 2012. The polarizing impact of science literacy and numeracy on perceived climate change risks. *Nature Climate Change*. doi:10.1038/nclimate1547. Online at <http://www.nature.com/nclimate/journal/vaop/ncurrent/full/nclimate1547.html>.
- <sup>21</sup> Union of Concerned Scientists. 2012. States work to protect high school football players from extreme heat risk, the leading cause of death and disability among high school athletes. Press release. Online at [http://www.ucsusa.org/news/media\\_alerts/states-work-to-protect-high-school-football-1374.html](http://www.ucsusa.org/news/media_alerts/states-work-to-protect-high-school-football-1374.html).
- <sup>22</sup> Baumeister, R.F., and B.J. Bushman. 2013. *Social psychology and human nature*. Wadsworth Publishing Co.
- <sup>23</sup> See, for example: U.S. Office of War Information. 1942. Victory speaker: An arsenal of information for speakers. Online at <http://arcweb.sos.state.or.us/pages/exhibits/ww2/life/pdf/speak1.pdf>.
- <sup>24</sup> Nordhaus, T., and M. Schellenberger. The death of environmentalism: Global warming politics in a post-environmental world. 2004. Online at <http://grist.org/article/doe-reprint>.
- <sup>25</sup> Hochschild, A. 2006. *Bury the chains*. New York: Houghton Mifflin Company.

# 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*

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### 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

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#### Workshop Organizers

**Naomi Oreskes**

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

**Peter C. Frumhoff**

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

**Richard (Rick) Heede**

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

**Lewis M. Branscomb**

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

**Angela Ledford Anderson**

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

#### Workshop Participants

**Myles Allen**

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

**Richard (Dick) E. Ayres**

*Attorney, The Ayres Law Group  
Washington, DC*

**Brenda Ekwurzel**

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

**Sharon Y. Eubanks**

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

**Stanton A. Glantz**

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

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

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

**John Mashey**  
*Techviser*  
 Portola Valley, CA

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

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

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

**Paul Slovic**  
*Founder and President, Decision Research*  
 Eugene, OR

**Claudia Tebaldi**  
*Research Scientist, Climate Central*  
 Boulder, CO

**Jasper Teulings**  
*General Counsel/Advocaat, Greenpeace*  
*International*  
 Amsterdam

**Roberta Walburn**  
*Attorney*  
 Minneapolis, MN

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

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

### **Rapporteur**

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



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



Union of  
Concerned  
Scientists

Two Brattle Square  
Cambridge, MA 02138-3780  
(617) 547-5552

Website: [www.ucsusa.org](http://www.ucsusa.org)

CLIMATE  
ACCOUNTABILITY  
INSTITUTE

1626 Gateway Road  
Snowmass, CO 81654-9214  
(970) 927-9511

Website: [www.climateaccountability.org](http://www.climateaccountability.org)

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Union of Concerned Scientists and  
Climate Accountability Institute

**APP. 065**

# Exhibit D



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

Dear All,

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

The meeting will take place at:

Rockefeller Family Fund

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

Train to 116th St. from Penn Station

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

Here is a DRAFT Agenda, your suggestions are welcome.

DRAFT Agenda

Exxon: Revelations & Opportunities

Friday January 8 11 AM – 3 PM

475 Riverside Dr @ 120th ST Manhattan

10:45: Arrival and Coffee

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

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

What are our common goals? Examples include:

- o 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.
- o To delegitimize them as a political actor
- o 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.
- o To call into question climate advantages of fracking, compared to coal.
- o To drive divestment from Exxon.
- o To drive Exxon & climate into center of 2016 election cycle.

# **Exhibit E**

**Morgan, Wendy**

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

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

### **Draft Schedule for Attorneys General Climate Change Meeting**

Date: March 29, 2016

Location: 120 Broadway, New York, NY

#### Schedule:

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

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

10:15 to 10:30 – break

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

11:15 to 11:30 – break

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

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

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

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

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

2:45 to 3:00 – break

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

- Continued discussion
- Coalition next steps

4:30 – end.

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

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

My two thoughts are:

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

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

Have a good weekend -- Wendy

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

Wendy and Scott—

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

Best,  
Mike

### **Draft Schedule for Attorneys General Climate Change Meeting**

**Date:** March 29, 2016

**Location:** 120 Broadway, New York, NY

#### **Schedule:**

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

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

10:15 to 10:30 – break

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

11:15 to 11:30 – break

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

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

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

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

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

2:45 to 3:00 – break

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

- Continued discussion
- Coalition next steps

4:30 – end.

**From:** Lemuel Srolovic

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

**To:** 'Kline, Scot'; Morgan, Wendy

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

**Subject:** RE: Clean Power Plan and Exxon Mobil

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

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

Date: On or about April 1, 2016

Location: 120 Broadway, New York, NY

Schedule:

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

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

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

2:15 to 2:30 – break

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

3:15 to 3:30 - break

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

4:30 – end.

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

Lem:

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

Thanks.

Scot

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

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

Sent from my iPhone

On Feb 18, 2016, at 3:42 PM, Kline, Scot <[scot.kline@vermont.gov](mailto: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](mailto:scot.kline@vermont.gov)>; Morgan, Wendy <[wendy.morgan@vermont.gov](mailto:wendy.morgan@vermont.gov)>  
**Cc:** Brian Mahanna <[Brian.Mahanna@ag.ny.gov](mailto:Brian.Mahanna@ag.ny.gov)>; Tasha L. Bartlett <[Tasha.Bartlett@ag.ny.gov](mailto: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](mailto:scot.kline@vermont.gov)>; Morgan, Wendy <[wendy.morgan@vermont.gov](mailto: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](mailto: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](mailto:scot.kline@vermont.gov)>  
**Cc:** Morgan, Wendy <[wendy.morgan@vermont.gov](mailto: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](mailto: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](mailto: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](mailto: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](mailto:Lemuel.Srolovic@ag.ny.gov))  
**Sent:** Tuesday, February 09, 2016 1:10 PM  
**To:** Kline, Scot  
(mailto:[scot.kline@vermont.gov](mailto:scot.kline@vermont.gov))  
**Subject:** We Need to Reschedule This Afternoon's Conversation

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

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

Sorry again for inconvenience.

Lem

Lemuel M. Srolovic  
Bureau Chief  
Environmental Protection  
Bureau  
New York State Attorney  
General  
212-416-8448 (o)  
917-621-6174 (m)  
[lemuel.srolovic@ag.ny.gov](mailto:lemuel.srolovic@ag.ny.gov)

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# Exhibit F

**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 G

# ExxonMobil

Corporate citizenship in a changing world







## CONTENTS

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

### THIS IS EXXONMOBIL

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

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

### OUR PRINCIPLES

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

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

### OUR COMMITMENTS

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

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

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

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





A letter from Chairman Lee Raymond

## Corporate citizenship in a changing world

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

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

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

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

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

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

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

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



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

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

Sincerely,

Lee R. Raymond  
CEO and Chairman



**This is ExxonMobil**

**Technology enables progress**

Over the last 120 years ExxonMobil has evolved from a regional marketer of kerosene in the U.S. to the largest petroleum and petrochemical enterprise in the world. Much has changed in that time. When we began, transportation was by horse-drawn wagon. Two decades passed before the Duryea brothers perfected their

early gasoline-powered autos and the Wright brothers experimented with airplanes. Making products for the space program was, obviously, beyond imagining.

Today we operate in nearly 200 countries and territories and are best known by our familiar brand names: *Exxon, Esso* and *Mobil*. We make the products that drive modern transportation, power cities,

lubricate industry and provide the petrochemical building blocks that lead to thousands of consumer goods.

As society's needs have changed and products have evolved, our commitment to technology and innovation has allowed us to continuously meet the world's needs for energy and petrochemicals.



**1903** Wilbur and Orville Wright make a successful flight using our gasoline.



**1926** Premium brand Esso motor gasoline goes on sale.

**1954** Our lubricants sail on the *USS Nautilus*, the first atomic-powered submarine.



**1893** The company lubricates the Duryea brothers' gasoline-powered automobile.



**1906** We develop Mei-Foo lanterns to burn kerosene efficiently. These lamps were imported by the millions throughout China.



**1927** Charles Lindbergh uses Mobiloil in the *Spirit of St. Louis*, on the first solo flight across the Atlantic.

1880      1890      1900      1910      1920      1930      1940      1950



**1886** Herman Frasch, our first research chemist, discovers how to remove sulfur from kerosene. Low sulfur technology is still used today to make clean-burning gasoline.



**1901** We help develop the Spindletop oil field near Beaumont, Texas. Spindletop's discovery tripled U.S. oil production and marked the beginning of the modern petroleum industry.



**1900** The first-in-industry product development laboratory leads to a century of breakthrough new product discoveries.



**1920** The company makes isopropyl alcohol, the first commercial petrochemical. Isopropyl alcohol is used in cosmetics and rubbing alcohol.



**1930s** We invent butyl rubber. Today ExxonMobil is the world's leading producer of this product, used in tire innerliners due to its exceptional air retention properties.



**1946** We establish the first-in-industry occupational health organization to foster a safe work environment. Today more than 500 employees are devoted to safety, health and environment related science.



**1938** We invent fluid catalytic cracking, which *Fortune Magazine* calls the most important chemical innovation in the first half of the 20th century. The process helped fuel Allied war planes and today makes clean fuels for cars, trucks and planes.



ExxonMobil's commitment to technology development and commercialization has fueled its growth to become the world's leading petroleum and petrochemical company. The company has three core business areas: **Upstream** — exploration, development and production of oil and natural gas, and natural gas marketing; **Downstream** — refining and marketing of petroleum products such as motor gasoline and lubricants; and **Chemical**.

**Upstream**

ExxonMobil explores for oil and natural gas on six of the seven continents. As a result of its technology breakthroughs, the company is a leader in deepwater development in waters deeper than 4,000 feet. We produce more than four million oil-equivalent barrels per day from about 30,000 wells in 25 countries. The company has 72 billion oil-equivalent barrels of petroleum and natural gas resources located in some 40 countries.

**Downstream**

ExxonMobil's downstream business includes 46 refineries in 26 countries that supply 6.3 million barrels per day of refined products. We have ownership interests in more than 300 terminals that provide storage as products move to the 43,000 branded service stations, 700 airports and 300 seaports. Under the *Mobil*, *Exxon* and *Esso* names, we provide leading-edge conventional and synthetic finished lubricants. An active research effort on next generation ultra-low emission fuels and fuel cells is underway.

**Chemical**

ExxonMobil Chemical Company manufactures petrochemical products that are the building blocks for thousands of packaging, consumer, automotive, industrial, medical, electrical and construction materials that make life better for people around the world. It has 54 major plants in 19 countries. Technology breakthroughs in "smart" catalysts allow creation of "designer" plastics to fit specific product applications.



1964 "Put a Tiger in Your Tank" advertising campaign starts.

1970 Introduction of the first synthetic lubricant extends engine life.



1997 We introduce SpeedPass, which brings convenience to gasoline customers.

2000 Our special Lubricants aboard the International Space Station enable space walks.



1960

1970

1980

1990

2000

1965 We set a record for the deepest offshore oil production. Subsequent records were set in 1968, 1970, 1972 and 1977. Deepwater drilling discoveries are producing new supplies to meet the world's growing demand for oil and gas.

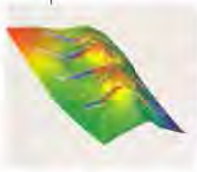
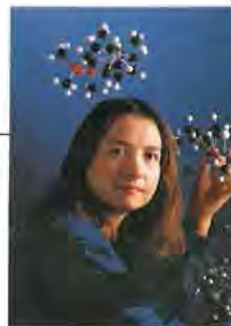


1980s Work commences with Toyota on next generation fuels for hybrid engines and fuel cells. These technologies offer the potential for high performance with near-zero greenhouse gas emissions.

2001 Our latest generation subsurface reservoir computer simulation modeling — EM<sup>3D</sup> — allows geologists to predict the movement of oil over time to maximize the amount of oil produced and reduce the number of oil wells.



1980s Metallocene catalysts allow for development of "designer" plastics and synthetic rubber molecules that can be custom built to fit a variety of consumer goods, ranging from car bumpers to wine corks.



1964 Our invention of 3-D seismic technology allows a visual picture of subsurface oil and gas reserves that enables new oil discoveries at reduced cost.



How we run our business

**Guiding principle:**

**The way we conduct our business is as important as the results themselves. Integrity is the cornerstone of corporate citizenship. We expect everyone — directors, officers, employees and suppliers acting on our behalf — to observe the highest standards of ethics.**

**A disciplined approach**

A disciplined system of business controls guides how we work. It stresses open communication, policies and procedures regarding ethics and other standards of business conduct, proper recording of business transactions, and protection of company assets. No employee, regardless of position, is exempt.

**Straightforward system of controls**

*A System of Management Controls – Basic Standards* document provides the basic criteria for managers to establish effective controls. The system addresses organizational structure, formation of business entities, control of financial instruments, and standards for foreign-exchange operations.

**Employee authority**

Specific procedures outline authority that employees do and don't have, thereby ensuring that business transactions are approved and executed by the appropriate level of management.

At ExxonMobil we have long recognized the importance and value of business integrity. The means by which we achieve our results are just as important as the results themselves. We have communicated this message for decades and remind all of our employees of this policy every year. Our ethics policy, like all of our policies, is clear-cut, straightforward and applies to everyone without exception.

The strength of any policy lies in how well it is implemented. At ExxonMobil, we not only test the effectiveness of our ethics policy, we also ensure that proven management control systems are in place throughout our operations. While we continue to improve upon these systems, they provide the basic framework for ensuring operational excellence throughout our company. We believe that a disciplined approach to managing the business is good business.

**Board of Directors**

The Board of Directors oversees the business affairs of the Corporation. To ensure independence and objectivity, a substantial majority of the board members are non-employees. Five of the seven board committees consist entirely of non-employee directors. The Board Audit

Committee is empowered to investigate any matter brought to its attention — with full access to all books, records, facilities and personnel of the Corporation.

**Standards of Business Conduct**

The *Standards of Business Conduct* is at the heart of our controls system. These policies were first published nearly 40 years ago and have been continually enhanced over the years. The policies deal with business ethics, conflicts of interest, antitrust, equal employment opportunity, harassment in the workplace, and safety, health and environmental performance.



Employee dialogue identifies potential problems and improvements.



**Business practices reviews**

Managers also regularly review and discuss the *Standards of Business Conduct* in employee meetings. Employees are encouraged to raise any issue, question or concern with their direct supervisor or representatives of Audit, Human Resources, Law or Controller's.

**Formal reporting requirements**

Despite the presence of sound management controls, we recognize that with operations in almost 200 countries and territories, there may be violations of company policies. If a problem occurs, the appropriate managers promptly review the incident and take consistent disciplinary action. Upward reporting guidelines, which extend to the Corporation's Management Committee and Board of Directors, ensure appropriate management review.

**Management representation letters**

Managers of each organization are required to annually confirm in writing their compliance with our *Standards of Business Conduct*, and financial reporting standards.

**Auditing and compliance**

The Internal Audit staff independently assesses compliance with policies and procedures, and evaluates the effectiveness of all financial and related controls. Managers are obligated to evaluate all Internal Audit findings and recommendations and take appropriate action. About 300 audits are conducted annually across all business units.

Independent external auditors review corporate financial statements to ensure accuracy and conformity with generally accepted accounting principles.



Specific procedures outline employee authority, thereby ensuring that transactions are properly approved and executed.

ExxonMobil takes many steps to assure the independence of external auditors. For example, we strictly control and review their work on other projects with the Board Audit Committee.

**Safety, health and environmental compliance**

Many of our operations and products, while vital to the world's interests, present potential risks to our employees and customers, and to the community. Managing such risks is a critical aspect of our business. In 1992 we developed the Operations Integrity Management System, or OIMS, a comprehensive, structured process to manage these safety, health and environmental activities. Under OIMS, management, with support from technical experts, regularly assesses operations. Each year, about one-third of ExxonMobil's major operations are reviewed by experts from outside the organization being evaluated.

Under OIMS, we review specific hazards that we believe could have major incident potential and take steps to mitigate risks. (See next section for a more complete discussion of OIMS.)

**Drug and alcohol use**

Alcohol, drug or other substance abuse by employees impairs performance and safety. The use or possession of illegal drugs, misuse of legitimate drugs, and use or possession of unprescribed controlled drugs on company business or premises, or being unfit for work due to drug or alcohol use are strictly prohibited. Today, no employee with a history of substance abuse will be permitted to work in a position critical to the safety and well being of employees, the public or ExxonMobil.



Safety, health and environment

Guiding principle:

ExxonMobil is committed to maintaining high standards of safety, health and environmental care. We comply with all applicable environmental laws and regulations, and apply reasonable standards where laws and regulations do not exist. Energy and chemicals are essential to economic growth, and their production and consumption need not conflict with protecting health and safety or safeguarding the environment. Our goal is to drive injuries, illnesses, operational incidents and releases as close to zero as possible.

on dispersants and bioremediation techniques to speed environmental recovery should a spill occur.

Most important, we initiated a comprehensive program — Operations Integrity Management System (OIMS) — to manage risk and help prevent all types of incidents in the future. Today OIMS has become the respected benchmark approach for the prevention of incidents.

OIMS provides a framework for meeting our commitments to the highest operational standards of safety, health, product safety and environmental protection. OIMS has been updated to comply with the 1996 guidelines set by the International Standards Organization (ISO), which developed standards for environmental management systems (ISO 14001). In verifying ExxonMobil compliance with the standards of ISO 14001, Lloyd's Register Quality Assurance noted in 2001 that

We care deeply about how our products and operations affect our employees, neighbors and customers. Our products, properly used, provide great benefit to society. We know our neighbors have a direct interest in how well we operate.

fund a worldwide network of oil spill cooperatives and stockpiled our own equipment for rapid response. Moreover, we have continued and expanded our research

While our operations do involve risks, such risks can be substantially reduced if managed properly. We spend considerable time, effort and money to do so.

Valdez: reflections on learning and improving

We have learned from the events of the 1989 Valdez oil spill. It was a terrible accident everyone in our company regrets. From the onset of the event to today, we have accepted responsibility for the accident and sought to mitigate its impacts. As a result, we committed to build into the fabric of our company a continuous improvement program to make what were already industry-leading environmental protection policies pre-Valdez even stronger. We have helped establish and



Emergency response drills such as this fire response exercise at a liquefied petroleum gas terminal in Thailand are designed to be as realistic as possible.



"We further believe ExxonMobil to be among the industry leaders in the extent to which environmental management considerations have been integrated into its ongoing business process."

**Safety and Health**

**ExxonMobil leads industry in workplace safety**

Despite the safety challenges inherent in the work we do, our safety record — both for employees and contractors — is consistently better than the petroleum industry average and continues to improve.

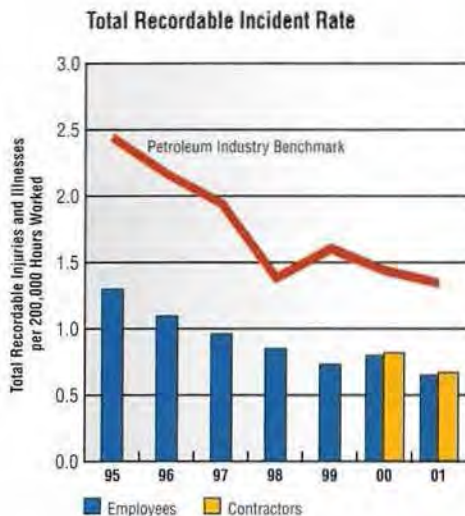
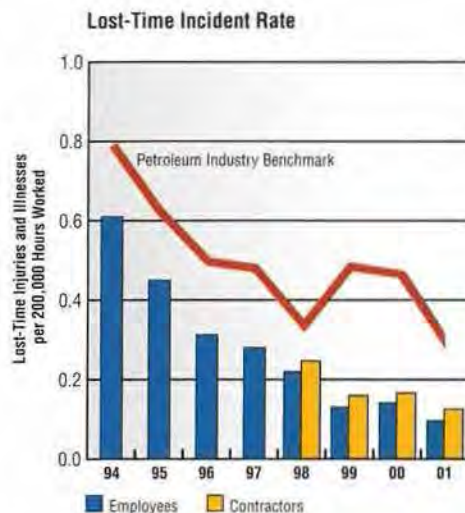
Such safety performance is not the result of happenstance or luck. It's the result of management and employee commitment and accountability. Throughout ExxonMobil operations, safety standards are established, jobs are analyzed, and potential problems and risks are identified. The focus is on recognizing and eliminating hazards before they cause an accident.

Workplace safety also includes protecting the health of employees and contractors working in potentially dangerous environments. In developing countries where ExxonMobil has operations, we've funded programs to combat such health problems as malaria and AIDS.

**Safety improvements continue**

ExxonMobil achieved another year of safety improvement in 2001, continuing our pacesetter performance within the industry.

The principal measure of worker safety is the Lost-Time Incident Rate, which we use throughout our operations. It quantifies worker absences due to job-related injury or illness. Lost time is expressed in relation to 200,000 work hours, which roughly equates to 100 people working 40 hours per week for one year.



Our incident rate for 2001 was 0.09. Our contractor rate was 0.13. Both rates are substantially below the average of the top 75 companies working in the petroleum industry.

We constantly seek to manage the work environment to prevent all injuries, and believe that involving every manager, employee and contractor will eventually make it possible to achieve zero job-related injuries.

Our ongoing operations and new facilities construction projects collectively employ about 200,000 workers (employees and contractors). A major disappointment was the three employee and 10 contractor fatalities we had in 2001. Seven of the fatalities involved motor vehicle or related equipment. According to the U.S. National Safety Council, about 70 highway and home fatalities occur annually in a comparable population.

Although fatalities in 2001 were one-third the level of 1995 and lost-time incidents were one-fifth, we will not be satisfied until we have created a work environment free of injury.



Crews recover air-gun floats during a seismic survey in Australia's Bass Strait. ExxonMobil's Geophysical Operations Group has completed seven years and 15 million project hours without an employee or contractor lost-time injury.



## Safety, health and environment

### How OIMS works

The OIMS process requires continuous evaluation and improvement of management systems and standards. OIMS establishes a common language for discussion and internal sharing of successful systems and practices among different parts of ExxonMobil's business.

The OIMS framework comprises 11 elements, each with clearly defined expectations that every operation must fulfill. Management systems put into place to meet OIMS expectations must show documented evidence of the following five characteristics:

- The scope must be clear and the objectives must fully define the purpose and expected results;
- Well-qualified people are accountable to execute the system;
- Documented procedures are in place to ensure the system functions properly;
- Results are measured and verified that the intent of the system is fulfilled; and
- Performance feedback from verification and measurement drives continuous improvement of the system.

OIMS requires each operating unit to be assessed by experienced employee teams from outside that particular unit approximately every three years. Self assessments are required in the other years.

During 2001, more than 70 such outside teams assessed performance at about one-third of all ExxonMobil operating units. This level of activity occurs annually.

### OIMS elements in action

#### 1. Management, leadership, commitment and accountability.

Employees at all levels are held accountable for safety, health and environmental performance.

*Example: Throughout our chemical business, employees annually develop personal safety work plans. Members of senior management share their plans broadly within their organizations.*



#### 2. Risk assessment and management.

Systematic reviews evaluate risks to help prevent accidents from happening.

*Example: A risk assessment in Africa revealed that vehicle fatalities were 30 times higher than in Europe and the U.S. An ExxonMobil driver training program has led to dramatic improvements.*



#### 3. Facilities design and construction.

All construction projects from small improvements to major new expansions are evaluated early in their design for safety, health and environmental impact.

*Example: A focus on facilities design has improved energy efficiency by 37 percent at our refineries and chemical plants.*

#### 4. Information and documentation.

Information that is accurate, complete and accessible is essential to safe and reliable operations.

*Example: In Africa, the fuels and lubes business electronically cataloged country and local procedures to allow access to best practices by all parts of the organization.*

#### 5. Personnel and training.

Meeting high standards of performance requires that employees are well trained.

*Example: Employees were hired well ahead of the start-up of a major new plant in Singapore to allow time for completion of rigorous training and certification.*





**6. Operations and maintenance.**

Operations and maintenance procedures are frequently assessed and modified to improve safety and environmental performance.

*Example: At Imperial Oil's production operation in Alberta, Canada, flaring and venting of natural gas have been reduced by 69 percent over the last five years as a result of new procedures.*



**7. Management of change.**

Any change in procedure is tested for safety, health and environmental impact.

*Example: After equipment maintenance and replacement at refineries such as the Torrance, California Refinery, engineers review all changes to confirm that all operating procedures and guidelines are still correct before start-up.*

**8. Third-party services.**

Contractors are important to safe operations.

*Example: Our 25 geophysical services contractors – working in 20 countries – have worked seven years without a lost-time injury.*



**9. Incident investigation and analysis.**

Any incident, including a "near miss," is investigated.

*Example: Operations around the world share incident investigation results in a common database to allow key learnings to be broadly shared.*

**10. Community awareness and emergency preparedness.**

Good preparation can significantly reduce the impact of an accident.

*Example: Like other company business units, ExxonMobil's International Marine Transportation (IMT) affiliate routinely conducts emergency response drills. This training paid off in 2001 when we were called upon to help four non-company vessels in distress.*



**11. Operations integrity assessment and improvement.**

A process that measures performance relative to expectations is essential to improved operations integrity.

*Example: At ExxonMobil's European region offices in Brussels, Belgium, teams of experts measure OIMS effectiveness and use the findings to plan future improvements in operations.*

**Milestones**

- Our Malaysian upstream affiliate achieved its second consecutive year of zero lost-time injuries. On a combined employee-contractor basis, the affiliate has logged more than 22 million work hours since its last lost-time injury.
- Our Baton Rouge, Louisiana Chemical Plant achieved 7.2 million work hours without a lost-time injury. The adjacent ExxonMobil refinery completed 4.3 million work hours without a lost-time injury.



**Safety, health and environment**

**Environment**

**Environmental performance continues to improve**

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

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

environmental regulatory compliance also are favorable.

**Addressing climate change risk**

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

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

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

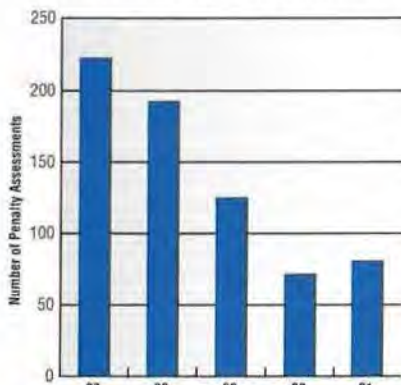
- Scientific research to improve understanding of climate change and its potential risks;
- Implementing economic steps to reduce greenhouse gas emissions now; and
- Research on innovative, advanced technologies that have potential to dramatically reduce emissions in the future. We are actively engaged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

**Greenhouse gas emissions**

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

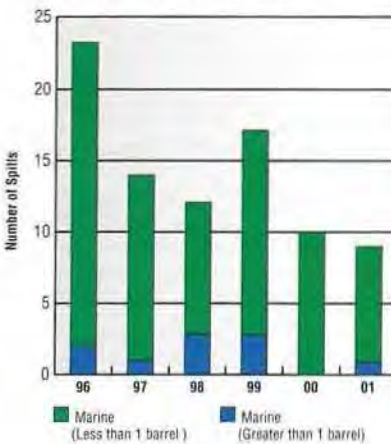
**Regulatory Compliance**

**Environmental Regulatory Compliance**



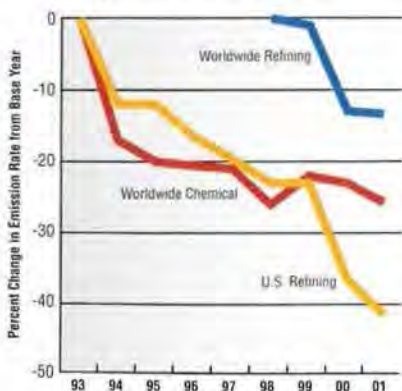
**Spills**

**Marine Spills (Operated Fleet)**



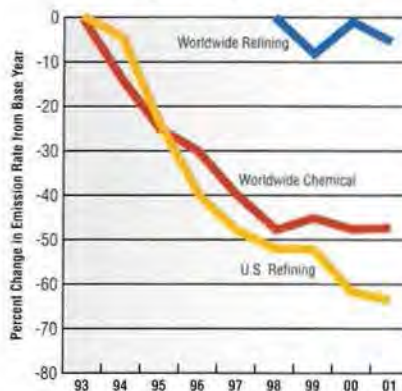
**Air Emissions from Operations**

**Nitrogen Oxide Emissions**



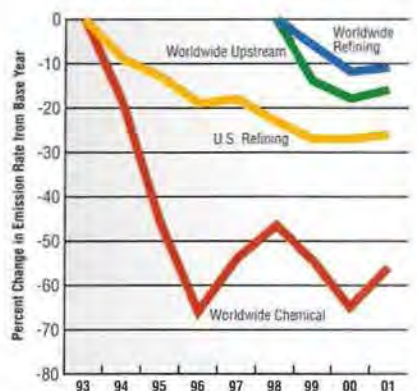
**Emission Rate Bases (amount per 100 tonnes of throughput)**  
 1993: U.S. Refining = 0.034 tonnes NO<sub>x</sub>  
 1993: Worldwide Chemical = 0.070 tonnes NO<sub>x</sub>  
 1998: Worldwide Refining = 0.026 tonnes NO<sub>x</sub>

**Volatile Organic Compounds Emissions**



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

**Sulfur Dioxide Emissions**



**Emission Rate Bases (amount per 100 tonnes of throughput)**  
 1993: U.S. Refining = 0.055 tonnes SO<sub>2</sub>  
 1993: Worldwide Chemical = 0.022 tonnes SO<sub>2</sub>  
 1998: Worldwide Refining = 0.083 tonnes SO<sub>2</sub>  
 1998: Worldwide Upstream = 0.029 tonnes SO<sub>2</sub>





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

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

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

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

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

### ***Making things better***

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

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

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



**Safety, health and environment**

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

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

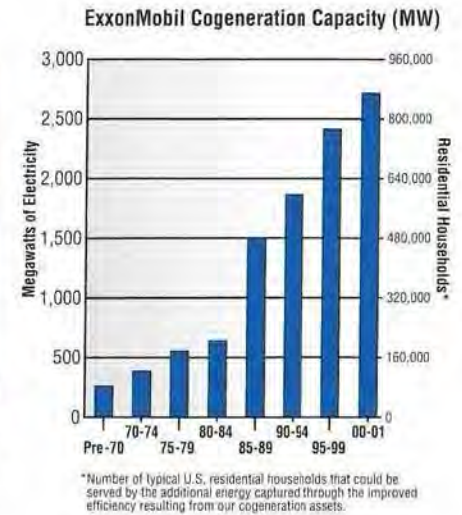
Our efforts to measure and understand operational greenhouse gas emissions and to develop and utilize advanced technologies reflect a two-decade effort to establish a sound scientific, technical and economic basis to address climate change concerns.



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

**Energy efficiency improved 35 percent**

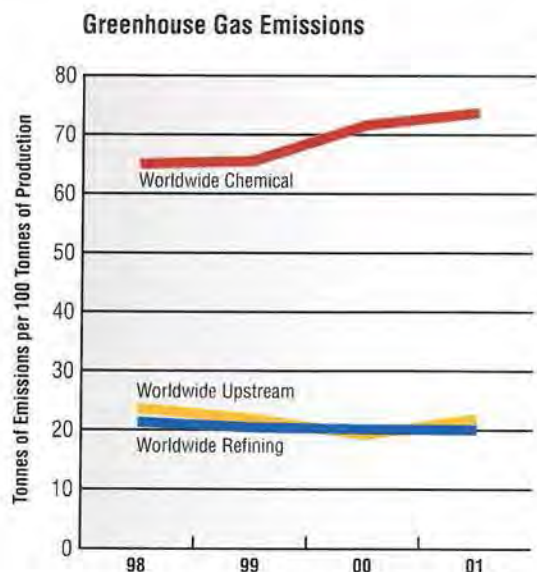
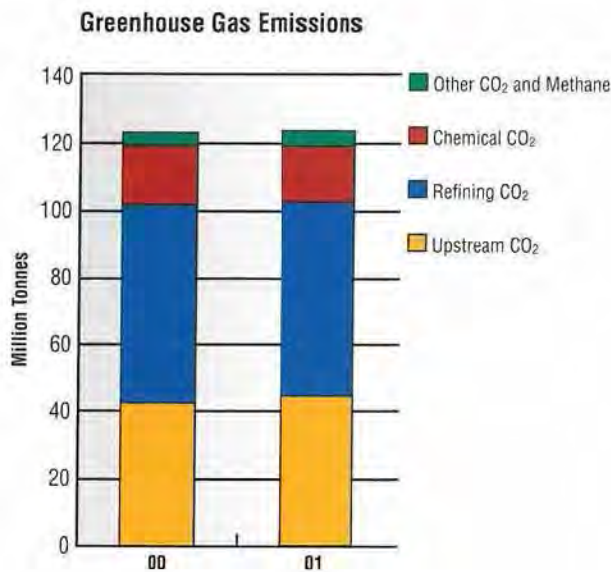
Since the energy crisis of the early 1970s, we have focused on becoming more energy efficient in our operations. In fact, between 1973 and 1998 we have improved energy efficiency in our refineries and chemical plants by more than 35 percent. The energy saved over that 25-year period is equal to all the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



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

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

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







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

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

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

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

#### **Nurturing biodiversity**

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

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

#### **Sustainability: managing for today and tomorrow**

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

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

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

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

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

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



## Safety, health and environment

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

### Science and technology research delivers improvements

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

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

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

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

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

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

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



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

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

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

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



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

### Recognition for outstanding performance

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



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



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

- A loss prevention system at the Campana Refinery in Argentina earned Esso the Argentinean Institute of Petroleum and Gas Safety Award.
- Two ExxonMobil employees, Linda Williamson and Mark Hidalgo, received the Outreach Award from the National Voluntary Protection Program Participants Association in 2000 and 2001, respectively. The annual award honors a single individual for his or her efforts to improve worker safety and spread the cooperative approach of the U.S. Occupational Safety and Health Administration program.
- ExxonMobil Canada received the 2001 VCR Upstream Oil and Gas Leadership Award for reducing emissions and improving energy efficiency. Since 1994 the company cut its energy consumption by an amount that would heat more than 43,000 homes for one year, and reduced CO<sub>2</sub> emissions by approximately 580,000 tonnes. During this period production increased 30 percent. VCR is a partnership of government agencies, industrial companies and other organizations.

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



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



# **Exhibit H**

# ExxonMobil

Taking on the world's toughest energy challenges.™



2006  
corporate  
citizenship  
report

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## about this report

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

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

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

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

For additional information and to provide comments, please contact:

Elizabeth Beauvais  
 Advisor, Corporate Citizenship  
 ExxonMobil  
 3225 Gallows Road  
 Fairfax, VA 22037  
 E-mail: [elizabeth.beauvais@exxonmobil.com](mailto:elizabeth.beauvais@exxonmobil.com)

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

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



# environmental performance

## focus areas:

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

## Case study: Sound and the marine environment

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

## environmental management

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

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

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

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

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


**environmental performance  
a closer look**

### Climate change: policy perspective

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

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

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

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

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

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

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

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

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

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

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

For more information on our emergency prevention and response systems, please go to our Web site ([exxonmobil.com/emergencyresponse](http://exxonmobil.com/emergencyresponse)).

## global climate change and greenhouse gas emissions

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

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

**environmental performance**  
a closer look

**Reporting greenhouse gas emissions**

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

Calculating global GHG emissions is complex, not least because:

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

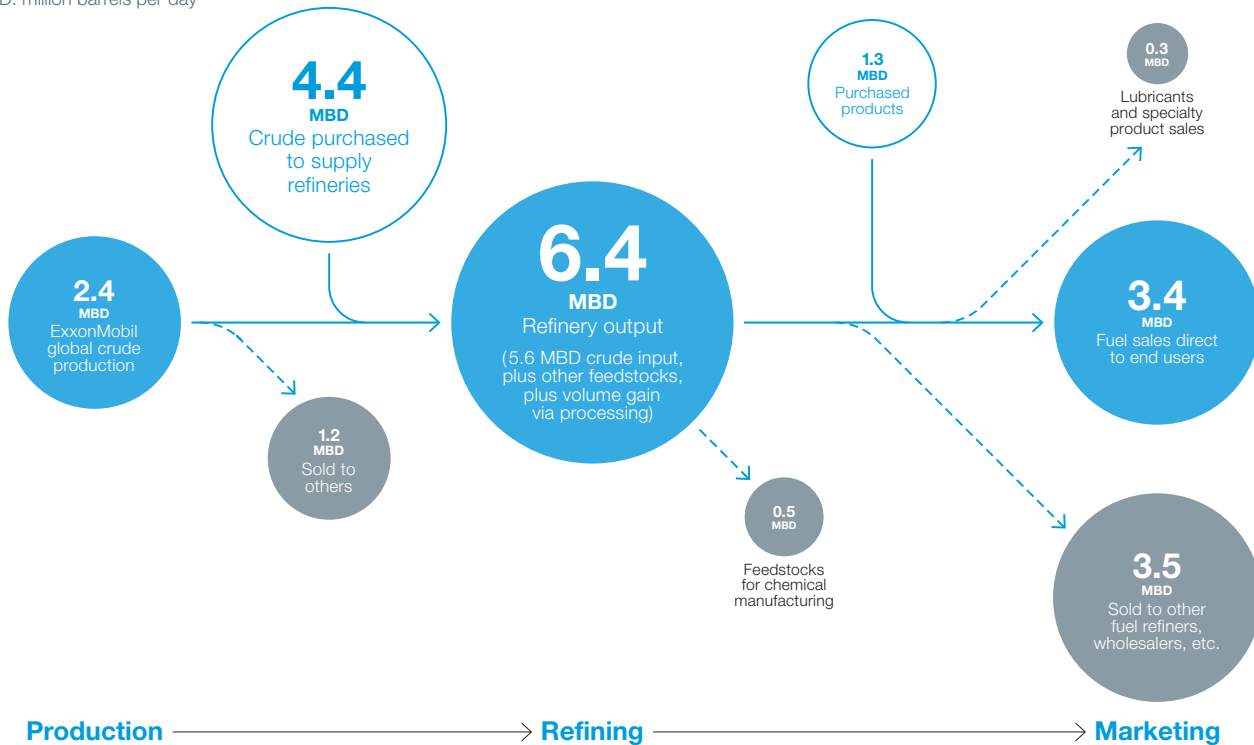
- On average, about 87 percent of petroleum-related GHG emissions are produced by end users, versus 13 percent by petroleum industry production and manufacturing operations. The emissions produced by burning specific fuels are well-known—for example, standard gasoline and diesel fuel emit 20.3 and 22.5 pounds of CO<sub>2</sub> per gallon, respectively. But actual end-user emissions will depend on factors such as vehicle choice, travel habits, and energy-efficiency efforts in businesses, homes, offices, and vehicles.

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

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

**ExxonMobil 2006 worldwide petroleum supply overview**

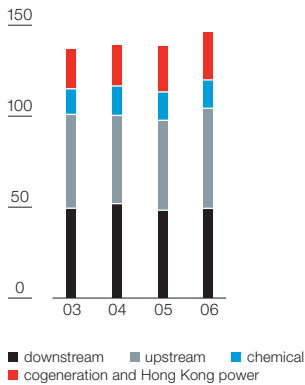
MBD: million barrels per day





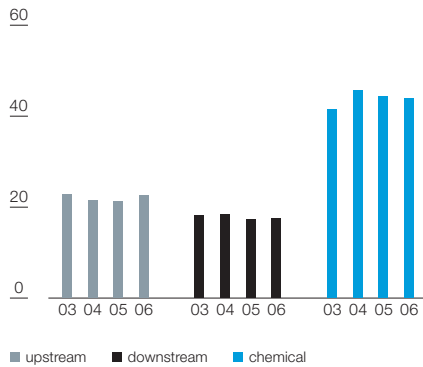
**greenhouse gas emissions (absolute)**

direct equity, CO<sub>2</sub>-equivalent emissions (million metric tons)



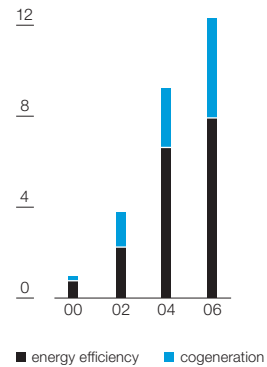
**greenhouse gas emissions (normalized)**

direct equity, CO<sub>2</sub>-equivalent emissions (excluding cogeneration) (metric tons per 100 metric tons of throughput)



**avoided GHG emissions from ExxonMobil actions since 1999**

CO<sub>2</sub>-equivalent emissions (million metric tons)



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

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

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

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

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

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

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



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



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

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

## improving energy efficiency

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

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

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

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

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

# **Exhibit I**

**From:** Balagia, Jack  
**Sent:** Wednesday, November 04, 2015 9:53 PM  
**To:** McGowan, Marie C; Conlon, Patrick J  
**Cc:** Ebner, Randall M; Johnson, Casey; Johnson, Robert W - Law; Byrne, Richard E; Bell, Annora A; Klafehn, Lynn M; Lee, Joann  
**Subject:** Fwd: Investigatory Subpoena from New York State Attorney General's Office

Sent from my iPhone

Begin forwarded message:

**From:** "Lemuel Srolovic" <[Lemuel.Srolovic@ag.ny.gov](mailto:Lemuel.Srolovic@ag.ny.gov)>  
**To:** "Balagia, Jack" <[jack.balagia@exxonmobil.com](mailto:jack.balagia@exxonmobil.com)>  
**Subject:** Investigatory Subpoena from New York State Attorney General's Office

Mr. Balagia – attached is an investigatory subpoena for documents from the New York State Attorney General's office. The subpoena is returnable on December 4, 2015. If you or a colleague would like to discuss the subpoena, my contact information is below. Very truly yours, Lem Srolovic

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](mailto:lemuel.srolovic@ag.ny.gov)

# Exhibit J



NEWS / NEWS

MORE

## Exxon Mobil on Hot Seat for Global Warming Denial

New York Attorney General Eric Schneiderman subpoenaed the oil and gas giant Wednesday evening.

By [Alan Neuhauser](#) | Staff Writer Nov. 5, 2015, at 4:35 p.m.

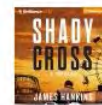


Exxon Mobil Corp., once on the leading edge of climate science, has been accused of hiding what it knew about the existence of human-induced global warming. (DAVID MCNEW/GETTY IMAGES)

The New York attorney general has launched an investigation into Exxon Mobil to determine whether the country's largest oil and gas company lied to investors about how global warming could hurt its balance sheets and also hid the risks posed by climate change from the public.

Attorney General Eric Schneiderman, a Democrat, issued a subpoena to Exxon Mobil on Wednesday night seeking financial records, internal communications, climate studies, advertising materials and other documents, an official in the attorney general's office familiar with the investigation confirmed Thursday.

The probe spans two areas of the law: consumer protection – whether Exxon Mobil engaged in deceptive or misleading business practices – and New York's fraud and securities law, known as the Martin Act, according to the official, who was not authorized to speak on the record.



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Peabody Energy, the nation's largest coal producer, has also been under investigation for the past two years.

The dual investigations were first reported by The New York Times .

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Schneiderman's subpoena comes just weeks after a [probe by InsideClimate News](#) revealed that despite Exxon funneling millions of dollars in past decades to advocacy groups to obscure how burning oil, gas and coal warms the environment, it had once been a global leader in climate change research.

As early as 1977 – roughly a decade before researcher James Hansen testified before Congress to alert the world to the dangers of climate change – a senior company scientist warned executives that "there is general scientific agreement that the most likely manner in which mankind is influencing the global climate is through carbon dioxide release from the burning of fossil fuels," [InsideClimate News reported](#).

Schneiderman's office began scrutinizing Exxon Mobil as early as last year, the office official tells U.S. News. Exxon Mobil has vigorously denied that it suppressed information.

"Nothing could be further from the truth," CEO Rex Tillerson said Wednesday.

[ALSO: [Republican Candidates Embrace Obama's Energy Platform](#)]

Nonetheless, in the weeks since the debut of the InsideClimate package – which was followed shortly by [another expose by the Los Angeles Times](#) – the hashtag #ExxonKnew has been a trending topic on Twitter.

Schneiderman's subpoena could mark the opening salvo in a far broader effort by states to examine what fossil fuel companies knew about man-made climate change, when they knew it and what they may have done to hide its dangers from the public to protect company profits – a campaign that may resemble others that elicited billions of settlement dollars from tobacco companies. (Many of the same marketing figures who worked for the tobacco companies reportedly have [more recently found work with](#) climate-denial groups.)



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Private lawsuits aimed at holding companies liable for damage they've caused to the world's climate have met with little success.

"New York's attorney general has shown great courage in holding to account arguably the richest and most powerful company on Earth," Bill McKibben, co-founder of the environmental group 350.org, said in a statement. "We hope that other state attorney[s] general and the federal Department of Justice, and the Securities [and] Exchange Commission, will show similar fortitude."

Schneiderman [reportedly plans to seek re-election](#) in 2018.

*Updated on Nov. 5, 2015: This story has been updated to include additional information from the New York State Attorney General's office.*

Tags: Exxon Mobil, energy policy and climate change, global warming, oil, greenhouse gases, natural gas, environment, energy, New York, courts, Peabody Energy Corp.



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[Alan Neuhauser](#) | STAFF WRITER

Alan Neuhauser covers law enforcement and criminal justice for U.S. News & World Report. He also contributes to STEM and Healthcare of Tomorrow, and previously reported on energy and the environment. You can follow him on [Twitter](#) or reach him at [aneuhauser@usnews.com](mailto:aneuhauser@usnews.com).

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# **Exhibit K**



# 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 L**



1 of 1 DOCUMENT

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Oil Daily

November 13, 2015 Friday

**SECTION: FEATURES**

**LENGTH:** 725 words

**HEADLINE:** New York Attorney General Comments on Exxon Probe

**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."

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

**LOAD-DATE:** November 19, 2015

# **Exhibit M**

**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 8<sup>th</sup> 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.



\*\*\*\*\*

### **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 N

**Kline, Scot**

---

**From:** Peter Washburn <Peter.Washburn@ag.ny.gov>  
**Sent:** Friday, March 25, 2016 11:49 AM  
**To:** Lemuel Srolovic; Kline, Scot; Morgan, Wendy  
**Cc:** Michael Meade  
**Subject:** Afternoon Discussion: State Responses  
**Attachments:** Question Responses.docx

Wendy, Scot, Lem –

For this afternoon's discussion. See attached responses received from participating states re: what they are looking to add to/get out of the afternoon discussion.

As an overall summary, the responses demonstrate a strong desire among the states to learn what each other are up to -- a validation of the value of this meeting -- as well as to support and sustain coordination on individual and collective efforts into the future -- a validation of the value of a coalition.

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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 Cignac) – Consider how to increase our office's coordination on matters involving DOE, FERC, and ISOs/RTOs. How we can be 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 Hoffer) – See above.

ME (Jerry Reid) – None.

OR (Paul Garrahan) – We don't have any particular ideas, other than our interest in the possible oil company litigation, but we are open to other possibilities.

RI (Greg Schultz) – I am open for any discussion. I would like to hear from the NHAG and other states on their MTBE litigation.

USVI (Claude Earl Walker) – We are interested in identifying other potential litigation targets.

VA (Daniel Rhodes) – Not sure we have specific items for the afternoon discussion at this time but likely will be prompted by the discussions. We would be very interested in any discussion and thoughts about resource sharing through collaborative thinking in the formation of coalition building.

WA (Laura Watson) – I think I probably covered this in response to the first question. The only thing I'd add is that we're interested in the legal theories under section 115 of the federal Clean Air Act, although it looks like the focus in the agenda is on non-federal actions.

**(4) Will any consumer protection or securities staff be participating? Fossil fuel company disclosure investigations raise consumer protection and securities issues as well as climate change. If enough folks from that part of your offices are participating, we could plan a break out session for them.**

CT (Matthew Levine) – We will not have someone from our Consumer protection division but I work closely with that group and am getting familiar with the consumer protection and securities issues related to climate change and we would likely be the group (environment) that works on these issues.



DC (Elizabeth Wilkins) – I will be the only person from DC participating.

IL (James Gignac) – Not in the meeting itself, but we 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 O



## Peter Frumhoff

*Director of Science & Policy*

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



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

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

Peter Frumhoff



## Peter Frumhoff's Selected Publications

Frumhoff, P.C., R. Heede, and N. Oreskes. 2015. The climate responsibilities of industrial carbon producers. *Climatic Change* 132(2): 157-171. doi: 10.1007/s10584-015-1472-5. [Available here.](#)

Frumhoff, P.C., V. Burkett, R.B. Jackson, R. Newmark, J. Overpeck, and M. Webber. 2015. Vulnerabilities and opportunities at the nexus of electricity, water and climate. *Environmental Research Letters* 10:080201. doi:10.1088/1748-9326/10/8/080201. [Available here.](#)

Mera, R., N. Massey, M. Allen, P. Mote, D.E. Rupp, and P.C. Frumhoff. 2015. Climate change, climate justice and the application of probabilistic event attribution to summer heat extremes in the California Central Valley. *Climatic Change*, published online: <http://link.springer.com/article/10.1007/s10584-015-1474-3>. doi: 10.1007/s10584-015-1474-3

Rosenberg, A.A., L.M. Branscomb, V. Eady, P.C. Frumhoff, G.T. Goldman, M. Halpern, K. Kimmell, Y. Kothari, L.D. Kramer, N.F. Lane, J.J. McCarthy, P. Phartiyal, K. Rest, R. Sims, and C. Wexler. 2015. Congress's attacks on science-based rules. *Science* 348(6238): 964-966. doi: 10.1126/science.aab2939. [Available here.](#)

Allison, T.D., T.L. Root, and P.C. Frumhoff. 2014. Thinking globally and siting locally-renewable energy and biodiversity in a rapidly warming world. *Climatic Change* 126: 1-6. doi:10.1007/s10584-014-1127-y. [Available here.](#)

Sanford, T., P.C. Frumhoff, A. Luers, and J. Gullede. 2014. The climate policy narrative for a dangerously warming world. *Nature Climate Change* 4:164-166. doi:10.1038/nclimate2148. [Available here.](#)

Ekuruzel, C., E. Frumhoff, K. Hayhoe, D.C. Nepstad, C.B. Field, D.C. Nepstad, K. Hayhoe, R. Avissar, L.M. Curran, P. Friedlingstein, C.D. Jones, C. Nobre. 2007. Increasing the impact of assessments on public understanding of climate risks and choices *Climatic Change* 108: 791-802. doi: 10.1007/s10584-011-0194-6. [Available here.](#)

Meyer, J.L., P.C. Frumhoff, S.P. Hamburg, and C. de la Rosa. 2010. Above the din but in the fray: environmental scientists as effective advocates. *Frontiers in Ecology and the Environment* 8(6): 299-305. doi:10.1890/090143. [Available here.](#)

Gullison, R.E., P.C. Frumhoff, J.G. Canadell, C.B. Field, D.C. Nepstad, K. Hayhoe, R. Avissar, L.M. Curran, P. Friedlingstein, C.D. Jones, C. Nobre. 2007. Tropical forests and climate policy. *Science*: 316:985-986. doi 10.1126/science.1136163. [Available here.](#)

Frumhoff, P.C. J.J. McCarthy, J.M. Melillo, S.C. Moser, and D.J. Wuebbles. 2007. *Confronting Climate Change in the U.S. Northeast: Science, Impacts and Solutions*. Synthesis Report of the Northeast Climate Impacts Assessment (NECIA). Union of Concerned Scientists. Cambridge, MA.

Hayhoe, K, D. Cayan, C.B. Field, P.C. Frumhoff, E.P. Maurer, N. Miller, S.C. Moser, S. H. Schneider, K. Cahill, E.E. Cleland, L. Dale, R. Drapek, R.M. Hanemann, L.S. Kalkstein, J. Lenihan, C.K. Lunch, R.P. Neilson, S. C. Sheridan and J.H. Verville. 2004. Emissions pathways, climate change and impacts on California. *Proceedings of the National Academy of Sciences* 101(34): 12422-12427. doi 10.1073/pnas.0404500101. [Available here.](#)

## Opinion Pieces

*Fossil Fuel Firms Are Still Bankrolling Climate Denial Lobby Groups*. The Guardian. March 25 2015. [Available here.](#)

*Making Water-Smart Energy Choices in Colorado*. Denver Post. Oct 15 2012 (with Alice Madden). [Available here.](#)

*Toward One America on Climate Change*. Multiple newspapers – McClatchy syndicate. February 23 2012 (with Andrew Hoffman). [Available here.](#)

*Candidates must deal with facts, not wishes, on climate change*. Multiple newspapers – McClatchy syndicate. September 16 2011 (with Kerry Emanuel). [Available here.](#)

*The Limits of Doubt-Mongering*. The Hill. February 23 2011 (with Naomi Oreskes). [Available here.](#)

## Other

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

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[Farewell to Edward L. Miles \(1939-2016\): Friend, Colleague, Force for Science-based Policy](#)

MAY 13, 2016

[Scientists, Legal Scholars Brief State Prosecutors on Fossil Fuel Companies' Climate Accountability](#)

MAY 11, 2016

[Holding the Fossil Fuel Industry Accountable: What We've Done and Must Do in the Wake of Paris](#)

DECEMBER 18, 2015

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**APP. 141**

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Ashley Siefert  
Energy  
Communications Officer  
202-331-5666  
[asiefert@ucsusa.org](mailto:asiefert@ucsusa.org)

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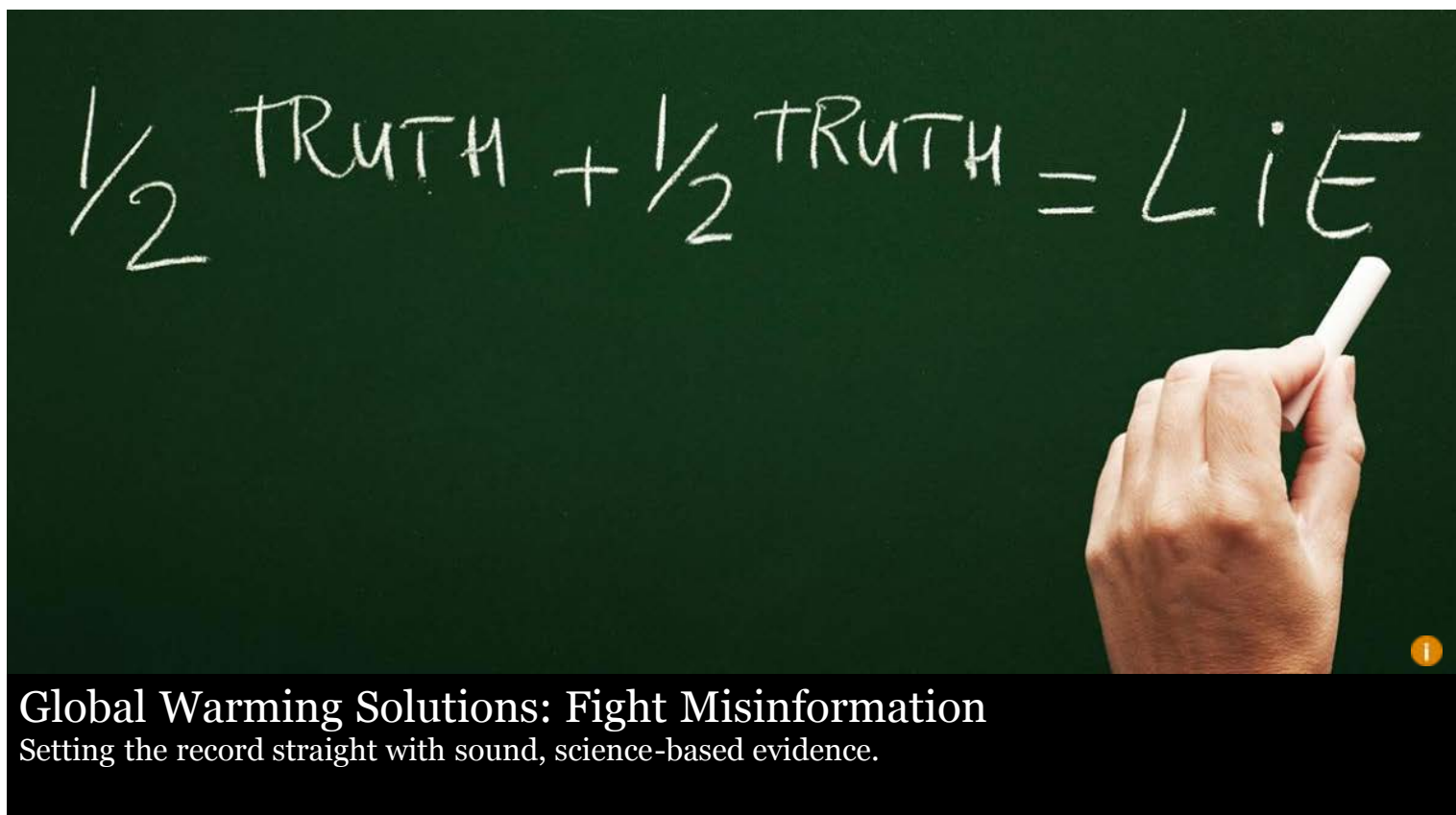
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# Exhibit P



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

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

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

Case 4:16-cv-00469-K Document 76-6 Filed 10/17/16 Page 19 of 46 PageID 2543  
These companies have known for decades that their products—oil, natural gas, and coal—cause global warming, and they have tried to convince politicians and the public to allow industries to continue polluting, and attempt to undercut existing pollution standards.

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

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

## Holding fossil fuel companies accountable

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

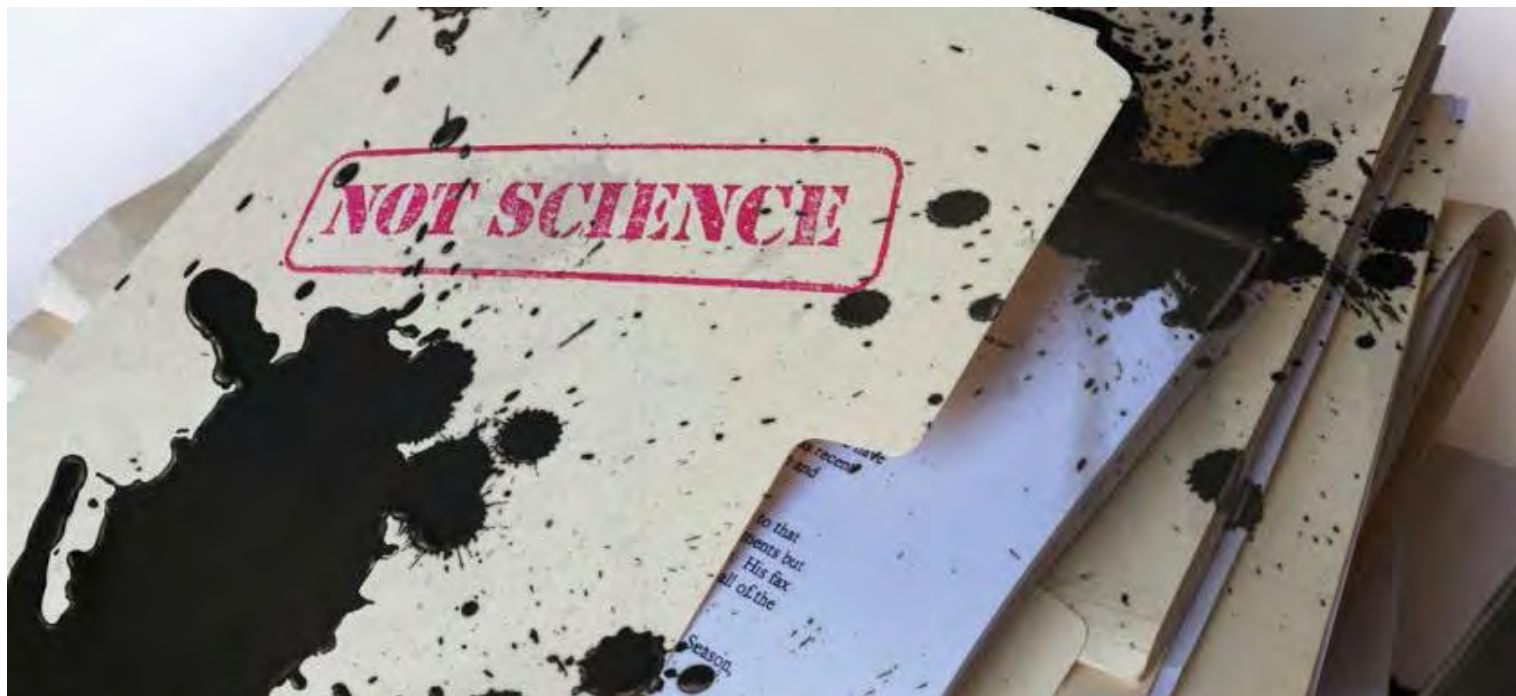
These companies should immediately stop funding climate deception. They should bear their fair share of responsibility for the damage caused by their products.

### Learn more:

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

## The Climate Deception Dossiers

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

## Documenting inaccurate coverage of climate science by major cable news outlets

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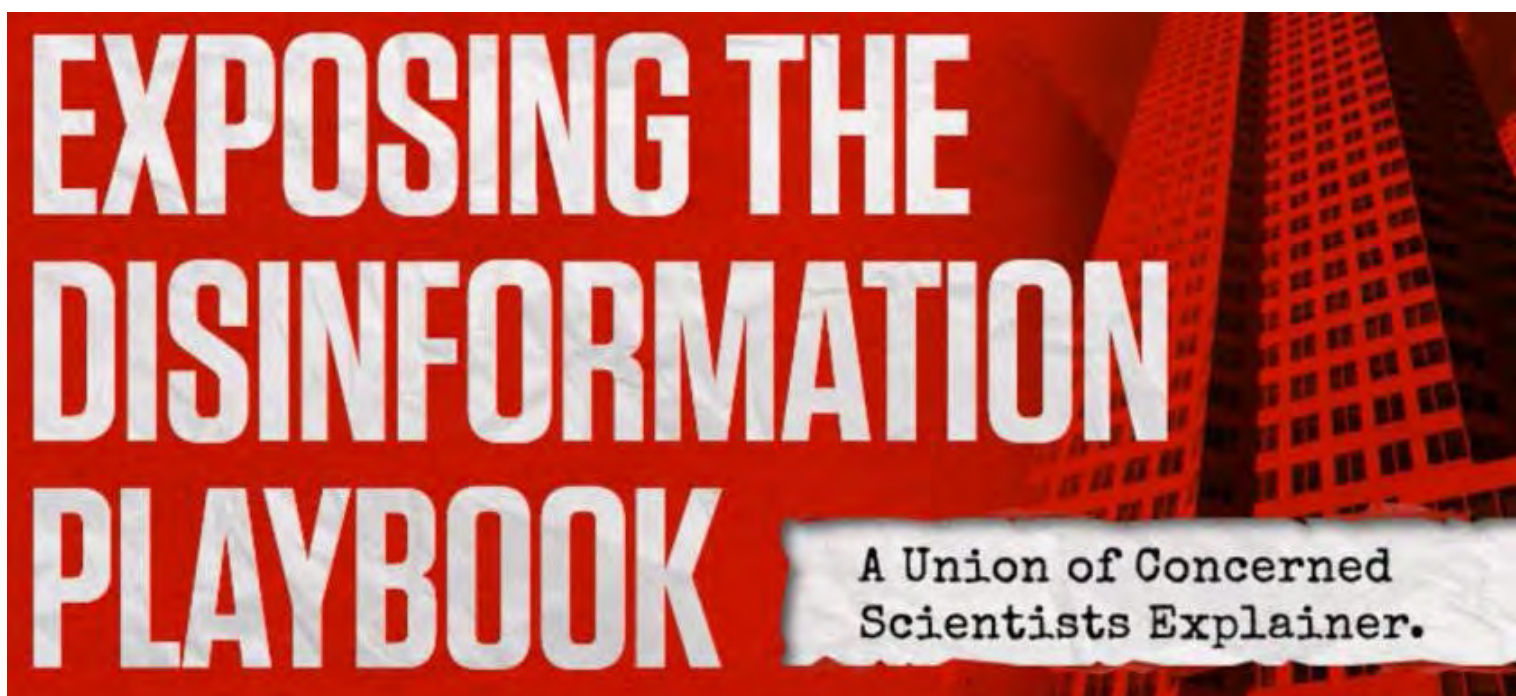




Photo: Grafissimo/iStock

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

## Exposing the fossil fuel industry's disinformation playbook



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

**Learn more:**

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

## Calling out Fox News for misleading coverage of climate science

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

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

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

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

## Exposing special interest groups and policy makers who misrepresent climate science

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Got Science? 4/16/16, 10:46 AM. Document 76-6 Filed 10/17/16 Page 24 of 46 PageID 2548  
Case 1:16-cv-00469-KLD Document 76-6 Filed 10/17/16 Page 24 of 46 PageID 2548  
who have run roughshod over scientific evidence. Past columns have [debunked fake government reports](#), [countered misinformation about renewable energy](#), and [exposed state-level efforts to suppress research on sea level rise](#).

## Fighting back against attacks on climate science and scientists

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Photo: arturbo/iStock

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

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



# Resources for effectively communicating climate science

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

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

## **Learn more:**

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

## We Need Your Support to Make Change Happen

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We *can* reduce global warming emissions and ensure communities have the resources they need to withstand the effects of climate change—but not without you. Your generous support helps develop science-based solutions for a healthy, safe, and sustainable future.

\$25

\$50

\$100

\$250

\$1000

Other

Donate

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[Abuse of Power: ExxonMobil, Chairman Lamar Smith, and the First Amendment](#)

GRETCHEN GOLDMAN | MAY 19, 2016

[Suddenly, the Future is Clear for Solar Energy](#)

MIKE JACOBS | MAY 19, 2016

[With the First Lawsuit Against ExxonMobil for Climate Deception Announced, What Do We Know About Its Risk from Climate Change Impacts?](#)

GRETCHEN GOLDMAN | MAY 19, 2016

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**APP. 154**

[ VIDEO ]



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[ ON TWITTER ]

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[ INFOGRAPHIC ]

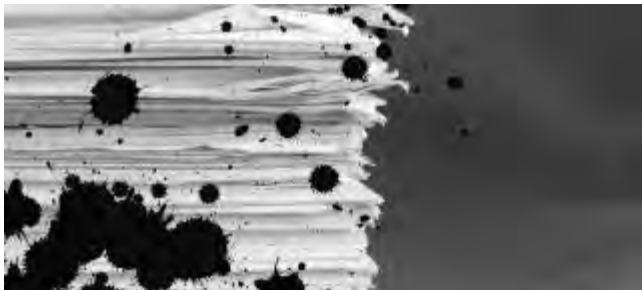
## CLIMATE SCIENCE VS. FOSSIL FUEL FICTION



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

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[ TAKE ACTION ]



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

[Tell ExxonMobil to stop funding front groups that distort or deny climate change. >](#)



Science for a healthy planet and safer world



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**Union of Concerned Scientists**

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# Exhibit Q

# **Smoke, Mirrors & Hot Air**

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**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](mailto:ucs@ucsusa.org)

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## ACKNOWLEDGMENTS

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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

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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.

## PUTTING THE BRAKES ON EXXONMOBIL'S DISINFORMATION CAMPAIGN

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*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<sup>152</sup>

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.<sup>153</sup> 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."<sup>154</sup> 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.<sup>155</sup>

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.<sup>156</sup>

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.<sup>157</sup> 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."<sup>158</sup>

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.<sup>159</sup> 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.<sup>160</sup> 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.<sup>161</sup>

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.<sup>162</sup> 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."<sup>163</sup> 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."<sup>164</sup> 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](http://www.ExxposeExxon.com). The site includes sample letters to Rex Tillerson and members of Congress.

# **Exhibit R**



# Democrat AGs signed secrecy pact to hide details of probe into climate-change dissent



*New York Attorney General Eric T. Schneiderman speaks during a news conference in New York on Feb. 11, 2016. (Associated Press) \*\*FILE\*\* more >*

By Valerie Richardson - *The Washington Times* - Thursday, August 4, 2016

Democratic attorneys general signed a secrecy agreement aimed at keeping hidden the details of their investigation into climate change dissenters, according to documents released Thursday.

The Common Interest Agreement was signed in April and May by representatives for 17 attorneys general as part of their collaborative pursuit of fossil fuel companies, academics and think tanks that challenge the narrative of catastrophic climate change.

Such agreements are typically used by prosecutors on investigations involving litigation, but the pact signed by AGs United for Clean Power was different. The agreements were “clearly drafted to obstruct open-records requests while these AGs carried out a political campaign against their critics,” said the Energy and Environment Legal Institute, which obtained the documents.



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## **PHOTOS: Stars who support Trump**

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"It's baffling that these AGs feel they can trample on their own states' public records laws," David W. Schnare, E&E Legal general counsel, said in a Thursday statement.

"If they truly believe that they are engaged in anything other than a purely political campaign, they should have no problem explaining to the public what they are doing and subjecting their activities to the scrutiny their legislatures demanded," he said.

He said the institute obtained the 17 agreements through open-records requests and a lawsuit against the District of Columbia.

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## **PHOTOS: Best shotguns for home defense**

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"The time and effort it took to obtain the document; the arguments made to defeat efforts to obtain it; and the AGs' reluctance even to acknowledge the existence of such an agreement, all raise more questions about what these AGs are hiding," said the institute.

The E&E Legal Institute previously obtained an unsigned copy of the Common Interest Agreement through an open-records request, but the Thursday release marks the first time the signed documents have been made available to the public.

Eric Soufer, a spokesman for New York Attorney General Eric T. Schneiderman, defended the use of the agreement, calling it a "routine practice during a multistate investigation."

"These agreements preserve the confidentiality of public information shared among state law enforcement officials during the course of an investigation," Mr. Soufer said in a Thursday email. "These agreements are also routinely employed by non-government entities engaged in private litigation."

The suggestion that such an agreement is "anything other than a standard, routine, and responsible law enforcement practice is utter nonsense."

"This is just another press release by fossil fuel industry allies hoping to distract, deflect, and delay a serious fraud investigation into potential corporate fraud and malfeasance," Mr. Soufer said. "Needless to say, it will not be effective."

Case 4:16-cv-00469-K Document 76-6 Filed 10/17/16 Page 45 of 46 PageID 2569  
Former Denver prosecutor Craig Silverman said both sides have a point: Such agreements are not rare, and they can be used to avoid disclosure.

“It is not unusual for plaintiffs’ attorneys to have cooperative working agreements with other plaintiffs with whom they share common interests,” Mr. Silverman said.

At the same time, he said, “Lawyers and their clients are always looking for a privilege, which is a legal way of keeping secrets.

“Once this privilege is asserted, it becomes difficult to prove the cooperation agreement is a pretext so as to pierce the privilege,” Mr. Silverman said. “EELI’s complaining is understandable because this interstate agreement works specifically to shield the government’s strategizing and litigation preparation behind closed doors. A lot of interesting stuff can be claimed as shielded under that umbrella of privilege.”

The agreements were part of a coalition of 17 attorneys general — 16 Democrats and one independent — who announced at a March 29 press conference that they would join forces to pursue companies such as Exxon Mobil accused of misleading the public about the consequences of climate change.

Yet the 17 prosecutors who participated in the New York press event are not the same 17 who signed the agreements.

Iowa Attorney General Tom Miller lent his name to the March unveiling of AGs United for Clean Power, but has not signed the Common Interest Agreement, said Iowa Deputy Attorney General Tam Ormiston.

“At this moment, we aren’t a part of the Common Interest Agreement. We haven’t withdrawn and we haven’t gone forward, either,” Mr. Ormiston told The Washington Times.

Meanwhile, a deputy for New Hampshire Attorney General Joseph Foster signed the agreement April 29 even though Mr. Foster did not take part in the March press conference, which featured former Vice President Al Gore.

New Hampshire became involved a week after a rally outside the Statehouse urging Mr. Foster to join the coalition and investigate Exxon Mobil for climate change fraud. The protest was sponsored by NextGen Climate New Hampshire and 350.org.

NextGen has powerful connections, particularly in the Granite State: The New Hampshire arm is headed by Becky Wasserman, daughter of Lee Wasserman, who runs the Rockefeller Family Fund, a key player in funding the climate change movement.

The other states and jurisdictions that have signed on to the Common Interest Agreement are California, Connecticut, the District of Columbia, Illinois, Massachusetts, Maryland, Maine, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Virginia, the Virgin Islands and Washington.

At least three of the attorneys general — Mr. Schneiderman, Massachusetts' Maura Healey and Claude E. Walker of the Virgin Islands — have issued subpoenas as part of their investigations into Exxon Mobil.

The Virgin Islands subpoenas, which have since been dropped, called for Exxon's communications with more than 100 universities, professors and think tanks, while the Massachusetts subpoena named a dozen organizations that have challenged the catastrophic view of climate change.

Critics have blasted the cooperative investigation as a free speech violation intended to chill debate, while Mr. Schneiderman has argued that climate change "fraud" is not protected by the First Amendment.

Chris Horner, E&E senior legal fellow, said the document was "far less a proper common interest agreement than a sweeping cloak of secrecy."

He noted that the agreement includes a provision that allows information to be shared with "other persons, provided that all Parties consent in advance."

That provision would presumably allow the prosecutors to divulge information about their investigation with environmentalists and climate change groups, which have been active in devising and promoting the strategy to pursue climate change skeptics through the legal system.

"It was drafted not in anticipation of any particular litigation but in obvious anticipation of open records requests," Mr. Horner said. "We have already revealed they've colluded on this use of their law enforcement powers to wage a political campaign with political activist groups and activist lawyers. This is wrong and in the end will be fully exposed."

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# **Exhibit S**



## PRACTICE AREAS



### **Environmental Litigation**

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### **Personal Injuries**

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# Exhibit T



# Corporate Citizenship Report

**ExxonMobil**  
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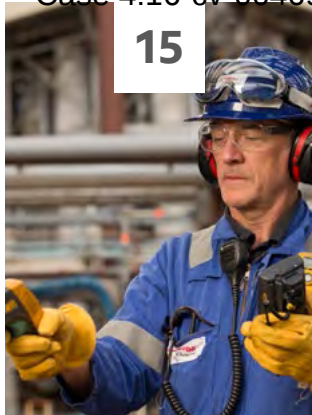


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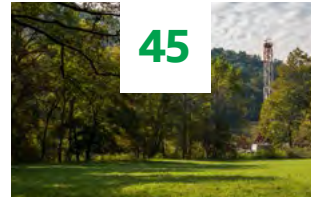
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In December 2015, students at the Federal Housing Estate Primary School in Lagos, Nigeria, learn about malaria prevention and proper bed net use through Grassroot Soccer's community-based program. To learn more about this program, see page 69.



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Video

Throughout the report, additional content is available by clicking the icons shown on the left.



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## Managing climate change risks

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Harold Johnson, lab technician at our Products Technology Center in Paulsboro, New Jersey, examines a motor oil sample. Since 2000, ExxonMobil has spent approximately \$7 billion to develop lower-emission energy solutions.



Society continues to face the dual challenge of meeting energy demand to support the economic growth needed for improved living standards, while simultaneously addressing the risks posed by rising greenhouse gas emissions and climate change. While future temperature changes and the associated impacts are difficult to accurately predict, we believe the risks of climate change are real and warrant thoughtful action.

ExxonMobil supports advancement of the scientific understanding of climate change and is committed to providing affordable energy to support human progress while advancing effective solutions to address the risks of climate change. Our climate change risk management strategy includes four components: engaging on climate change policy, developing future technology, mitigating greenhouse gas emissions in our operations and developing solutions that reduce greenhouse gas emissions for our customers.

## Engaging on climate change policy

Climate change is a global issue that requires the collaboration of governments, companies, consumers and other stakeholders to create global solutions. We believe countries need to work together to craft policies aimed at mitigating greenhouse gas emissions that recognize the priorities and needs of both developed and developing countries. We engage stakeholders directly and with trade associations around the world to encourage sound policy solutions for addressing these risks.

### Attributes of sound climate policy

ExxonMobil believes the long-term objective of effective policy is to reduce the risks posed by climate change at minimum societal cost, in balance with other societal priorities such as poverty eradication, education, health, security and affordable energy.

We fundamentally believe that free markets, innovation and technology are essential to addressing the risks of climate change. Success in developing and deploying impactful technologies will highly depend on governments creating a

policy landscape that enables innovation and competition. Policies need to be clear and guard against duplicative, overlapping and conflicting regulations, which send mixed signals to the market and impose unnecessary costs on consumers. We believe that effective policies are those that:

- Promote global participation;
- Let market prices drive the selection of solutions;
- Ensure a uniform and predictable cost of greenhouse gas emissions across the economy;
- Minimize complexity and administrative costs;
- Maximize transparency; and
- Provide flexibility for future adjustments to react to developments in climate science and the economic impacts of climate policies.

Policies based on these principles minimize overall costs to society and allow markets to help determine the most effective and commercially viable solutions.

Given the wide range of societal priorities and limited global resources, all policies, including climate change policy, must be as economically efficient as possible. ExxonMobil believes that market-based systems that impose a uniform, economy-wide cost on greenhouse gas emissions are more economically efficient policy options than mandates or standards. This is because market-based policies more effectively drive consumer behavior and technology innovation, while mandates and standards eliminate consumer choice and can perpetuate ineffective technologies.

Since 2009, ExxonMobil has held the view that a properly designed, revenue-neutral carbon tax is a more effective market-based option than a cap-and-trade approach. A carbon tax is more transparent, can be implemented in existing tax infrastructure, avoids the complexity of creating and regulating carbon markets where none exist and reduces greenhouse gas emissions price volatility, thus delivering a clearer, more consistent long-term market price signal.

Only through a sound global policy framework will the power of markets and innovation enable society to find cost-effective solutions to address the risks of climate change, while at the same time continuing to address the many other challenges the world faces.

### Engaging stakeholders

Managing the risks of climate change will require increased innovation and collaboration. Therefore, ExxonMobil engages a variety of stakeholders — including policymakers, investors, consumers, non-governmental organizations (NGOs), academics and the public — on climate change issues of direct relevance to the company.

## Up Close: Attributes of sound market-based policy

While market-based systems may have different designs and regional applications, we believe effective systems are those that promote global participation and are characterized as follows:

- Apply to all greenhouse gas emissions across the economy;
- Provide a uniform price for all greenhouse gas emissions;
- Apply the costs of greenhouse gas emissions to the parties most able and likely to alter behavior in response to a price signal;
- Prevent shifting of greenhouse gas emissions to unregulated jurisdictions;
- Provide for linkages with other market-based systems outside the regulated jurisdiction;
- Return revenue generated from the system back to the economy in an equitable fashion that encourages economic growth and limits regressive income effects; and
- Provide for accurate and cost-effective greenhouse gas emissions measurement, verification and reporting.



## Up Close: Outcomes from COP 21

In December 2015, parties to the United Nations (UN) Framework Convention on Climate Change convened in Paris for the 21st Conference of the Parties (COP 21). COP 21 resulted in a global agreement which, for the first time, commits all parties to undertake action on climate change and report on related progress. Key commitments of the agreement include:

- “Each party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.”
- “Each party shall communicate nationally determined contributions every five years.”
- “Each party shall regularly provide ... a national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases” and “information necessary to track progress made in implementing and achieving its nationally determined contribution.”



Participants at the 21st Conference of the Parties in Paris, December 2015.

ExxonMobil believes that these commitments are a positive step in achieving global participation to address climate change risks.

For many years, ExxonMobil’s *Outlook for Energy* has taken into account the potential for climate policies to become increasingly stringent over time and impose rising costs on energy-related carbon dioxide emissions. Preliminary analyses of the aggregation of intended nationally determined contributions, which were submitted by governments as part

of the COP 21 process, indicate a greenhouse gas emissions trajectory similar to that anticipated in our *Outlook*.

ExxonMobil continues to support and contribute to efforts to reduce greenhouse gas emissions. We believe the risks of climate change are real and warrant thoughtful action. Meeting the climate change challenge will require action from all parts of society, including governments, civil society and the private sector. We believe it is possible to address climate change risks while also meeting growing global energy demand and supporting economic development.

ExxonMobil actively advocates for responsible policies that would be effective in addressing the risks of climate change. When we encounter proposals, we offer informed data and policy analysis and engage in thoughtful debate. We have had hundreds of meetings with policymakers in the United States, the European Union and Canada to share our views on carbon pricing policy. We will continue to meet with policymakers and other stakeholders to discuss effective approaches to reduce greenhouse gas emissions. For additional information on ExxonMobil’s approach to political advocacy and contributions, see page 86.

Our chairman and members of the management committee have primary responsibility for — and are actively engaged in — managing climate change risks. The board of directors receives annual in-depth briefings that cover updates on public policy, scientific and technical research, and company positions and actions related to climate change.

To drive improvement, our merit-driven employee development and compensation systems integrate performance in environmental areas, including emissions and energy efficiency.

In order to ensure that our corporate communications accurately reflect our internal policy positions, we employ a corporate-wide global climate change and greenhouse gas issue management team. As issues arise at the local, state, national and regional levels, our global team of experts evaluate and develop a company position on the issue. ExxonMobil employees also hold key leadership positions, including board of director positions, with many trade associations that engage on climate change issues, including the American Petroleum Institute (API), the International Association of Oil and Gas Producers (IOGP) and IPIECA, the global oil and gas industry association for environmental and social issues.

We believe an effective policy response to climate change requires a thorough understanding of the climate system. Our scientists have been involved in climate change research and related policy analysis for more than 30 years. This has resulted in hundreds of publicly available documents on climate-related topics, including more than 50 peer-reviewed publications.

While our long-standing and continuous involvement with climate science research, often conducted in collaboration with governmental bodies and leading universities, has advanced the company’s understanding of the climate system, ExxonMobil is committed to continued engagement with the climate science community in an effort to further develop the science. ExxonMobil contributes to a wide range of academic and other organizations that research and promote dialogue on addressing climate change risks.

 Peer-reviewed articles on climate research



We engage with IPIECA on a number of issues, including climate change risks. Rick Mire, environment, regulatory and socioeconomic manager, has represented ExxonMobil at IPIECA for more than a decade and has served as chair since 2012.

Experts from our organization have participated in the UN Intergovernmental Panel on Climate Change (IPCC) since its inception. Most recently, our scientists contributed to the IPCC Fifth Assessment Report in lead author, review editor and reviewer roles. For additional information on the IPCC's Fifth Assessment Report, see the adjacent Up Close. Our scientists also participated in the work of the U.S. National Academy of Sciences, including its work to review the third U.S. National Climate Assessment Report and provide advice to the U.S. Global Change Research Program.

### Engaging industry

ExxonMobil recognizes the growing interest in climate change risks and understands that stakeholders seek a better understanding of the positions of the oil and gas industry, as well as how individual companies approach the management of climate change risks within their own businesses.

IPIECA was established in 1974 at the request of the United Nations Environmental Program. As an active IPIECA member, ExxonMobil engaged with member companies in advance of the December 2015 COP 21 meeting in Paris in order to

help develop a common industry position on global efforts to address and mitigate climate change risks. That work culminated in *The Paris Puzzle* — a publication on the challenges and responses needed to address the risks of climate change.

### IPIECA Paris Puzzle

Recognizing the desire of stakeholders for more accessible and clear information, in 2015 we also took a key role collaborating with IPIECA and its member companies to create a voluntary reporting framework for oil and gas companies to publish their climate change risk management approach in a simple, straightforward and transparent manner. The resulting framework, which IPIECA will pilot during 2016, covers a wide range of climate-related issues and provides a consistent reporting methodology for the oil and gas industry. This framework should enable interested stakeholders to understand an individual company's views on the issues central to addressing climate change risks.

### IPIECA Climate Change Reporting Framework

## Up Close.

## ExxonMobil and the IPCC

For more than 25 years, the IPCC has provided periodic assessments of climate change, including information on the causes and impacts as well as potential response strategies. Experts from ExxonMobil have participated in the IPCC since its inception. In October 2014, the IPCC completed its Fifth Assessment Report, which offers an update of materials related to climate science, including the socioeconomic aspects of climate change and its implications for sustainable development. Our scientists contributed to the IPCC Fifth Assessment Report in lead author, review editor and reviewer roles.

The Fifth Assessment reports high confidence in the scientific certainty of many aspects of climate change, including that atmospheric greenhouse gas concentrations are rising in response to emissions, the earth's temperature has warmed over the last century and that the risks associated with climate change will increase with the magnitude of atmospheric greenhouse gas concentration and temperature increases. The assessment notes that the ability to forecast the magnitude and pattern of future climate change remains less certain and confidence declines when moving from a global to local scale.

While the current scientific understanding of climate change leaves some unanswered questions, it is clear that the risks are real and warrant thoughtful action. ExxonMobil employs a risk management strategy and continually strives to improve our understanding of the impacts of climate change. As part of our *Outlook for Energy* analysis, we project an energy-related carbon dioxide (CO<sub>2</sub>) emissions profile through 2040. This can be compared with the energy-related CO<sub>2</sub> emissions profiles from various scenarios outlined by the IPCC. When we do this, our *Outlook* emissions profile approximates the IPCC's intermediate Representative Concentration Pathways 4.5 emissions profile in shape, but is slightly under it in magnitude.

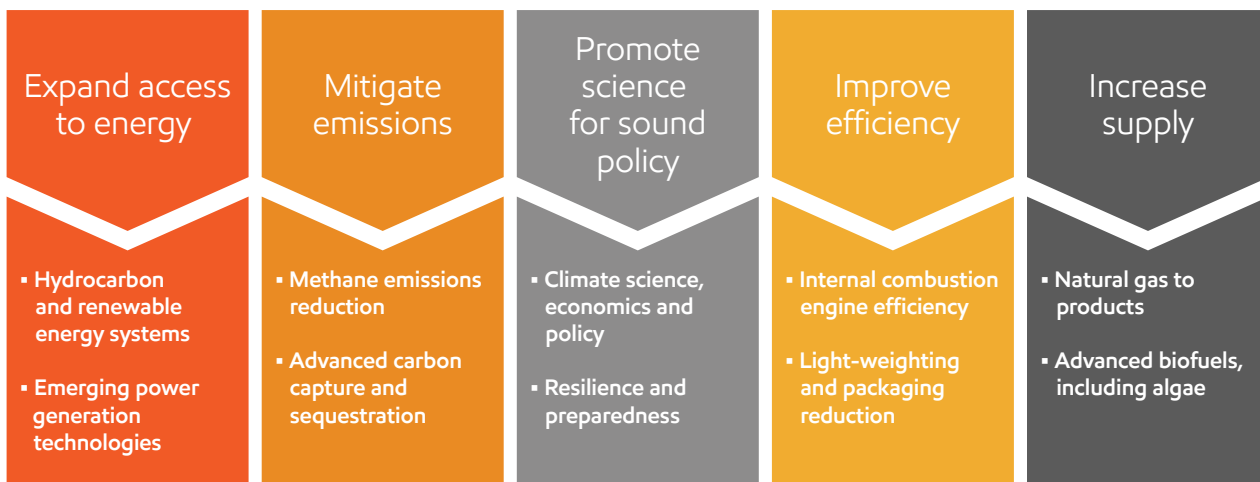
### IPCC's Fifth Assessment Report

As society transitions to lower greenhouse gas emission energy solutions, technological advancements that change the way we produce and use energy will be instrumental in providing the global economy with the energy it needs while reducing greenhouse gas emissions. Recognizing the limitations associated with most existing low greenhouse gas emissions energy technologies, particularly in delivering the necessary economy and scale, we are conducting fundamental research to develop low greenhouse gas emission energy solutions that have the potential to be economically feasible without subsidies, standards or mandates. ExxonMobil is pioneering scientific research to discover innovative approaches to enhance existing and develop next-generation energy sources.

ExxonMobil's Emerging Technologies program brings together executives, scientists and engineers from across ExxonMobil's businesses to identify and evaluate technology research opportunities with a long-term strategic focus. The Emerging Technologies team seeks to understand a wide range of technology options and how they may impact the global energy system in the near term and as far as 50 years into the future. Our evaluation extends well beyond our base business and near-term focus. If a technology could have a material effect on the future of energy, we insist on knowing about it and understanding the related science. Understanding the fundamental science serves as a basis for our broader research efforts and may lead to further technology development aimed at practical application, such as our work on biofuels. Additionally, this awareness informs our internal analysis of the global energy landscape as reflected and encapsulated in our annual *Outlook for Energy*.

 *The Outlook for Energy: A View to 2040*

At the center of our research is ExxonMobil's Corporate Strategic Research laboratory, a fundamental research institution with approximately 150 Ph.D. scientists and engineers focused on addressing the company's long-range science needs. The laboratory's scientists are internationally recognized experts in their field. Our research portfolio, as illustrated in the graphic above, includes a broad array



of programs, including biofuels, carbon capture and sequestration, alternative energy and climate science.

**“ExxonMobil is a leader in its commitment to fundamental science and has a constancy of purpose when looking at emerging energy technologies. As part of our commitment, we continue to widen our research aperture through collaborations with academics and other third parties to better enable us to identify potential breakthroughs in lower-emission technologies.”**



**Vijay Swarup**  
Vice president, research and development

In addition to in-house research, the Corporate Strategic Research laboratory conducts strategic research with leading universities around the world. For example, in 2014, ExxonMobil signed an agreement to join the Massachusetts Institute of Technology Energy Initiative, a collaboration aimed at working to advance and explore the future of energy. ExxonMobil was also a founding member of the Global

Climate and Energy Project at Stanford University, which seeks to develop fundamental, game-changing scientific breakthroughs that could lead to lower greenhouse gas emissions and a less carbon-intensive global energy system. Other university collaborations cover a wide range of scientific topics, from understanding the impacts of black carbon and aerosols at the University of California, Riverside to the fundamentals of biomass pyrolysis used to make biofuels at Iowa State University.

**Advanced biofuels**

ExxonMobil funds a broad portfolio of biofuels research programs including ongoing efforts to develop algae-based biofuels, as well as programs for converting non-food based feedstocks, such as whole cellulosic biomass, algae-based feedstocks and cellulose-derived sugars, into advanced biofuels. We believe that additional fundamental technology improvements and scientific breakthroughs are still necessary in both biomass optimization and the processing of biomass into fuels. Specifically, scientific breakthroughs are needed to ensure that advanced biofuels can be scaled up economically and produced with the desired environmental benefit of lower life cycle greenhouse gas emissions.



## Up Close: Advanced biofuels partnership with Michigan State University

ExxonMobil is a leader in funding and conducting research on advanced biofuels. In 2015, ExxonMobil and Michigan State University (MSU) launched a partnership to advance biofuel research by developing the basic science required to progress algae-based fuels and bio-products.

Research has shown that algae photosynthesis can be highly efficient under optimal conditions in the laboratory but that this efficiency drops under realistic growth conditions. The partnership seeks to understand why some strains of algae are more efficient than others by using advanced technologies to study the photosynthetic processes of many cultures under different conditions.

The objective is to eventually process algae bio-oils in ExxonMobil refineries to supplement crude oil as the raw material to manufacture gasoline, diesel, aviation fuels and marine fuels. We are also researching potential applications for chemicals and lubricants.

Algae biofuel research and development is a long-term endeavor that could take decades to commercialize at scale. In this partnership, we are working to build on our significant progress since beginning this work in 2009.

**“Nature has provided us with a great potential for improvement, and there are many strains of algae that have adapted to work in different environments. We want to determine how they do this and which genes are responsible. Then, we can potentially combine traits to make strains that are more efficient under harsh conditions.”**

### David Kramer

Photosynthesis and bioenergetics professor, MSU-Department of Energy Plant and Research Laboratory

Our advanced biofuels research includes joint research collaborations with Synthetic Genomics Inc., Renewable Energy Group, the Colorado School of Mines, Michigan State University, Iowa State University, Northwestern University and the University of Wisconsin. For additional information on biofuel initiatives in 2015, see the adjacent Up Close.

 Energy investment in advanced biofuels

### Carbon capture and sequestration

Carbon capture and sequestration (CCS) is the process by which CO<sub>2</sub> gas that would otherwise be released into the atmosphere is captured, compressed and injected into underground geologic formations for permanent storage. With a working interest in approximately one-third of the world's total CCS capacity, ExxonMobil is a leader in one of the most important next-generation low-carbon technologies. In 2015, we captured 6.9 million metric tons of CO<sub>2</sub> for sequestration.

ExxonMobil believes the greatest opportunity for future large-scale deployment of CCS will be in the natural gas-fired power generation sector. While CCS technology can be applied to coal-fired power generation, the cost to capture CO<sub>2</sub> is about twice that of natural gas power generation. In addition, because coal-fired power generation creates about twice as much CO<sub>2</sub> per unit of electricity generated, the geological storage space required to sequester the CO<sub>2</sub> produced from coal-fired generation is about twice that associated with gas-fired generation.

ExxonMobil is conducting proprietary, fundamental research to develop breakthrough carbon capture technologies that have the potential to be economically feasible without government subsidies, standards or mandates.

### Environmental life cycle assessments

Every product has the potential to impact the environment. These impacts can be associated with use of the product itself, the manufacturing process or the acquisition of raw materials used to make the product. As a result, a holistic estimate of a product's environmental impact should reflect its entire life cycle.



Our LaBarge gas plant in Wyoming contributes to the total carbon dioxide ExxonMobil captures for sequestration each year.

To help direct our research efforts, we use in-house experts and tools to conduct environmental life cycle assessments of emerging products and activities. In doing so, we are able to assess which technologies have the potential to deliver the game-changing results that will be needed to transition the energy system to lower-emissions solutions.

ExxonMobil researchers also collaborate with researchers at national laboratories and universities around the globe to advance the science of life cycle assessments. In recent years, we have developed new approaches for quantifying environmental impacts associated with energy systems, and published our findings in prestigious peer-reviewed journals. Peer-review and collaboration with external scientists enhance dialogue with the academic research community and bring external expertise and perspective to ExxonMobil life cycle assessments, supporting sound science both within the company and in the greater scientific community.



# Mitigating greenhouse gas emissions in our operations

As we seek to increase production of oil and natural gas to meet growing global energy demand, we are committed to continuing to take actions to mitigate greenhouse gas emissions within our operations.

ExxonMobil has a robust set of processes designed to improve efficiency, reduce emissions and contribute to effective long-term solutions to manage climate change risks. These processes include, where appropriate, setting tailored objectives at the business, site and equipment levels, and then

stewarding progress toward meeting those objectives. Based on decades of experience, ExxonMobil believes this rigorous bottom-up approach is a more effective and meaningful way to drive efficiency improvement and greenhouse gas emissions reduction than simply setting high-level corporate targets. We also believe that continuing to use this approach will yield further improvements in all sectors of our business.

In the near term, we are working to increase energy efficiency while reducing flaring, venting and fugitive emissions in our operations. In the medium term, we are deploying proven technologies such as cogeneration and carbon capture and sequestration where technically and economically feasible. Longer term, we are conducting and supporting research to

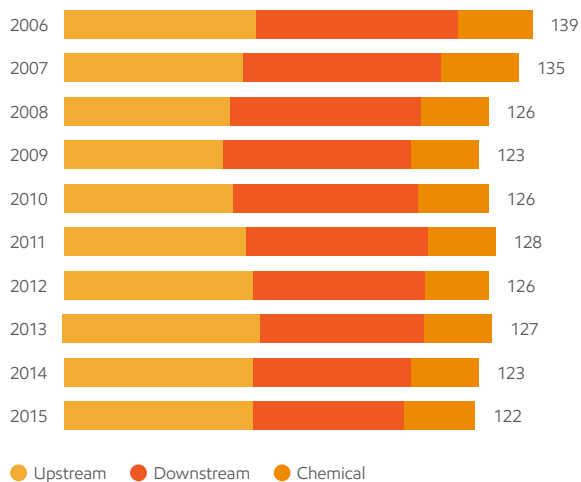
develop breakthrough, game-changing technologies. Since 2000, ExxonMobil has spent approximately \$7 billion to develop lower-emission energy solutions.

In 2015, ExxonMobil's net equity greenhouse gas emissions were 122 million CO<sub>2</sub>-equivalent metric tons. Relative to our 2014 performance, our 2015 emissions decreased by approximately 1 million CO<sub>2</sub>-equivalent metric tons. This decrease was primarily driven by energy efficiency improvement and asset divestment.

 2015 CDP (Carbon Disclosure Project) response

## Greenhouse gas emissions (net)<sup>1</sup>

Net equity, CO<sub>2</sub>-equivalent emissions  
Millions of metric tons

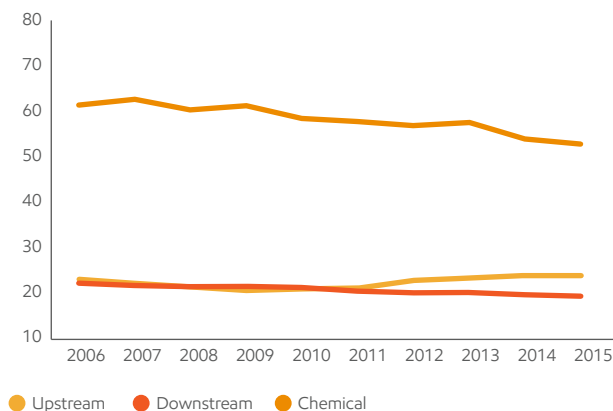


In 2015, ExxonMobil's net equity greenhouse gas emissions were 122 million CO<sub>2</sub>-equivalent metric tons. Relative to our 2014 performance, our 2015 emissions decreased by approximately 1 million CO<sub>2</sub>-equivalent metric tons.

<sup>1</sup>Our calculations are based on the guidance provided in API's Compendium of Greenhouse Gas Emission Estimation Methodologies for the Oil and Gas Industry and IPIECA's Petroleum Industry Guidelines for Reporting Greenhouse Gas Emissions.

## Greenhouse gas emissions (normalized)

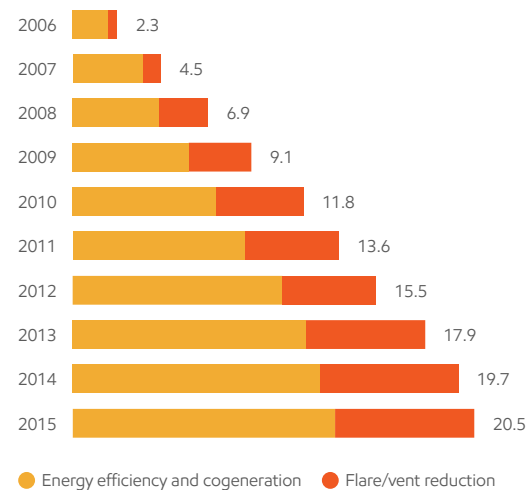
Net equity, CO<sub>2</sub>-equivalent emissions  
Metric tons per 100 metric tons of throughput or production



Through our commitment to energy efficiency, application of structured processes and continued use of a bottom-up approach, we continue to yield industry-leading results. For example, normalized greenhouse gas emissions from our Downstream business totaled 18.9 metric tons per 100 metric tons of throughput or production in 2015. This represents an improvement of 13 percent compared with our 2006 performance.

## Greenhouse gas emissions avoided from ExxonMobil actions<sup>2</sup>

Net equity, CO<sub>2</sub>-equivalent emissions  
Millions of metric tons



In 2015, greenhouse gas emissions avoided from ExxonMobil actions were 20.5 million metric tons, cumulative since 2006. This represents an additional reduction of 0.8 million metric tons compared with our 2014 performance.

<sup>2</sup>Cumulative since 2006.

Energy efficiency



>\$3.8 Billion

invested since 2000 at our Upstream facilities around the world on emission reduction efforts, including energy efficiency and flare mitigation



>\$400 Million

invested over the past 15 years at our refining facilities around the world to reduce greenhouse gas emissions



>\$2 Billion

in support of Upstream and Downstream cogeneration facilities since 2001 to more efficiently produce electricity and reduce greenhouse gas emissions

>\$200 Million

in capital expenditures at global Chemical facilities since 2004 to reduce greenhouse gas emissions

In 2015, energy used in our operations totaled 1.7 billion gigajoules. Energy consumed in our operations generates more than 80 percent of our direct greenhouse gas emissions and is one of our largest operating costs. As such, we have focused on energy efficiency for several decades. Since 2000, we have used our Global Energy Management System in the Downstream and Chemical businesses, and our Production Operations Energy Management System in our Upstream businesses to identify and act on energy savings opportunities.

Through our commitment to energy efficiency, application of structured processes and continued use of a bottom-up approach, we continue to yield industry-leading results. For example, in the 2010, 2012 and 2014 Refining Industry Surveys,<sup>3</sup> ExxonMobil's global refining operations achieved first quartile energy efficiency performance.

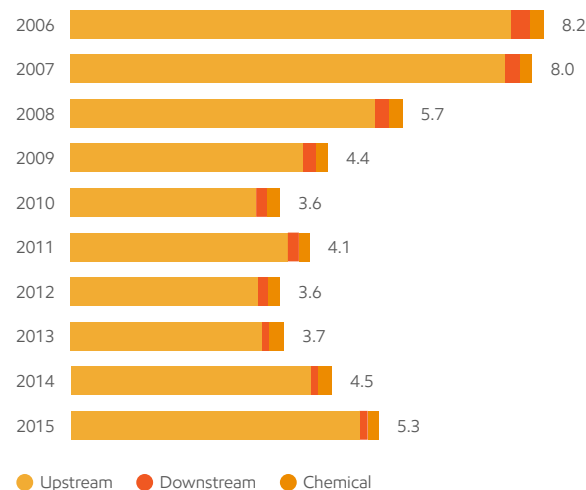
Flaring

In 2015, flaring volume from our combined Upstream, Downstream and Chemical operations totaled 5.3 million metric tons. This represents an increase of 0.8 million metric tons compared with our 2014 performance.

The increase in flaring in 2015 was primarily due to operations in Angola, where a third-party-operated liquefied natural gas (LNG) plant was not operating. These increases were partially offset by flaring reductions resulting from the completion of commissioning work at our Papua New Guinea LNG plant and operational improvements at the Usan production field in Nigeria.

ExxonMobil is a charter member of the *Global Gas Flaring Reduction Partnership*. In addition, we put in place our own parameters, the *Upstream Flaring and Venting Reduction Environmental Standard for Projects*, in 2005. Accordingly, our goal is to responsibly avoid routine flaring in new Upstream projects and reduce "legacy" flaring in our existing operations.

Millions of metric tons



In 2015, flaring volume from our combined Upstream, Downstream and Chemical operations totaled 5.3 million metric tons. This represents an increase of 0.8 million metric tons compared with our 2014 performance.

For example, our joint venture operations in Qatar have recently begun using a jetty boil-off gas (JBOG) recovery facility to recover the natural gas that was previously flared during LNG vessel loading at the marine berths located at the Ras Laffan Port. Approximately 1 percent of the LNG loaded onto the ships evaporates due to the difference in temperature between the LNG and the ship tank. The JBOG recovery facility collects the boil-off gas and returns it to the LNG plants to be used as fuel or converted back into LNG. During one year of operation, the JBOG facility has recovered more than 500,000 metric tons of gas and reduced LNG vessel loading-related flaring by around 90 percent.

<sup>3</sup>The Solomon Survey provides a global benchmarking assessment of the refining industry and is conducted every two years.



Paula Byrum inspects equipment at our XTO Energy operations site near Herbert Springs, Arkansas.

## Up Close: Mitigating methane emissions at XTO Energy

XTO Energy manages methane emissions as a matter of safety and environmental responsibility. Responsible methane containment practices are applied during drilling, completion and production operations to minimize methane emissions. We manage emissions through a mix of voluntary and regulatory actions, such as implementing leak detection and repair programs, reducing oil and gas completion emissions and targeting replacement of high-bleed pneumatics with lower-emitting devices.

After drilling and completion of a new well, our workers prepare the production equipment for decades of operation. A key part of these preparations is to ensure that the natural gas product is contained by the production equipment. We utilize optical gas imaging cameras to locate equipment leaks that would otherwise be invisible, which allows us to detect leaks and make repairs. This attention to detail is important to promote safety and environmental performance.

There is a growing interest within the scientific and policy communities on human-related methane emissions. In the United States, we are working with federal and state governments and within industry to ensure that regulations aimed at reducing emissions of methane and volatile organic compounds sufficiently support long-term operations, achieve emission reduction objectives and provide flexibility for technology.

We continue to seek greater understanding of the magnitude and characteristics of oil and gas industry-related methane emissions. XTO Energy participated in studies conducted by the University of Texas and Environmental Defense Fund which quantified the methane leakage rate in the United States from Upstream gas production activities at 0.4 percent of the total gas produced. The results of this study helped validate Environmental Protection Agency estimates. We are active in ongoing methane research including participating in a methane measurement reconciliation study with the Department of Energy's National Renewable Energy Laboratory to close the knowledge gap between methane measured at ground sources and methane measured from the air. We are also working with Stanford University on its new Natural Gas Initiative, which will focus on methane measurement and monitoring technologies.

Our venting and fugitive emissions in 2015 totaled 6 million CO<sub>2</sub>-equivalent metric tons, which is essentially flat relative to our 2014 performance. While venting and fugitive emissions, most of which are methane, represent approximately 5 percent of our direct greenhouse gas emissions, we recognize the importance of reducing these emissions. We continue to look for cost-effective ways to reduce methane and other hydrocarbon emissions in our operations, such as replacing high-bleed pneumatic devices with lower-emission technology and conducting green well completions in targeted Upstream operations. For more information on how XTO Energy manages methane emissions, see the adjacent Up Close.

### Cogeneration

Cogeneration technology captures heat generated from the production of electricity for use in production, refining and chemical processing operations. Due to its inherent energy efficiency, the use of cogeneration leads to reduced greenhouse gas emissions. Our cogeneration facilities alone enable the avoidance of approximately 6 million metric tons per year of greenhouse gas emissions.

We have interests in approximately 5,500 megawatts of cogeneration capacity in more than 100 installations at more than 30 locations around the world. This capacity is equivalent to the annual energy needed to power 2.5 million U.S. homes. Over the past decade, we have added more than 1,000 megawatts of cogeneration capacity and continue to develop additional investment opportunities.

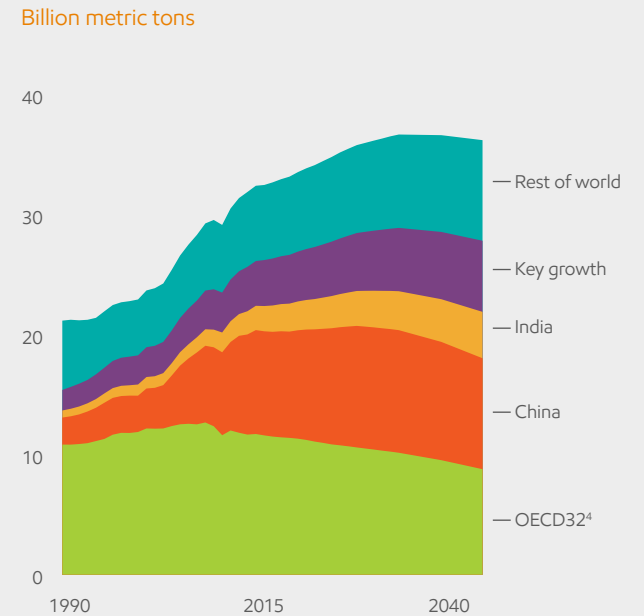
For example, ExxonMobil began the construction of a new 84-megawatt cogeneration facility at our Singapore refinery's Jurong site. When this facility is completed in 2017, ExxonMobil will have more than 440 megawatts of cogeneration capacity in Singapore, enabling our integrated refining and petrochemical complex to meet all its power needs.





The Kizomba B platform located offshore Angola.

## Energy-related CO<sub>2</sub> emissions



<sup>4</sup>The Organization for Economic Cooperation and Development. Refer to the Organization for Economic Cooperation and Development website ([oecd.org](http://oecd.org)) for a listing of its members.

## Up Close: Managing the business risks of climate change

By 2040, the world's population is projected to reach 9 billion — up from about 7.2 billion today — and global GDP will have more than doubled. As a result, we see global energy demand rising by about 25 percent from 2014 to 2040. In order to meet this demand, we believe all economic energy sources, including our existing hydrocarbon reserves, will be needed. We also believe that the transition of the global energy system to lower-emissions sources will take many decades due to its enormous scale, capital intensity and complexity. As such, we believe that none of our proven hydrocarbon reserves are, or will become, stranded.

 Energy and carbon — managing the risks

ExxonMobil's long-range annual forecast, *The Outlook for Energy*, examines energy supply and demand trends for approximately 100 countries, 15 demand sectors and 20 different energy types. The *Outlook* forms the foundation for the company's business strategies and helps guide our investment decisions. In response to projected increases in global fuel and electricity demand, our 2016 *Outlook* estimates that global energy-related CO<sub>2</sub> emissions will peak around 2030 and then begin to decline. A host of trends contribute to this downturn — including slowing population growth, maturing economies and a shift to cleaner fuels like natural gas and renewables — some voluntary and some the result of policy.

ExxonMobil addresses the potential for future climate change policy, including the potential for restrictions on emissions, by estimating a proxy cost of carbon. This cost, which in some geographies may approach \$80 per ton by 2040, has been included in our *Outlook* for several years. This approach seeks to reflect potential policies governments may employ related to the exploration, development, production, transportation or use of carbon-based fuels. We believe our view on the

potential for future policy action is realistic and by no means represents a "business-as-usual" case. We require all of our business lines to include, where appropriate, an estimate of greenhouse gas-related emissions costs in their economics when seeking funding for capital investments.

We evaluate potential investments and projects using a wide range of economic conditions and commodity prices. We apply prudent and substantial margins in our planning assumptions to help ensure competitive returns over a wide range of market conditions. We also financially stress test our investment opportunities, which provides an added margin against uncertainties, such as those related to technology development, costs, geopolitics, availability of required materials, services and labor. Stress testing further enables us to consider a wide range of market environments in our planning and investment process.

# Exhibit U

# Retire in the U.K

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

Several states have launched investigations into the company



BY: [Alana Goodman](#)

Follow [@alanagoodman](#)

April 14, 2016 5:00 pm

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

The meeting—which included top officials at GreenPeace, the Working Families Party, and the

**APP. 192**





Rockefeller Family Fund—took place as climate change groups have pushed for a federal criminal probe of ExxonMobil’s environmental impact, similar

to the 1990s racketeering case against Big Tobacco.

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

ADVERTISING

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

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



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

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

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

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

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

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

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

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

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

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

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

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

This entry was posted in [Issues](#) and tagged [Climate Change](#). Bookmark the [permalink](#).

 <b>SHARE</b>	 <b>TWEET</b>	 <b>EMAIL</b>
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**Alana Goodman** [Email](#) | [Full Bio](#) | [RSS](#)

Alana Goodman is a staff writer for the Washington Free Beacon. Prior to joining the Beacon, she was assistant online editor at Commentary. She has written for the Weekly Standard, the New York Post and the Washington Examiner. Goodman graduated from the University of Massachusetts in 2010, and lives in Washington, D.C. Her Twitter handle is [@alanagoodman](#). Her email address is

[goodman@freebeacon.com](mailto:goodman@freebeacon.com).

# **Exhibit V**

## 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



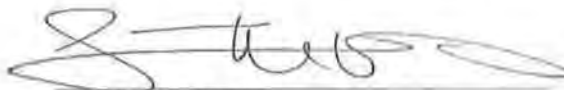
Michele Van Gelderen  
Supervising Deputy Attorney General  
Consumer Law Section  
Office of Attorney General Kamala D. Harris  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Tel. (213) 897-2000

Dated: May 3, 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

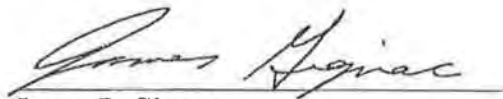


Elizabeth Wilkins  
Senior Counsel to the Attorney General\*  
Office of the Attorney General for the District of  
Columbia  
441 4th Street N.W. Suite 1100S  
Washington, D.C. 20001  
(202) 724-5568  
elizabeth.wilkins@dc.gov

\*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).

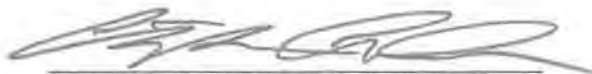


Dated: May 2, 2016



James P. Gignac  
Environmental and Energy Counsel  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, IL 60602  
(312) 814-0660  
[jgignac@atg.state.il.us](mailto:jgignac@atg.state.il.us)

Dated: April 29, 2016



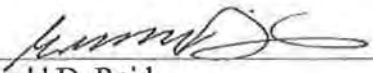
CHRISTOPHE COURCHESNE  
Assistant Attorney General  
Chief, Environmental Protection Division  
One Ashburton Place  
Boston, MA 02108  
christophe.courchesne@state.ma.us

Dated: May 10, 2016



Joshua N. Auerbach  
Assistant Attorney General  
200 Saint Paul Place  
Baltimore, Maryland 21202  
(410) 576-6311  
jauerbach@oag.state.md.us

Dated: May 5, 2016

  
\_\_\_\_\_  
Gerald D. Reid  
Assistant Attorney General  
Chief, Natural Resources Division  
Maine Office of the Attorney General  
(207) 626-8545  
jerry.reid@maine.gov

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

Karen D. Olson  
Deputy Attorney General  
Minnesota Attorney General's Office  
445 Minnesota Street, Suite 900  
St. Paul, MN 55101  
(651) 757-1370  
karen.olson@ag.state.mn.us

Dated: April 29, 2016



JOSEPH A. FOSTER, ATTORNEY GENERAL  
K. Allen Brooks, Senior Assistant Attorney General  
33 Capitol Street  
Concord, NH 03301  
(603) 271-3679  
allen.brooks@doj.nh.gov

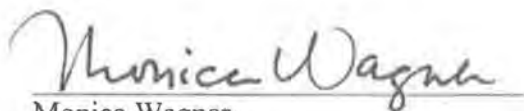
Dated: May 6, 2016

Tania Maestas

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

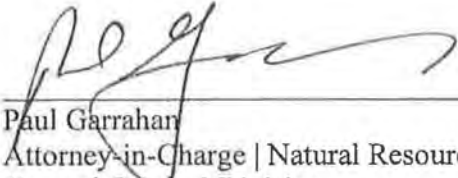


Dated: May 2, 2016

A handwritten signature in cursive script that reads "Monica Wagner". The signature is written in black ink and is positioned above a horizontal line.

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

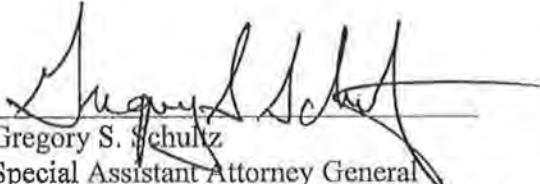
Dated: April 29, 2016



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Paul Garrahan  
Attorney-in-Charge | Natural Resources Section |  
General Counsel Division  
Oregon Department of Justice  
1162 Court St. NE, Salem, OR 97301-4096  
971.673.1943 (Tue, Thu, Fri) (Portland)  
503.947.4593 (Mon, Wed) (Salem)  
503.929.7553 (Mobile)

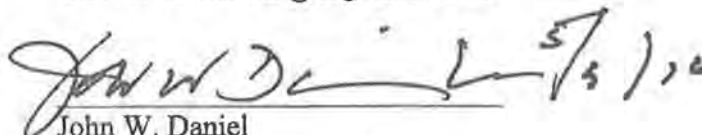
Dated: April 28, 2016

  
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

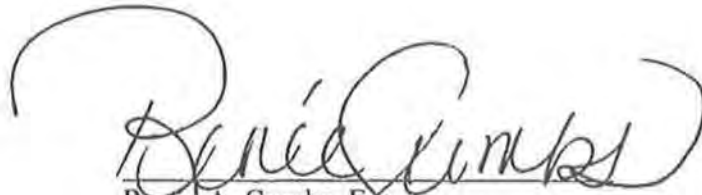
 5/9/16

Rhodes B. Ritenour  
Deputy Attorney General  
Civil Litigation Division  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219  
Office: (804) 786-6731  
E-mail: RRitenour@oag.state.va.us

 5/9/16

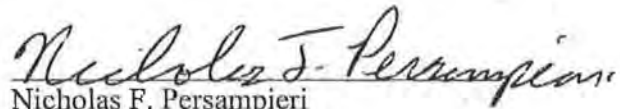
John W. Daniel  
Deputy Attorney General  
Commerce, Environmental, and Technology  
Division  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219  
Office: (804) 786-6053  
E-mail: JDaniel@oag.state.va.us

Dated: May <sup>4th</sup> 10, 2016



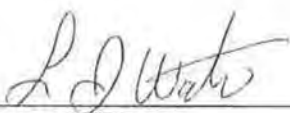
Renee A. Gumbs, Esq.  
Deputy Attorney General  
Department of Justice  
34-38 Kronprindsens Gade  
GERS Complex, 2nd flr.  
St. Thomas, VI 00802  
(340) 774-5666. ext. 101  
(340) 776-3494 (Fax)  
Renee.gumbs@doj.vi.gov

Dated: April 29, 2016



Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802)-828-6902  
nick.persampieri@vermont.gov

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 W**

**Luther Strange**  
Alabama Attorney General



May 16, 2016

For More Information, contact:  
Mike Lewis (334) 353-2199  
Joy Patterson (334) 242-7491  
Page 1 of 1

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

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

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

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

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

*A copy of the intervention plea is attached.*

--30--



**NO. 017-284890-16**

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

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

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

**I. Background.**

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

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

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

## **II. Standard for Intervention.**

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

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

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

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

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

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

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

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

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

#### **IV. Conclusion and Prayer for Relief.**

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

Respectfully submitted,

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



**CERTIFICATE OF SERVICE**

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

Patrick J. Conlon  
patrick.j.conlon@exxonmobil.com  
Daniel E. Bolia  
daniel.e.bolia@exxonmobil.com  
1301 Fannin Street  
Houston, TX 77002

Theodore V. Wells, Jr.  
twells@paulweiss.com  
Michele Hirshman  
mhirshman@paulweiss.com  
Daniel J. Toal  
dtoal@paulweiss.com  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064

Justin Anderson  
janderson@paulweiss.com  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
2001 K Street, NW  
Washington, D.C. 20006-1047

Ralph H. Duggins  
rduggins@canteyhanger.com  
Philip A. Vickers  
pvickers@canteyhanger.com  
Alix D. Allison  
aallison@canteyhanger.com  
CANTEY HANGER LLP  
600 W. 6th St. #300  
Fort Worth, TX 76102

Nina Cortell  
nina.cortell@haynesboone.com  
HAYNES & BOONE, LLP  
301 Commerce Street  
Suite 2600  
Fort Worth, TX 76102

*Counsel for Exxon Mobil Corporation*

Cohen Milstein Sellers & Toll PLLC  
lsinger@cohenmilstein.com  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, D.C. 20005

Linda Singer, Esq.  
lsinger@cohenmilstein.com  
Cohen Milstein Sellers & Toll PLLC  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, D.C. 20005

Claude Earl Walker, Esq.  
claudewalker@doj.vi.gov  
Attorney General  
3438 Kronprindsens Gade  
GERS Complex, 2nd Floor  
St. Thomas, U.S. Virgin Islands 00802

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

# **Exhibit X**

**Luther Strange**  
Alabama Attorney General



March 30, 2016

For More Information, contact:  
Mike Lewis (334) 353-2199  
Joy Patterson (334) 242-7491  
Page 1 of 1

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

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

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

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

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

--30--

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

[www.ago.alabama.gov](http://www.ago.alabama.gov)



**APP. 225**

# **Exhibit Y**



OFFICE OF THE ATTORNEY GENERAL  
*State of Louisiana*

JEFF LANDRY

**RECENT NEWS**

3/30/2016 11:47:00 AM

**Attorney General Jeff Landry Slams Al Gore's Coalition**

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

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

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

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



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**WWW.AG.STATE.LA.US**

# **Exhibit Z**



# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371  
www.science.house.gov

May 18, 2016

The Honorable Eric Schneiderman  
Attorney General of New York  
Office of the Attorney General  
The Capitol  
Albany, NY 12224-0341

Dear Mr. Attorney General,

The Committee on Science, Space, and Technology is conducting oversight of a coordinated attempt to deprive companies, nonprofit organizations, and scientists of their First Amendment rights and ability to fund and conduct scientific research free from intimidation and threats of prosecution. On March 29, 2016, you and other state attorneys general – the self-proclaimed “Green 20” – announced that you were cooperating on an unprecedented effort against those who have questioned the causes, magnitude, or best ways to address climate change.<sup>1</sup> The Committee is concerned that these efforts to silence speech are based on political theater rather than legal or scientific arguments, and that they run counter to an attorney general’s duty to serve “as the guardian of the legal rights of the citizens” and to “assert, protect, and defend the rights of the people.”<sup>2</sup> These legal actions may even amount to an abuse of prosecutorial discretion. To assist in the Committee’s oversight of this matter, I am writing to request information related to your office’s role in this investigation.

### **The 2012 Workshop to Explore Legal Avenues to Demonize the Fossil Fuel Industry**

According to media reports, efforts to instigate an investigation such as the one announced by the Green 20 on March 29 date back to at least 2012 and are the result of a “four-year, coordinated strategy by environmental organizations and trial attorneys.”<sup>3</sup> In June 2012, the Climate Accountability Institute (CAI) and the Union of Concerned Scientists (UCS) convened a “Workshop on Climate Accountability, Public Opinion, and Legal Strategies” in La

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<sup>1</sup> Video Press Conference with Eric Schneiderman, Attorney General, N.Y. State (Mar. 29, 2016); John Schwartz, *Exxon Mobil Climate Change Inquiry in New York Gains Allies*, N.Y. TIMES, Mar. 29, 2016, available at [http://www.nytimes.com/2016/03/30/science/new-york-climate-change-inquiry-into-exxon-adds-prosecutors.html?\\_r=2](http://www.nytimes.com/2016/03/30/science/new-york-climate-change-inquiry-into-exxon-adds-prosecutors.html?_r=2).

<sup>2</sup> Bureaus of Attorney General, New York, May 12, 2016, available at <http://www.ag.ny.gov/bureaus>; Office of the Attorney General, U.S. Virgin Islands, Dept. of Justice, May 12, 2016, available at [http://usvidoj.codemeta.com/DivisionContent\\_1.php?divId=84](http://usvidoj.codemeta.com/DivisionContent_1.php?divId=84).

<sup>3</sup> Phil McKenna, *Activists Step Up Long-Running Campaign to Hold Oil Industry Accountable for Climate Damages* Inside Climate News, Apr. 27, 2016, available at <http://insideclimatenews.org/news/26042016/environmental-activists-campaign-exxon-climate-change-investigation-attorney-general-schneiderman>.

May 18, 2016

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Jolla, California.<sup>4</sup> The workshop's attendees included UCS Director of Science and Policy Peter Frumhoff and activist trial attorney Matthew Pawa, founder of the Global Warming Legal Action Project.<sup>5</sup>

The goal of the 2012 workshop was to develop a "strategy to fight industry in the courts," as well as to find ways to address what workshop attendees believed to be a "network of public relations firms and nonprofit 'front groups' that have been actively sowing disinformation about global warming for years."<sup>6</sup> According to the workshop's report, a necessary component of their strategy was to bring "internal industry documents to light."<sup>7</sup> Workshop attendees then proceeded to identify ways to procure documents that they admittedly did not know existed (e.g., "many participants suggested that incriminating documents **may** exist):"<sup>8</sup>

Having attested to the importance of seeking internal documents ... 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 ... **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.<sup>9</sup>

The strategy decided upon by workshop participants appears clear: to act under the color of law to persuade attorneys general to use their prosecutorial powers to stifle scientific discourse, intimidate private entities and individuals, and deprive them of their First Amendment rights and freedoms.

### **The 2016 Rockefeller Family Fund Meeting and the Attempt to Conceal Collusion between Your Office and Extremist Environmental Groups and Trial Lawyers**

In January 2016, nearly four years later, a group of environmental activists, including 2012 workshop participant Matthew Pawa, as well as representatives from groups such as

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<sup>4</sup> Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control, Climate Accountability Institute, and Union of Concerned Scientists, Oct. 2012, *available at* <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> Phil McKenna, *Activists Step Up Long-Running Campaign to Hold Oil Industry Accountable for Climate Damages*, Inside Climate News, Apr. 27, 2016, *available at* <http://insideclimatenews.org/news/26042016/environmental-activists-campaign-exxon-climate-change-investigation-attorney-general-schneiderman>; Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control, Climate Accountability Institute, and Union of Concerned Scientists, Oct. 2012, *available at* <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>.

<sup>7</sup> Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control, Climate Accountability Institute, and Union of Concerned Scientists, Oct. 2012, *available at* <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>.

<sup>8</sup> *Id.* [emphasis added]

<sup>9</sup> *Id.* [emphasis added]

May 18, 2016

Page 3

350.org and Greenpeace, met at the Manhattan offices of the Rockefeller Family Fund.<sup>10</sup> The meeting was held to develop a strategy “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 “[t]o drive Exxon & climate into [the] center of [the] 2016 election cycle.”<sup>11</sup> According to media reports, the meeting also included a discussion of state attorneys general, the Department of Justice, and “the main avenues for legal actions & related campaigns.”<sup>12</sup> Specifically, meeting attendees were to focus on determining “the best prospects for successful action? For getting discovery? For creating scandal?”<sup>13</sup>

Finally, on March 29, 2016, in the hours before you and other members of the Green 20, joined by former Vice President Al Gore, held your widely-publicized press conference announcing your cooperation on investigations against those who question the causes, magnitude, or best ways to address climate change, members of your group were briefed by 2012 workshop attendees Matthew Pawa of the Global Warming Legal Action Project and UCS’s Peter Frumhoff. It has since come to light that your office willfully concealed the fact that this briefing took place. According to emails discovered and posted online by a watchdog group, on March 30, Matthew Pawa wrote to an attorney in your office stating that a *Wall Street Journal* reporter wanted to talk with Pawa about the pre-conference briefing. Pawa asked an attorney in your office, “What should I say if she asks if I attended?”<sup>14</sup> Your attorney replied, “My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.”<sup>15</sup>

In the weeks since the March 29 press conference, legal actions against those who question climate change orthodoxy by members of the Green 20 have rapidly expanded to include subpoenas for documents, communications, and research that would capture the work of more than 100 academic institutions, scientists, and nonprofit organizations. According to press reports, most of those targeted were identified from lists published on an environmental activist organization’s website.<sup>16</sup>

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<sup>10</sup> Amy Harder, Devlin Barret, and Bradley Olson, *Exxon Fires Back at Climate-Change Probe*, WALL ST. J., Apr. 13, 2016, available at <http://www.wsj.com/articles/exxon-fires-back-at-climate-change-probe-14660574535?cb=logged0.4458549134086849>.

<sup>11</sup> *Id.*

<sup>12</sup> Alana Goodman, *Memo Shows Secret Coordination Effort Against ExxonMobil by Climate Activists, Rockefeller Fund*, WASH. FREE BEACON, Apr. 14, 2016, available at <http://freebeacon.com/issues/memo-shows-secret-coordination-effort-exxonmobil-climate-activists-rockefeller-fund>.

<sup>13</sup> *Id.*

<sup>14</sup> Valerie Richardson, *Democratic AGs, Climate Change Groups Collude on Prosecuting Dissenters, Emails Show*, WASH. TIMES, Apr. 17, 2016, available at <http://www.washingtontimes.com/news/2016/apr/17/democratic-ags-climate-change-groups-colluded-on-p/?page=all>.

<sup>15</sup> *Id.*

<sup>16</sup> Valerie Richardson, *Exxon Climate Change Dissent Subpoena Sweeps Up More than 100 U.S. Institutions*, WASH. TIMES, May 3, 2016, available at <http://m.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-communications/>.



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### **The Committee's Request for Transparency**

This sequence of events – from the 2012 workshop to develop strategies to enlist the help of attorneys general to secure documents, to the 2016 subpoenas issued by you and other members of the Green 20 – raises serious questions about the impartiality and independence of current investigations by the attorneys general. Your office – funded with taxpayer dollars – is using legal actions and investigative tactics taken in close coordination with certain special interest groups and trial attorneys may rise to the level of an abuse of prosecutorial discretion. Further, such actions call into question the integrity of your office.

To assist the Committee in its oversight of a coordinated attempt to attack the First Amendment rights of American citizens and their ability to fund and conduct scientific research free from intimidation and threats of prosecution, we request the following documents and information as soon as possible, but by no later than noon on May 30, 2016. Please provide the requested information for the time frame from January 1, 2012, to the present:

1. All documents and communications between or among employees of the Office of the Attorney General of New York and any officer or employee of the Climate Accountability Institute, the Union of Concerned Scientists, Greenpeace, 350.org, the Rockefeller Brothers Fund, the Rockefeller Family Fund, the Global Warming Legal Action Project, the Pawa Law Group, and the Climate Reality Project, referring or relating to your office's investigation, *subpoenas duces tecum*, or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.
2. All documents and communications between or among employees of the Office of the Attorney General of New York and any other state attorney general office referring or relating to your office's investigation, *subpoenas duces tecum*, or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.
3. All documents and communications between or among employees of the Office of the Attorney General of New York and any official or employee of the U.S. Department of Justice, U.S. Environmental Protection Agency, or the Executive Office of the U.S. President referring or relating to your office's investigation, *subpoenas duces tecum*, or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change.

The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all

The Honorable Eric Schneiderman

May 18, 2016

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documents in electronic format. An attachment provides information regarding producing documents to the Committee.

If you have any questions about this request, please contact Committee Staff at 202-225-6371. Thank you for your attention to this matter.

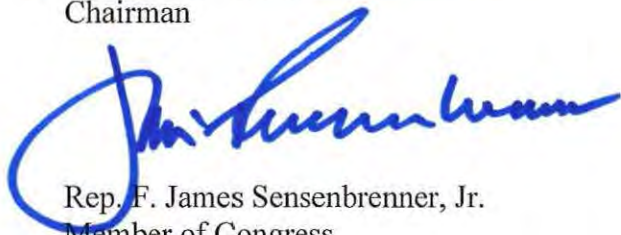
Sincerely,



Rep. Lamar Smith  
Chairman



Rep. Frank D. Lucas  
Vice Chairman



Rep. F. James Sensenbrenner, Jr.  
Member of Congress



Rep. Dana Rohrabacher  
Member of Congress



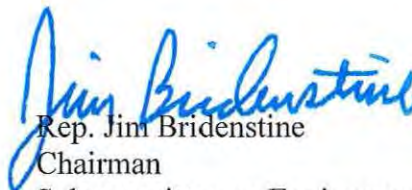
Rep. Randy Neugebauer  
Member of Congress



Rep. Mo Brooks  
Member of Congress



Rep. Bill Posey  
Member of Congress



Rep. Jim Bridenstine  
Chairman  
Subcommittee on Environment



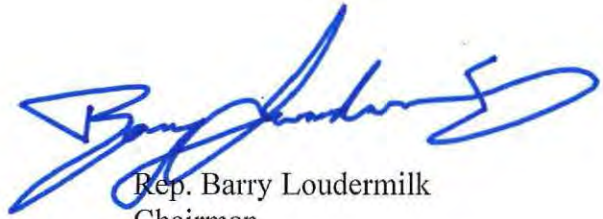
Rep. Randy Weber  
Chairman  
Subcommittee on Energy



Rep. John Moolenaar  
Member of Congress



Rep. Brian Babin  
Chairman  
Subcommittee on Space



Rep. Barry Loudermilk  
Chairman  
Subcommittee on Oversight



Rep. Ralph Lee Abraham  
Member of Congress

cc: The Honorable Eddie Bernice Johnson, Ranking Member, Committee on Science, Space,  
and Technology

Enclosure

# **Exhibit AA**





STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 BROADWAY  
NEW YORK, NY 10271

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

LESLIE B. DUBECK  
COUNSEL

May 26, 2016

The Honorable Lamar Smith  
Chairman  
House Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Smith:

I write in response to the May 18, 2016 letter (the “Letter”) signed by you and several other Republican members of the House Committee on Science, Space, and Technology (the “Committee”) requesting that my office provide various documents and communications referring or relating to law enforcement and investigative activities of the Office of the Attorney General of New York (“NYOAG”) concerning climate change.

NYOAG has a long, very proud history of aggressively protecting investors and consumers from corporate fraud. The matter that appears to be the focus of your attention is our ongoing investigation into whether ExxonMobil Corporation violated New York’s securities, business and consumer fraud laws by making false or misleading statements to investors and consumers relating to climate change driven risks and their impact on Exxon’s business. This investigation comes on the heels of an investigation NYOAG concluded last year into Peabody Energy Corporation, then the largest publicly traded coal company in the world, which found that Peabody made false and misleading statements to the public and investors regarding financial risks associated with climate change and the effects of potential regulatory responses on the market for coal.<sup>1</sup>

For the reasons set forth below, the NYOAG respectfully declines to provide the materials requested by the Letter. The Letter is premised on a series of incorrect statements and assumptions regarding the actions of the NYOAG and raises serious constitutional concerns,

---

<sup>1</sup> Under the agreement concluding the NYOAG investigation, Peabody committed to revising its disclosures to investors regarding the company’s financial risks related to climate change. Assurance of Discontinuance at pp. 9-10, *In the Matter of Investigation by Eric T. Schneiderman, Attorney General of the State of New York, of Peabody Energy Corporation*, Assurance No. 15-242 (Nov. 8, 2015), <http://ag.ny.gov/pdfs/Peabody-Energy-Assurance-signed.pdf>.

The Honorable Lamar Smith  
May 26, 2016  
Page 2 of 3

including the lack of congressional jurisdiction over state law enforcement activities and the Committee's intrusion into sovereign state actions protected by the 10<sup>th</sup> Amendment to the U.S. Constitution.

First, the Letter makes unfounded claims about the NYOAG's motives. Our investigation seeks to ensure that investors and consumers were and are provided with complete and accurate information that is indispensable to the just and effective functioning of our free market. There is no basis for your suggestion that the NYOAG has been engaged in a "coordinated attempt to deprive companies, nonprofit organizations, and scientists of their First Amendment rights and ability to fund and conduct scientific research free from intimidation and threats of prosecution." As I am sure you are aware, "the First Amendment does not shield fraud." *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003) (allowing fraud claim and rejecting argument that fraudulent charitable solicitations are protected by the First Amendment); *People v. Coalition Against Breast Cancer, Inc.*, 22 N.Y.S.3d 562, 565 (2d Dep't 2015) (same); *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1123 (D.C. Cir. 2009) (holding that false and misleading statements about the health effects and addictiveness of smoking cigarettes were not protected by the First Amendment); *SEC v. Pirate Investor LLC*, 580 F.3d 233, 255 (2009) ("Punishing fraud, whether it be common law fraud or securities fraud, simply does not violate the First Amendment.").

Second, Congress does not have jurisdiction to demand documents and communications from a state law enforcement official regarding the exercise of a State's sovereign police powers, such as the NYOAG's investigation of ExxonMobil. Congress' powers are limited by the 10<sup>th</sup> Amendment to those granted by the U.S. Constitution, and its investigative jurisdiction is derived from and limited by its power to legislate concerning federal matters. *See, e.g., Barenblatt v. United States*, 360 U.S. 109, 111-12 (1959); *Kilbourn v. Thompson*, 103 U.S. 168, 195-96 (1880). Thus, Congress' oversight authority does not extend to investigations by a state Attorney General. *See, e.g., Watkins v. United States*, 354 U.S. 178, 187 (1957) ("The power of the Congress to conduct investigations . . . comprehends probes into departments of the Federal Government . . .").

Investigations and other law enforcement actions by a state Attorney General for potential violations of state law, as here, involve the exercise of police powers reserved to the States under the 10<sup>th</sup> Amendment, and are not the appropriate subject of federal legislation, oversight or interference. *See, e.g., New York v. United States*, 505 U.S. 144, 162 (1992) ("[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions.") Our federal system contemplates a crucial role for state law enforcement. *See The Federalist No. 45 at 357* (James Madison) (Robert Scigliano ed., 2010) (the powers delegated "to the federal government are few and defined. . . . The powers reserved to the several states will extend to all objects which, in the ordinary course of affairs, concern the lives, liberties, and property of the people, and the internal order, improvement, and prosperity of the state").

The Honorable Lamar Smith


May 26, 2016

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Third, we are not aware of any precedent supporting a Congressional investigation or oversight of a state Attorney General, as contemplated by the Letter. Indeed, absent an explicit authorization, a committee's investigative power is narrowly construed to avoid serious constitutional concerns, such as the state sovereignty issues that are implicated here. *See Tobin v. United States*, 306 F.2d 270, 275 (D.C. Cir.), *cert denied*, 371 U.S. 902 (1962) (overturning contempt conviction involving House Judiciary Subcommittee subpoena of Port of New York Authority records pursuant to "expansive investigation of an interstate compact agency" by Congress that had "never before [been] attempted"). The Letter does not identify any congressional authorization to engage in this inquiry; nor could it, given the constitutional principles discussed above. Under House Rule X, cited in the Letter, Congress has authorized the Committee on Science, Space, and Technology, to "review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development." Rule X(3)(k). Congress has not delegated this committee with any oversight authority concerning the investigations of state attorneys general regarding violations of state securities, consumer or business laws, nor could it. Moreover, throughout the Rules of the House of Representatives, context demands that "Government" with a capital "G" be understood as a proper noun to describe a specific government—the Federal Government—and not *all* governments. *See, e.g.*, Rule X(4)(c)(1)(B) (Committee on Oversight and Government Reform shall "evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government"). *See also* Gov't Printing Office Style Manual, Rule 3.19. The governments of the several states are distinct entities from the entity that is the Government of the United States. *United States v. Cruikshank*, 92 U.S. 542, 549 (1876) ("We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the others . . .").

We trust that you and the other signatory Committee members appreciate the importance of our federal system, state law enforcement activities, and the critical need to maintain their integrity and independence from federal interference.

Sincerely,



Leslie B. Dubeck  
Counsel

cc: Honorable Eddie Bernice Johnson  
Ranking Member, Committee on Science, Space, and Technology

Majority Staff, Committee on Science, Space, and Technology  
Rayburn House Office Building, Room 2321

Minority Staff, Committee on Science, Space, and Technology  
Ford House Office Building, Room 394

# **Exhibit BB**



COMMITTEE ON  
**SCIENCE, SPACE, & TECHNOLOGY** (/)  
Lamar Smith, Chairman



(<http://www.facebook.com/SciSpaceTechCmt>)



([//twitter.com/HouseScience](https://twitter.com/HouseScience))



([http://www.youtube.com/channel/UCtoUE3dJ-](http://www.youtube.com/channel/UCtoUE3dJ-mLUo5dwGs7hXOw)

[mLUo5dwGs7hXOw](http://www.youtube.com/channel/UCtoUE3dJ-mLUo5dwGs7hXOw))



(newsletter-subscribe)



([/rss.xml](#))

## Smith Subpoenas MA, NY Attorneys General, Environmental Groups

Jul 13, 2016 | Press Release

WASHINGTON – Science, Space, and Technology Committee Chairman Lamar Smith (R-Texas) today issued subpoenas to New York Attorney General Eric Schneiderman, Massachusetts Attorney General Maura Healey, and eight environmental organizations to obtain documents related to coordinated efforts to deprive companies, nonprofit organizations, scientists and scholars of their First Amendment rights.

**Chairman Lamar Smith (R-Texas):** "The attorneys general have appointed themselves to decide what is valid and what is invalid regarding climate change. The attorneys general are pursuing a political agenda at the expense of scientists' right to free speech.

"The Committee has a responsibility to protect First Amendment rights of companies, academic institutions, scientists, and nonprofit organizations. That is why the Committee is obligated to ask for information from the attorneys general and others.

"Unfortunately, the attorneys general have refused to give the committee the information to which it is entitled. What are they hiding? And why?"

**Energy Subcommittee Chairman Randy Weber (R-Texas):** "Since when did it become a crime to express or hold an opinion? The difference of opinions is what makes our country so strong and unique. It's this freedom without censorship or restraint that helped build our country. However, this posse of attorneys general believe that those whose opinion, or scientific research, conflicts with the alleged consensus view on climate change should be the subject of investigation and prosecution by government officials - talk about a chilling effect on free speech."

**Space Subcommittee Chairman Brian Babin (R-Texas):** "Since March, these attorneys general have attempted to use questionable legal tactics to force the production of documents and communications from a broad group of scientists, companies, and non-profit organizations. These actions are an attempt to chill the scientific research of those who do not support the attorneys' general and environmental groups' political positions.

"These actions amount to a political attack rather than a serious inquiry based on the law. Today's action by the Science Committee and Chairman Smith sustains the commitment to protect the First Amendment rights of the individuals and groups targeted by the attorneys general and environmental activists."

**Rep. Darin LaHood (R-Ill.):** "Instead of pursuing real threats to America, these attorneys general are going down a path of partisan politics and attacking people who disagree with their conclusions about climate change. The administration has attempted to avoid all debate on climate change by circumventing Congress and signing international agreements without the consent of the Senate, and it now appears that Democratic attorneys general are following the president's lead.

"If the debate on climate change is settled, the environmental activists and state attorneys general should have no problem convincing the American public with their own evidence and arguments. Why go to such great lengths to squash differing opinions and anyone who questions their conclusions? These individuals, scientists, and organizations have the right to conduct research, form their own opinions, and voice those opinions."

**Rep. Warren Davidson (R-Ohio):** "Instead of upholding the constitution, protecting citizens, and putting real criminals behind bars, these attorneys general are using taxpayer dollars to manufacture charges to send a political message. This demonstrates a clear deviation from the legal duties of an attorney general and the possible abuse of discretionary judgement. It is not the job of the attorneys general to decide what science should be conducted, and their actions indicate their intent is to silence certain voices."

Chairman Smith followed up the subpoenas with a press conference (<https://www.facebook.com/SciSpaceTechCmt/>) on Capitol Hill this afternoon.

Case 4:16-cv-00469-K Document 76-8 Filed 10/17/16 Page 19 of 55 PageID 2638  
On July 8, Chairman Smith sent letters (/news/press-releases/committee-ramps-investigation-threatens-use-compulsory-process-against-members) to the individuals and organizations subpoenaed today reiterating his May 18 (/news/press-releases/committee-scrutinizes-motive-green-20) and June 20 (/news/press-releases/committee-stands-firm-investigation-green-20) requests for documents and communications, setting a deadline for those documents as July 13 (today) at 12:00 p.m., and threatening the use of compulsory process pending their compliance with the requests. The attorneys general and environmental groups have refused to comply with the committee's investigation at every step.

114th Congress



# Exhibit CC

T H E A T T O R N E Y G E N E R A L O F T E X A S

**KEN PAXTON**

## Attorney General Paxton Intervenes in First Amendment Case

*Monday, May 16, 2016 – Ft. Worth*



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

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

Exxon for daring to hold an opinion on climate change that differs from that of radical environmentalists.”

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

This version updates with the correct brief:

[https://www.texasattorneygeneral.gov/files/epress/files/2016/2016-05-16\\_exxon\\_states\\_intervention.pdf](https://www.texasattorneygeneral.gov/files/epress/files/2016/2016-05-16_exxon_states_intervention.pdf)

## AG Ken Paxton Speaks About Exxon Being Targeted for Climate Change Beliefs



## Related News

AG Paxton Files Lawsuit to Halt Illegal Buck-a-Bag Fee in Brownsville

Victoria Child Support Office Moves to New Location

# **Exhibit DD**

# United States Senate

WASHINGTON, DC 20510

May 25, 2016

The Honorable Loretta Lynch  
Attorney General  
United States Department of Justice  
Washington, D.C. 20530

**Re: DOJ's investigation into private entities' views on climate change**

Dear Attorney General Lynch:

We write today to demand that the Department of Justice (DOJ) immediately cease its ongoing use of law enforcement resources to stifle private debate on one of the most controversial public issues of our time—climate change.

This past March, during a DOJ oversight hearing before the Senate Judiciary Committee, one of our colleagues from the other side of the aisle lamented that, “[u]nder President Obama, the Department of Justice has done nothing so far about the climate denial scheme.” To our astonishment, you responded as follows:

This matter has been discussed. We have received information about it and have referred it to the FBI to consider whether or not it meets the criteria for what we could take action on.

We also understand that, in 2015, the Department was asked by a “coalition of environmentalists and lawmakers”<sup>1</sup> to investigate whether the past decisions of a private sector company to adopt and publicly disclose certain views on climate issues, and to refrain from adopting and publicly disclosing others, may have violated the Racketeer Influenced and Corrupt Organizations Act and related laws.

Statements from a March 29, 2016, press conference held by Democrat Attorneys General from New York, Connecticut, Maryland, Massachusetts, and Virginia, along with staff from the Democrat Attorney General’s offices in California, Delaware, the District of Columbia, Illinois, Iowa, Maine, Minnesota, New Mexico, Oregon, Rhode Island, and Washington (the “State Attorneys General”) make clear that similar investigations are ongoing. The Attorney

<sup>1</sup> Valerie Richardson, *Democratic AGs, climate change groups colluded on prosecuting dissenters, emails show*, <http://www.washingtontimes.com/news/2016/apr/17/democratic-ags-climate-change-groups-colluded-on-p/> (April 17, 2016).



General of the United States Virgin Islands also issued a subpoena seeking from over 100 private parties, including universities, scientists and nonprofit organizations, decades worth of documents, communications, emails, op-eds, speeches, advertisements, letters to the editor, research, reports, studies and memoranda of any kind—including drafts—that refer to climate change, greenhouse gases, carbon tax, or climate science.<sup>2</sup>

These actions provide disturbing confirmation that government officials at all levels are threatening to wield the sword of law enforcement to silence debate on climate change.<sup>3</sup> As you well know, initiating criminal prosecution for a private entity's opinions on climate change is a blatant violation of the First Amendment and an abuse of power that rises to the level of prosecutorial misconduct.<sup>4</sup> Using such a prosecution to issue intrusive demands targeting individuals who represent the parts of civil society that are most dependent on free inquiry and debate is something categorically different. As the U.S. Court of Appeals for the Sixth Circuit reminded the Justice Department just weeks ago, "no citizen—Republican or Democrat, socialist or libertarian—should be targeted or even have to fear being targeted"<sup>5</sup> on the basis of ideological disagreement with the government.

We encourage you to consider the following statement from Alabama Attorney General Luther Strange and Oklahoma Attorney General Scott Pruitt, issued in response to the announcement of the investigation by the previously referenced State Attorneys General, as you consider your path forward:

[Scientific and political debate] should not be silenced with threats of criminal prosecution by those who believe that their position is the only correct one and that all dissenting voices must therefore be intimidated and coerced into silence. It is inappropriate for State Attorneys General to use the power of their office to attempt to silence core political speech on one of the major policy debates of our time.<sup>6</sup>

In light of the above, please confirm within 14 days that the Department (1) has terminated all investigations or inquiries arising from any private individual or entity's views on climate change and (2) will not initiate in the future any such investigations or inquiries. In addition, we ask that you explain what steps you are taking as the federal official charged with protecting the civil rights of American citizens to prevent state law enforcement officers from unconstitutionally harassing private entities or individuals simply for disagreeing with the prevailing climate change orthodoxy.

We expect your prompt attention to this matter. If you have any questions, please contact Senator Mike Lee's Judiciary Committee staff at (202) 224-2791.

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<sup>2</sup> Valerie Richardson, *Exxon climate change dissent subpoena sweeps up more than 100 U.S. institutions*, <http://www.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-communications/> (May 3, 2016).

<sup>3</sup> Megan McArdle, *Subpoenaed Into Silence on Global Warming*, <http://www.bloombergview.com/articles/2016-04-08/subpoenaed-into-silence-on-global-warming> (April 8, 2016).

<sup>4</sup> 18 U.S.C. § 530B; *ABA Model Rule 3.1*.

<sup>5</sup> *United States v. NorCal Tea Party Patriots*, No. 15-3793, slip op. at \*1 (6th Cir., Mar. 22, 2016).

<sup>6</sup> Richardson, *supra*, at note 1.

Very truly yours,



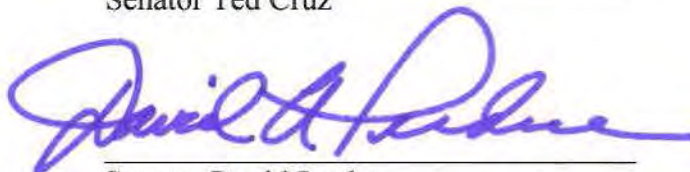
Senator Mike Lee



Senator Ted Cruz



Senator Jeff Sessions



Senator David Perdue



Senator David Vitter



# Exhibit EE



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:



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

Office of the Attorney General  
Environmental Protection Bureau  
120 Broadway, 26th Floor  
New York, New York 10271  
(212) 416-8448 (telephone)  
(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; (IPIECA); (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
      - yyymmdd
    - Accepted time formats:
      - hh:mm:ss (if not in 24-hour format, you must indicate am/pm)

- o 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:
  - o CCITT Group 4 compression
  - o 2-Bit black and white
  - o 300 dpi
  - o 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:
  - o ASCII
  - o Windows formatted CR + LF end of line characters
  - o Field delimiter: , (ASCII decimal character 44)
  - o No Text Qualifier
  - o .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):
  - o ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
  - o 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**

<b>FIELD NAME</b>	<b>FIELD DESCRIPTION</b>	<b>FIELD VALUE EXAMPLE<sup>1</sup></b>
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 >

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

<b>FIELD NAME</b>	<b>FIELD DESCRIPTION</b>	<b>FIELD VALUE EXAMPLE<sup>1</sup></b>
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 yyyymmdd
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 yyyymmdd
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 yyyymmdd
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 yyyymmdd
CALENDTIME	Time that a meeting ends.	hh:mm:ss AM/PM or hh:mm:ss
CALENDAR DUR	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

<b>FIELD NAME</b>	<b>FIELD DESCRIPTION</b>	<b>FIELD VALUE EXAMPLE<sup>1</sup></b>
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	B68F4F57223CA7DA3584BAD7E CF111B8044F8631
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 FF**





STANFORD UNIVERSITY  
GLOBAL CLIMATE & ENERGY PROJECT

[About Us](#)

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

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

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

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

**Objectives:**

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

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

Among GCEP's specific goals:

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

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# Exhibit GG



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

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2006

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2006

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from to  
Commission File Number 1-2256

**EXXON MOBIL CORPORATION**

(Exact name of registrant as specified in its charter)

NEW JERSEY  
(State or other jurisdiction of  
incorporation or organization)

13-5409005  
(I.R.S. Employer  
Identification Number)

5959 LAS COLINAS BOULEVARD, IRVING, TEXAS 75039-2298

(Address of principal executive offices) (Zip Code)

(972) 444-1000

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, without par value (5,693,398,774 shares outstanding at January 31, 2007)	New York Stock Exchange
Registered securities guaranteed by Registrant: SeaRiver Maritime Financial Holdings, Inc. Twenty-Five Year Debt Securities due October 1, 2011	New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Act). Yes  No

The aggregate market value of the voting stock held by non-affiliates of the registrant on June 30, 2006, the last business day of the registrant's most recently completed second fiscal quarter, based on the closing price on that date of \$61.35 on the New York Stock Exchange composite tape, was in excess of \$364 billion.

**Documents Incorporated by Reference:**

Proxy Statement for the 2007 Annual Meeting of Shareholders (Part III)

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**EXXON MOBIL CORPORATION**  
**FORM 10-K**  
**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2006**

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## PART I

### Item 1. *Business.*

Exxon Mobil Corporation, formerly named Exxon Corporation, was incorporated in the State of New Jersey in 1882. On November 30, 1999, Mobil Corporation became a wholly-owned subsidiary of Exxon Corporation, and Exxon changed its name to Exxon Mobil Corporation.

Divisions and affiliated companies of ExxonMobil operate or market products in the United States and most other countries of the world. Their principal business is energy, involving exploration for, and production of, crude oil and natural gas, manufacture of petroleum products and transportation and sale of crude oil, natural gas and petroleum products. ExxonMobil is a major manufacturer and marketer of commodity petrochemicals, including olefins, aromatics, polyethylene and polypropylene plastics and a wide variety of specialty products. ExxonMobil also has interests in electric power generation facilities. Affiliates of ExxonMobil conduct extensive research programs in support of these businesses.

Exxon Mobil Corporation has several divisions and hundreds of affiliates, many with names that include *ExxonMobil*, *Exxon*, *Esso* or *Mobil*. For convenience and simplicity, in this report the terms *ExxonMobil*, *Exxon*, *Esso* and *Mobil*, as well as terms like *Corporation*, *Company*, *our*, *we* and *its*, are sometimes used as abbreviated references to specific affiliates or groups of affiliates. The precise meaning depends on the context in question.

Throughout ExxonMobil's businesses, new and ongoing measures are taken to prevent and minimize the impact of our operations on air, water and ground. These include a significant investment in refining infrastructure and technology to manufacture clean fuels as well as projects to reduce nitrogen oxide and sulfur oxide emissions and expenditures for asset retirement obligations. ExxonMobil's 2006 worldwide environmental expenditures for all such preventative and remediation steps, including ExxonMobil's share of equity company expenditures, were about \$3.2 billion, of which \$1.1 billion were capital expenditures and \$2.1 billion were included in expenses. The total cost for such activities is expected to remain in this range in 2007 and 2008 (with capital expenditures approximately 40 percent of the total).

Operating data and industry segment information for the Corporation are contained in the Financial Section of this report under the following: "Quarterly Information", "Note 17: Disclosures about Segments and Related Information" and "Operating Summary". Information on oil and gas reserves is contained in the "Oil and Gas Reserves" part of the "Supplemental Information on Oil and Gas Exploration and Production Activities" portion of the Financial Section of this report. Information on Company-sponsored research and development activities is contained in "Note 3: Miscellaneous Financial Information" of the Financial Section of this report.

The number of regular employees was 82.1 thousand, 83.7 thousand and 85.9 thousand at years ended 2006, 2005 and 2004, respectively. Regular employees are defined as active executive, management, professional, technical and wage employees who work full time or part time for the Corporation and are covered by the Corporation's benefit plans and programs. Regular employees do not include employees of the company-operated retail sites (CORS). The number of CORS employees was 24.3 thousand, 22.4 thousand and 19.3 thousand at years ended 2006, 2005 and 2004, respectively.

ExxonMobil maintains a website at [www.exxonmobil.com](http://www.exxonmobil.com). Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 are made available through our website as soon as reasonably practical after we electronically file or furnish the reports to the Securities and Exchange Commission. Also available on the Corporation's website are the Company's

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Corporate Governance Guidelines and Code of Ethics and Business Conduct, as well as the charters of the audit, compensation and nominating committees of the Board of Directors. All of these documents are available in print without charge to shareholders who request them. Information on our website is not incorporated into this report.

**Item 1A. Risk Factors.**

ExxonMobil's financial and operating results are subject to a number of factors, many of which are not within the Company's control. These factors include the following:

*Industry and Economic Factors:* The oil and gas business is fundamentally a commodity business. This means the operations and earnings of the Corporation and its affiliates throughout the world may be significantly affected by changes in oil, gas and petrochemical prices and by changes in margins on gasoline and other refined products. Oil, gas, petrochemical and product prices and margins in turn depend on local, regional and global events or conditions that affect supply and demand for the relevant commodity. These events or conditions are generally not predictable and include, among other things:

- general economic growth rates and the occurrence of economic recessions;
- the development of new supply sources;
- adherence by countries to OPEC quotas;
- supply disruptions;
- weather, including seasonal patterns that affect regional energy demand (such as the demand for heating oil or gas in winter) as well as severe weather events (such as hurricanes) that can disrupt supplies or interrupt the operation of ExxonMobil facilities;
- technological advances, including advances in exploration, production, refining and petrochemical manufacturing technology and advances in technology relating to energy usage;
- changes in demographics, including population growth rates and consumer preferences; and
- the competitiveness of alternative hydrocarbon or other energy sources.

Under certain market conditions, factors that have a positive impact on one segment of our business may have a negative impact on another segment and vice versa.

*Competitive Factors:* The energy and petrochemical industries are highly competitive. There is competition within the industries and also with other industries in supplying the energy, fuel and chemical needs of both industrial and individual consumers. The Corporation competes with other firms in the sale or purchase of needed goods and services in many national and international markets and employs all methods of competition which are lawful and appropriate for such purposes.

A key component of the Corporation's competitive position, particularly given the commodity-based nature of many of its businesses, is ExxonMobil's ability to manage expenses successfully. This requires continuous management focus on reducing unit costs and improving efficiency including through technology improvements, cost control, productivity enhancements and regular reappraisal of our asset portfolio as described elsewhere in this report.

*Political and Legal Factors:* The operations and earnings of the Corporation and its affiliates throughout the world have been, and may in the future be, affected from time to time in varying degree by political and legal factors including:

- political instability or lack of well-established and reliable legal systems in areas where the Corporation operates;



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- other political developments and laws and regulations, such as expropriation or forced divestiture of assets, unilateral cancellation or modification of contract terms, and de-regulation of certain energy markets;
- laws and regulations related to environmental or energy security matters, including those addressing alternative energy sources and the risks of global climate change;
- restrictions on exploration, production, imports and exports;
- restrictions on the Corporation's ability to do business with certain countries, or to engage in certain areas of business within a country;
- price controls;
- tax or royalty increases, including retroactive claims;
- war or other international conflicts; and
- civil unrest.

Both the likelihood of these occurrences and their overall effect upon the Corporation vary greatly from country to country and are not predictable. A key component of the Corporation's strategy for managing political risk is geographic diversification of the Corporation's assets and operations.

*Project Factors:* In addition to some of the factors cited above, ExxonMobil's results depend upon the Corporation's ability to develop and operate major projects and facilities as planned. The Corporation's results will therefore be affected by events or conditions that impact the advancement, operation, cost or results of such projects or facilities, including:

- the outcome of negotiations with co-venturers, governments, suppliers, customers or others (including, for example, our ability to negotiate favorable long-term contracts with customers, or the development of reliable spot markets, that may be necessary to support the development of particular production projects);
- reservoir performance and natural field decline;
- changes in operating conditions and costs, including costs of third party equipment or services such as drilling rigs and shipping;
- security concerns or acts of terrorism that threaten or disrupt the safe operation of company facilities; and
- the occurrence of unforeseen technical difficulties (including technical problems that may delay start-up or interrupt production from an Upstream project or that may lead to unexpected downtime of refineries or petrochemical plants).

See section 1 of Item 2 of this report for a discussion of additional factors affecting future capacity growth and the timing and ultimate recovery of reserves.

*Market Risk Factors:* See the "Market Risks, Inflation and Other Uncertainties" portion of the Financial Section of this report for discussion of the impact of market risks, inflation and other uncertainties.

Projections, estimates and descriptions of ExxonMobil's plans and objectives included or incorporated in Items 1, 2, 7 and 7A of this report are forward-looking statements. Actual future results, including project completion dates, production rates, capital expenditures, costs and business plans could differ materially due to, among other things, the factors discussed above and elsewhere in this report.

# Exhibit HH

2015

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2015

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number 1-2256

**EXXON MOBIL CORPORATION**

(Exact name of registrant as specified in its charter)

**NEW JERSEY**  
(State or other jurisdiction of  
incorporation or organization)

**13-5409005**  
(I.R.S. Employer  
Identification Number)

**5959 LAS COLINAS BOULEVARD, IRVING, TEXAS 75039-2298**

(Address of principal executive offices) (Zip Code)

**(972) 444-1000**

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
<b>Common Stock, without par value (4,152,756,609 shares outstanding at January 31, 2016)</b>	<b>New York Stock Exchange</b>

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer

Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Act). Yes  No

The aggregate market value of the voting stock held by non-affiliates of the registrant on June 30, 2015, the last business day of the registrant's most recently completed second fiscal quarter, based on the closing price on that date of \$83.20 on the New York Stock Exchange composite tape, was in excess of \$346 billion.

**Documents Incorporated by Reference: Proxy Statement for the 2016 Annual Meeting of Shareholders (Part III)**

**EXXON MOBIL CORPORATION  
FORM 10-K  
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2015**

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## PART I

### ITEM 1. BUSINESS

Exxon Mobil Corporation was incorporated in the State of New Jersey in 1882. Divisions and affiliated companies of ExxonMobil operate or market products in the United States and most other countries of the world. Their principal business is energy, involving exploration for, and production of, crude oil and natural gas, manufacture of petroleum products and transportation and sale of crude oil, natural gas and petroleum products. ExxonMobil is a major manufacturer and marketer of commodity petrochemicals, including olefins, aromatics, polyethylene and polypropylene plastics and a wide variety of specialty products. Affiliates of ExxonMobil conduct extensive research programs in support of these businesses.

Exxon Mobil Corporation has several divisions and hundreds of affiliates, many with names that include *ExxonMobil*, *Exxon*, *Esso*, *Mobil* or *XTO*. For convenience and simplicity, in this report the terms *ExxonMobil*, *Exxon*, *Esso*, *Mobil* and *XTO*, as well as terms like *Corporation*, *Company*, *our*, *we* and *its*, are sometimes used as abbreviated references to specific affiliates or groups of affiliates. The precise meaning depends on the context in question.

Throughout ExxonMobil's businesses, new and ongoing measures are taken to prevent and minimize the impact of our operations on air, water and ground. These include a significant investment in refining infrastructure and technology to manufacture clean fuels, as well as projects to monitor and reduce nitrogen oxide, sulfur oxide and greenhouse gas emissions, and expenditures for asset retirement obligations. Using definitions and guidelines established by the American Petroleum Institute, ExxonMobil's 2015 worldwide environmental expenditures for all such preventative and remediation steps, including ExxonMobil's share of equity company expenditures, were \$5.6 billion, of which \$3.8 billion were included in expenses with the remainder in capital expenditures. The total cost for such activities is expected to decrease to approximately \$5 billion in 2016 and 2017, mainly reflecting lower project activity in Canada. Capital expenditures are expected to account for approximately 30 percent of the total.

The energy and petrochemical industries are highly competitive. There is competition within the industries and also with other industries in supplying the energy, fuel and chemical needs of both industrial and individual consumers. The Corporation competes with other firms in the sale or purchase of needed goods and services in many national and international markets and employs all methods of competition which are lawful and appropriate for such purposes.

Operating data and industry segment information for the Corporation are contained in the Financial Section of this report under the following: "Quarterly Information", "Note 18: Disclosures about Segments and Related Information" and "Operating Summary". Information on oil and gas reserves is contained in the "Oil and Gas Reserves" part of the "Supplemental Information on Oil and Gas Exploration and Production Activities" portion of the Financial Section of this report.

ExxonMobil has a long-standing commitment to the development of proprietary technology. We have a wide array of research programs designed to meet the needs identified in each of our business segments. Information on Company-sponsored research and development spending is contained in "Note 3: Miscellaneous Financial Information" of the Financial Section of this report. ExxonMobil held approximately 11 thousand active patents worldwide at the end of 2015. For technology licensed to third parties, revenues totaled approximately \$158 million in 2015. Although technology is an important contributor to the overall operations and results of our Company, the profitability of each business segment is not dependent on any individual patent, trade secret, trademark, license, franchise or concession.

The number of regular employees was 73.5 thousand, 75.3 thousand, and 75.0 thousand at years ended 2015, 2014 and 2013, respectively. Regular employees are defined as active executive, management, professional, technical and wage employees who work full time or part time for the Corporation and are covered by the Corporation's benefit plans and programs. Regular employees do not include employees of the company-operated retail sites (CORS). The number of CORS employees was 2.1 thousand, 8.4 thousand, and 9.8 thousand at years ended 2015, 2014 and 2013, respectively. The decrease in CORS employees reflects the multi-year transition of the company-operated retail network in portions of Europe to a more capital-efficient Branded Wholesaler model.

Information concerning the source and availability of raw materials used in the Corporation's business, the extent of seasonality in the business, the possibility of renegotiation of profits or termination of contracts at the election of governments and risks attendant to foreign operations may be found in "Item 1A. Risk Factors" and "Item 2. Properties" in this report.

ExxonMobil maintains a website at [exxonmobil.com](http://exxonmobil.com). Our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 are made available through our website as soon as reasonably practical after we electronically file or furnish the reports to the Securities and Exchange Commission. Also available on the Corporation's website are the Company's Corporate Governance Guidelines and Code of Ethics and Business Conduct, as well as the charters of the audit, compensation and nominating committees of the Board of Directors. Information on our website is not incorporated into this report.

**ITEM 1A. RISK FACTORS**

ExxonMobil's financial and operating results are subject to a variety of risks inherent in the global oil, gas, and petrochemical businesses. Many of these risk factors are not within the Company's control and could adversely affect our business, our financial and operating results, or our financial condition. These risk factors include:

**Supply and Demand**

The oil, gas, and petrochemical businesses are fundamentally commodity businesses. This means ExxonMobil's operations and earnings may be significantly affected by changes in oil, gas, and petrochemical prices and by changes in margins on refined products. Oil, gas, petrochemical, and product prices and margins in turn depend on local, regional, and global events or conditions that affect supply and demand for the relevant commodity. Any material decline in oil or natural gas prices could have a material adverse effect on certain of the Company's operations, especially in the Upstream segment, financial condition and proved reserves. On the other hand, a material increase in oil or natural gas prices could have a material adverse effect on certain of the Company's operations, especially in the Downstream and Chemical segments.

**Economic conditions.** The demand for energy and petrochemicals correlates closely with general economic growth rates. The occurrence of recessions or other periods of low or negative economic growth will typically have a direct adverse impact on our results. Other factors that affect general economic conditions in the world or in a major region, such as changes in population growth rates, periods of civil unrest, government austerity programs, or currency exchange rate fluctuations, can also impact the demand for energy and petrochemicals. Sovereign debt downgrades, defaults, inability to access debt markets due to credit or legal constraints, liquidity crises, the breakup or restructuring of fiscal, monetary, or political systems such as the European Union, and other events or conditions that impair the functioning of financial markets and institutions also pose risks to ExxonMobil, including risks to the safety of our financial assets and to the ability of our partners and customers to fulfill their commitments to ExxonMobil.

**Other demand-related factors.** Other factors that may affect the demand for oil, gas, and petrochemicals, and therefore impact our results, include technological improvements in energy efficiency; seasonal weather patterns, which affect the demand for energy associated with heating and cooling; increased competitiveness of alternative energy sources that have so far generally not been competitive with oil and gas without the benefit of government subsidies or mandates; and changes in technology or consumer preferences that alter fuel choices, such as toward alternative fueled or electric vehicles.

**Other supply-related factors.** Commodity prices and margins also vary depending on a number of factors affecting supply. For example, increased supply from the development of new oil and gas supply sources and technologies to enhance recovery from existing sources tend to reduce commodity prices to the extent such supply increases are not offset by commensurate growth in demand. Similarly, increases in industry refining or petrochemical manufacturing capacity tend to reduce margins on the affected products. World oil, gas, and petrochemical supply levels can also be affected by factors that reduce available supplies, such as adherence by member countries to OPEC production quotas and the occurrence of wars, hostile actions, natural disasters, disruptions in competitors' operations, or unexpected unavailability of distribution channels that may disrupt supplies. Technological change can also alter the relative costs for competitors to find, produce, and refine oil and gas and to manufacture petrochemicals.

**Other market factors.** ExxonMobil's business results are also exposed to potential negative impacts due to changes in interest rates, inflation, currency exchange rates, and other local or regional market conditions. We generally do not use financial instruments to hedge market exposures.

**Government and Political Factors**

ExxonMobil's results can be adversely affected by political or regulatory developments affecting our operations.

**Access limitations.** A number of countries limit access to their oil and gas resources, or may place resources off-limits from development altogether. Restrictions on foreign investment in the oil and gas sector tend to increase in times of high commodity prices, when national governments may have less need of outside sources of private capital. Many countries also restrict the import or export of certain products based on point of origin.

**Restrictions on doing business.** ExxonMobil is subject to laws and sanctions imposed by the U.S. or by other jurisdictions where we do business that may prohibit ExxonMobil or certain of its affiliates from doing business in certain countries, or restricting the kind of business that may be conducted. Such restrictions may provide a competitive advantage to competitors who may not be subject to comparable restrictions.

**Lack of legal certainty.** Some countries in which we do business lack well-developed legal systems, or have not yet adopted clear regulatory frameworks for oil and gas development. Lack of legal certainty exposes our operations to increased risk of adverse or unpredictable actions by government officials, and also makes it more difficult for us to enforce our contracts. In some cases these risks can be partially offset by agreements to arbitrate disputes in an international forum, but the adequacy of this remedy may still depend on the local legal system to enforce an award.

**Regulatory and litigation risks.** Even in countries with well-developed legal systems where ExxonMobil does business, we remain exposed to changes in law (including changes that result from international treaties and accords) that could adversely affect our results, such as:

- increases in taxes or government royalty rates (including retroactive claims);
- price controls;
- changes in environmental regulations or other laws that increase our cost of compliance or reduce or delay available business opportunities (including changes in laws related to offshore drilling operations, water use, or hydraulic fracturing);
- adoption of regulations mandating the use of alternative fuels or uncompetitive fuel components;
- adoption of government payment transparency regulations that could require us to disclose competitively sensitive commercial information, or that could cause us to violate the non-disclosure laws of other countries; and
- government actions to cancel contracts, re-denominate the official currency, renounce or default on obligations, renegotiate terms unilaterally, or expropriate assets.

Legal remedies available to compensate us for expropriation or other takings may be inadequate.

We also may be adversely affected by the outcome of litigation, especially in countries such as the United States in which very large and unpredictable punitive damage awards may occur, or by government enforcement proceedings alleging non-compliance with applicable laws or regulations.

**Security concerns.** Successful operation of particular facilities or projects may be disrupted by civil unrest, acts of sabotage or terrorism, and other local security concerns. Such concerns may require us to incur greater costs for security or to shut down operations for a period of time.

**Climate change and greenhouse gas restrictions.** Due to concern over the risk of climate change, a number of countries have adopted, or are considering the adoption of, regulatory frameworks to reduce greenhouse gas emissions. These include adoption of cap and trade regimes, carbon taxes, restrictive permitting, increased efficiency standards, and incentives or mandates for renewable energy. These requirements could make our products more expensive, lengthen project implementation times, and reduce demand for hydrocarbons, as well as shift hydrocarbon demand toward relatively lower-carbon sources such as natural gas. Current and pending greenhouse gas regulations may also increase our compliance costs, such as for monitoring or sequestering emissions.

**Government sponsorship of alternative energy.** Many governments are providing tax advantages and other subsidies to support alternative energy sources or are mandating the use of specific fuels or technologies. Governments are also promoting research into new technologies to reduce the cost and increase the scalability of alternative energy sources. We are conducting our own research efforts into alternative energy, such as through sponsorship of the Global Climate and Energy Project at Stanford University and research into liquid products from algae and biomass that can be further converted to transportation fuels. Our future results may depend in part on the success of our research efforts and on our ability to adapt and apply the strengths of our current business model to providing the energy products of the future in a cost-competitive manner. See “Management Effectiveness” below.

#### **Management Effectiveness**

In addition to external economic and political factors, our future business results also depend on our ability to manage successfully those factors that are at least in part within our control. The extent to which we manage these factors will impact our performance relative to competition. For projects in which we are not the operator, we depend on the management effectiveness of one or more co-venturers whom we do not control.

**Exploration and development program.** Our ability to maintain and grow our oil and gas production depends on the success of our exploration and development efforts. Among other factors, we must continuously improve our ability to identify the most promising resource prospects and apply our project management expertise to bring discovered resources on line as scheduled and within budget.

**Project management.** The success of ExxonMobil’s Upstream, Downstream, and Chemical businesses depends on complex, long-term, capital intensive projects. These projects in turn require a high degree of project management expertise to maximize efficiency. Specific factors that can affect the performance of major projects include our ability to: negotiate successfully with joint venturers, partners, governments, suppliers, customers, or others; model and optimize reservoir performance; develop markets for project outputs, whether through long-term contracts or the development of effective spot markets; manage changes in operating conditions and costs, including costs of third party equipment or services such as drilling rigs and shipping; prevent, to the extent possible, and respond effectively to unforeseen technical difficulties that could delay project startup or cause unscheduled project downtime; and influence the performance of project operators where ExxonMobil does not perform that role.



# Exhibit II



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, 10<sup>th</sup> 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, 10<sup>th</sup> 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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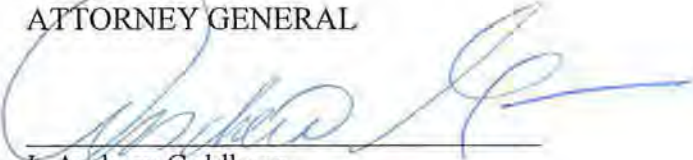
this CID, is subject to a fine of up to five thousand dollars (\$5,000.00). A copy of that provision is reprinted at Schedule C.

Issued at Boston, Massachusetts, this 19<sup>th</sup> 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



Demand No.: 2016-EPD-36

Date Issued: April 19, 2016

Issued To: Exxon Mobil Corporation

## 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 "CO<sub>2</sub>" 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 (H<sub>2</sub>O), carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), chlorofluorocarbons (CFCs), and ozone (O<sub>3</sub>) 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 "CH<sub>4</sub>" 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 CO<sub>2</sub> 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 CO<sub>2</sub> in the oceans by developing and using Climate Models;
  - (b) measure atmospheric and oceanic CO<sub>2</sub> levels (including, without limitation, through work conducted on Exxon's *Esso Atlantic* tanker);
  - (c) determine the source of the annual CO<sub>2</sub> 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 CO<sub>2</sub> 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 *CO<sub>2</sub> 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 *CO<sub>2</sub> 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 CO<sub>2</sub> 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 36<sup>th</sup> 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 CO<sub>2</sub> 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 CO<sub>2</sub> stabilization pathway, the average American household would face an added CO<sub>2</sub> 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 CO<sub>2</sub> 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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**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

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

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

**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\ TEXT\
NativeLink	path to the native files should begin with NATIVES\ 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;bBeg Attach;bEnd Attach;bFamilyID;bVolume;bMD5Hash;bCustodian_Source;bFROM;bTO;bCC;bSubject;bSent Date;bSent Time;bFile Extension;bDocID
AG000004507;bAG000004510;bAG000004507;bAG000004512;bAG000004507;bVOL001;bDoe, John;bJohn.doe@someplace.com;bj.doe@somewhereelse.com;btheboss@someplace.com;b;b;b
AG000004511;bAG000004512;bAG000004507;bAG000004512;bAG000004507;bVOL001;bDoe, John;bJohn.doe@someplace.com;bj.doe@somewhereelse.com;btheboss@someplace.com;b;b;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](mailto:Diane.E.Barry@state.ma.us)

(617) 963-2120

# **Exhibit JJ**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,

Plaintiff,

v.

MAURA TRACY HEALEY, Attorney  
General of Massachusetts, in her  
official capacity,

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

**DECLARATION OF ROBERT A. LUETTGEN**

I, Robert A. Luetgen, declare as follows:

1. My name is Robert A. Luetgen. I am Assistant Corporate Secretary at Exxon Mobil Corporation and have held this position since 2010. I am over 18 years of age and am fully competent in all respects to make this Declaration. The facts stated in this declaration are true and correct and are based on personal knowledge that I have obtained in my capacity as an employee of Exxon Mobil Corporation and from inquiries I made before submitting this declaration.

2. I submit this declaration in support of Plaintiff Exxon Mobil Corporation's Motion for a Preliminary Injunction.

3. Exxon Mobil Corporation maintains its principal office and its central operations in Texas.

4. Exxon Mobil Corporation holds its shareholder meetings in Texas.

5. Exxon Mobil Corporation does not maintain any climate change research facilities or personnel in Massachusetts.



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

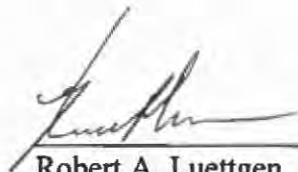
7. In the past five years, Exxon Mobil Corporation has not issued any form of equity for sale to the general public in Massachusetts.

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

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

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

Executed on June 14, 2016.



---

Robert A. Luetgen  
Assistant Corporate Secretary  
Exxon Mobil Corporation  
5959 Las Colinas Blvd  
Irving, Texas 75039

# **Exhibit KK**

# THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/new-york-ag-employs-powerful-law-in-exxon-probe-1474061881>

## BUSINESS

# New York AG Employs Powerful Law in Exxon Probe

New York's 1921 Martin Act grants prosecutors wide jurisdiction in securities investigations



PHOTO: BLOOMBERG NEWS

By CHRISTOPHER M. MATTHEWS

Sept. 16, 2016 5:38 p.m. ET

On first blush, New York Attorney General Eric Schneiderman's probe into Exxon Mobil Corp.'s accounting practices raises some questions. For instance, why is the top cop in New York investigating the Texas-based company's financial disclosures, a job more commonly handled by the federal Securities and Exchange Commission?

But Mr. Schneiderman has been knee deep in Exxon's internal forecasting for more than a year, using a powerful New York state fraud law to investigate the company's knowledge of the impact of climate change and how it could affect its future business.



The new probe into why Exxon hasn't written down the value of its assets two years into a crash in oil prices is an outgrowth of the climate change investigation, say people familiar with the matter, and yet another example of the wide jurisdiction of New York's Martin Act.

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READ MORE

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- Exxon's Accounting Practices Are Investigated
- Big Oil Companies Stay Shy Despite Upswing in Prices
- Exxon Seeking Injunction Against Climate-Change Investigation

Both probes have been examining whether Exxon, the world's largest publicly traded energy company, violated the 1921 law, under which prosecutors must prove a company misled or omitted

material facts from investors while offering securities.

The law grants wide powers. It doesn't require prosecutors to prove there was criminal intent or even that there were victims of an alleged fraud, something other agencies, including the SEC, have to prove under federal securities law.

An Exxon spokesman declined to comment on the investigation but said the company didn't have any material impairment impacts in its financial results.

Similar investigations brought by at least five other state attorneys general have been hampered by aggressive moves by Exxon, which, for instance, has sought to quash subpoenas issued by Massachusetts and the U.S. Virgin Islands. But the company hasn't challenged Mr. Schneiderman's broad subpoenas for emails, financial records, internal forecasts and other documents, a nod to breadth of the Martin Act.

Still, some legal experts have questioned whether Mr. Schneiderman is overreaching with his use of the Martin Act.

"You'd think if there was an issue about marking down reserves or other misstatements, that would be the eminent province of the SEC," said James Fanto, a professor at Brooklyn Law School.

Since 2014, oil producers world-wide have been forced to recognize that wells they plan to drill in the future are worth \$200 billion less than they once thought, and revisions have become a staple of oil industry earnings, helping to push losses to record levels. Exxon hasn't taken any write-downs—the only major U.S. oil producer not to do so—which has led some analysts to question its accounting practices.

“The Attorney General’s office is conducting an investigation into potential business fraud, consumer fraud, and securities fraud,” spokesman Eric Soufer said. “As the Attorney General has said, the company’s financial disclosures—and not the accuracy of its historic climate change research—are the focus of this investigation.”

Columbia Law School Professor Merritt B. Fox said the key issue for Mr. Schneiderman in either probe is whether the information Exxon allegedly withheld was, in fact, material in the eyes of the investing world.

“If they have evidence Exxon knew about the effects of climate change or falling prices on its assets and didn’t disclose it to people outside, that has the possibility of being a material misstatement or omission,” Professor Fox said.

But if the public could make investment decisions with other publicly available information, “it could be an issue,” for Mr. Schneiderman, he said.

News of Mr. Schneiderman’s new focus, reported by The Wall Street Journal on Friday, also comes amid pushback to the climate change investigations by conservative advocacy groups, lawmakers and state AGs.

The Energy & Environment Legal Institute, a conservative nonprofit, released emails last week from other AGs offices that were involved in a March press conference set up by Mr. Schneiderman to announce a coalition to combat climate change. The group, which obtained the emails through Freedom of Information requests, say they show skepticism by the other AG offices about the New York probe.

Meanwhile, a group of 11 Republican state attorneys general have filed motions to support Exxon’s efforts in Massachusetts state court to challenge a subpoena sent to the company by Massachusetts Attorney General Maura Healey.

Write to Christopher M. Matthews at [christopher.matthews@wsj.com](mailto:christopher.matthews@wsj.com)

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# **Exhibit LL**

NO. 017-284890-16

EXXON MOBIL CORPORATION,

*Plaintiff,*

v.

CLAUDE EARL WALKER, Attorney  
General of the United States Virgin Islands,  
in his official capacity, COHEN  
MILSTEIN SELLERS & TOLL, PLLC, in  
its official capacity as designee, and  
LINDA SINGER, in her official capacity  
as designee,

*Defendants.*

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION  
FOR DECLARATORY RELIEF**

Plaintiff Exxon Mobil Corporation (“ExxonMobil”), a company with principal offices in the State of Texas, files this Original Petition for Declaratory Relief against Defendants Claude Earl Walker, Attorney General of the United States Virgin Islands; the law firm of Cohen Milstein Sellers & Toll, PLLC (“Cohen Milstein”), a Washington, D.C. law firm that purports to represent Attorney General Walker in a claimed “investigation” of ExxonMobil; and Linda Singer, a member of Cohen Milstein with apparent responsibility for conducting the “investigation.” Defendants’ actions violate ExxonMobil’s constitutionally protected rights of freedom of speech, freedom from unreasonable searches and seizures, and due process of law and constitute the common law tort of abuse of process. In support of this petition, ExxonMobil would show the Court:

## I. DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under the Level 2 Discovery Control Plan of Rule 190.3 of the Texas Rules of Civil Procedure. However, ExxonMobil reserves the right to request entry of an order establishing a Level 3 discovery control plan. Plaintiff seeks only non-monetary relief.

## II. INTRODUCTION

2. Frustrated by the federal government's perceived inaction, a coalition of 20 state attorneys general announced their "collective efforts to deal with the problem of climate change" at a press conference, held on March 29, 2016, with former Vice President Al Gore as the featured speaker. The attorneys general declared that they planned to "creatively" and "aggressively" use the powers of their respective offices on behalf of the coalition to force ExxonMobil<sup>1</sup> and other energy companies to comply with the coalition's preferred policy responses to climate change. As their statements made unmistakably clear, the attorneys general press conference was a politically-motivated event, urged on by activists intolerant of contrary views.

3. At that press conference, Defendant Walker, the Attorney General of the United States Virgin Islands, an unincorporated United States Territory where ExxonMobil has no business operations, staff, or assets, pledged to do something "transformational" to end "rel[iance] on fossil fuel," beginning with "an investigation into a company" that manufactures a "product" he believes is "destroying this earth."

4. Attorney General Walker's "transformational" use of his office's powers includes the issuance of a subpoena, signed by a member of his staff, but mailed to

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<sup>1</sup> ExxonMobil was formed as a result of a merger between Exxon and Mobil on November 30, 1999. For ease of discussion, we refer to the predecessor entities as ExxonMobil throughout the Petition.

ExxonMobil in Irving, Texas by Cohen Milstein, a Washington, D.C. law firm that touts itself as a “pioneer in plaintiff class action lawsuits” and “the most effective law firm in the United States for lawsuits with a strong social and political component.”

5. In line with his so-called “transformational” agenda, Attorney General Walker deployed his authority under the Territory’s anti-racketeering statute, the Criminally Influenced and Corrupt Organizations Act (“CICO”), to issue the subpoena, and he identified as the statutory predicates “obtaining money by false pretenses” and conspiracy to do so. According to the subpoena, ExxonMobil “misrepresent[ed] [its] knowledge of the likelihood that [its] products and activities have contributed and are continuing to contribute to Climate Change in order to defraud” the government and “consumers” in the Virgin Islands, giving rise to an alleged “civil violation” of CICO.

6. Attorney General Walker’s allegation amounts to little more than a weak pretext for an unlawful exercise of government power. First, CICO’s statute of limitations requires the occurrence of at least one predicate act of fraud within the last five years.<sup>2</sup> For more than a decade, however, ExxonMobil has widely and publicly confirmed that it “recognize[s] that the risk of climate change and its potential impacts on society and ecosystems may prove to be significant.”<sup>3</sup>

7. Second, ExxonMobil has engaged in no conduct in the Virgin Islands that could give rise to a violation of Virgin Islands law. ExxonMobil has no physical presence in the Virgin Islands; it owns no property, has no employees, and has conducted no business operations in the Virgin Islands in the last five years.

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<sup>2</sup> 14 V.I.C. § 604(j)(2)(B).

<sup>3</sup> Exxon Mobil Corp., *Corporate Citizenship in a Changing World* 10 (2002); see also Exxon Mobil Corp., *2006 Corporate Citizenship Report* 15 (2007) (“Because the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant, strategies that address the risk need to be developed and implemented.”).

8. Third, no court in the Virgin Islands has jurisdiction over ExxonMobil, a New Jersey corporation with principal offices in the State of Texas. In the absence of such jurisdiction over ExxonMobil, neither Attorney General Walker nor Cohen Milstein has a legal basis to press any claims or charges against ExxonMobil arising under the laws of the Virgin Islands.<sup>4</sup>

9. In short, there is no *bona fide* basis for the Walker/Cohen Milstein subpoena, much less the reasonable suspicion required by the face of the very statute whose authority Attorney General Walker and Cohen Milstein have abused.<sup>5</sup>

10. Defendants' dubious allegation unmasks this subpoena for what it is: a pretextual use of law enforcement power to deter ExxonMobil from participating in ongoing public deliberations about climate change and to fish through decades of ExxonMobil's documents with the hope of finding some ammunition to enhance Attorney General Walker's position in the policy debate. Attorney General Walker and designees Cohen Milstein and Singer, acting in their official capacities, are abusing the power of government to chill and deter ExxonMobil from engaging in public discussions of policy issues related to climate change. The Walker/Cohen Milstein subpoena and the abusive CICO investigation violate and continue to violate ExxonMobil's rights under the United States Constitution and the Texas Constitution.

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<sup>4</sup> It appears that mailing the Walker/Cohen Milstein subpoena to ExxonMobil in Texas constitutes yet another impropriety. See 14 V.I.C. § 612(d) ("When documentary material is demanded by subpoena [under CICO], the subpoena shall not contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court in this Territory."); *Virgin Islands v. Steinhauer*, No. ST-10-CR-F240, 2010 WL 7371550 (V.I. Super. 2010) ("One important limitation on state courts is that they lack the authority to issue compulsory process outside of their respective territorial jurisdictions.").

<sup>5</sup> 14 V.I.C. § 612(a) (authorizing subpoenas where attorney general "reasonably suspect[s]" a CICO violation).



11. This flagrant misuse of law enforcement power is further illustrated by Attorney General Walker's outsourcing of the Virgin Islands' "investigation" to Defendants Cohen Milstein and Singer, likely on a contingency-fee basis. Walker's purported delegation to Cohen Milstein and Singer deprives ExxonMobil of due process of law and fundamental fairness. For more than a decade, Cohen Milstein has pursued bitterly contested and contentious litigation in an unrelated lawsuit against ExxonMobil now pending in federal court in the District of Columbia, which could result in a substantial fee award if Cohen Milstein's client were to prevail. That litigation record and Cohen Milstein's receipt of a \$15 million contingency-fee payment from Attorney General Walker in another unrelated case raise substantial doubts about whether that firm should be permitted to serve as the "disinterested prosecutor" whose impartiality is demanded by law and expected by the public.

12. Through their unlawful and concerted actions, Attorney General Walker, Cohen Milstein, and Singer, acting in their official capacities, have deprived and will continue to deprive ExxonMobil of its rights under the United States Constitution, the Texas Constitution, and common law. As a result, ExxonMobil seeks a declaratory judgment stating that the issuance of the Walker/Cohen Milstein subpoena has violated and continues to violate ExxonMobil's rights under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, 48 U.S.C. § 1561, and Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution, and constitutes an abuse of process under common law.

### **III. PARTIES**

13. Plaintiff ExxonMobil is a public shareholder owned energy company incorporated in New Jersey with principal offices in the State of Texas. ExxonMobil has

no business operations or staff in the Virgin Islands and has not had any within the past five years.

14. Defendant Claude Earl Walker is the Attorney General of the Virgin Islands and resides in the Virgin Islands. He is sued in his official capacity. Under Virgin Islands law, Attorney General Walker is the chief law enforcement officer for the Territory and is the head of the Virgin Islands Department of Justice. Attorney General Walker's principal office is located at 34-38 Kronprindsens Gade, GERS Complex, 2nd Floor, St. Thomas, U.S. Virgin Islands, 00802. Attorney General Walker may be served with a copy of the Original Petition and Citation by serving the Texas Secretary of State at P.O. Box 12079, Austin, Texas 78711-2079, as the agent for service because Attorney General Walker committed a tort in Texas and Attorney General Walker does not maintain a registered agent for service of process in Texas.

15. Defendant Cohen Milstein is a law firm that promotes itself as "a pioneer in plaintiff class action lawsuits" and "[t]he most effective law firm in the United States for lawsuits with a strong social and political component."<sup>6</sup> Its principal office is located at 1100 New York Avenue, N.W., Suite 500, West Tower, Washington, D.C. 20005. Cohen Milstein is sued in its official capacity as the designee for the Attorney General of the Virgin Islands in his investigation of ExxonMobil and the mailing of the Walker/Cohen Milstein subpoena to ExxonMobil in Texas. Cohen Milstein may be served with a copy of the Original Petition and Citation by serving the Texas Secretary of State at P.O. Box 12079, Austin, Texas 78711-2079, as the agent for service because

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<sup>6</sup> Cohen Milstein, *About Us*, available at <http://www.cohenmilstein.com/about.php> (last visited Apr. 12, 2016).

Cohen Milstein committed a tort in Texas and does not maintain a registered agent for service of process in Texas.

16. Defendant Linda Singer is a partner at Cohen Milstein's office in Washington, D.C. and a non-resident of Texas, whose usual place of business is located at 1100 New York Avenue, N.W., Suite 500, West Tower, Washington, D.C. 20005. Singer has been designated "national counsel" by Attorney General Walker in connection with the investigation of ExxonMobil and is sued in her official capacity. Singer may be served with a copy of the Original Petition and Citation by serving the Texas Secretary of State at P.O. Box 12079, Austin, Texas 78711-2079, as the agent for service because Singer committed a tort in Texas and but does not maintain a regular place of business in Texas or maintain a registered agent for service of process in Texas.

#### **IV. JURISDICTION AND VENUE**

17. This Court has jurisdiction over the subject matter of this case, pursuant to Article V, section 8 of the Texas Constitution, and Sections 24.007 and 24.008 of the Texas Government Code, because Plaintiff seeks a declaration under Section 37.003 of the Texas Civil Practice and Remedies Code that Defendants have violated and continue to violate its rights under 42 U.S.C. § 1983 and the Texas Constitution and that Defendants' actions constitute an abuse of process.

18. This Court has personal jurisdiction over Defendants, pursuant to Section 17.042(2) of the Texas Civil Practice and Remedies Code, because Defendants committed a tort, which is the subject of this suit, in whole or in part in Texas by mailing and causing to be mailed a subpoena to Plaintiff in Texas, which violated Plaintiff's rights under the United States Constitution, the Texas Constitution, and the common law.

Defendants' past conduct, and any further effort to enforce the subpoena, has injured and will continue to injure Plaintiff in Texas.

19. Venue for this case is proper in Tarrant County under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events giving rise to the claim occurred in Tarrant County. Specifically, the Walker/Cohen Milstein subpoena purports to compel ExxonMobil to search and review substantial records stored or maintained in Tarrant County.

## V. FACTS

### A. The "Green" Coalition of Attorneys General Announce a Plan to Use Law Enforcement Tools to Achieve Political Goals

20. ExxonMobil received the Walker/Cohen Milstein subpoena on March 22, 2016. Although the subpoena appears to have been signed by the Deputy Attorney General of Attorney General Walker's office on March 15, 2016, it arrived by mail a week later in an envelope postmarked Washington, D.C., with a return address for Cohen Milstein's law offices. ExxonMobil's address in Texas was written by hand on the envelope containing the subpoena.<sup>7</sup>

21. On March 29, 2016, a week after ExxonMobil received the subpoena, Attorney General Walker appeared and spoke at a New York City press conference dubbed "AGs United For Clean Power." Former Vice President Al Gore was the event's featured speaker, and attorneys general or staff members from over a dozen other states, the District of Columbia, and the Virgin Islands were in attendance.<sup>8</sup>

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<sup>7</sup> A true and correct copy of a redacted version of the subpoena is attached as Exhibit A and is incorporated by reference.

<sup>8</sup> A transcript of the AGs United For Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition->

22. The attorneys general, self-proclaimed as “the Green 20” (a reference to the number of participating attorneys general), explained that their mission was to “com[e] up with creative ways to enforce laws being flouted by the fossil fuel industry.”<sup>9</sup> Expressing dissatisfaction with the “gridlock in Washington” regarding climate change legislation, the New York Attorney General said that the coalition had to work “creatively” and “aggressively.”<sup>10</sup> He announced that the assembled “group of state actors [intended] to send the message that [they were] prepared to step into this [legislative] breach.”<sup>11</sup> He continued:

We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we’re sending a message that, at least some of us—actually a lot of us—in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.<sup>12</sup>

23. Vice President Gore also cited perceived inaction by the federal government to justify investigations brought by state attorneys general, observing that “our democracy’s been hacked . . . but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level.”<sup>13</sup>

24. Vice President Gore went on to condemn those who question the viability of renewable energy sources, faulting them for “slow[ing] down this renewable

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attorneys-general-across. A copy of this transcript is attached as Exhibit B and is incorporated by reference.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 9.

revolution” by “trying to convince people that renewable energy is not a viable option.”<sup>14</sup> He then accused the fossil fuel industry of “using [its] combined political and lobbying efforts to put taxes on solar panels and jigger with the laws” and said “[w]e do not have 40 years to continue suffering the consequences of the fraud.”<sup>15</sup>

25. After hailing Vice President Gore as one of his “heroes,” Attorney General Walker explained that his office had “launched an investigation into a company that we believe must provide us with information about what they knew about climate change and when they knew it.”<sup>16</sup> That thinly-veiled reference to ExxonMobil was later confirmed in a press release naming ExxonMobil as the target of his investigation.<sup>17</sup>

26. Continuing the theme of the press conference, Attorney General Walker admitted that his investigation of ExxonMobil (or “Goliath,” to use his vernacular) was aimed at changing public policy, not investigating actual violations of existing law:

It could be David and Goliath, the Virgin Islands against a huge corporation, but we will not stop until we get to the bottom of this and make it clear to our residents as well as the American people that we have to do something transformational. We cannot continue to rely on fossil fuel. Vice President Gore has made that clear.<sup>18</sup>

27. To Attorney General Walker, the public policy debate on climate change is settled: “We have to look at renewable energy. That’s the only solution.”<sup>19</sup>

28. As for the energy companies like ExxonMobil, Attorney General Walker accused them of producing a “product that is destroying this earth.”<sup>20</sup> He complained

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.* at 15.

<sup>17</sup> Press Release, A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change (Mar. 29, 2016), *available at* <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>.

<sup>18</sup> Ex. B at 16.

<sup>19</sup> *Id.*

that, “as the polar caps melt,” those “companies . . . are looking at that as an opportunity to go and drill, to go and get more oil. Why? How selfish can you be?”<sup>21</sup>

29. These statements were so wholly incompatible with the impartiality expected of law enforcement officials that one reporter asked whether the press conference and the publicized investigations were nothing more than “publicity stunt[s].”<sup>22</sup>

30. The press conference also drew a swift and sharp rebuke from other state attorneys general who recognized a misuse of state power in the making. The attorneys general of Alabama and Oklahoma stated that “scientific and political debate” “should not be silenced with threats of criminal prosecution by those who believe that their position is the only correct one and that all dissenting voices must therefore be intimidated and coerced into silence.”<sup>23</sup> They stated further that “[i]t is inappropriate for State Attorneys General to use the power of their office to attempt to silence core political speech on one of the major policy debates of our time.”<sup>24</sup>

31. The Louisiana Attorney General observed that “[i]t is one thing to use the legal system to pursue public policy outcomes; but it is quite another to use prosecutorial weapons to intimidate critics, silence free speech, or chill the robust exchange of ideas.”<sup>25</sup> Likewise, the Kansas Attorney General questioned the “unprecedented” and “strictly partisan nature of announcing state ‘law enforcement’ operations in the presence of a

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 17.

<sup>23</sup> Press Release, Alabama Attorney General, State AG’s Strange, Pruitt Condemn Attempts To Silence Those Who Disagree With President Obama’s Energy Agenda (March 30, 2016), *available at* <http://www.ago.state.al.us/News-800>.

<sup>24</sup> *Id.*

<sup>25</sup> *Attorney General Jeff Landry Slams Al Gore’s Coalition*, Office of the Attorney General: State of Louisiana (Mar. 30, 2016), *available at* <https://www.ag.state.la.us/Article.aspx?articleID=2207&catID=2>.



former vice president of the United State[s] who, presumably [as a private citizen], has no role in the enforcement of the 17 states' securities or consumer protection laws."<sup>26</sup> The West Virginia Attorney General criticized the attorneys general for "abusing the powers of their office" and stated that the desire to "eliminate fossil fuels . . . should not be driving any legal activity" and that it was improper to "use the power of the office of attorney general to silence . . . critics."<sup>27</sup>

**B. The Virgin Islands Investigation of ExxonMobil Is Invalid and Meritless**

32. Eight months before the press conference, on August 6, 2015, Kenneth Mapp, the Governor of the Virgin Islands, appointed Defendant Walker as the Acting Attorney General. Walker was confirmed in the office on December 15, 2015.

33. The Attorney General of the Virgin Islands is authorized to (i) "investigate violations of the laws of the Virgin Islands for which the executive branch of the Government of the United States Virgin Islands may invoke penalties, fines or forfeitures, or deny, suspend or revoke licenses" and (ii) "initiate and conduct appropriate proceedings in relation thereto."<sup>28</sup>

34. According to the Walker/Cohen Milstein subpoena, the Virgin Islands investigation concerns ExxonMobil's alleged violation of CICO, the Territory's version of the federal Racketeer Influenced and Corrupt Organizations Act.<sup>29</sup> The subpoena spans 17 pages, contains 16 broadly worded document requests, and covers a nearly 40-year time period. The subpoena identifies two purported predicate offenses: obtaining

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<sup>26</sup> Michael Bastasch, *Kansas AG Takes On Al Gore's Alarmism – Won't Join Anti-Exxon 'Publicity Stunt,'* Dailycaller.com (Apr. 4, 2016), available at <http://dailycaller.com/2016/04/04/kansas-ag-takes-on-al-gores-alarmism-wont-join-ant-exxon-publicity-stunt>.

<sup>27</sup> Kyle Feldscher, *West Virginia AG 'disappointed' in probes of Exxon Mobil,* Washington Examiner (Apr. 5, 2016), available at <http://www.washingtonexaminer.com/west-virginia-ag-disappointed-in-probes-of-exxon-mobil/article/2587724>.

<sup>28</sup> 3 V.I.C. § 114(4).

<sup>29</sup> Ex. A at 1.

money by false pretenses, in violation of 14 V.I.C. § 834, and conspiracy to obtain money by false pretenses, in violation of 14 V.I.C. § 551.<sup>30</sup>

35. In order to issue a subpoena investigating an alleged CICO violation, the Attorney General must “reasonably suspect[]” that a CICO violation has occurred.<sup>31</sup> But the grounds Attorney General Walker has identified for his suspicion are pretexts.

36. Under CICO, at least one of the two required predicate acts must have been committed within five years of the filing of any case by the Attorney General.<sup>32</sup> To meet the statutory standard of reasonable suspicion for an act within the limitations period, at a bare minimum, it would have to be shown that sometime after March 2011, ExxonMobil “misrepresent[ed] [its] knowledge of the likelihood that [its] products and activities have contributed and are continuing to contribute to Climate Change in order to defraud” the government and “consumers” in the Virgin Islands.<sup>33</sup> But throughout that period and well before, ExxonMobil has publicly and repeatedly acknowledged risks related to climate change.

37. For example, ExxonMobil’s 2006 Corporate Citizenship Report recognized that “the risk to society and ecosystems from rising greenhouse gas emissions could prove to be significant.”<sup>34</sup> Despite noting that “[c]limate remains an extraordinarily complex area of scientific study,” it reasoned that “strategies that address the risk need to be developed and implemented.”<sup>35</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> 14 V.I.C. § 612(a).

<sup>32</sup> 14 V.I.C. § 604(j)(2)(B).

<sup>33</sup> Ex. A. at 1.

<sup>34</sup> Exxon Mobil Corp., *2006 Corporate Citizenship Report* 15 (2007).

<sup>35</sup> *Id.*

38. In addition, in 2002, ExxonMobil, along with three other companies, helped launch the Global Climate and Energy Project at Stanford University, which has a mission of “conducting fundamental research on technologies that will permit the development of global energy systems with significantly lower greenhouse gas emissions.”<sup>36</sup>

39. ExxonMobil has also discussed these risks in its public Securities and Exchange Commission filings. For example, in its 2006 10-K, ExxonMobil stated that the “risks of global climate change” “have been, and may in the future” continue to impact its operations.<sup>37</sup> Similarly, in its 2009 10-K, ExxonMobil noted that the “risk of climate change” and “pending greenhouse gas regulations” may increase its “compliance costs.”<sup>38</sup>

40. It is notable that the United States government did not even formally opine on the effects of greenhouse gases on the environment until 2009, when the Environmental Protection Agency (“EPA”) issued its endangerment finding that “current and projected concentrations of the six key well-mixed greenhouse gases . . . in the atmosphere threaten the public health and welfare of current and future generations.”<sup>39</sup>

41. An even more fundamental problem with the investigation is that Attorney General Walker and the Territory of the Virgin Islands lack jurisdiction over ExxonMobil. ExxonMobil has maintained no business operations, staff, or assets in the Virgin Islands within the last five years. Rather, ExxonMobil is headquartered and

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<sup>36</sup> Stanford University Global Climate & Energy Project, *About Us*, available at <https://gcep.stanford.edu/about/index.html> (last visited Apr. 12, 2016).

<sup>37</sup> Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 28, 2007).

<sup>38</sup> Exxon Mobil Corp., Annual Report (Form 10-K) (Feb. 26, 2010).

<sup>39</sup> *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, EPA, <http://www3.epa.gov/climatechange/endangerment> (last updated Feb. 23, 2016).

maintains all of its central operations in Texas. There appears to be no legal action that Attorney General Walker could plausibly bring against ExxonMobil under CICO in a Virgin Islands court.

42. Nevertheless, the Walker/Cohen Milstein subpoena unreasonably demands production of essentially any and all ExxonMobil communications and documents related to climate change since 1977 (a period of 39 years), including all documents related to research ExxonMobil conducted or funded.<sup>40</sup> For example, the subpoena demands “[a]ll Documents or Communications reflecting or concerning studies, research, or other reviews” ExxonMobil conducted or funded “regarding the certainty, uncertainty, causes or impacts of Climate Change.”<sup>41</sup>

43. The subpoena also appears to target individuals and entities that hold policy views with which Attorney General Walker disagrees. The subpoena requests “[a]ll Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews, or public opinions regarding Climate Change sent to or received from” 88 named organizations, three-quarters of which have been identified by environmental advocacy groups as opposing policies in favor of addressing climate change or disputing the science in support of climate change.<sup>42</sup> It requests similar documents and communications from 54 named scientists, professors, and other professionals.<sup>43</sup> Eighty percent of the individuals in this request, who have been identified in the media as having a viewpoint on climate change, either oppose policies in favor of addressing climate change or dispute the science in support of climate change.

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<sup>40</sup> Ex. A (Document Request Nos. 1-2).

<sup>41</sup> *Id.* (Document Request No. 1).

<sup>42</sup> *Id.* (Document Request No. 6).

<sup>43</sup> *Id.* (Document Request Nos. 7-8).

44. The exceptionally broad scope of this investigative demand—nearly 40 years of records across an employee base that now stands at 73,500 people—highlights the pretextual basis for the investigation and the subpoena. Complying with the Virgin Islands subpoena would impose on ExxonMobil burden and expense incommensurate with any legitimate law enforcement purpose.

45. In another remarkable irregularity, the subpoena directs ExxonMobil to produce responsive records to Attorney General Walker's office and Defendant Linda Singer within a month's time, by April 15, 2016.<sup>44</sup> It also instructs ExxonMobil to present any inquiries about compliance to the Attorney General's office or to Singer at Cohen Milstein's offices in Washington, D.C.

**C. Attorney General Walker Has Improperly Delegated His Law Enforcement Authority to Cohen Milstein**

46. Defendant Cohen Milstein has previously served as private counsel to various attorneys general pursuant to contingent fee arrangements.<sup>45</sup>

47. As reported by *The New York Times* on December 18, 2014, Defendants Singer and Cohen Milstein regularly pitch state attorneys general and other public officials on possible lawsuits that they propose to file against companies perceived to have deep pockets. Singer was reported to have contacted attorneys general in Arizona, Connecticut, Nevada, New Mexico, New York, and Washington, to take on major plaintiff-side civil cases on a contingency-fee basis.<sup>46</sup>

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<sup>44</sup> *Id.* at 2.

<sup>45</sup> Retainer Agreement, dated May 15, 2012, and letters between Cohen Milstein and Linda Singer with the Office of the Attorney General of Mississippi regarding their investigation of JPMorgan Chase and Bank of America; Retainer Agreement, dated Apr. 8, 2013, between Cohen Milstein and the City of Chicago.

<sup>46</sup> Eric Lipton, *Lawyers Create Big Paydays by Coaxing Attorneys General to Sue*, N.Y. Times, Dec. 18, 2014.

48. Within months of his appointment, Attorney General Walker contracted for legal services with Cohen Milstein and Singer on a contingency-fee basis in another matter. Under that agreement, Cohen Milstein and Singer pursued a claim against a different American energy company for closing a refinery in the Virgin Islands in contravention of a supposed pledge to continue operations through 2022.<sup>47</sup> Cohen Milstein and Singer brought a lawsuit against the company on September 15, 2015,<sup>48</sup> which settled soon after. On February 16, 2016, Cohen Milstein and Singer received \$15 million pursuant to that contingency-fee arrangement with Attorney General Walker.<sup>49</sup>

49. Less than one month later, Attorney General Walker issued the subpoena that Cohen Milstein mailed to ExxonMobil.

50. On information and belief, Walker and Cohen Milstein have entered into a contingency-fee contract here similar to their previous fee arrangement.

51. In addition to its past dealings with Attorney General Walker, Defendant Cohen Milstein has been and currently is pursuing a contentious 15-year litigation in an unrelated action against ExxonMobil, in which ExxonMobil has raised serious questions about whether Cohen Milstein and its co-counsel have fully complied with their ethical obligations.

52. Since 2001, Cohen Milstein, along with co-counsel Terrence Collingsworth, has represented a group of anonymous plaintiffs from Aceh, Indonesia, in a lawsuit for money damages and other relief under the Alien Tort Statute (the “ATS

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<sup>47</sup> Y. Peter Kang, *Virgin Islands Sues Hess For \$1.5B Over Refinery Closure*, Law360 (Sept. 14, 2015), available at <http://www.law360.com/articles/702563/virgin-islands-sues-hess-for-1-5b-over-refinery-closure>.

<sup>48</sup> *Id.*

<sup>49</sup> Bill Kossler, *\$220 Hovensa Windfall Honeymoon Already Over*, St. Croix Source (Feb. 16, 2016).

Matter”).<sup>50</sup> The lawsuit alleges that ExxonMobil aided and abetted human rights abuses committed by Indonesian troops assigned by the Indonesian government to protect an Indonesian natural gas facility during an Indonesian civil war. However, ExxonMobil’s role was simply to operate the natural gas facility as a contractor to the Indonesian government.<sup>51</sup> In addition, while conducting its business in Indonesia, ExxonMobil has worked for generations to improve the quality of life in Indonesia through employment of local workers, provision of health services, and extensive community investment. ExxonMobil categorically denies that it was complicit in any human rights violations and strongly condemns human rights violations in any form.

53. The ATS Matter is one of a number of cases that have been filed across the country by Collingsworth against multi-national corporations operating overseas.<sup>52</sup> In recent years, it has come to light in many of those cases that Collingsworth has engaged in repeated misconduct, such as fabricating plaintiffs and claims, bringing claims without authorization from any plaintiffs, and paying fact witnesses \$100,000 in an effort to secure favorable testimony.<sup>53</sup>

54. In *Gonzalez v. Texaco*, Collingsworth filed suit for Ecuadorian plaintiffs who claimed that Texaco’s petroleum operations caused them physical injuries, including

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<sup>50</sup> ExxonMobil is represented in the ATS Matter, as it is in this action, by the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, LLP.

<sup>51</sup> *Doe I v. Exxon Mobil Corp.*, No. 01-1357, Dkt. 533, ¶ 28 (D.D.C. Sept. 10, 2015).

<sup>52</sup> Those cases include *Gonzalez v. Texaco*, No. C. 06-02820 WHA (N.D. Cal. 2006); *Juana Perez IA v. Dole Food Co.*, No. BC412620 (Cal. Super. Ct., L.A. Cnty.); *Jane/John Does 1-144 v. Chiquita Brands Int’l Inc.*, No. 1:07-cv-01048, Dkt. 3 (D.D.C. Jun. 7, 2007) (Complaint filed by Collingsworth), consolidated into *In re Chiquita Brands Int’l, Inc. Alien Tort Statute & S’holder Derivative Litig.*, No. 08-01916-MD-MARRA, Dkt. 1 (S.D. Fla. Feb. 25, 2008) (Consolidation Order); *Baloco v. Drummond Co.*, No. 7:09-cv-00557, Dkt. 1 (N.D. Ala. Mar. 20, 2009) (Complaint); and *Balcerro v. Drummond Co.*, No. 2:09-cv-01041, Dkt. 1 (N.D. Ala. May 27, 2009) (Complaint).

<sup>53</sup> *Drummond Co. v. Collingsworth*, No. 9:14-mc-81189-DMM, Dkt. 14 (S.D. Fla. Oct. 24, 2014).



cancer.<sup>54</sup> However, deposition testimony revealed that three of the plaintiffs' claims were wholly fabricated—neither they nor their family members ever had cancer—and the claims were dismissed.<sup>55</sup> The episode caused the judge to rebuke Collingsworth, remarking that this was “not the first evidence of misconduct by plaintiffs' counsel in this case” and that Collingsworth “manufactured” the case.<sup>56</sup> Additional evidence in the case revealed that Collingsworth not only had fabricated claims about whether the plaintiffs had cancer, but had also filed suit on behalf of individuals without their authorization.<sup>57</sup> The court specifically found that Collingsworth had filed complaints on behalf of “[p]laintiffs [who] were not even aware that a lawsuit had been filed in their names in the United States and none of them had specifically authorized such a suit.”<sup>58</sup>

55. The mounting evidence of misconduct by Cohen Milstein's co-counsel culminated in a scathing opinion issued by an Alabama federal judge in December 2015, in which the judge found that Collingsworth had improperly made payments to witnesses and made repeated and knowing false statements to both the court and to opposing counsel in an effort to conceal the payments.<sup>59</sup>

56. In addition, just last month, Collingsworth voluntarily dismissed with prejudice a lawsuit he had filed against the Dole Food Company in California state

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<sup>54</sup> No. C. 06-02820 WHA (N.D. Cal. 2006).

<sup>55</sup> *Gonzalez v. Texaco*, No. C. 06-02820 WHA, 2007 WL 2255217, at \*1-2, 4 (N.D. Cal. Aug. 3, 2007).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at \*2.

<sup>58</sup> Order Declining to Impose Additional Sanctions for Attorney's Unreasonable and Incompetent Actions, *Gonzalez v. Texaco*, No. C 06-02820 WHA, Dkt. 371 (N.D. Cal. Dec. 21, 2009).

<sup>59</sup> Memorandum Opinion and Order, *Drummond, Inc. v. Collingsworth*, No. 2:11-cv-3695-RDP, Dkt. 417 (N.D. Ala. Dec. 7, 2015) (The judge stated he “ha[d] no hesitation in finding that there is (at least) probable cause to believe that Collingsworth . . . engaged in witness bribery and suborning perjury,” and that “this alleged witness bribery continues to this day.”).

court.<sup>60</sup> He did so after it came to light that Collingsworth's colleagues had offered bribes to third parties to provide testimony favorable to the plaintiffs in that lawsuit.<sup>61</sup>

57. Based on this, and other evidence, ExxonMobil has been pressing both Cohen Milstein and Collingsworth for over a year to produce all records of payments to any witnesses in the ATS Matter. Among other things, ExxonMobil has pressed Cohen Milstein to demonstrate its compliance with its ethical obligations to ensure the accuracy of representations made by its co-counsel on behalf of their mutual clients, including whether any payments have been made to witnesses. Cohen Milstein apparently has consulted with outside counsel to address its obligations in view of its co-counsel's misconduct, and the parties are in the midst of litigating ExxonMobil's supplemental motion to compel additional documents from Cohen Milstein and Collingsworth.

58. In light of its involvement in this contentious litigation against ExxonMobil, the very target of Attorney General Walker's investigation, Cohen Milstein cannot be the neutral, disinterested prosecutor required by due process under the United States Constitution and the Texas Constitution.

**D. ExxonMobil Has Been Injured and Continues To Be Injured by Defendants' Conduct**

59. ExxonMobil has long been active in the policy debate about potential responses to climate change. Indeed, since 2009, ExxonMobil has publicly advocated for a carbon tax as the preferred method to regulate carbon emissions. Proponents of a carbon tax on greenhouse gas emissions argue that increasing taxes on carbon can "level

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<sup>60</sup> Request for Dismissal, *Juana Perez IA v. Dole Food Co.*, BC412620 (March 2, 2016).

<sup>61</sup> *Juana Perez IA v. Dole Food Co.*, Case No. BC412620, Transcript of Deposition of Adolfo Enrique Guevara Cantillo, at 72:22-73:19 (Cal. Sup. Ct. Jan. 27, 2016); *Juana Perez IA v. Dole Food Co.*, Case No. BC412620, Declaration of Andrea Neuman in Support of Addendum to the Joint Status Conference Statement for February 11, 2016 Conference (Cal. Sup. Ct. Feb. 4, 2016); *Juana Perez IA v. Dole Food Co.*, Case No. BC412620, Plaintiffs' Request for Dismissal (Cal. Sup. Ct. Mar. 2, 2016).

the playing field among different sources of energy.”<sup>62</sup> While the coalition of attorneys general is entitled to disagree with ExxonMobil’s position, no member of that coalition, including Attorney General Walker, is entitled to silence or seek to intimidate one side of that debate (or the debate about any other important public issue) through the issuance of an overbroad and burdensome subpoena that is facially premised upon a pretextual investigation that has been delegated to a law firm already in contentious litigation with the investigation’s target. ExxonMobil intends—and has a Constitutional right—to continue to advance its perspective in the national discussions over how to respond to climate change. Its right to do so should not be violated through this exercise of government power.

60. As a result of the improper and politically-motivated investigation launched by Attorney General Walker and impermissibly delegated to Cohen Milstein and Singer, ExxonMobil has suffered, now suffers, and will continue to suffer violations of its rights under the First, Fourth, and Fifth Amendments to the United States Constitution<sup>63</sup> and under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution. The chilling effect of this inquiry, which discriminates based on viewpoint to target one side of an ongoing policy debate, strikes at protected speech at the core of the First Amendment. Defendants’ burdensome demand for irrelevant records violates the Fourth Amendment’s reasonableness requirement, as well as its prohibition on fishing expeditions. Finally, the delegation of this investigation—which carries penalties available only to government prosecutors—to a private law firm, acting on a

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<sup>62</sup> Jeremy Carl & David Fedor, *Revenue-Neutral Carbon Taxes in the Real World: Insights from British Columbia and Australia*, Hoover Institution at Stanford University: Shultz-Stephenson Task Force on Energy Policy 1 (2012).

<sup>63</sup> The federal constitutional rights have been made applicable to the State of Texas through the Fourteenth Amendment and to the Virgin Islands through 48 U.S.C. § 1561.

contingency-fee basis and embroiled in claims of misconduct in a long-running litigation with ExxonMobil, cannot be reconciled with the Fifth Amendment's requirement that only a neutral and impartial prosecutor can satisfy due process.

61. Acting under the laws, customs, and usages of the Virgin Islands, Attorney General Walker and his designees Cohen Milstein and Singer have subjected ExxonMobil, and are causing ExxonMobil to be subjected, to the deprivation of rights, privileges, and immunities secured by the United States Constitution and the Texas Constitution. ExxonMobil's rights are made enforceable against Defendants, all of whom are acting under the color of law, by the Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution and 48 U.S.C. § 1561, all within the meaning and contemplation of 42 U.S.C. § 1983, and by Section Nineteen of Article One of the Texas Constitution.

62. In addition, Defendants have committed an abuse of process under common law. Defendants issued the subpoena without the reasonable suspicion required by law and based on an ulterior motive to silence those who express views on climate change with which they disagree. Defendants' conduct has caused injury to ExxonMobil.

63. Absent relief, Defendants will continue to deprive ExxonMobil of these rights, privileges, and immunities.

## **VI. CAUSES OF ACTION**

### **A. First Cause of Action**

#### **Violation of ExxonMobil's First and Fourteenth Amendment Rights (48 U.S.C. § 1561 and 42 U.S.C. § 1983)**

64. ExxonMobil repeats and realleges paragraphs 1 through 63 above as if fully set forth herein.

65. The subpoena's focus on one side of a policy debate in an apparent effort to silence, intimidate, and deter those possessing a particular viewpoint from participating in that debate contravenes, and any effort to enforce the subpoena would further contravene, the rights provided to ExxonMobil by the First Amendment to the United States Constitution, made applicable to the State of Texas by the Fourteenth Amendment and to the Virgin Islands by 48 U.S.C. § 1561, and by Section Eight of Article One of the Texas Constitution.

66. The subpoena improperly targets political speech and amounts to an impermissible content-based restriction on speech. The effect of the subpoena is to (i) deter ExxonMobil from participating in the public debate over climate change now and in the future and (ii) chill others from expressing an opinion on climate change that runs counter to the view held by a coalition of some state officials, including Attorney General Walker, now and in the future.

67. The subpoena does not constitute the least restrictive means of accomplishing any compelling government purpose and is not narrowly tailored to advance any compelling government interest.

## **B. Second Cause of Action**

### **Violation of ExxonMobil's Fourth and Fourteenth Amendment Rights (48 U.S.C. § 1561 and 42 U.S.C. § 1983)**

68. ExxonMobil repeats and realleges paragraphs 1 through 67 above as if set forth fully herein.

69. Defendants' issuance and mailing of the subpoena on ExxonMobil contravenes, and any effort to enforce the subpoena would further contravene, the rights provided to ExxonMobil by the Fourth Amendment to the United States Constitution,

made applicable to the State of Texas by the Fourteenth Amendment and to the Virgin Islands by 48 U.S.C. § 1561, and by Section Nine of Article One of the Texas Constitution to be secure in its papers and effects against unreasonable searches and seizures.

70. The subpoena is an unreasonable search and seizure because it is vastly overbroad, constitutes an abusive fishing expedition, and imposes an unwarranted burden on ExxonMobil.

### **C. Third Cause of Action**

#### **Violation of ExxonMobil's Fifth and Fourteenth Amendment Rights (48 U.S.C. §§ 1561, § 1571, 1591, 1611, and 42 U.S.C. § 1983)**

71. ExxonMobil repeats and realleges paragraphs 1 through 70 above as if fully set forth herein.

72. Attorney General Walker's delegation of investigative and prosecutorial authority to Cohen Milstein and Singer contravenes the rights provided to ExxonMobil by the Fifth Amendment to the United States Constitution, made applicable to the State of Texas by the Fourteenth Amendment and to the Virgin Islands by 48 U.S.C. § 1561, and by Section Nineteen of Article One of the Texas Constitution not to be deprived of life, liberty, or property without due process of law, as well as the separation of powers doctrine made applicable to the Virgin Islands by 48 U.S.C. §§ 1571, 1591, and 1611.

73. The delegation of Defendant Walker's investigative and prosecutorial authority violates the due process of law because (i) this investigation could result in penalties available only to government prosecutors; (ii) Cohen Milstein and Singer are believed to be compensated on a contingency fee basis; and (iii) Cohen Milstein is engaged in ongoing and unusually contentious litigation against ExxonMobil.

**D. Fourth Cause of Action**

**Abuse of Process Claim**

74. ExxonMobil repeats and realleges paragraphs 1 through 73 above as if fully set forth herein.

75. Defendants committed an abuse of process under common law by (i) issuing and mailing the subpoena without reasonable suspicion, as required by the authorizing statute, in what amounts to a fishing expedition; (ii) having an ulterior motive for issuing and mailing the subpoena, namely an intent to prevent ExxonMobil from exercising its right to express views disfavored by Defendants and to extract an unwarranted financial settlement from ExxonMobil; and (iii) causing injury to ExxonMobil's reputation and its ability to exercise its First Amendment rights as a result.

**E. Fifth Cause of Action**

**Declaration of the Parties' Respective Rights**

(Tex. Civ. Prac. & Rem. Code § 37.003)

76. ExxonMobil repeats and realleges paragraphs 1 through 75 above as if fully set forth herein.

77. For the foregoing reasons, ExxonMobil is entitled to a declaration that enforcement of the subpoena, as drafted, against ExxonMobil is impermissible under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and 48 U.S.C. § 1561 and under Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution, and constitutes an abuse of process under common law.



## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants as follows:

1. That a declaratory judgment be entered pursuant to Tex. Civ. Prac. & Rem. Code § 37.003, declaring that the issuance and mailing of the subpoena violates ExxonMobil's rights under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, 48 U.S.C. § 1561, and Sections Eight, Nine, and Nineteen of Article One of the Texas Constitution;
2. That a declaratory judgment be entered pursuant to Tex. Civ. Prac. & Rem. Code § 37.003, declaring that the issuance and mailing of the subpoena constitutes an abuse of process, in violation of common law;
3. All costs of court together with any and all such other and further relief as this Court may deem proper.

Dated: April 13, 2016

EXXON MOBIL CORPORATION

By: /s/ Patrick J. Conlon  
Patrick J. Conlon  
State Bar No. 24054300  
patrick.j.conlon@exxonmobil.com  
Daniel E. Bolia  
State Bar No. 24064919  
daniel.e.bolia@exxonmobil.com  
1301 Fannin Street  
Houston, TX 77002  
(832) 624-6336

/s/ Theodore V. Wells, Jr.  
Theodore V. Wells, Jr.  
(*pro hac vice* pending)  
Michele Hirshman  
(*pro hac vice* pending)  
Daniel J. Toal  
(*pro hac vice* pending)  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3000  
Fax: (212) 757-3990

Justin Anderson  
(*pro hac vice* pending)  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
2001 K Street, NW  
Washington, D.C. 20006-1047  
(202) 223-7300  
Fax: (202) 223-7420

*Counsel for Exxon Mobil Corporation*

/s/ Ralph H. Duggins  
Ralph H. Duggins  
State Bar No. 06183700  
rduggins@canteyhanger.com  
Philip A. Vickers  
State Bar No. 24051699  
pvickers@canteyhanger.com  
Alix D. Allison  
State Bar. No. 24086261  
aallison@canteyhanger.com  
CANTEY HANGER LLP  
600 W. 6th St. #300  
Fort Worth, TX 76102  
(817) 877-2800  
Fax: (817) 877-2807

/s/ Nina Cortell  
Nina Cortell  
State Bar No. 04844500  
nina.cortell@haynesboone.com  
HAYNES & BOONE, LLP  
301 Commerce Street  
Suite 2600  
Fort Worth, TX 76102  
(817) 347-6600  
Fax: (817) 347-6650

# Exhibit MIM

SCIENCE

## Exxon Mobil Fraud Inquiry Said to Focus More on Future Than Past

By JOHN SCHWARTZ AUG. 19, 2016

For more than a year, much of the public scrutiny of Exxon Mobil was captured by the #Exxonknew hashtag — shorthand for revelations about decades-old research on climate change conducted by the company while it funded groups promoting doubt about climate science.

Articles about that research have energized protests against Exxon Mobil and the fossil fuel industry and had a role in initiating queries by at least five attorneys general, led by Eric T. Schneiderman of New York.

Early on, his office demanded extensive emails, financial records and other documents from the oil company, leaving many observers with the impression that a deeper look into the company's past was the focus of the investigation.

But in an extensive interview, Mr. Schneiderman said that his investigation was focused less on the distant past than on relatively recent statements by Exxon Mobil related to climate change and what it means for the company's future.

In other words, the question for Mr. Schneiderman is less what Exxon knew, and more what it predicts.

For example, he said, the investigation is scrutinizing a 2014 report by Exxon Mobil stating that global efforts to address climate change would not mean that it had to leave enormous amounts of oil reserves in the ground as so-called "stranded assets."

But many scientists have suggested that if the world were to burn even just a portion of the oil in the ground that the industry declares on its books, the planet would heat up to such dangerous levels that "there's no one left to burn the rest," Mr. Schneiderman said.

By that logic, the Exxon Mobil will have to leave much of its oil in the ground, which means the company's valuation of its reserves is off by a significant amount.

"If, collectively, the fossil fuel companies are overstating their assets by trillions of dollars, that's a big deal," Mr. Schneiderman said. And if the company's own internal research shows that Exxon Mobil knows better, he added, "there may be massive securities fraud here."

Alan Jeffers, a spokesman for Exxon, dismissed the idea that its forecast could be viewed as fraudulent.

"If it turns out to be wrong, that's not fraud, that's wrong," he said. "That's why we adjust our outlook every year, and that's why we issue the annual forecast publicly, so people can know the basis of our forecasting."

The company has said allegations that it secretly developed a definitive understanding of climate change before the rest of the world's scientists are "preposterous."

Mr. Schneiderman has praised reports from publications, including Inside Climate News and the Los Angeles Times, that detailed Exxon Mobil's past research.

And all indications were that his office planned to use its subpoena powers to unearth new documents that might show a disconnect between what the company was saying publicly and what it was saying privately about climate change over several decades.

In the interview, however, Mr. Schneiderman said his focus lay elsewhere. "The older stuff really is just important to establish knowledge and the framework and to look for inconsistencies."

He called his efforts a straightforward fraud investigation, like many that he and his predecessors have taken on in subjects as wide-ranging as the crash of mortgage-backed securities and Volkswagen's diesel engine deceptions.

Mr. Schneiderman also mentioned, as an example of questionable public statements by Exxon Mobil, congressional testimony in 2010 by its chief executive, Rex Tillerson, who said that while the company acknowledged that humans were affecting the climate through greenhouse gas emissions to some degree, it was not yet clear "to what extent and therefore what can you do about it."

Mr. Tillerson added, "There is not a model available today that is competent" for understanding the science and predicting the future.

Mr. Schneiderman disagrees, and cited the industry's own extensive climate research and the actions it has taken in response, including exploration in the melting Arctic and raising the decks of offshore oil platforms to compensate for rising sea level.

"These guys have the best science for their engineering purposes," he said. "We're confident they're not wasting shareholder dollars to do things that are inconsistent with the science they have internally."

Since November, when the investigation was first revealed, and as other state attorneys general announced their support, Mr. Schneiderman's intentions have been questioned and, he said, misconstrued.

Supporters of Exxon Mobil have accused him and his colleagues of using prosecutorial powers to pursue political ends and of trying to squelch the First Amendment rights of the company, its scientists and anyone who agrees with them.

Lamar Smith, a congressman from Texas and chairman of the House Committee on Science, Space and Technology, accused the attorneys general of "pursuing a political agenda at the expense of scientists' rights to free speech" and has issued subpoenas demanding internal documents from Mr. Schneiderman and another state attorney general, as well as eight groups that have supported the investigations.

Hans von Spakovsky, a conservative commentator, compared the investigation by the attorneys general to the Spanish Inquisition, and the Daily Caller asked whether Mr. Schneiderman had suggested "jailing global warming skeptics."

Mr. Schneiderman talks about such accusations with incredulity.

"This is an investigation," he said. "It is a civil fraud case. No one is being prosecuted — we're not out to silence dissenting views." He has said, however, that if criminal actions turn up in the evidence the state gathers, criminal charges could be filed.

When asked about the First Amendment implications of investigating Exxon's statements, he repeated a sentence he has uttered many times: "The First Amendment doesn't protect you for fraud."

He added, "Three-card monte operators can't say, 'Hey, I'm just exercising my First Amendment rights!'"

When asked about the focus of Mr. Schneiderman's investigation, Joel Seligman, an expert in securities law who is the president of the University of Rochester, said that "at some level, this is a plain-vanilla investigation — and there is no guarantee it will lead to a case."

Exxon Mobil has sued to block subpoenas from Massachusetts and the United States Virgin Islands, but the company has provided hundreds of thousands of pages of documents to New York.

If the investigation does turn up the kind of evidence that could lead to a civil case, it is still unclear whether New York or the other states might win, said David M. Uhlmann, a former top federal prosecutor of environmental crime and a professor at the University of Michigan law school.

Until governments impose the kind of regulations that will lead to concrete action to slow or reverse climate change, he said, "We're going to continue to drill for oil and frack for gas." In that case, he continued, Exxon may "utilize a significant portion of its reserves, which means it may not even be wrong when it states that it expects to utilize its reserves."

Even if Exxon is wrong in saying that it expects to be able to use all its reserves, "The question is whether they know that they are wrong and are therefore lying to investors," he added.

The investigation, Mr. Schneiderman said, mirrors an earlier inquiry into a coal giant, Peabody Energy. In 2013, he issued subpoenas for internal documents related to climate change, and found false statements to shareholders and the Securities and Exchange Commission. "Simple stuff like 'it's impossible to predict the effect of a carbon tax on the coal market,' and they paid a consultant a lot of money to predict the effect of a carbon market," he said.

Peabody signed an agreement pledging to properly disclose the climate risk to its business.

Mr. Schneiderman has also been accused of conspiring with environmental groups, but he said, "People bring information to us all the time. If it's got merit to it, we follow up on it."

Groups like the Union of Concerned Scientists have investigated the fossil fuel industry for years, he said, and so "it would be malpractice for us not to meet with people like this."

The industry's tactics come "straight out of the tobacco playbook," he said. "It's delay, and sowing doubt."

Mr. Schneiderman has refused to comply with the congressman's subpoena, stressing the importance of federalism — normally an argument used by conservatives against federal overreach.

When asked for comment, Kristina Baum, a spokeswoman for the Science committee, said that Mr. Smith was unavailable.

# **Exhibit NN**





THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY  
ATTORNEY GENERAL

TEL: (617) 727-2200  
www.mass.gov/ago

July 26, 2016

The Honorable Lamar Smith  
Chairman  
House Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Smith:

I am Chief Legal Counsel for Massachusetts Attorney General Maura Healey, and I write in response to the July 13, 2016, subpoena issued to her by the House Committee on Science, Space, and Technology (the "Committee"). The subpoena is sweeping in its scope and completely unprecedented in its intended interference with an ongoing regulatory investigation by a state's attorney general. The subpoena seeks "all documents and communications between any officer or employee of the Office of the Attorney General of Massachusetts" (the "Office") and nine non-profit organizations and other groups, "any other state attorney general office," and "any official or employee of the U.S. Department of Justice, U.S. Environmental Protection Agency, or the Executive Office of the U.S. President," "referring or relating to the [Office's] investigation or potential prosecution of companies, nonprofit organizations, scientists, or other individuals related to the issue of climate change."<sup>1</sup>

Attorney General Healey hereby objects to the subpoena as an unconstitutional and unwarranted interference with a legitimate ongoing state investigation. The subpoena is a dangerous overreach by the Committee and an affront to states' rights. The Committee's majority members (the "Majority") arranged for the subpoena in disregard of the detailed letters from Attorney General Healey and the Ranking Member of the Committee setting forth why the Committee has no legal authority to tamper with a state attorney general's investigation into possible violations of state law by Exxon Mobil Corporation ("Exxon"). The Majority also disregarded Attorney General Healey's objection that most of the documents being requested are either attorney-client privileged documents or protected from disclosure as attorney work product. The Majority delivered the subpoena without even acknowledging Attorney General Healey's offers to discuss her objections in a conference call with the Chairman and/or Committee staff. This sequence of events suggests that the Majority had no intention of considering the substance of Attorney General Healey's objections.<sup>2</sup>

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<sup>1</sup> Subpoena, July 13, 2016, pg. 2.

<sup>2</sup> We remain willing to confer by telephone with you as Chairman and/or your staff to discuss Attorney General Healey's objections to the subpoena, as outlined in this letter, provided that the Ranking Member and/or her staff are invited and permitted to participate.

You, Mr. Chairman, yourself reportedly have conceded that the subpoena of a state attorney general is unprecedented in the history of Congress.<sup>3</sup> None of the cases cited by the Committee in any of its correspondence with Attorney General Healey provides authority for the proposition that a Congressional committee can subpoena a sitting state attorney general about a pending investigation by his or her office. Congressional and Committee rules provide no such explicit power, the courts have never recognized such power, and the few legal decisions that the Majority's letters mention relate to quite different situations and therefore provide no authority for the Committee's subpoena. Because the subpoena is unconstitutional and otherwise unlawful, Attorney General Healey respectfully objects to its issuance and declines to produce to the Committee documents related to the Office's ongoing investigation of Exxon.

## **BACKGROUND FACTS**

### **The Attorney General Is the Chief Law Enforcement Officer in Massachusetts and Has Broad Powers of Investigation.**

Attorney General Healey is an elected constitutional officer in the state of Massachusetts and is the highest ranking law enforcement official. Mass. Gen. L. c. 12 § 3. The Attorney General determines legal policy for the state and brings legal actions on behalf of the state. *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E.2d 1262 (1977); Mass. Gen. L. c. 12 § 5. Attorney General Healey also has various enumerated statutory powers, including the prevention or remedy of damage to the environment, Mass. Gen. L. c. 12 § 11D, and enforcement of the state's consumer protection law, Chapter 93A of the Massachusetts General Laws ("Chapter 93A"), which proscribes unfair and deceptive practices in the conduct of business. In Massachusetts the Attorney General is authorized to protect investors, consumers, and other persons in the state against unfair and deceptive business practices through such mechanisms as promulgating regulations, conducting investigations through civil investigative demands ("CID"), and instituting litigation.<sup>4</sup>

CIDs under Chapter 93A are a crucial tool for gaining information regarding whether an entity under investigation has violated the statute. Since the beginning of 2013, the Office has issued several hundred CIDs pursuant to Chapter 93A to or regarding companies or individuals suspected of committing unfair and deceptive business practices or other illegal conduct. These Chapter 93A investigations have addressed, among other things, foreclosure practices of banks, business practices in the pharmaceutical industry, and marketing of other products and services sold in the state. The Office issued some CIDs as part of joint investigations with other regulators: about 25 CIDs were issued in connection with joint investigations with other states, about 30 were issued in connection with joint investigations involving the federal government, and several involved joint investigations with other states as well as the federal government.

Attorney General Healey's office routinely issues CIDs to large publicly traded companies with business dealings in the state but with principal places of business outside of Massachusetts. Examples since 2013 which have become public through settlement with the target companies

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<sup>3</sup> Amanda Reilly, *Smith subpoenas AGs, enviro groups in escalating fight*, Energy & Environment Daily, July 14, 2016, <http://www.eenews.net/eedaily/2016/07/14/stories/1060040258>.

<sup>4</sup> Mass. Gen. L. c. 93 §§ 8, 9; Mass. Gen. L. c. 93A §§ 4, 6.

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include: a joint investigation with federal authorities (targeting Oppenheimer<sup>5</sup>); three investigations in which the Office worked with the U.S. government and a small group of states (Citigroup,<sup>6</sup> JPMorgan,<sup>7</sup> and Chase Bank<sup>8</sup>); three which the Office undertook with a large multistate enforcement group (Ocwen,<sup>9</sup> Moneygram,<sup>10</sup> and HSBC<sup>11</sup>); and one investigation with one other state attorney general as a partner (LPL Financial<sup>12</sup>). A very recent, visible example is the Office's 2016 participation in a joint multistate investigation into Volkswagen's "clean diesel" deception, which resulted in a partial settlement providing Massachusetts with nearly \$100 million in Chapter 93A civil penalties and environmental mitigation payments.<sup>13</sup>

Nearly every other state attorney general has CID or similar investigative authority.<sup>14</sup>

### **The Office's Longstanding Efforts on Climate Change.**

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<sup>5</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, Oppenheimer to Pay \$2.8 Million to Settle Allegations of Misrepresenting Performance of Fund to Investors (Mar. 11, 2013), <http://www.mass.gov/ago/news-and-updates/press-releases/2013/2013-03-11-oppenheimer-settlement.html>.

<sup>6</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, CitiGroup to Pay \$7 Billion in Federal-State Deal Over Mortgage Backed Securities (July 14, 2014), <http://www.mass.gov/ago/news-and-updates/press-releases/2014/2014-07-14-citigroup-settlement.html>.

<sup>7</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, JPMorgan to Pay \$13 Billion in Federal-State Deal Over Mortgage Backed Securities (Nov. 19, 2013), <http://www.mass.gov/ago/news-and-updates/press-releases/2013/2013-11-19-jpmorgan-settlement.html>.

<sup>8</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, Chase Bank to Pay \$136 Million in Nationwide Settlement Over Unlawful Credit Card Debt Collection Practices (July 8, 2015), <http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-07-08-chase-settlement.html>.

<sup>9</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, Ocwen to Provide \$2.1 Billion in Relief to Homeowners in State-Federal Settlement Over Loan Servicing Misconduct (Dec. 19, 2013), <http://www.mass.gov/ago/news-and-updates/press-releases/2013/2013-12-19-ocwen-settlement.html>.

<sup>10</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, MoneyGram to Pay \$13 Million in Multistate Settlement Over Wire Transfer Scams, AG Healey Offers Tips for Consumers (Feb. 11, 2016), <http://www.mass.gov/ago/news-and-updates/press-releases/2016/2016-02-11-moneygram-settlement.html>.

<sup>11</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, \$470 Million State-Federal Settlement Reached with HSBC Over Unlawful Foreclosures, Loan Servicing (Feb. 5, 2016), <http://www.mass.gov/ago/news-and-updates/press-releases/2016/470-million-state-federal-settlement-reached-with-hsbc-over-unlawful-foreclosures-loan-servicing.html>.

<sup>12</sup> Press Release, Commonwealth of Massachusetts Office of the Attorney General, Boston Firm to Pay \$1.8 Million for Selling Unsuitable Investments to Consumers (Sept. 23, 2015), <http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-09-23-lpl-financial-aod.html>.

<sup>13</sup> Press Release, Volkswagen of America, Inc., Volkswagen Reaches Settlement Agreement with U.S. Federal Regulators, Private Plaintiffs and 44 U.S. States on TDI Diesel Engine Vehicles (June 28, 2016), <http://media.vw.com/release/1214/>. On July 19, 2016, Massachusetts announced the filing of an additional state suit against Volkswagen for matters not covered under the settlement. Press Release, N.Y. State Office of the Attorney General, NY A.G. Schneiderman, Massachusetts A.G. Healey, Maryland A.G. Frosh Announce Suits Against Volkswagen, Audi And Porsche Alleging They Knowingly Sold Over 53,000 Illegally Polluting Cars And SUVs, Violating State Environmental Laws (July 19, 2016), <http://www.ag.ny.gov/press-release/ny-ag-schneiderman-massachusetts-ag-healey-maryland-ag-frosh-announce-suits-against>.

<sup>14</sup> See, e.g., Fla. Stat. Ann. Fla. Stat. Ann. § 542.28 (West 2016); 740 Ill. Comp. Stat. Ann. 10/7.2 (West 2016); Minn. Stat. Ann. § 8.31 (West 2016); N.Y. Exec. Law § 63 (McKinney 2016); N.Y. Gen. Bus. Law §§ 343, 352 (McKinney 2016); Ohio Rev. Code Ann §§ 1331.16, 1345.06 (West 2016); S.C. Code Ann. §39-5-70 (2016); Tex. Bus. & Com. Code Ann. §15.10 (West 2015); Wash. Rev. Code Ann. §19.86.110 (West 2016).



For years the Office has been a leader in addressing the threat of climate change, often in collaboration with other state attorneys general. The Office led the federal litigation that resulted in the United States Supreme Court's determination in *Massachusetts v. EPA* that greenhouse gases are pollutants warranting regulation under the federal Clean Air Act. *See Massachusetts v. EPA*, 549 U.S. 497 (2007). In the intervening decade, Massachusetts's injuries from climate change—and the scientific predictions of future injuries—have only grown more devastating.<sup>15</sup> In subsequent litigation, the Office has worked closely with other states to advocate for and defend federal findings and regulations addressing climate change under the Clean Air Act, including the EPA's Clean Power Plan regulations to reduce power plant greenhouse gas emissions and the EPA's recent regulations regarding methane emissions from oil and gas facilities. Massachusetts has itself enacted laws that require reductions in greenhouse gas emissions and encourage strategies to reduce reliance on fossil fuels, including the Global Warming Solutions Act, Mass. Gen. L. c. 21N, and the Green Communities Act, 2008 Mass. Legis. Serv. Ch. 169 (S.B. 2768) (West).

We understand, that you, Mr. Chairman, have raised questions about the causes of climate change and the extent to which human activity versus other factors such as “natural cycles” and “sun spots” contribute to this problem.<sup>16</sup> Nevertheless, as state and federal law recognize, the overwhelming scientific evidence indicates that human activity, and the burning of fossil fuels in particular, are key drivers of climate change. *See, e.g.*, Intergovernmental Panel on Climate Change, 2014 Synthesis Report, Summary for Policymakers at 2-5 (“Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on humans and natural systems. . . . Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and oceans have warmed, the amounts of snow and ice have diminished, and sea level has risen. . . . Emissions of CO<sub>2</sub> from fossil fuel combustion and industrial processes contributed about 78% of the total GHG emissions increase from 1970 to 2010, with a similar percentage contribution for the increase during the period 2000 to 2010. Globally, economic and population growth continued to be the most important drivers of increases in CO<sub>2</sub> emissions from fossil fuel combustion.”) (internal citations omitted).<sup>17</sup>

### **The Investigation into Exxon.**

Exxon is the largest publicly-traded oil and gas corporation in the world.<sup>18</sup> In 2015, *The Los Angeles Times*, in cooperation with the Columbia University School of Journalism<sup>19</sup> and the news

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<sup>15</sup> *See, e.g.*, Jess Bigood, *At a Cape Cod Landmark, a Strategic Retreat From the Ocean*, N. Y. Times, July 6, 2016, [http://www.nytimes.com/2016/07/07/us/at-a-cape-cod-landmark-a-strategic-retreat-from-the-ocean.html?\\_r=3](http://www.nytimes.com/2016/07/07/us/at-a-cape-cod-landmark-a-strategic-retreat-from-the-ocean.html?_r=3) (“managed retreat” implemented on Cape Cod beaches); David Abel, *Climate change could be even worse for Boston than previously thought*, Boston Globe, June 22, 2016, <https://www.bostonglobe.com/metro/2016/06/22/climate-change-could-have-even-worse-impact-boston-than-previously-expected/S6hZ4nDPeUWNyTsx6ZckuL/story.html>.

<sup>16</sup> Bill Lambrecht, *Smith tries to take NASA out of climate research*, San Antonio Express News, May 16, 2015, <http://www.expressnews.com/news/local/article/Smith-tries-to-take-NASA-out-of-climate-research-6268551.php>.

<sup>17</sup> IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

<sup>18</sup> ExxonMobil, *About us*, <http://corporate.exxonmobil.com/en/company/about-us> (last visited July 25, 2016).

<sup>19</sup> Sara Jerving, Katie Jennings, Masako Melissa Hirsch, and Susanne Rust, *What Exxon knew about the Earth's melting Arctic*, Los Angeles Times, Oct. 9, 2015, <http://graphics.latimes.com/exxon-arctic/>.

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organization InsideClimate News,<sup>20</sup> published a series of investigative reports and internal Exxon and other documents establishing that Exxon had a robust climate change scientific research program in the late 1970s into the 1980s that documented the serious potential for climate change, the likely contribution of fossil fuels (the company's chief product) to climate change, and the risks of climate change to the world's natural and economic systems, including Exxon's own assets and businesses.<sup>21</sup> By July 1977, Exxon's own scientists informed Exxon management that the release of carbon dioxide from burning fossil fuels was causing global temperatures to increase, a situation that would, the scientists warned Exxon management, give rise to "the need for hard decisions regarding changes in energy strategies."<sup>22</sup> Exxon's scientists were, in the early 1980s, predicting significant increases in global temperature as a result of the combustion of fossil fuels, and that a 2 to 3 degree Celsius increase could lead to melting of polar ice, rising sea levels, "redistribution of rainfall," "accelerated growth of pests and weeds," "detrimental health effects," and "population migration."<sup>23</sup> Exxon's scientists advised Exxon management that it would be possible to "avoid the problem by sharply curtailing the use of fossil fuels."<sup>24</sup> One Exxon scientist warned in no uncertain terms that it was "distinctly possible" that the effects of climate change over time will "indeed be catastrophic (at least for a substantial fraction of the earth's population)."<sup>25</sup>

Exxon's scientists understood that doubling of atmospheric carbon dioxide would occur "sometime in the latter half of the 21<sup>st</sup> century," and that "CO<sub>2</sub>-induced climate changes should be observable well before doubling."<sup>26</sup> Exxon's own scientists agreed with the scientific consensus that "a doubling of atmospheric CO<sub>2</sub> from its pre-industrial revolution value would result in an average global temperature rise of (3.0 ± 1.5) [degrees Celsius]."<sup>27</sup> Exxon also knew what that would mean for humanity and ecological systems: "There is unanimous agreement in the scientific community that a temperature increase of this magnitude would bring about significant changes in the earth's climate, including rainfall distribution and alternations in the biosphere."<sup>28</sup> Nevertheless, even as of

<sup>20</sup> <https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken>; InsideClimate News was nominated for a Pulitzer Prize for its work on the Exxon investigation and the Road Not Taken Series. *See*

<https://insideclimatenews.org/news/18042016/insideclimate-news-pulitzer-prize-finalist-exxon-investigation>.

<sup>21</sup> According to InsideClimate News, its "reporters interviewed former Exxon employees, scientists, and federal officials, and consulted hundreds of pages of internal Exxon documents, many of them written between 1977 and 1986." Neela Banerjee, et al., *Exxon: The Road Not Taken* (InsideClimate News 2015) at 2. InsideClimate News also reviewed "thousands of documents from archives including those held at the University of Texas-Austin, the Massachusetts Institute of Technology and the American Association for the Advancement of Science." *Id.*

<sup>22</sup> Shannon Hall, *Exxon Knew About Climate Change Almost 40 Years Ago: A new investigation shows the oil company understood the science before it became a public issue and spent millions to promote misinformation*, Scientific American, Oct. 26, 2015, <http://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/>.

<sup>23</sup> Henry Shaw, *CO<sub>2</sub> Greenhouse and Climate Issues* (March 28, 1984),

<https://insideclimatenews.org/sites/default/files/documents/Shaw%20Climate%20Presentation%20%281984%29.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> Roger W. Cohen, Interoffice Memorandum to W. Glass (Aug. 18, 1981),

<http://insideclimatenews.org/sites/default/files/documents/%2522Catastrophic%2522%20Effects%20Letter%20%281981%29.pdf>.

<sup>26</sup> Letter from Exxon scientist Roger W. Cohen to A.M. Natkin, Exxon Office of Science and Technology (Sept. 2, 1982),

<https://insideclimatenews.org/sites/default/files/documents/%2522Consensus%2522%20on%20CO2%20Impacts%20%281982%29.pdf>

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

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this year, 2016, Exxon continues to tell its investors that “[w]e are confident that none of our hydrocarbon reserves are now or will become stranded,”<sup>29</sup> and maintains that, “[w]hile most scientists agree climate change poses risks related to extreme weather, sea-level rise, temperature extremes, and precipitation changes, current scientific understanding provides limited guidance on the likelihood, magnitude, or time frame of these events.”<sup>30</sup>

Additionally, Exxon made statements in 1980 at an American Petroleum Institute AQ-9 Task Force meeting that demonstrated its knowledge of the fact that as fossil fuels continue to be burned, a “global average 2.5 C rise [is] expected by 2038,” which would cause “major economic consequences.”<sup>31</sup> They further projected that at a “3% per annum growth rate of CO<sub>2</sub>, a 2.5 C rise brings world economic growth to a halt in about 2025,” and that a “5 C rise” by 2067 will have “globally catastrophic effects.”<sup>32</sup> In a 1982 memo to Exxon management, a manager at the Exxon Research and Engineering Company Environmental Affairs Program showed concern and predicted that climate change would cause “disturbances in the existing global water distribution balance” and would have “a dramatic impact on soil moisture, and in turn, on agriculture,” stating “there are some potentially catastrophic events that must be considered,” including the melting of the Antarctic ice sheet causing a 5 meter sea level rise, and “flooding much of the U.S. East Coast, including the State of Florida and Washington D.C.”<sup>33</sup> At an environmental conference presentation in 1984, another Exxon scientist stated “[w]e can either adapt our civilization to a warmer planet or avoid the problem by sharply curtailing the use of fossil fuels.”<sup>34</sup> These statements contrast sharply to statements made by Exxon in 2014 (“[w]e are confident that none of our hydrocarbon reserves are now or will become stranded.”<sup>35</sup>) and 2016 (“[o]il 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.”<sup>36</sup>). These recent statements fail to mention any of the previous research, projections, or concerns that were expressed by Exxon’s own scientists and disseminated within the company and industry in the 1980s; they instead portray, to a public unaware of this research, a bright future for the Exxon and the oil industry.

<sup>29</sup> *Energy and Carbon—Managing the Risks* (Exxon, 2014) at 1.

<sup>30</sup> ExxonMobil website, Meeting global needs—managing climate business risks, *available at* <http://corporate.exxonmobil.com/en/current-issues/climate-policy/climate-perspectives/managing-climate-change-business-risks>.

<sup>31</sup> Minutes of the Feb. 29, 1980 meeting of the American Petroleum Institute AQ-9 Task Force (of which Exxon is a member) (Mar. 18, 1980), *available at* <https://insideclimatenews.org/sites/default/files/documents/AQ-9%20Task%20Force%20Meeting%20%281980%29.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> Memorandum from M.B. Glaser, Manager, Exxon Research and Engineering Company Environmental Affairs Program, to a broad distribution list of Exxon management, attaching a summary of the CO<sub>2</sub> “Greenhouse Effect” and CO<sub>2</sub> Greenhouse Effect Technical Review (Nov. 12, 1982), *available at* <https://insideclimatenews.org/sites/default/files/documents/1982%20Exxon%20Primer%20on%20CO2%20Greenhouse%20Effect.pdf>.

<sup>34</sup> Henry Shaw, “CO<sub>2</sub> Greenhouse and Climate Issues” (Mar. 28, 1984), *available at* <https://insideclimatenews.org/sites/default/files/documents/Shaw%20Climate%20Presentation%20%281984%29.pdf>

<sup>35</sup> *Energy and Carbon—Managing the Risks* (Exxon, 2014) at 1.

<sup>36</sup> Press Release, ExxonMobil, ExxonMobil’s Energy Outlook Projects Energy Demand Increase and Decline in Carbon Intensity (Jan. 25, 2016), <http://news.exxonmobil.com/press-release/exxonmobils-energy-outlook-projects-energy-demand-increase-and-decline-carbon-intensit>.



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Despite its research and knowledge, Exxon appears to have engaged with other fossil fuel interests in a campaign from at least the 1990s onward to prevent government action to reduce greenhouse gas emissions.<sup>37</sup> In 1998, Exxon's Randy Randol participated as a member of the "Global Climate Science Communications Team," which engaged in a concerted effort to challenge the "scientific underpinning of the global climate change theory" in the media, and which took the position that "[i]n fact, it [sic] not known for sure whether (a) climate change actually is occurring, or (b) if it is, whether humans really have any influence on it."<sup>38</sup> A draft plan prepared by that team noted that "[u]nless 'climate change' becomes a non-issue, meaning that the Kyoto proposal is defeated and there are no further initiatives to thwart the threat of climate change, there may be no moment when we can declare victory for our efforts."<sup>39</sup>

In addition to undertaking efforts to forestall government action on climate change that would reduce the use of fossil fuel products in the United States, Exxon seemingly failed to disclose its knowledge of climate change threats in a fully candid way to investors in its securities and to consumers to whom it continued to market and sell such products.

Concerns that Exxon has not adequately disclosed climate risk to Massachusetts investors in its securities appear to be reflected in recent actions by Exxon shareholders (including Massachusetts-based shareholders) to compel the company to more fully assess and respond to climate risks. In the past year Exxon shareholders came close to passing resolutions that would have required Exxon to implement "stress tests" to ascertain more specifically the climate-driven risks to Exxon's businesses. As the Wall Street Journal reported, the proposals "drew more support than any contested climate-related votes" in Exxon's history, and indicate that "more mainstream shareholders like pension funds, sovereign wealth funds, and asset managers are starting to take more seriously" the effects on Exxon of a "global weaning from fossil fuels."<sup>40</sup>

Following the publication of the investigative reports and documents by the Los Angeles Times and others, on or about November 5, 2015, New York Attorney General Eric Schneiderman issued a subpoena to Exxon under New York's Martin Act, seeking documents regarding Exxon's climate research and its communications to investors and consumers about the risks of climate change and the effect of those risks on Exxon's business.<sup>41</sup> According to press statements by the New York

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<sup>37</sup> See, e.g., Draft Global Climate Science Communications Action Plan (Apr. 3, 1998), <https://insideclimatenews.org/sites/default/files/documents/Global%20Climate%20Science%20Communications%20Plan%20%281998%29.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Bradley Olson & Nicole Friedman, *Exxon, Chevron Shareholders Narrowly Reject Climate-Change Stress Tests*, The Wall Street Journal, May 25, 2016 <http://www.wsj.com/articles/exxon-chevron-shareholders-narrowly-reject-climate-change-stress-tests-1464206192>; see also, e.g., Natasha Lamb & Bob Litterman, *Really? Exxon left the risk out of its climate risk report*, GreenBiz, Mar. 28, 2014, <https://www.greenbiz.com/blog/2014/05/28/exxonmobil-left-risk-out-climate-risk-report> (coauthored by executive at Massachusetts-based Exxon shareholder Arjuna Capital).

<sup>41</sup> Justin Gillis and Clifford Krauss, *Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General*, N.Y. Times, Nov. 5, 2015, <http://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html>.



Attorney General, Exxon is cooperating with the subpoena and has produced more than 700,000 pages of documents so far.<sup>42</sup>

In January 2016, at the request of members of Congress, the Department of Justice asked the Federal Bureau of Investigation to investigate whether Exxon should be prosecuted under the federal Racketeer Influenced and Corrupt Organizations Act, based on the documents released by journalists.<sup>43</sup> United States Attorney General Lynch recently confirmed that the investigation is ongoing.<sup>44</sup>

And in early July 2016, nineteen members of the Senate called for an end to fossil fuel companies', including Exxon's, climate change "misinformation campaign to mislead the public and cast doubt in order to protect their financial interest,"<sup>45</sup> and offered support for a resolution urging fossil fuel companies to cooperate with "active or future investigation into (A) their climate-change related activities; (B) what they knew about climate change and when they knew that information; (C) what they knew about the harmful effects of fossil fuels on the climate; and (D) any activities to mislead the public about climate change."<sup>46</sup>

Given the obligations of the Office to prevent damage to the state's environment and protect Massachusetts investors and consumers against unfair and deceptive business practices, the history of the Office's efforts on climate change, the press revelations about Exxon's apparent undisclosed knowledge about the impact of fossil fuel use on climate change, and the various investigations by other state and federal officials, the Office began looking into Exxon-related issues and determined that an investigation pursuant to Chapter 93A would be warranted. A critical issue under Massachusetts law is whether Exxon told investors and consumers, or led them to believe, that it was appropriate and safe for Exxon to utilize its substantial fossil fuel reserves for the manufacture and sale of petroleum products with knowledge, based on its extensive research, that such practices would cause significant climate change and harm to the world.

In March 2016 the New York Attorney General, Attorney General Healey, and several other attorneys general met in New York and discussed at a press conference their cooperation on a number of national environmental issues.<sup>47</sup> Attorney General Healey announced that her office also would be investigating Exxon's climate change research and public communications to investors

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<sup>42</sup> Phil McKenna, *Virgin Islands and Exxon Agree to Uneasy Truce Over to Climate Probe*, InsideClimate News, July 7, 2016, <https://insideclimatenews.org/news/06072016/virgin-islands-exxon-agree-climate-probe-subpoena-claude-walker-schneiderman-healey>.

<sup>43</sup> <https://www.documentcloud.org/documents/2730475-DOJ-RESPONSE.html>;  
<http://www.rollingstone.com/politics/news/did-exxon-lie-about-global-warming-20160630>.

<sup>44</sup> Amanda Reilly, *Fossil fuel backers accused of 'calculated disinformation'*, Energy and Environment Daily, June 23, 2016, <http://www.eenews.net/eedaily/2016/06/23/stories/1060039264>.

<sup>45</sup> James Osborne, *19 Senate Democrats call out Exxon, fossil fuel industry on climate change denial*, FuelFix, July 11, 2016, <http://fuelfix.com/blog/2016/07/11/19-senate-democrats-call-out-exxon-fossil-fuel-industry-on-climate-change-denial/>.

<sup>46</sup> S. Con. Res. 45, 114th Cong. (2016).

<sup>47</sup> Press Release, N.Y. State Office of the Attorney General, A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change (Mar. 29, 2016), <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>.

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and consumers. This press conference was not unusual; multi-state attorney general investigations, litigation, amicus briefs, and other collaborative efforts often have been accompanied by press announcements.<sup>48</sup>

The Office initiated an investigation of Exxon's potential liability for violations of Chapter 93A with respect to statements to investors and consumers. On April 19, 2016, the Office served Exxon's Massachusetts registered agent with its CID. The CID sought documents from Exxon on such topics as "Exxon's development, planning, implementation, review, and analysis of research efforts to study CO<sub>2</sub> emissions"; research on how the effects of climate change will affect Exxon's costs, marketability, and future profits; and how this information was communicated to consumers and investors.<sup>49</sup>

### **The Majority's Attempted Interference with State Investigations.**

It appears that the issuance of the New York subpoena and the Massachusetts CID prompted the Committee to attempt an intervention into state attorneys' general investigations of Exxon. On May 18, 2016, Attorney General Healey received a letter from Chairman Smith and other Majority members of the Committee requesting that the Office produce "documents and communications between or among employees of the Office" and various non-profit organizations, other state attorneys general, and federal governmental bodies.<sup>50</sup> In its letter, the Majority attempted to justify the request on the grounds that the Office's investigation was an effort "to silence speech," coordinated through "[c]ollusion between the New York Attorney General and [e]xtremist [e]nvironmental [g]roups," and "may even amount to an abuse of prosecutorial discretion."<sup>51</sup> Attorney General Healey responded by letter on June 2, 2016, respectfully declining to produce the requested documents.<sup>52</sup> Attorney General Healey's response pointed out that the Committee mischaracterized the investigation because its true focus is on protecting consumers in the state; that under the Constitution, the Committee has no power to interfere with a state investigation because it

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<sup>48</sup> See, e.g., Press Release, N.Y. State Office of the Attorney General, NY A.G. Schneiderman, Massachusetts A.G. Healey, Maryland A.G. Frosh Announce Suits Against Volkswagen, Audi And Porsche Alleging They Knowingly Sold Over 53,000 Illegally Polluting Cars And SUVs, Violating State Environmental Laws (July 19, 2016), <http://www.ag.ny.gov/press-release/ny-ag-schneiderman-massachusetts-ag-healey-maryland-ag-frosh-announce-suits-against>; Press Release, Commonwealth of Massachusetts Office of the Attorney General, AG Healey Joins Multistate Effort to Question Use of On-Call Shifts at Retail Stores (Apr. 13, 2016), <http://www.mass.gov/ago/news-and-updates/press-releases/2016/2016-04-13-multistate-retail.html>; Press Release, Commonwealth of Massachusetts Office of the Attorney General, AG Healey Joins Federal-State Crackdown on Four Cancer Charities Charged with Bilking \$187 Million From Donors (May 19, 2016), <http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-05-19-rtc-cancer-fund.html>; Amici Curiae Brief in Support of Mississippi's Interlocutory Appeal, *Google, Inc. v. Hood*, 822 F.3d 212 (2016), 2015 WL 4094982 (C.A.5) (Appellate Brief).

<sup>49</sup> Civil Investigative Demand 2016-DPF-36, *ExxonMobil Corp. v. Healey*, No. 4:16-cv-469, ECF No. 1 (Apr. 29, 2016), pg. 12-20.

<sup>50</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Massachusetts Attorney General Maura Healey, Commonwealth of Massachusetts Office of the Attorney General (May 18, 2016), <http://www.mass.gov/ago/docs/energy-utilities/exxon/sst-committee-request-for-information.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> Letter from Richard A. Johnston, Chief Legal Counsel, Commonwealth of Massachusetts Office of the Attorney General to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (June 2, 2016), <http://www.mass.gov/ago/docs/energy-utilities/exxon/ma-letter-to-sst-committee.pdf>.

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is not a valid federal legislative purpose; and that the Majority had not identified any Congressional authorization to undertake an investigation into the enforcement activities of the Office.<sup>53</sup>

The Majority members reiterated their requests in a second letter sent on June 17, 2016.<sup>54</sup> This time, the Majority claimed that the Office's investigation had the potential "to chill scientific research" and referred to various House of Representatives' rules and a number of investigations that Congress had conducted in both international and domestic matters. None of the cited rules or prior investigations, however, involved Congressional investigation into the activities of a state attorney general to enforce state laws. Consequently, Attorney General Healey responded to the letter on June 24, 2016, reiterating her declination to produce documents to the Committee.<sup>55</sup> Ranking Committee Member Eddie Bernice Johnson wrote to you as Chairman as well, urging the cessation of "this abuse of authority" and the end of the "exceptionally unusual" document requests.<sup>56</sup>

The Majority members sent Attorney General Healey a third letter on July 6, 2016, threatening to use compulsory process.<sup>57</sup> This time the Majority referenced the importance of protecting scientific research and the similarities between Office's CID and the subpoena issued by the Attorney General of the Virgin Islands to Exxon and also cited three court decisions, none of which involved Congressional interference with a state attorney general's investigatory or enforcement powers under state law.<sup>58</sup> The next day, Ranking Member Johnson issued a statement condemning the "abuse of power" and "harassment" of the attorneys general and non-profit organizations to which the Majority members had issued such letters.<sup>59</sup> Attorney General Healey responded to this third letter in a letter sent July 13, 2016, stating that the Majority still had not furnished any valid legal authority for its requests for documents, and that she "continues respectfully to decline to provide the requested materials to the Committee." Attorney General Healey nevertheless indicated that she was "willing to confer by telephone" with Chairman Smith or his staff about objections to producing documents to the Committee, provided that Ranking Member Johnson and her staff were

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<sup>53</sup> *Id.*

<sup>54</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Massachusetts Attorney General Maura Healey, Commonwealth of Massachusetts Office of the Attorney General (June 17, 2016), <http://www.mass.gov/ago/docs/energy-utilities/exxon/sst-letter-to-ag-healey-06-17-2016.pdf>.

<sup>55</sup> Letter from Richard A. Johnston, Chief Legal Counsel, Commonwealth of Massachusetts Office of the Attorney General to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (June 24, 2016), <http://www.mass.gov/ago/docs/energy-utilities/exxon/letter-lamarsmith-june24.pdf>.

<sup>56</sup> Letter from Hon. Eddie Bernice Johnson, Ranking Member, H. Comm. on Science, Space, & Tech. to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (June 23, 2016) pg. 1, 5, [http://democrats.science.house.gov/sites/democrats.science.house.gov/files/documents/06.23.16%20-%20LTR%20to%20Smith%20re%20AG%20and%20Enviro%20Groups%20Oversight\\_0.pdf](http://democrats.science.house.gov/sites/democrats.science.house.gov/files/documents/06.23.16%20-%20LTR%20to%20Smith%20re%20AG%20and%20Enviro%20Groups%20Oversight_0.pdf).

<sup>57</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Massachusetts Attorney General Maura Healey, Commonwealth of Massachusetts Office of the Attorney General (July 6, 2016) pg. 3, <http://www.mass.gov/ago/docs/energy-utilities/exxon/07-06-16-sst-letter-to-ma-ag.pdf>.

<sup>58</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Massachusetts Attorney General Maura Healey, Commonwealth of Massachusetts Office of the Attorney General (July 6, 2016) pg. 3.

<sup>59</sup> Press Release, H. Comm. on Science, Space, & Tech. Democrats, Ranking Member Johnson Response to the Chairman's Subpoena Threat (July 7, 2016), <http://democrats.science.house.gov/press-release/ranking-member-johnson-response-chairman%E2%80%99s-subpoena-threat>.



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also invited and permitted to participate.<sup>60</sup> The Majority did not respond to Attorney General Healey's offer of a telephone conference.

Instead, a few hours after receiving Attorney General Healey's third letter (and a similar letter from the New York Attorney General), Committee staff sent a subpoena to Attorney General Healey,<sup>61</sup> and you as Chairman proceeded to hold a press conference announcing subpoenas to the New York Attorney General, Attorney General Healey, and several non-profit organizations. After the issuance of the subpoenas, Ranking Member Johnson, joined by Committee Member Congresswoman Clark and Congressmen Beyer and Tonko, issued a statement condemning the "unlawful subpoenas" issued by the Committee, which had the effect of creating the "Committee's unfortunate new reputation as a committee of witch hunts."<sup>62</sup>

On another front, on June 15, 2016, Exxon filed a civil complaint against Attorney General Healey in the United States District Court for the Northern District of Texas under 42 U.S.C. § 1983, alleging that the Office's investigation violated its constitutional rights, along with a motion for a preliminary injunction to enjoin Attorney General Healey from enforcing the CID issued to the company.<sup>63</sup> The following day, June 16, 2016, Exxon filed a petition in Massachusetts state court to set aside or modify the CID, along with an emergency motion seeking the same relief, and a request to stay the Massachusetts proceeding pending the outcome of the Texas proceeding. Those actions are still pending.<sup>64</sup> Exxon has not produced any documents in response to the Massachusetts CID.

## LEGAL OBJECTIONS TO THE SUBPOENA

The Committee's subpoena—demanding access to privileged and protected documents relating to an on-going state investigation into a private party—is an unprecedented and unconstitutional attempt to interfere in Attorney General Healey's exercise of her authority to investigate violations of state law.

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<sup>60</sup> Letter from Richard A. Johnston, Chief Legal Counsel, Commonwealth of Massachusetts Office of the Attorney General to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (July 13, 2016), <http://www.mass.gov/ago/docs/energy-utilities/exxon/ltr-to-congressman-lamar-smith-7-13-16.pdf>.

<sup>61</sup> Press Release, H. Comm. on Science, Space, & Tech., Smith Subpoenas MA, NY Attorneys General (July 13, 2016), <https://science.house.gov/news/press-releases/smith-subpoenas-ma-ny-attorneys-general-environmental-groups>.

<sup>62</sup> Press Release, H. Comm. on Science, Space, & Tech. Democrats, Statement in Response to the Committee's Issuance of Subpoena (July 13, 2016), <http://democrats.science.house.gov/press-release/statement-response-committee%E2%80%99s-issuance-subpoena>.

<sup>63</sup> Complaint, *ExxonMobil Corp. v. Healey*, No. 4:16-cv-469, ECF No. 1 (June 15, 2016); Motion for Preliminary Injunction filed by Exxon Mobil Corporation, *ExxonMobil Corp. v. Healey*, No. 4:16-cv-469, ECF No. 8 (June 16, 2016).

<sup>64</sup> Petition of ExxonMobil Corp. to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order, *In re Civil Investigative Demand No. 2016-EPD-36, Issued by the Office of the Attorney General*, No. 16-1888F (June 16, 2016); Emergency Motion of ExxonMobil Corp. to Set Aside or Modify the Civil Investigative Demand or Issue a Protective Order, *In re Civil Investigative Demand No. 2016-EPD-36, Issued by the Office of the Attorney General*, No. 16-1888F (June 16, 2016).

**A. Attorney General Healey Objects to Producing Privileged and Protected Investigatory Documents, Because to Do So Would Compromise the Investigation and the Independence of Her Office.**

As discussed further below, the Committee's subpoena is unconstitutional simply because it has no basis in any valid legislative purpose. But the subpoena is particularly egregious for attempting to compel production of documents that are plainly subject to a sovereign state's attorney-client privilege, work product protection, and deliberative process protection. Indeed, most of the Office's documents that would be responsive to the subpoena are covered by these or similar protections under Massachusetts law.

In her third letter in response to the Committee's demands, delivered just prior to issuance of the subpoena, Attorney General Healey advised the Majority that Exxon had filed two lawsuits in an effort to stop the investigation and had not produced any documents in response to the CID. Even if Exxon had produced documents to the Office, or in the future does, the Office is prohibited from making publicly available documents produced by a CID, except in court filings. Mass. Gen. L. c. 93A § 6(6). Consequently, as her letter stated, most of the responsive documents in her possession would be privileged as attorney-client documents or protected as attorney work product.

Moreover, Massachusetts law protects privileged documents in which attorneys within the Office discuss their bases for conducting an investigation into Exxon, as well as work product documents such as Office communications with sources of information about Exxon's business conduct.<sup>65</sup> And since Massachusetts law protects documents covered by the common interest doctrine, the Committee should not be permitted to see communications between the Office and federal investigators or attorneys general from other states, which are protected by a common interest privilege in the context of a potential multi-state investigation.<sup>66</sup>

Compliance with the subpoena would eviscerate Attorney General Healey's ability to conduct an ordinary and lawful investigation, shielded by long-established privileges and protections for its internal communications, work product, and strategic discussions with allied state attorneys general. Attorney General Healey therefore declines to produce the documents.

**B. The Committee Has No Constitutional Right to Interfere with a Lawful State Investigation into Possible Violations of Massachusetts Law by Exxon.**

The Committee has no right to obtain documents from Attorney General Healey—whether or not protected by recognized privileges—for several important reasons. Attorney General Healey's

<sup>65</sup> Mass. R. Evid. § 502; Mass. R. Civ. P. 26.

<sup>66</sup> *Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs., Inc.*, 449 Mass. 609, 612, 870 N.E.2d 1105, 1109 (Mass. 2007) ("Broadly stated, the common interest doctrine 'extend[s] the attorney-client privilege to any privileged communication shared with another represented party's counsel in a confidential manner for the purpose of furthering a common legal interest.'"); Restatement (Third) of the Law Governing Lawyers § 76(1) (2000) ("If two or more clients with a common interest in a litigated or nonlitigated matter are represented by separate lawyers and they agree to exchange information concerning the matter, a communication of any such client that otherwise qualifies as privileged . . . that relates to the matter is privileged as against third persons. Any such client may invoke the privilege, unless it has been waived by the client who made the communication.").

investigation is an ordinary and lawful investigation under Massachusetts law. The Committee's attempted interference with that investigation is a violation of states' rights and constitutional principles of federalism. The Majority has not cited any rules of either Congress or the Committee itself that support this attempted intrusion into a sovereign state's investigation. None of the court decisions cited by the Majority even discusses Congressional subpoenas to state attorneys general, let alone authorizes them.

**1. Attorney General Healey's investigation arises out of discrepancies in Exxon documents relating to climate change and a concern that Exxon misled Massachusetts investors and consumers with its public representations and omissions about climate change.**

The Committee's subpoena is a deliberate interference with Attorney General Healey's ordinary and lawful investigation of Exxon's possible violation of Massachusetts law. As indicated above, the Office regularly investigates violations of Chapter 93A, which proscribes unfair and deceptive practices toward investors and consumers, among others. Mass. Gen. L. c. 93A. Attorney General Healey is authorized under Chapter 93A to represent the interests of the state and its citizens, as well as to investigate corporate and other wrongdoing, including violations of laws protecting investors and consumers. *See id.* Based on the Office's review of a number of publicly available Exxon documents and public statements by Exxon, Attorney General Healey determined to investigate whether Exxon made false or misleading statements, in violation of Massachusetts law, to investors and consumers regarding the risks of climate change and the effect of those risks on Exxon's products and business.<sup>67</sup>

The recently-published Exxon documents cited above appear to demonstrate that Exxon knew by at least July 1977 from its own scientists that the continued burning of fossil fuels was causing global temperatures to increase, that the impacts could be catastrophic, and that changes in energy strategies would be needed. Nevertheless, it appears that Exxon continued to advise investors that its business model, heavily reliant on continued burning of fossil fuels, was sound, and continued to market its fossil fuel products to consumers without adequately disclosing the climate risks to the public.

The Office is in the preliminary stages of its investigation. Exxon is the first entity or person to receive a CID. Attorney General Healey has made no determinations as to whether the Office will institute litigation against Exxon pursuant to Chapter 93A or other laws. However, given the apparent discrepancies between what Exxon knew from its own internal scientific research about impacts on global warming and what Exxon both affirmatively represented and failed to tell investors and consumers about its research, she is entitled under Massachusetts law to investigate Exxon's conduct. Given that the Office's investigation is in the ordinary course of powers vested in Attorney General Healey by state law, there is no basis whatsoever for the U.S. Congress to interfere in the investigation.

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<sup>67</sup> *See* Civil Investigative Demand 2016-DPF-36, *ExxonMobil Corp. v. Healey*, No. 4:16-cv-469, ECF No. 1 (Apr. 19, 2016).



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**2. Fundamental constitutional principles preclude a Congressional committee from interfering with a state attorney general's lawful investigation.**

As far as Attorney General Healey is aware, no committee of Congress in the history of the country has issued a subpoena to a sitting state attorney general with respect to his or her exercise of official duties. We have found no such instance in our research. Nor has the Committee brought any such instance to our attention. Indeed, you as Chairman reportedly stated that “[t]his may be the first time any Congressional committee has subpoenaed state attorneys general.”<sup>68</sup>

There is a reason that Congress has refrained: The Constitution precludes such interference. The state of Massachusetts has a sovereign interest in the protection of its residents, including in their capacities as investors and consumers. As the Supreme Court has explained, the “Constitution created a Federal Government of limited powers. ‘The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.’ U.S. Const., Amdt. 10. The States thus retain substantial sovereign authority under our constitutional system.” *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). And the States retain significant sovereign powers—“powers with which Congress does not readily interfere.” *Id.* at 461. As already made clear to the Committee by the New York Attorney General, “[i]nvestigations and other law enforcement actions by a state Attorney General for potential violations of state law, as here, involve the exercise of police powers reserved to the States under the 10th Amendment,” and thus “are not the appropriate subject of federal legislation, oversight, or interference.”<sup>69</sup>

Further, while Congress, through committees, has power to investigate in furtherance of its power to legislate, that power may not be used to investigate matters “unrelated to a valid legislative purpose,” *Quinn v. United States*, 349 U.S. 155, 161 (1955), and a broad and general authorization from Congress to a committee must, when necessary, be narrowly construed to avoid transgressing constitutional federal-state boundaries, *Tobin v. United States*, 306 F.2d 270, 274-75 (D.C. Cir. 1962). Monitoring or impeding a state attorney general’s investigation or prosecution of a state-law enforcement action is not related to a valid federal legislative purpose. See *New York v. United States*, 505 U.S. 144, 162 (1992) (Constitution does not “confer upon Congress the ability to require the States to govern according to Congress’ instructions.”).

The *Tobin* case well illustrates the limits on a committee’s subpoena power. In *Tobin*, the D.C. Circuit reversed a Port of New York Authority official’s criminal conviction for contempt of Congress for refusing to comply with a subpoena in a House subcommittee’s investigation into whether Congress should “alter, amend or repeal” its consent to the interstate compact between New York and New Jersey that created the Port Authority. 306 F.2d at 272-76. The subpoena sought a broad range of documents concerning the Port Authority’s internal affairs, including, among other things, “[a]ll communications in [its] files . . . including correspondence, interoffice and other memoranda and reports relating to” a wide array of topics. *Id.* at 276 n.2. The Port Authority refused to comply with these demands on the two grounds that the request violated the

<sup>68</sup> Amanda Reilly, *Smith subpoenas AGs, enviro groups in escalating fight*, Energy & Environment Daily, July 14, 2016, <http://www.eenews.net/eedaily/2016/07/14/stories/1060040258>.

<sup>69</sup> Letter from Leslie B. Dubeck, Counsel, Office of the New York Attorney General to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (May 26, 2016) pg. 2.



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Tenth Amendment, and that the Compact Clause of the U.S. Constitution did not actually permit Congress to “alter, amend or repeal” its consent to a compact. *Id.* at 272. Although the court recognized that the committee had “jurisdiction over ‘interstate compacts generally,’ and the power ‘to conduct full and complete investigations and studies relating to . . . the activities and operations of interstate compacts,’” the court also recognized that “when Congress authorizes a committee to conduct an investigation, the courts have adopted the policy of construing such resolutions of authority narrowly, in order to obviate the necessity of passing on serious constitutional questions.” *Id.* at 274-75. And the court found that “the very fact that Congress had never before attempted such an expansive investigation of an interstate compact agency—an investigation, by its very nature, sure to provoke the serious and difficult constitutional questions involved here—leads to the conclusion that if Congress had intended the Judiciary Committee to conduct such a novel investigation it would have spelled out this intention in words more explicit than the[se] general terms[.]” *Id.* at 275. Accordingly, the court concluded that the subpoena fell outside the committee’s authority. *Id.* at 276.

Here, the Majority has not identified in its three letters to Attorney General Healey in support of its own “novel” subpoena any explicit Congressional authorization to investigate this Office’s enforcement activities. This lacuna is not surprising: Any such purported authorization would violate the fundamental principles of federalism that are manifest in our Constitution as a whole and are safeguarded by the Tenth Amendment. As the New York Attorney General has aptly stated, “Congress does not have jurisdiction to demand documents and communications from a state law enforcement official regarding the exercise of a State’s sovereign police powers.”<sup>70</sup>

Thus, as Attorney General Healey already has explained to the Majority in her several prior communications on this matter prior to the unlawful issuance of the subpoena, Massachusetts law empowers her office to conduct an investigation into potential unfair and deceptive business practices on the part of Exxon, and the Committee cannot interfere in the investigation without violating the fundamental federal structure of our Constitution. The subpoena constitutes an unauthorized and unconstitutional invasion of the rights of the state of Massachusetts as a sovereign state.

### **3. The Committee’s evolving rationales for its subpoena are untenable.**

The Majority’s rationales for interfering with Attorney General Healey’s investigation have shifted over time both legally and factually, demonstrating the unstable ground on which this unprecedented subpoena rests.<sup>71</sup> The bottom line is that the Majority has never provided a valid

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<sup>70</sup> Letter from Leslie B. Dubeck, Counsel, Office of the New York Attorney General to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (May 26, 2016) pg. 2.

<sup>71</sup> In the Committee’s first letter, on May 18, the Majority alleged that Attorney General Healey was restricting free speech, colluding with extremist groups, and abusing prosecutorial discretion. Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Massachusetts Attorney General Maura Healey, Commonwealth of Massachusetts Office of the Attorney General, May 18, 2016. In their second letter, on June 17, the Majority cited their supposedly “broad investigatory power” and charge to protect scientific research and development as justification for their document requests. Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Massachusetts Attorney General Maura Healey, Commonwealth of Massachusetts Office of the Attorney General, June 17, 2016. And their third letter, on July 6, focused on the similarities between the Virgin Islands subpoena and the Massachusetts CID, attempting to use the similar language as evidence of “a deliberate attempt to

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legislative purpose for its action. Nor has the Majority cited a single Congressional rule or judicial decision that remotely suggests that the Committee has authority to interfere with an ongoing state investigation or to subpoena the files of a sitting state attorney general.

*a. Congressional and Committee Rules do not provide for investigating purely state matters.*

Although the Majority's letters have cited several Congressional rules in an effort to justify its request for investigatory files from Attorney General Healey, none of these provisions in fact provides any support for the Majority's effort. Neither the Rules of the House of Representatives<sup>72</sup> ("House Rules"), the Science, Space, and Technology Committee's own rules<sup>73</sup> ("Committee Rules"), nor the Committee's Oversight Plan<sup>74</sup> ("Plan") authorizes the Committee to conduct an investigation of a sovereign state's exercise of its law enforcement authority in connection with the state's consumer and investor protection statute.

House Rule X establishes standing committees, whose jurisdiction concerns matters related to *federal* agencies, application of *federal* law, implementation of *federally*-funded programs, and tax and economic implications of *federal* policies. The standing committees have general oversight responsibilities to assist the House in its evaluation of the application of *federal* laws; "conditions and circumstances" that "may indicate the necessity or desirability of enacting new or additional legislation"; formulation of *federal* law; and whether *federal* programs are being carried out consistent with Congress's intent. See House Rule X, Clause 2(a)-(b) (general oversight responsibilities).

Committee Rule VIII (Oversight and Investigations) provides that the Committee "shall review and study . . . the application . . . of *those* laws, . . . the subject matter of which is within its jurisdiction" including "all laws, programs, and Government activities relating to nonmilitary research and development" in accordance with House Rule X, and must prepare a plan of its oversight activities. See Committee Rule VIII (emphasis supplied); see also Plan at 1. In light of the capitalized term "Government" and in light of House Rule X, the term "those laws" in Committee Rule VIII refers to *federal* laws.

Similarly, the Plan prepared by the Committee focuses on oversight of *federal* agencies, with a key goal of eliminating "waste, fraud, and abuse." No provision of the Plan discusses a need or plan to investigate any state activities, and no such investigation would aid the Committee in fulfilling its charge pursuant to House Rule X. While the Plan suggests that the Committee will engage in

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mask the true purpose of [the Office's] investigation. Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech., to Hon. Massachusetts Attorney General Maura Healey, Commonwealth of Massachusetts Office of the Attorney General, July 6, 2016.

<sup>72</sup> Rules of the House of Representatives, 114<sup>th</sup> Cong. (Jan. 6, 2015), <http://clerk.house.gov/legislative/house-rules.pdf>.

<sup>73</sup> Rules of the Science, Space, and Technology Committee, 114<sup>th</sup> Cong., [https://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/Committee%20on%20Science%20and%20Space%20and%20Technology%20Rules%20114th%20Congress%20v2\\_0.pdf](https://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/Committee%20on%20Science%20and%20Space%20and%20Technology%20Rules%20114th%20Congress%20v2_0.pdf).

<sup>74</sup> Science, Space, and Technology Committee Oversight Plan for 114<sup>th</sup> Congress, <https://science.house.gov/sites/republicans.science.house.gov/files/documents/SST%20Oversight%20Plan%20for%20the%20114th%20Congress.pdf>.

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oversight efforts in connection with “scientific integrity,” it is limited to oversight of *federal* agencies. *See, e.g.*, Plan at 9 (the Committee will continue to “collect and examine allegations of intimidation of science specialists in *federal agencies*, suppression or revisions of scientific findings, and mischaracterizations of scientific findings because of political or other pressures” (emphasis supplied)); *see also id.* (The Committee will develop and implement “scientific integrity principles within the *Executive Branch*.” (emphasis supplied)). Read in the context of the overall Plan, it is obvious the Committee’s focus is on and limited to scientific findings made or funded by federal government agencies, not by private corporations, such as Exxon.

The Committee therefore was not delegated “any oversight authority concerning the investigations of state attorneys general regarding violations of state securities, consumer, or business laws”<sup>75</sup> by Congress. The Ranking Member of the Committee has also recognized this lack of authority, stating that “nowhere in our jurisdiction—legislative or oversight—can one find justification for our Committee’s oversight of state police powers.”<sup>76</sup>

*b. No judicial decision has sanctioned Congressional subpoenas of state attorneys general.*

In addition to the lack of authority under Congressional rules, none of the judicial decisions cited in the Majority’s second and third letters to Attorney General Healey (there were no decisions cited in the first such letter) suggests that the Committee may interfere with her statutory power to investigate possible violations of Massachusetts law by Exxon.

The June 17 Letter referenced several decisions in footnotes, none of which involved a Congressional investigation into enforcement activities of a state attorney general. *McGrain v. Daugherty* involved a subpoena to a private individual, 273 U.S. 135 (1927), and *Eastland v. U.S. Servicemen’s Fund* involved a subpoena to a bank, 421 U.S. 491 (1975). *Barenblatt v. United States* and *Shelton v. United States* concerned subpoenas issued by the infamous House Committee on Un-American Activities to a university professor and a Klan member, respectively. 360 U.S. 109 (1959); 404 F.2d 1292 (D.C. Cir. 1968). Finally, *Hutcheson v. United States* concerned a subpoena issued to a union officer, 369 U.S. 599 (1962).

The July 6 Letter is similarly devoid of any court decisions supporting interference by a Congressional committee with a state attorney general’s enforcement activities. *In the Matter of the Special April 1977 Grand Jury* concerned a *federal grand jury* subpoena issued to a state attorney general concerning potential criminal law violations by him personally, and specifically did not involve an investigation “into the affairs of the State of Illinois” or the attorney general’s actions in his official capacity. 581 F.2d 589, 592 (7th Cir. 1978). *Freilich* concerned a claim that a federal *statutory* reporting requirement compelled states to implement a federal regulatory program and therefore amounted to unconstitutional “commandeering” under *Hodel v. Virginia Surface Mining & Reclamation Ass’n*, 452 U.S. 264 (1981). *Frelich v. Bd. of Directors of Upper Chesapeake Health, Inc.*, 142 F.Supp. 2d 679, 696 (D. Md. 2001). *Michigan Department of Community Health*

<sup>75</sup> Letter from Leslie B. Dubeck, Counsel, Office of the New York Attorney General to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (May 26, 2016) pg. 2.

<sup>76</sup> Letter from Hon. Eddie Bernice Johnson, Ranking Member, H. Comm. on Science, Space, & Tech., to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (June 23, 2016) pg. 7.



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involved a federal *administrative* subpoena issued by the Drug Enforcement Administration to a state agency, where there was a clear nexus between the federal investigation and enforcement of a federal law. See *United States v. Michigan Dep't of Cmty. Health*, No. 1:10-MC-109, 2011 WL 2412602 (W.D. Mich. June 9, 2011). Even there, the court denied the DEA's petition to enforce its subpoena with respect to certain records in the state agency's possession. *Id.* at \*14.

Put simply, none of the cases which the Committee has cited in any of its letters to Attorney General Healey provides that a Congressional committee can force a state Attorney General to disclose to the committee the substance or results of an official investigation into possible violations of state law by a private company.

*c. Attorney General Healey is not infringing on Exxon's rights of free speech, because the First Amendment does not protect false and misleading statements.*

The Majority's letters to Attorney General Healey and the Chairman's comments at a press conference announcing the subpoena suggest that the Majority is concerned that this Office's investigation threatens free speech rights. That concern is misplaced.

As the Chairman and members of this Committee know, the First Amendment does not protect false and misleading statements in the marketplace. See, e.g., *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1123 (D.C. Cir. 2009) (“[I]t is well settled that the First Amendment does not protect fraud.”); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357(1995) (“[The government] may, and does, punish fraud directly.”); *In re R. M. J.*, 455 U.S. 191, 203 (1982) (“[W]hen the particular content or method of the advertising suggests that it is inherently misleading or when experience has proved that in fact such advertising is subject to abuse, the States may impose appropriate restrictions. Misleading advertising may be prohibited entirely.”); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 593 (1980) (“[F]alse and misleading commercial speech is not entitled to any First Amendment protection.”); *Friedman v. Rogers*, 440 U.S. 1, 9 (1979) (“[R]estrictions on false, deceptive, and misleading commercial speech” are “permissible.”); *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949) (“[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.”); *Massachusetts Ass'n of Private Career Sch. v. Healey*, No. CV 14-13706-FDS, 2016 WL 308776 at \*18 (D. Mass. Jan. 25, 2016) (“[T]he government may place an outright ban on speech that is misleading on its face—that is, speech that is more likely to deceive the public than to inform it.”).

Just as the courts rejected claims by the tobacco industry that the First Amendment protected its knowingly false statements that cigarette smoking did not cause lung cancer, Exxon may not use the First Amendment to shield its statements and non-disclosures with respect to the relationship between fossil fuel use and climate change. Businesses are not permitted to make false statements to the public and then claim that the First Amendment protects them from the consequences of state laws prohibiting false statements in business affairs. As the Oregon Attorney General's Office wrote to you:

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Your letter also incorrectly accuses this office of investigating entities based on their speech or beliefs concerning climate change. Please be advised this office will not be dissuaded from considering whether state laws, including consumer protections laws, may provide redress against knowingly false commercial speech concerning global warming. The First Amendment simply does not protect fraudulent speech. *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (“This government power [to protect people against fraud] has always been recognized in this country and is firmly established.”).<sup>77</sup>

Because Exxon appears to have made many statements to the public, including investors and consumers, about the impact of fossil fuels on climate change that appear to contradict its own internal documents, Attorney General Healey is entitled to investigate what Exxon knew and said to others about these issues—in order to determine whether a cause of action exists for violation of Massachusetts law. Attorney General Healey is not seeking to stifle Exxon’s scientific research; to the contrary, the Office is looking into whether Exxon properly represented to the public, in accordance with Massachusetts law, what it knew first-hand from its detailed internal scientific research.

Furthermore, because the Office has not sent CIDs to any entities or individuals other than Exxon, the Majority’s professed concern about chilling third-party research is also misplaced. To the extent that the Office’s CID to Exxon seeks communications between Exxon and other entities or individuals about climate change, those documents are relevant to a determination whether Exxon was telling the public, including investors and consumers, a different story about climate change than it was discussing internally and privately with select third parties. If so, the outside communications would be relevant to potential claims that Exxon violated Chapter 93A by misleading investors and consumers.

**4. If the Committee’s action goes unchallenged, it could jeopardize states’ rights and, in particular, the independence of state attorneys general to conduct investigations into violations of state law.**

A substantial portion of Attorney General Healey’s work is to conduct investigations into various types of illegal behavior, including unfair and deceptive business practices. As stated above, the Office has issued several hundred CIDs under Chapter 93A since 2013. Some of those investigations result in settlements or assurances of discontinuance, some result in civil enforcement actions or other litigation, and some are closed for lack of sufficient evidence of wrongdoing. Attorney General Healey, like most other state attorneys general, also participates regularly in multi-state investigations in which attorneys general collaborate on strategy, discovery, and sometimes litigation. If the Committee is permitted to obtain the privileged and otherwise protected investigatory files of the Office as well as other offices of state attorneys general, the longstanding independence of states to enforce state laws against businesses will be compromised. The states’

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<sup>77</sup> Letter from Hon. Eddie Bernice Johnson, Ranking Member, H. Comm. on Science, Space, & Tech. to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (June 23, 2016) pg. 3-4 (quoting Letter from Frederick M. Boss, Deputy Attorney General, Ore. Dep’t of Justice to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech. (June 1, 2016) pg. 2).

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prerogative to conduct their own investigations into violations of state law is a bedrock of states' rights.

As stated above, there has been an unbroken recognition for over 200 years that states are empowered to investigate wrongdoing against their residents, without interference by the federal government and in particular Congress. As a result, state attorneys general succeed in obtaining favorable results for their residents every day of the year, in matters ranging from fraudulent unfair and deceptive mortgage lending practices on the part of large national banks and others, to Volkswagen's fraudulent schemes with respect to environmental emissions systems. The Committee's subpoena threatens this entire fabric of independent state investigations.

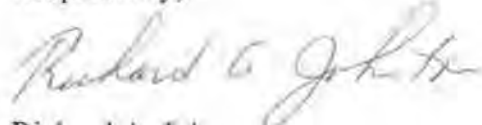
Exxon has already seized for itself two different opportunities to present legal arguments to two separate courts as to why this Office's investigation should not proceed. As described above, Exxon has filed lawsuits in both federal court in Texas and state court in Massachusetts in an effort to stop Attorney General Healey's investigation. Under existing court discovery rules, Exxon would not be entitled in the course of those lawsuits to obtain most of the attorney-client, work product, and deliberative documents that the Committee has subpoenaed. Yet the Committee apparently seeks to provide Exxon with yet another, third venue to challenge the investigation and to obtain materials to which Exxon has no right.

There is simply no legitimate legislative or constitutional basis for the Committee to meddle in a state investigation of state-law violations. Attorney General Healey will not yield to this blatant attempt to chill her investigation into Exxon's conduct.

## CONCLUSION

For these reasons, including those contained in the attached letters to the Majority, Attorney General Healey objects to the subpoena and respectfully declines to produce any documents. Attorney General Healey submits that the Majority should withdraw the subpoena and cease its interference with a lawful Massachusetts state investigation. In the event the Majority seeks to pursue the subpoena notwithstanding these objections, Attorney General Healey submits that the subpoena and the objections should be referred to the entire Committee for its review.

Respectfully,



Richard A. Johnston  
Chief Legal Counsel

cc: Honorable Eddie Bernice Johnson, Ranking Member, House Committee on Science, Space, and Technology

Honorable Katherine Clark, Member, House Committee on Science, Space, and Technology

Enclosure





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](http://www.mass.gov/ago)

June 2, 2016

The Honorable Lamar Smith  
Chairman  
House Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Smith:

I write in response to the May 18, 2016, letter ("Letter") signed by you and several other members of the House Committee on Science, Space, and Technology ("Committee") seeking certain documents and information in connection with ongoing law enforcement and investigative activities of the Massachusetts Attorney General's Office ("MA AGO") regarding potential violations of Massachusetts's consumer protection and securities laws by ExxonMobil Corporation ("Exxon").

At the outset, the Committee's characterization of MA AGO's investigative activities is inaccurate. The Committee's assertion that the MA AGO is engaged in a "coordinated attempt to deprive companies, nonprofit organizations, and scientists of their First Amendment rights and ability to fund and conduct scientific research free from intimidation and threats of prosecution," is absolutely incorrect, and the Committee's intimation that the MA AGO's actions "may even amount to an abuse of prosecutorial discretion" is without basis.

The MA AGO is authorized under Massachusetts law to represent the interests of the Commonwealth and its citizens, as well as to investigate corporate and other wrongdoing, including violations of laws protecting investors and consumers. Based on MA AGO's review of a number of publicly available Exxon documents and public statements by Exxon, MA AGO determined to investigate whether Exxon made false or misleading statements, in violation of Massachusetts law, to investors and consumers regarding the risks of climate change and the effect of those risks on Exxon's business.

Publicly available Exxon documents establish that at least by July 1977, Exxon's own scientists informed Exxon management that the release of carbon dioxide from burning fossil fuels was causing global temperatures to increase, a situation that would, the scientists warned Exxon





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management, give rise to “the need for hard decisions regarding changes in energy strategies.”<sup>1</sup> Publicly available Exxon documents also confirm that Exxon’s scientists were, in the early 1980s, predicting significant increases in global temperature as a result of the combustion of fossil fuels, and that a 2 to 3 degree Celsius increase could lead to melting of polar ice, rising sea levels and “redistribution of rainfall,” “accelerated growth of pests and weeds,” “detrimental health effects,” and “population migration.”<sup>2</sup> Exxon’s scientists counseled Exxon management that it would be possible to “avoid the problem by sharply curtailing the use of fossil fuels.”<sup>3</sup> One Exxon scientist warned in no uncertain terms that it was “distinctly possible” that the effects of climate change over time will “indeed be catastrophic (at least for a substantial fraction of the earth’s population).”<sup>4</sup> Despite Exxon’s early understanding of the science of climate change and the threats posed by climate change to human populations and global ecosystems, other publically available documents suggest that Exxon may have participated in later self-interested efforts to mislead the public, including investors and consumers, with respect to the impacts of climate change in order to defeat governmental policy measures designed to address the threat of climate change.<sup>5</sup>

Exxon’s shareholders are taking very seriously concerns about the nature and extent of Exxon’s disclosures regarding the impacts of climate change on Exxon’s business; just last week, on May 25, Exxon shareholders came close to passing resolutions that would have required Exxon to implement “stress tests” to ascertain more specifically the climate-driven risks to Exxon’s business.<sup>6</sup> As The Wall Street Journal reported, the proposals “drew more support than any contested climate-related votes” in Exxon’s history, and indicate that “more mainstream shareholders like pension funds, sovereign wealth funds, and asset managers are starting to take more seriously” the effects on Exxon of a “global weaning from fossil fuels.”<sup>7</sup>

<sup>1</sup> Shannon Hall, *Exxon Knew About Climate Change Almost 40 Years Ago: A new investigation shows the oil company understood the science before it became a public issue and spent millions to promote misinformation*, Scientific American, Oct. 26, 2015, available at <http://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/>

<sup>2</sup> Henry Shaw, *CO<sub>2</sub> Greenhouse and Climate Issues* (March 28, 1984), available at <http://insideclimatenews.org/sites/default/files/documents/Shaw%20Climate%20Presentation%20%281984%29.pdf>

<sup>3</sup> *Id.*

<sup>4</sup> Roger W. Cohen, Interoffice Memorandum to W. Glass (Aug. 18, 1981), available at <http://insideclimatenews.org/sites/default/files/documents/%2522Catastrophic%2522%20Effects%20Letter%20%281981%29.pdf>

<sup>5</sup> See, e.g., Draft Global Climate Science Communications Action Plan (est. 1998), available at <http://insideclimatenews.org/sites/default/files/documents/Global%20Climate%20Science%20Communications%20Plan%20%281998%29.pdf> (noting “[v]ictory will be achieved when . . . those promoting the Kyoto treaty on the basis of extant science appear to be out of touch with reality,” and “[u]nless ‘climate change’ becomes a non-issue, meaning that the Kyoto proposal is defeated and there are no further initiatives to thwart the threat of climate change, there may be no moment when we can declare victory for our efforts.”).

<sup>6</sup> Bradley Olson & Nicole Friedman, *Exxon, Chevron Shareholders Narrowly Reject Climate-Change Stress Tests*, The Wall Street Journal, May 25, 2016, available at <http://www.wsj.com/articles/exxon-chevron-shareholders-narrowly-reject-climate-change-stress-tests-1464206192>

<sup>7</sup> *Id.*

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As the Chairman and members of this Committee know, the First Amendment does not protect false and misleading statements in the marketplace. *See, e.g., United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1123-24 (D.C. Cir. 2009). Because Exxon appears to have made many statements to investors and consumers about the impact of fossil fuels on climate change which appear to contradict its own internal documents, the MA AGO is entitled to investigate what Exxon knew and said to others about these issues.

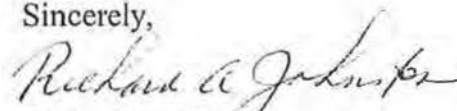
The Commonwealth has a sovereign interest in the protection of its investors and consumers. As the U.S. Supreme Court has explained, the “Constitution created a Federal Government of limited powers. ‘The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.’ U.S. Const., Amdt. 10. The States thus retain substantial sovereign authority under our constitutional system.” *Gregory v. Ashcroft*, 111 S. Ct. 2395, 2399 (1991). States, therefore, retain significant sovereign powers—“powers with which Congress does not readily interfere.” *Id.* at 2401.

Further, while Congress, through committees, has power to investigate in furtherance of its power to legislate, that power is limited: Congress’s power may not be used to investigate matters “unrelated to a valid legislative purpose,” *Quinn v. U.S.*, 75 S. Ct. 668, 672 (1955), and must be narrowly tailored to avoid transgressing constitutional federal-state boundaries. *Tobin v. U.S.*, 306 F.2d 270, 275 (D.C. Cir. 1962), *cert denied*, 371 U.S. 902 (1962). An investigation by a state attorney general, and any related prosecution of a state law enforcement action, is not related to a valid federal legislative purpose. *See New York v. U.S.* 505 U.S. 144, 162 (1992) (Constitution does not “confer upon Congress the ability to require the States to govern according to Congress’ instructions”). The Committee does not identify in its Letter any congressional authorization to undertake an investigation into the enforcement activities of this Office, and any such purported authorization would violate long-standing principles of federalism.

Moreover, most of the materials that the Committee has requested from the MA AGO, which include investigatory and deliberative process materials, attorney work product, and attorney-client and/or common interest privileged materials, would be protected from disclosure under established state and federal law.

For all of these reasons, the MA AGO respectfully declines to provide the requested materials.

Sincerely,



Richard A. Johnston  
Chief Legal Counsel



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](http://www.mass.gov/ago)

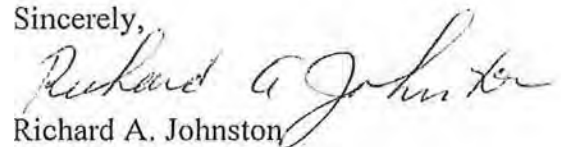
June 24, 2016

The Honorable Lamar Smith  
Chairman  
House Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Smith:

We have reviewed your letter of June 17, 2016, also signed by certain other members of the Committee. Your letter does not lead us to alter our conclusion that the Committee lacks authority to interfere with an investigation by the Massachusetts Attorney General's Office into possible violations of Massachusetts law by ExxonMobil Corporation, as set out in detail in our letter of June 2, 2016. Consequently, as indicated in our prior letter, we will not be providing the Committee with the documents requested in your letters to our office.

Sincerely,

  
Richard A. Johnston  
Chief Legal Counsel





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](http://www.mass.gov/ago)

July 13, 2016

The Honorable Lamar Smith  
Chairman  
House Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Smith:

I write in response to your July 6, 2016, letter ("July Letter"), which, like your letters of May 18 and June 17, seeks documents and information in connection with ongoing law enforcement and investigative activities of the Massachusetts Attorney General's Office ("MA AGO") regarding potential violations of Massachusetts law by ExxonMobil Corporation ("Exxon"). This letter supplements our responsive letters to you of June 2 and 24, principally to address new arguments raised in your July Letter.

As you know from our letter of June 2, the focus of MA AGO's investigation is to determine whether Exxon, in violation of Massachusetts law, misled consumers and/or investors by taking public positions regarding the impact of fossil fuel combustion on climate change and Exxon's business that contradict Exxon's own knowledge and understanding, including as documented by Exxon's own scientific research. For example, in 1981, Exxon understood that "[a]tmospheric CO<sub>2</sub> will double in 100 years if fossil fuels grow at 1.4%/a," and that such a doubling of CO<sub>2</sub> would result in a "3 [degree Celsius] global average temperature rise and 10 [degree Celsius] at poles" which would cause "major shifts in rainfall/agriculture" and melting of polar ice.<sup>1</sup> Despite Exxon's knowledge, and its recognition that there may need to be "an orderly transition to non-fossil fuel technologies,"<sup>2</sup> by 1998, Exxon's Randy Randol was nonetheless participating as a member of the "Global Climate Science Communications Team" that was engaged in a concerted effort to challenge the "scientific underpinning of the global climate change theory" in the media, and taking the position that "[i]n fact, it [sic] not known for sure

<sup>1</sup> Preliminary Statement on Exxon's Position on The Growth of Atmospheric Carbon Dioxide, from Henry Shaw to Dr. E. E. David, Jr., (May 15, 1981), *available at* <https://insideclimatenews.org/sites/default/files/documents/Exxon%20Position%20on%20CO2%20%281981%29.pdf>.

<sup>2</sup> *Id.*





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whether (a) climate change actually is occurring, or (b) if it is, whether humans really have any influence on it.”<sup>3</sup>

MA AGO is entitled to investigate what Exxon knew and communicated to others about these issues, since those facts are highly relevant to our prospective determination of whether Exxon violated Massachusetts law and misled consumers and/or investors. It appears, from documents such as the above-cited Draft Global Climate Science Communications Plan, that Exxon may have communicated with many entities to misrepresent facts about the impacts of climate change and climate-driven risks to its business; the fact that some of those entities may have conducted research or employed scientists does not diminish the relevance of Exxon’s communications to them, nor give this Committee authority to probe into or interfere with MA AGO’s investigation of potential violations by Exxon of Massachusetts law.

Neither the Rules of the House of Representatives<sup>4</sup> (“House Rules”), the Science, Space and Technology Committee’s own rules<sup>5</sup> (“Committee Rules”), nor the Committee’s Oversight Plan<sup>6</sup> (“Plan”) authorize the Committee to conduct an investigation of a sovereign state’s exercise of its law enforcement authority in connection with the state’s consumer and investor protection statute. House Rule X establishes standing committees. Standing committee jurisdiction concerns matters related to federal agencies, application of federal law, implementation of federally-funded programs, and tax and economic implications of federal policies. The standing committees have general oversight responsibilities to assist the House in its evaluation of the application of federal laws; “conditions and circumstances” that “may indicate the necessity or desirability of enacting new or additional legislation”; formulation of federal law; and whether federal programs are being carried out consistent with Congress’s intent. *See* House Rule X, Clause 2(a)-(b) (general oversight responsibilities).

Committee Rule VIII (Oversight and Investigations) provides that the Committee “shall review and study . . . the application . . . of those laws, . . . the subject matter of which is within its jurisdiction” including “all laws, programs, and Government activities relating to nonmilitary research and development” in accordance with House Rule X, and must prepare a plan of its oversight activities. *See* Committee Rule VIII (emphasis supplied); *see also* Plan at 1. In light of the capitalized term “Government” and in light of House Rule X, the term “those laws” in Committee Rule VIII refers to federal laws.

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<sup>3</sup> *See, e.g.*, Draft Global Climate Science Communications Action Plan (Apr. 3, 1998), *available at* <http://insideclimatenews.org/sites/default/files/documents/Global%20Climate%20Science%20Communications%20Plan%20%281998%29.pdf>. There are other publicly-available documents which further demonstrate this historical contradiction in positions taken by Exxon internally and externally. *See e.g.*, MA AGO Civil Investigative Demand 2016-EPD-36, issued Apr. 19, 2016, *available at* <http://www.mass.gov/ago/docs/energy-utilities/exxon/ma-exxon-cid-.pdf>

<sup>4</sup> Rules of the House of Representatives, 114<sup>th</sup> Cong. (Jan. 6, 2015), *available at* <http://clerk.house.gov/legislative/house-rules.pdf>

<sup>5</sup> Rules of the Science, Space, and Technology Committee, 114<sup>th</sup> Cong., *available at* [https://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/Committee%20on%20Science%20Space%20and%20Technology%20Rules%20114th%20Congress%20v2\\_0.pdf](https://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/Committee%20on%20Science%20Space%20and%20Technology%20Rules%20114th%20Congress%20v2_0.pdf)

<sup>6</sup> Science, Space, and Technology Committee Oversight Plan for 114<sup>th</sup> Congress, *available at* <https://science.house.gov/sites/republicans.science.house.gov/files/documents/SST%20Oversight%20Plan%20for%20the%20114th%20Congress.pdf>



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Similarly, the Plan prepared by the Committee focuses on oversight of federal agencies, with a key goal of eliminating “waste, fraud, and abuse.” No provision of the Plan discusses a need or plan to investigate any state activities, and no such investigation would aid the Committee in fulfilling its charge pursuant to House Rule X. While the Plan suggests that the Committee will engage in oversight efforts in connection with “scientific integrity,” it is limited to oversight of federal agencies. *See, e.g.*, Plan at 9 (the Committee will continue to “collect and examine allegations of intimidation of science specialists in federal agencies, suppression or revisions of scientific findings, and mischaracterizations of scientific findings because of political or other pressures”) and *id.*, (the Committee will develop and implement “scientific integrity principles within the Executive Branch.”) Read in the context of the overall Plan, it is obvious the Committee’s focus is on and limited to scientific findings made or funded by federal government agencies, not by private corporations, such as Exxon.

As we previously conveyed in our letter of June 2, Congress’s power may not be used to investigate matters “unrelated to a valid legislative purpose.” *Quinn v. U.S.*, 75 S. Ct. 668, 672 (1955). The MA AGO investigation is unrelated to a valid federal legislative purpose. *See New York v. U.S.* 505 U.S. 144, 162 (1992) (Constitution does not “confer upon Congress the ability to require the States to govern according to Congress’ instructions”) and therefore, may not be the subject of the exercise of Congress’s power.

None of the cases cited in your July Letter suggests a different result with respect to MA AGO’s right under Massachusetts law to investigate possible violations of a state statute protecting consumers and investors without Congressional interference. *In the Matter of the Special April 1977 Grand Jury* concerned a federal grand jury subpoena issued to a state attorney general concerning potential criminal law violations by him personally, and specifically did not involve an investigation “into the affairs of the State of Illinois.” 581 F.2d 589, 592 (7<sup>th</sup> Cir. 1978). *Freilich* concerned a claim that a federal statutory reporting requirement compelled states to implement a federal regulatory program and therefore amounted to unconstitutional “commandeering” under *Hodel v. Virginia Surface Mining & Reclamation Association*, 452 U.S. 264 (1981). *See Freilich v. Bd. of Directors of Upper Chesapeake Health, Inc.*, 142 F.Supp. 2d 679, 696-97 (D. Md. 2001) (citing *Hodel*, at 288). *Michigan Department of Community Health* involved a federal administrative subpoena issued by the Drug Enforcement Administration to a state agency where there was a clear nexus between the federal investigation and enforcement of a federal law. *See U.S. v. Mich. Dep’t of Cmty. Health*, No. 1:10-mc-109, 2011 U.S. Dist. LEXIS 59445 (W.D. Mich. June 3, 2011). Even there, the court denied the DEA’s petition to enforce its subpoena with respect to certain records in the state agency’s possession. *Id.* at \*41. Put simply, none of the cases which you have cited provides that a Congressional committee can force a state Attorney General to disclose the substance or results of an official investigation into possible violations of state law by a private company.

We note that on June 23, 2016, Ranking Committee Member Eddie Bernice Johnson wrote you that your requests for information about state AGO investigations into Exxon “are an illegitimate exercise of Congressional oversight power,” and she provided a detailed legal explanation as to why. In addition to the arguments which we have made and the authorities which we have cited in our responsive letters to you as grounds for our declination to provide documents about our investigation, we refer you again to Rep. Johnson’s letter attached hereto.

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Furthermore, as you know, Exxon has challenged, in Massachusetts state court and Texas federal district court, the civil investigative demand MA AGO served upon the company, and Exxon has not yet produced any documents to MA AGO. Thus the vast majority of existing documents sought by the Committee and in MA AGO's possession constitutes core attorney work product, attorney-client communications, deliberative process documents and other privileged materials that are protected from disclosure.

In response to your various letters, MA AGO continues respectfully to decline to provide the requested materials to the Committee. As we indicated in a call with your staff today, we are willing to confer by telephone with you or your staff, provided that Representative Eddie Bernice Johnson, Ranking Member of the Committee, and/or her staff, are invited and permitted to participate in any discussions between our offices.

Sincerely,

A handwritten signature in blue ink that reads "Richard A. Johnston". The signature is written in a cursive style with a large initial "R".

Richard A. Johnston  
Chief Legal Counsel

Cc: Honorable Eddie Bernice Johnson, Ranking Member, Science, Space and Technology Committee



LAMAR S. SMITH, Texas  
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas  
RANKING MEMBER

Congress of the United States  
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371  
[www.science.house.gov](http://www.science.house.gov)

June 23, 2016

The Honorable Lamar Smith  
Chairman  
Committee on Science, Space, and Technology  
2321 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Smith,

On May 18, 2016, you wrote to 17 state and territorial attorneys general and 8 non-governmental organizations (NGOs) demanding documents related to possible investigations into fossil fuel industry fraud regarding climate change.<sup>1</sup> On June 17, 2016, after receiving what were presumably unsatisfactory responses from these attorneys general and NGOs, you sent a second round of demands to these same groups. These demands are an illegitimate exercise of Congressional oversight power, and I urge you to immediately cease this abuse of authority.

In a Congress in which the Committee on Science, Space, and Technology's oversight powers have been repeatedly abused, this latest action stands apart. In addition to mischaracterizing innumerable facts, laws, and legal precedents surrounding this situation, the May 18 and June 17 letters have now led the Committee on Science, Space, and Technology to the precipice of a Constitutional crisis. 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.

The state and territorial attorneys general, representatives for the targeted NGOs, and 43 Democratic Members of Congress<sup>2</sup> have already written to you to patiently explain the

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<sup>1</sup> Attorneys General from: California, Connecticut, District of Columbia, Iowa, Illinois, Massachusetts, Maryland, Maine, Minnesota, New Mexico, New York, Oregon, Rhode Island, U.S. Virgin Islands, Virginia, Vermont, Washington. NGOs: 350.org, Climate Accountability Institute, The Climate Reality Project, Greenpeace, Pawa Law Group, P.C., The Rockefeller Brothers Fund, Rockefeller Family Fund, Union of Concerned Scientists. All Committee letters and responses are available at: <http://democrats.science.house.gov/letter/document-requests-sent-state-attorneys-general-and-environmental-groups>

<sup>2</sup> Letter from Hon. Donald S. Beyer Jr. to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. (June 2, 2016); Letter from Hon. Paul D. Tonko to Hon. Lamar Smith, Chairman, H. Comm. On

illegitimacy of your “investigation.” Since you have apparently rejected their responses, I will endeavor to highlight once more the factual and legal shortcomings of your demand letters.

### **The Majority’s Letters Mischaracterize State Attorney General Actions**

Both your May 18 and June 17 letters refer to a “coordinated attempt to attack First Amendment rights of American citizens and their ability to fund and conduct scientific research free from intimidation and threats of prosecution...”<sup>3</sup> In laying out your factual case, you state:

This sequence of events – from the 2012 workshop to develop strategies to enlist the help of attorneys general to secure documents, to the 2016 subpoenas issued by you and other members of the Green 20 – raises serious questions about the impartiality and independence of current investigations by the attorneys general. Your office – funded with taxpayer dollars – is using legal actions and investigative tactics taken in close coordination with certain special interest groups and trial attorneys may rise to the level of an abuse of prosecutorial discretion. Further, such actions call into question the integrity of your office.<sup>4</sup>

Ignoring for a moment the grossly inappropriate and unsubstantiated innuendo contained in these statements, I would like to highlight the factual deficiencies in your claims.

First of all, it is important to accurately report on the actions of the state and territorial attorneys general. As the New York Attorney General’s Office noted in their response to your May 18 letter, they are investigating “whether ExxonMobil Corporation violated New York’s securities, business and consumer fraud laws by making false or misleading statements to investors and consumers relating to climate change driven risks and their impact on Exxon’s business.”<sup>5</sup> In other words, these state attorneys general are investigating potential fraud under state law.

The Commonwealth of Massachusetts Office of the Attorney General laid out the factual basis for these fraud investigations in some detail in its June 2, 2016, response letter, stating:

Publicly available Exxon documents establish that at least by July 1977, Exxon’s own scientists informed Exxon management that the release of carbon dioxide from burning fossil fuels was causing global temperatures to increase, a situation that would, the scientists warned Exxon management, give rise to “the need for hard decisions regarding changes in energy strategies.” Publicly available Exxon

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Science, Space, & Tech. (June 10, 2016); Letter from Hon. Ted W. Lieu to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. (June 9, 2016).

<sup>3</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Hon. Eric Schneiderman, Attorney General, May 18, 2016, pg. 4.

<sup>4</sup> *Id.*

<sup>5</sup> Letter from Leslie B. Dubeck, Counsel, Office of the New York Attorney General to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., May 26, 2016, pg. 1.

documents also confirm that Exxon's scientists were, in the early 1980s, predicting significant increases in global temperature as a result of the combustion of fossil fuels, and that a 2 to 3 degree Celsius increase could lead to melting of polar ice, rising sea levels and "redistribution of rainfall," "accelerated growth of pests and weeds," "detrimental health effects," and "population migration." Exxon's scientists counseled Exxon management that it would be possible to "avoid the problem by sharply curtailing the use of fossil fuels." One Exxon scientist warned in no uncertain terms that it was "distinctly possible" that the effects of climate change over time will "indeed be catastrophic (at least for a substantial fraction of the earth's population)." Despite Exxon's early understanding of the science of climate change and the threats posed by climate change to human populations and global ecosystems, other publically available documents suggest that Exxon may have participated in later self-interested efforts to mislead the public, including investors and consumers, with respect to the impacts of climate change in order to defeat governmental policy measures designed to address the threat of climate change.<sup>6</sup>

These accusations were widely reported in the press in 2015.<sup>7</sup> Moreover, these accusations should have come as no surprise to you or your staff as they formed the same factual basis that compelled 20 scientists to write to the U.S. Attorney General to suggest that Racketeer Influenced and Corrupt Organizations Act (RICO) investigations might be warranted against fossil fuels companies that potentially knowingly defrauded the American public. You previously instigated an investigation against one of those scientists for exercising his constitutionally protected First Amendment right to petition the government.<sup>8</sup> This is the first of many instances where the irony of your current accusations becomes evident.

Multiple state attorneys general also pointed out the legal fallacy of your accusations of First Amendment violations. For instance, the Oregon Attorney General's Office pointed out that:

[y]our letter also incorrectly accuses this office of investigating entities based on their speech or beliefs concerning climate change. Please be advised this office

<sup>6</sup> Letter from Richard A. Johnston, Chief Legal Counsel, Commonwealth of Massachusetts Office of the Attorney General letter to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., June 2, 2016, pgs. 1-2 (citations omitted).

<sup>7</sup> See, e.g., Shannon Hall, *Exxon Knew About Climate Change Almost 40 Years Ago: A new investigation shows the oil company understood the science before it became a public issue and spent millions to promote misinformation*, Scientific American, Oct. 26, 2015, available at <http://www.scientificamerican.com/article/cxson-knew-about-climate-change-almost-40-years-ago/> And, Neela Banerjee, Lisa Song, and David Hasemyer, *Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago*, Inside Climate News, Sep. 16, 2015, available at <http://insideclimatenews.org/news/15092015/Exxons-own-research-confirmed-fossil-fuels-role-in-global-warming>

<sup>8</sup> Press Release, H. Comm. On Science, Space, and Tech., "Smith: Taxpayer-Funded Climate Org Allegedly Seeks Criminal Penalties for Skeptics," Oct. 1, 2015, available at <https://science.house.gov/news/press-releases/smith-taxpayer-funded-climate-org-allegedly-seeks-criminal-penalties-skeptics>

will not be dissuaded from considering whether state laws, including consumer protections laws, may provide redress against knowingly false commercial speech concerning global warming. The First Amendment simply does not protect fraudulent speech. *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003); *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (“This government power [to protect people against fraud] has always been recognized in this country and is firmly established.”).<sup>9</sup>

The notion that fraudulent speech is not protected by the U.S. Constitution would seem to be beyond dispute. Nonetheless, despite the state attorneys generals pointing very specifically to the factual and legal deficiencies of your accusations, your June 17, 2016, letters persist in leveling these baseless accusations against the attorneys general, stating:

This statement suggests that your office, as an arm of state government, will decide what science is valid and what science is invalid. In essence, you are saying that if your office disagrees with whether fossil fuel companies’ scientists were conducting and using the “best science,” the corporation could be held liable for fraud. Not only does the possibility exist that such action could have a chilling effect on scientists performing federally funded research, but it also could infringe on the civil rights of scientists who become targets of these inquiries. Your actions violate the scientists’ First Amendment rights. Congress has a duty to investigate your efforts to criminalize scientific dissent.<sup>10</sup>

Nothing in that assertion bears any relationship to the statements of the various state attorneys general. These state investigations have nothing to do with deciding “what science is valid and what science is invalid.” The investigations, as multiple attorneys general pointed out, are concerned with whether certain fossil fuel companies believed or knew one set of facts, and yet publically disseminated another in order to enrich themselves at others expense. These allegations constitute textbook fraud.<sup>11</sup>

These investigations have a well-known precedent. In the 1990s, various state attorneys general sued tobacco companies for the state-borne healthcare costs associated with tobacco use. One of the bases for the claims was that the tobacco industry engaged in a conspiracy to conceal and misrepresent “the addictive and harmful nature of tobacco/nicotine.”<sup>12</sup> These suits resulted in the Master Settlement Agreement in 1998, where the four largest tobacco companies settled all pending state claims related to the healthcare costs related to tobacco.<sup>13</sup> The Federal Government soon followed suit. In

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<sup>9</sup> Letter from Frederick M. Boss, Deputy Attorney General, Oregon Department of Justice letter to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., June 1, 2016, pg. 2.

<sup>10</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Hon. Eric Schneiderman, Attorney General, June 17, 2016, pg. 3.

<sup>11</sup> Black’s Law Dictionary defines fraud as: “A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.” Black’s Law Dictionary 670 (7<sup>th</sup> ed. 1999).

<sup>12</sup> Civil Action Complaint, Commonwealth of Pennsylvania, *Commonwealth of Pennsylvania v. Philip Morris, Inc.*, pg. 10, April 1997.

<sup>13</sup> Tobacco Control Legal Consortium, *The Master Settlement Agreement: An Overview*, available at <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-msa-overview-2015.pdf>



1999 the U.S. Department of Justice brought RICO Act actions against the largest tobacco companies.<sup>14</sup> The parallels of that case with the current state attorneys general investigations cannot be overstated. In *U.S. v. Philip Morris*, the government alleged that the tobacco industry internally knew of the health risks of their products for decades, yet engaged in a well-financed conspiracy to deceive the American public about the health effects of tobacco. This included financing scientific studies questioning the links between tobacco and health problems and the creation of front organizations to hide links to the tobacco financing. The U.S. government won the case, and the decision was upheld on appeal.<sup>15</sup>

I have repeatedly criticized your tendency to rely upon former tobacco industry-funded scientists, consultants, and public relations firms in past Committee investigations and hearings.<sup>16</sup> Given your past reliance on such “experts”, it’s perhaps unsurprising that you are now questioning these legitimate state attorneys general investigations of potential fraudulent actions against the American people.

### **The Majority’s Investigation of State Attorneys General is Unconstitutional**

A Congressional document demand to a state attorney general is exceptionally unusual. Such a demand from the Science Committee is unheard of.

State attorney generals are elected officials of sovereign state governments. They are not employees of the Federal Government, nor are they subject to federal oversight or control, including by the United States Congress.

You note in your June 17 letter that Congress’s oversight powers are well established and broad, citing such authorities as the “U.S. Constitution, Art. 1; *McGrain v. Daugherty*, 273 U.S. 135 (1927) (Congress was investigating the U.S. Dep’t of Justice’s handling of the Teapot Dome scandal); *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491 (1975)(U.S. Senate committee investigating the activities of U.S. Servicemen’s Fund and their effect on the morale of members of the Armed Services.)”<sup>17</sup> The existence of Congress’s oversight powers goes without saying, and is a well-established principle of law. You go on to make an important point about the source of Congressional oversight power, stating:

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<sup>14</sup> U.S. Department of Justice, *Litigation Against Tobacco Companies Home*, <https://www.justice.gov/civil/case-4>

<sup>15</sup> *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095 (D.C. Cir. 2009).

<sup>16</sup> See, e.g., Letter from Hon. Eddie Bernice Johnson, Ranking Member, to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., August 6, 2013, available at

<http://democrats.science.house.gov/sites/democrats.science.house.gov/files/Letter.pdf>

And, *Ensuring Open Science at EPA: Hearing Before the Subcomm. On the Environment of the H. Comm. On Science, Space, & Tech.*, 113<sup>th</sup> Cong. 16-17 (2014) (statement of Hon. Eddie Bernice Johnson, Ranking Member).

<sup>17</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Hon. Eric Schneiderman, Attorney General, June 17, 2016, pg. 1 (note).

Hand in hand with Congress' legislative power is its power to investigate. Indeed, in 1975, when commenting on Congress' investigative power, the Supreme Court stated that the "scope of its power of inquiry... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."<sup>18</sup>

This analysis is particularly relevant to the "investigation" at hand. Congress's broad oversight powers are directly tied to our power to legislate. Thus, by the authority you have relied upon in your own letters, Congress has no legal oversight authority over issues or actions that fall outside Congress's legislative authority.

As nearly every state attorney general who responded to your May 18 letters indicated, state government law enforcement officials acting in their official capacities are not within Congress' legislative control. For instance, in its May 27, 2016, response to your demand letter, the California Attorney General's Office noted:

[w]e do not believe it is within the jurisdiction of Congress to demand documents from a state law enforcement official such as the California Attorney General. Although Congress' investigative jurisdiction is broad, that is because it tracks Congress' power to legislate and appropriate concerning federal matters. But the power to investigate does not extend beyond those matters. (See, e.g. *Barenblatt v. U.S.* (1959) 360 U.S. 109, 111 ["Congress may only investigate into those areas in which it may potentially legislate or appropriate"].) Investigations and prosecutions of state law enforcement actions by state attorneys general are not federal matters. To the contrary, under the Constitution and laws of the United States, such activities partake of police powers reserved to the states, and are not subject to federal interference. (See, e.g., *New York v. U.S.* (1992) 505 U.S. 144, 162 ["the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions"].)<sup>19</sup>

As a reminder, the Tenth Amendment to the U.S. Constitution reads as follows:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.<sup>20</sup>

Implicit in the powers reserved to the states under the Tenth Amendment are state police powers. In case after case, the courts have struck down Congressional attempts to regulate state government activities, including exercise of their police powers.<sup>21</sup> It is clear that Congress has no legislative authority to dictate the actions of state attorneys general.

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<sup>18</sup> *Id.* at 1, citing *Eastland v. United States Servicemen's Fund*, 431 U.S. 491, 504 n. 15 (1975) (quoting *Barenblatt v. United States* 360 U.S. 109, 111 (1959)).

<sup>19</sup> Letter from Martin Goyette, Senior Assistant Attorney General, State of California Department of Justice letter to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., May 27, 2016, pg. 2.

<sup>20</sup> U.S. Const. amend. X.

<sup>21</sup> See, e.g., *United States v. Lopez*, 514 U.S. 549 (1995) (striking down a gun-free school zone provision); *United States v. Morrison*, 529 U.S. 598 (2000) (invalidating a provision of the Violence Against Women Act); and, *United States v. Constantine*, 296 U.S. 287 (1935) (invalidating an excise tax imposed on violators of local law).



Even if Congress did have some inroad into regulation of state police powers, such a legislative authority would not rest with the Committee on Science, Space, and Technology. Our oversight jurisdiction (which is broader than our actual legislative jurisdiction) encompasses “laws, programs, and Government activities relating to nonmilitary research and development.”<sup>22</sup> Note that the capitalization of the word “Government” gives the word the meaning “Federal Government.” Nowhere in our jurisdiction - legislative or oversight - can one find justification for our Committee’s oversight of state police powers. The elected officials that serve as state attorney generals are answerable to their respective constituents and the courts, but not to the U.S. Congress. As my colleagues from Virginia, the District of Columbia, and Maryland pointed out:

States’ rights long being a central pillar of conservative philosophy, the Letter’s effort to meddle directly in the self-governance and prosecutorial discretion of 17 U.S. state and territories is not lacking for irony.<sup>23</sup>

### **The Majority’s Investigation of NGOs’ Exercise of Free Speech is Unconstitutional**

The First Amendment to the U.S. Constitution reads, in whole:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.<sup>24</sup>

While the First Amendment prohibits government interference with the free speech rights of individuals, that prohibition is not absolute. One relevant example is that fraudulent speech is not protected by the First Amendment.<sup>25</sup> Moreover, the First amendment does not provide an absolute shield against legitimate Congressional oversight. In that regard, you state in your June 17 letter to the various NGOs:

In *Barenblatt v. United States*, the Supreme Court stated “where the First Amendment rights are asserted to bar government interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.” Moreover, when balancing the interests of the parties in *Watkins v. United States*, the Court held “the critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosure from an unwilling witness.” These cases are important precisely because they provide examples of congressional investigations – sustained by the Supreme Court – involving

<sup>22</sup> House Rule X(3)(k).

<sup>23</sup> Letter from Hon. Donald S. Beyer Jr., to Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech., June 2, 2016, pg. 2.

<sup>24</sup> U.S. Const. amend. I.

<sup>25</sup> See, *Illinois v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003).

organizations similar to yours. The parties being investigated in the cases noted above are no different than the recipients of the Science Committee's May 18 letter.<sup>26</sup>

Since this is the only real legal authority you cite as justification for investigating Americans' constitutionally protected speech, I think it is worth scrutinizing.

First, I would like to point out the context of these cases. Both of these cases involved the notorious House Un-American Activities Committee (HUAC), and investigations that committee conducted into the private lives of American citizens. If ever there was an example of a "witch hunt" in the history of the United States Congress, the HUAC investigations best fit the bill. For that reason, it is more than a little disconcerting that you think those cases' fact patterns so closely resemble your own investigation.

I would also like to point to an error in your statement. You state that both of these cases are important because "they provide examples of congressional investigations – sustained by the Supreme Court – involving organizations similar to yours."<sup>27</sup> This statement is false. In *Watkins v. United States*, the Supreme Court overturned a conviction under 2 U.S.C. 192 against an individual who refused to provide certain testimony to HUAC.<sup>28</sup> The *Watkins* Court held that the conviction was invalid under the Due Process Clause of the Fifth Amendment.

Rather than supporting the legal grounds of your investigation, the *Watkins* decision is actually an indictment against it. The *Watkins* court noted that:

The Court recognized the restraints of the Bill of Rights upon congressional investigations in *United States v. Rumely*, 345 U.S. 41... It was concluded that, when First Amendment rights are threatened, the delegation of power to the committee must be clearly revealed in its charter.<sup>29</sup>

The *Watkins* Court went on to state:

*Kilbourn v. Thompson* teaches that such an investigation into individual affairs is invalid if unrelated to any legislative purpose. That is beyond the powers conferred upon the Congress in the Constitution. *United States v. Rumely* makes it plain that the mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights.<sup>30</sup>

As I noted earlier, it is clear that our Committee doesn't even have a semblance of a legislative purpose that would justify this investigation. It is inconceivable that our

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<sup>26</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Richard Heede, Climate Accountability Institute, June 17, 2016, pg. 4 (citations omitted).

<sup>27</sup> *Id.* emphasis added.

<sup>28</sup> *Watkins v. United States*, 354 U.S. 178 (1957).

<sup>29</sup> *Id.* at 198.

<sup>30</sup> *Id.*

Committee, based on our House Rule X jurisdiction, could legislate on any topic related to state law enforcement, private speech, private citizens exercising their First Amendment right to petition their government, or fraud. In fact, the only plausible legislative action that Congress as a whole could take in this instance would be in altering Federal fraud and RICO Act statutes to inappropriately help big oil avoid potential liability. However, even in that instance, such a bill would not come anywhere near the jurisdiction of the Committee on Science, Space, and Technology.

Your June 17 letter claims legislative jurisdiction over this “investigation” because we oversee \$31.8 billion in annual federal government research expenditures. Somehow you link the Committee’s specific jurisdiction to fund federal scientific research to being the science police for the United States. Even if we had such expansive jurisdiction (and we do not), it would still fall far short of having jurisdiction over state police powers or fraud laws, which are the true subject matters of this “investigation.” Thus, based on the legal authorities you yourself have cited, this “investigation” violates the Constitution.

### **This “Investigation” is Illegitimate**

In the foregoing, I have pointed out the many factual and legal shortcomings and mischaracterizations contained in your May 18 and June 17 letters. Sadly, despite having these shortcomings previously noted to you, this misguided effort is continuing. In reality, this overreach is simply the culmination of three years of “oversight” run amuck. When you assumed the Chairmanship of this Committee, Members were promised an ambitious and bipartisan legislative agenda. That did not materialize. What has taken its place is a series of increasingly disturbing “fishing expeditions” masquerading as oversight.

I noted your May and June letters contain a great deal of unintentional irony. I’ll note one more example. In your June 17 letter, as a justification for your current investigation you say:

[C]ongress has a responsibility to investigate whether such investigations are having a chilling effect on the free flow of scientific inquiry and debate regarding climate change.<sup>31</sup>

Here, you could just as well be referring to your own misguided investigation into eminent NOAA climate scientists last year. In that “investigation” you actually subpoenaed NOAA Administrator, former astronaut, and authentic American hero Dr. Kathy Sullivan in an attempt to obtain the email communications of world renowned NOAA climate scientists.<sup>32</sup> What was the purpose of this investigation? It was simply a fishing expedition against scientists who reached a scientific conclusion with which you

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<sup>31</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. On Science, Space, & Tech. to Richard Heede, Climate Accountability Institute, June 17, 2016, pg. 3.

<sup>32</sup> Committee on Science, Space, and Technology Subpoena Duces Tecum issued by Hon. Lamar Smith, Chairman, to Hon. Kathryn Sullivan, 114<sup>th</sup> Cong., October 13, 2015.

personally disagreed. In the end, your investigation, like so many recent Science Committee investigations, found nothing.

I have served on the Committee on Science for more than two decades, and during that time this Committee has accomplished great things. We've overseen the completion of the International Space Station and the sequencing of the human genome, and we've undertaken serious investigations, ranging from the Space Shuttle Challenger accident to the environmental crimes at the Rocky Flats nuclear site. However, lately the Committee on Science has seemed more like a Committee on Harassment. The Committee's prolific, aimless, and jurisdictionally questionable oversight activities have grown increasingly mean-spirited and meaningless. They frequently appear to be designed primarily to generate press releases. However, none of these recent investigations has rushed head long into a serious Constitutional crisis like we are about to face. We are moving into dangerous and uncharted territory.

At the beginning of this Congress I swore an oath to uphold the Constitution. I take that oath seriously. As evidenced by the letters you have received from Democratic Members from New York, California, Virginia, Maryland, and the District of Columbia, the Democratic Members of the Committee also take this oath seriously. We will not sit idly by while the powers of the Committee are used to trample on the Bill of Rights of the U.S. Constitution. I implore you to cease your current actions before they do lasting institutional damage to the Committee on Science, Space, and Technology and the Congress as a whole.

Thank you for your attention to this matter.

Sincerely,



EDDIE BERNICE JOHNSON  
Ranking Member  
Committee on Science, Space, and Technology

Cc: Members of the Committee on Science, Space, and Technology

California, Connecticut, District of Columbia, Iowa, Illinois, Massachusetts, Maryland, Maine, Minnesota, New Mexico, New York, Oregon, Rhode Island, U.S. Virgin Islands, Virginia, Vermont, Washington Attorneys General and 350.org, Climate Accountability Institute, The Climate Reality Project, Greenpeace, Pawa Law Group, P.C., The Rockefeller Brothers Fund, Rockefeller Family Fund, Union of Concerned Scientists

# Exhibit 00

**NO. 017-284890-16**

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

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

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

**I. Background.**

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



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

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

## **II. Standard for Intervention.**

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

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

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

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

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

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

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

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

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

#### **IV. Conclusion and Prayer for Relief.**

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

Respectfully submitted,

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

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

Patrick J. Conlon  
patrick.j.conlon@exxonmobil.com  
Daniel E. Bolia  
daniel.e.bolia@exxonmobil.com  
1301 Fannin Street  
Houston, TX 77002

Theodore V. Wells, Jr.  
twells@paulweiss.com  
Michele Hirshman  
mhirshman@paulweiss.com  
Daniel J. Toal  
dtoal@paulweiss.com  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064

Justin Anderson  
janderson@paulweiss.com  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON, LLP  
2001 K Street, NW  
Washington, D.C. 20006-1047

Ralph H. Duggins  
rduggins@canteyhanger.com  
Philip A. Vickers  
pvickers@canteyhanger.com  
Alix D. Allison  
aallison@canteyhanger.com  
CANTEY HANGER LLP  
600 W. 6th St. #300  
Fort Worth, TX 76102

Nina Cortell  
nina.cortell@haynesboone.com  
HAYNES & BOONE, LLP  
301 Commerce Street  
Suite 2600  
Fort Worth, TX 76102

*Counsel for Exxon Mobil Corporation*

Cohen Milstein Sellers & Toll PLLC  
lsinger@cohenmilstein.com  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, D.C. 20005

Linda Singer, Esq.  
lsinger@cohenmilstein.com  
Cohen Milstein Sellers & Toll PLLC  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, D.C. 20005

Claude Earl Walker, Esq.  
claude.walker@doj.vi.gov  
Attorney General  
3438 Kronprindsens Gade  
GERS Complex, 2nd Floor  
St. Thomas, U.S. Virgin Islands 00802

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



# **Exhibit PP**

AN ENERGY POLICY ESSAY

# Revenue-Neutral Carbon Taxes in the Real World

## *Insights from British Columbia and Australia*

by Jeremy Carl and David Fedor

Shultz-Stephenson Task Force on Energy Policy  
[www.hoover.org/taskforces/energy-policy](http://www.hoover.org/taskforces/energy-policy)

### Introduction

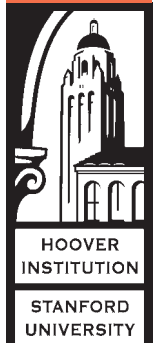
While the scientific and economic implications of climate change remain highly contested, the idea of a net revenue-neutral tax on carbon dioxide emissions has been proposed by a number of economists from across the ideological spectrum as one possible way to help level the playing field among different sources of energy by accounting for the potential externalities of carbon emissions. At the same time other economists have criticized carbon pricing, both from the right and the left, as either a utopian scheme inappropriate to address a global problem or as a band-aid that will not fundamentally limit carbon emissions. In a revenue-neutral carbon tax regime, all revenues generated from taxes on carbon emissions would be directly returned to the taxed economy through an equivalent reduction in other existing taxes or through direct payments to taxpayers. Depending on the particular structure utilized, these may be referred to as a “revenue-neutral carbon tax” or a “carbon tax shift/swap” or a “carbon fee and dividend”.

What the arguments for such a policy structure, both pro and con, have often lacked is detailed analysis of the performance and design of revenue-neutral carbon taxes in the real world. This paper attempts to address that gap. It examines the revenue-recycling carbon pricing mechanisms already enacted in British Columbia and Australia in order to assess their approach and efficacy.

### ***Modern Carbon Tax Forays: British Columbia and Australia***

The Canadian Province of British Columbia was an early adopter of a revenue-neutral carbon tax that directly recycles 100% of the revenue it generates. British Columbia now has four years of experience on carbon tax implementation and revenue distribution. Australia, after years of discussion with stakeholders from across the

task force on energy policy



economy, has now designed and implemented a partially-revenue-recycling carbon tax from July 2012. Though both regions adopted broad-based taxes on greenhouse gas (GHG) emissions, they have chosen different design and implementation strategies that reflect their respective existing political, economic, and energy use characteristics.

Taken together, the British Columbian and Australian choices help to illustrate the spectrum of options, dynamics, and pitfalls that can be anticipated by other regions such as the United States that have not yet decided whether or how to value the potential negative externalities of GHG emissions. Key issues include where to apply or exempt a carbon tax within an economy, how to distribute carbon tax revenues, the relationship between carbon and other taxes, and the robustness of the carbon tax to stakeholder petitioning during design or implementation. To this last point, British Columbia presents the very rare case of a straightforward and relatively transparent revenue-neutral carbon tax that has so far managed to avoid major dilution from impacted stakeholders. Australia's proposal, on the other hand, reflects the political challenges of effectively enacting such a tax on carbon-intensive economy while upholding free-market principles. Following these investigations, we offer the case of the United States and consider at a high level how experiences abroad may or may not be relevant given the unique conditions here.

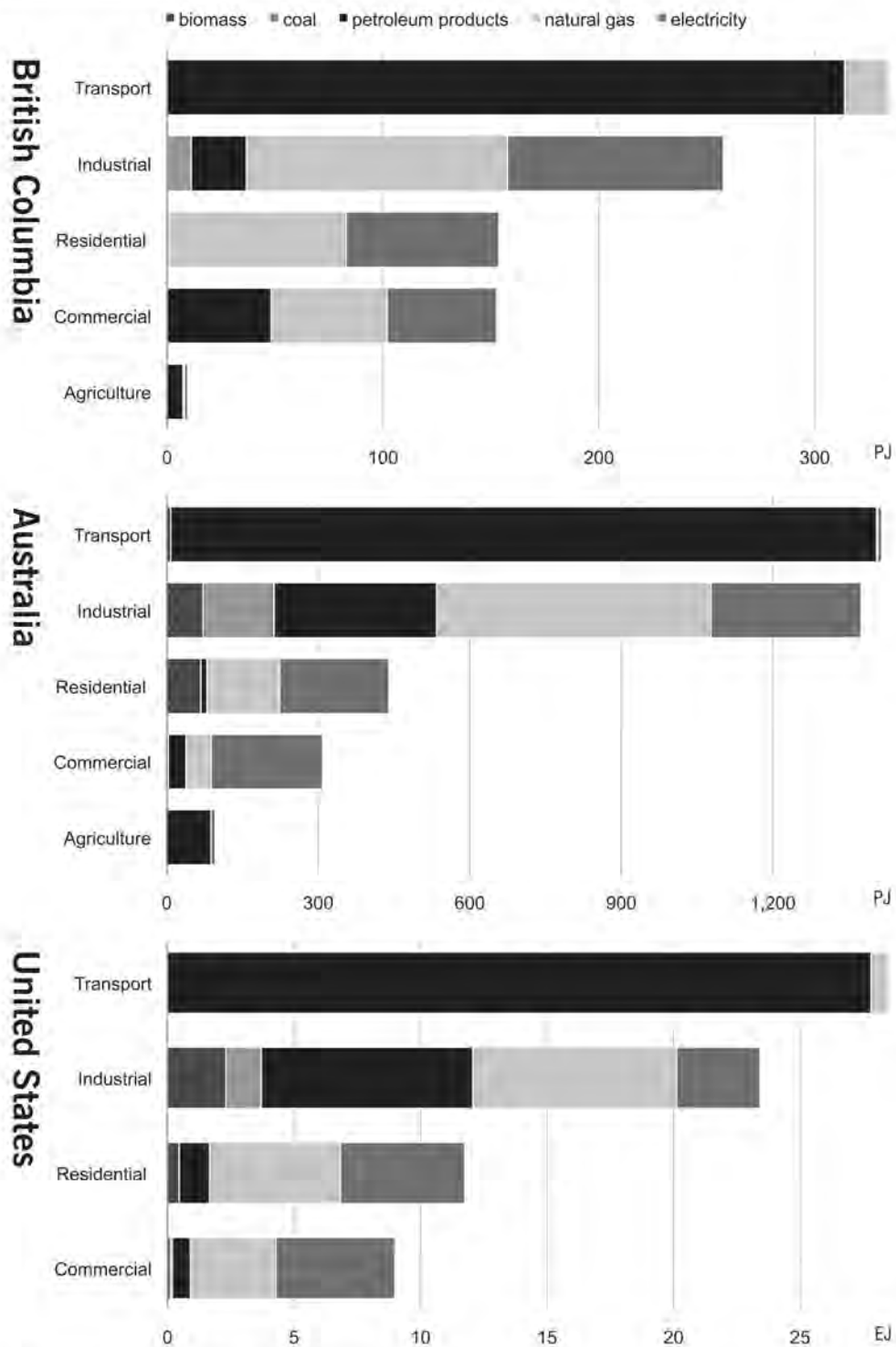
British Columbia presents the very rare case of a straightforward and relatively transparent revenue-neutral carbon tax that has so far managed to avoid major dilution from impacted stakeholders.

## REGIONAL ECONOMIC, ENERGY, AND GHG EMISSION CHARACTERISTICS

	British Columbia	Australia	United States	
<b>General</b>				
GPD per Capita	37,200	44,600	46,000	exchange rate, y2009 USD per person
Primary Energy Use per Capita	0.20	0.28	0.33	TJ per person
Carbon Dioxide Emissions per Capita	11.3	18.8	17.7	metric tons per person
Carbon Intensity of Final Energy	56.4	108.1	74.7	metric tons per TJ
Carbon Intensity of Economy	0.305	0.406	0.384	metric tons per 1000 y2009 USD
Average Residential Electricity Price	0.09	0.20	0.12	y2010 USD per kWh, not including carbon price
Average Residential Natural Gas Price	12.50	20.10	11.80	y2010 USD per mmbTU, not including carbon price
Average Retail Price of Mid-Grade Gasoline	3.60	3.67	2.40	y2009 USD per gallon, including taxes but not carbon price
Passenger Vehicle Travel Demand	5,070	4,620	9,540	passenger-vehicle-miles per person, data for 2007
<b>GHG emission inventory</b>				
Electricity and Heat Generation	2%	38%	33%	
Transport	39%	15%	26%	
Manufacturing, Construction, Other Industrial	13%	8%	14%	direct energy use only
Residential, Commercial, Agricultural	12%	4%	9%	direct energy use only
Fossil Fuel Production and Refining	11%	4%	3%	US figure estimated
Non-Energy Emissions	15%	26%	13%	
Fugitive Emissions	9%	7%	6%	
<b>Electricity supply mix</b>				
Coal	0%	75%	44%	
Natural Gas	4%	15%	25%	
Oil + other	4%	2%	1%	
Nuclear	0%	0%	20%	
Hydro + Other Primary Renewable	90%	8%	11%	

**Source:** Data for 2009, compiled by the authors from national statistics and energy information bureaus; GHG data are from national inventory reports to the UNFCCC.

**SECTORAL FINAL ENERGY USE (2009)**



Source: charts by the authors with data compiled from: Statistics Canada (2011) Report on Energy Supply and Demand in Canada, 2009 Preliminary, Catalogue #57-003-X; ABARE (2011) Energy Update 2011, Australian Government; US EIA (2010) Annual Energy Review 2009, US Department of Energy.

## BRITISH COLUMBIA

### Policy Design

British Columbia's carbon tax policy, originally put forward by the center-right Liberal Party of Canada, was implemented in 2008 amid broader provincial tax reforms and continues to this day. The tax, which began at CAD \$10 per metric ton carbon dioxide and has since risen to CAD \$30, is implemented through a fuel-specific volumetric tax applied the first point of entry or sale and is allowed to filter broadly through the economy. Carbon tax revenues offset existing provincial personal and corporate taxes and now represent about 4% of the total government budget. The tax's relatively simple structure allows very few exemptions or protected entities, and provincial economic growth has so far exceeded the Canadian average over the tax's implementation period. Public and political acceptance for the measure is generally good amid British Columbia's electorate; after five years of experience, however, some tensions have formed over the tax's future form and direction. Though the policy's impact has not been comprehensively modeled, a June 2012 report by the British Columbia government indicates that provincial carbon emissions and fuel use fell relative to historical and broader Canadian trends over the policy's early years.

The tax's relatively simple structure allows very few exemptions or protected entities, and provincial economic growth has so far exceeded the Canadian average over the tax's implementation period.

In originally introducing this so-called "carbon tax shift", the British Columbia Ministry of Finance laid out five broad implementation principles:

**1. "All carbon tax revenue is recycled through tax reductions"**

The policy includes a legal requirement to demonstrate how all of the carbon tax revenue is returned to provincial taxpayers. The primary mechanisms for this are broad reductions in personal and corporate income tax rates supplemented by direct annual payments to low-income households. A cautious approach toward returning carbon tax revenue has meant that the carbon tax has in fact been revenue-negative in each year for the British Columbia government; income tax reductions are set in advance of tallying annual carbon tax receipts and are calibrated based upon economic forecasts, which creates some uncertainty in the final net revenue level.<sup>1</sup> Nominal net tax refund in the first four years of the program exceed CAD \$500 million (an equivalent, on a population basis, of a USD \$35 billion refund on a nationwide carbon tax in the United States).

Specific historic carbon tax revenue receipts and recycling tax measures are described in the table below. Note the gradual growth in gross carbon tax revenue over time and



the shares of tax benefits and dividends distributed through various mechanisms to business and individuals; total business tax benefits have generally exceeded those for individuals. This has recently become a point of public discontent as some now feel that provincial businesses got too good of a “deal” with the carbon tax’s corporate tax breaks. The table also indicates how tax benefits were gradually ramped up alongside the increasing carbon tax, “rewarding” British Columbians in stages as policy implementation progressed:

	FY 2008/9 @ \$10/ton	2009/10 \$15/ton	2010/11 \$20/ton	2011/12* \$25/ton
<b>Gross Carbon Tax Revenue (million CAD)</b>	<b>\$306</b>	<b>\$542</b>	<b>\$741</b>	<b>\$960</b>
<b>Individual benefits</b>				
Low income climate action tax credit	-106	-153	-165	-188
Reduction of 2% in the first two personal income tax bracket rates				
Reduction of 5% effective Jan 2009	-107	-206	-207	-218
Northern and rural homeowner payment of CAD \$200			-19	-75
<i>Individuals' share of carbon revenue</i>	<i>70%</i>	<i>66%</i>	<i>53%</i>	<i>50%</i>
<b>Business benefits</b>				
General corporate income tax rate cut from 12% to 11%				
To 10.5% effect Jan 1 2010				
To 10% effective Jan 1 2011	-65	-152	-271	-381
Small business corporate tax rate cut from 4.5% to 3.5%				
To 2.5% effective December 2008	-35	-164	-144	-220
Industrial property tax credits		-54	-58	-68
Farm property tax credits			-1	-2
<i>Business' share of carbon revenue</i>	<i>33%</i>	<i>68%</i>	<i>64%</i>	<i>70%</i>
<b>Net Government Carbon Tax Revenue</b>	<b>-\$7</b>	<b>-\$187</b>	<b>-\$124</b>	<b>-\$192</b>

**Source:** Table by authors, data compiled from yearly BC MOF budget and fiscal plans, with updates.

\* Revised forecast from 2012 budget, subject to updates

## 2. “The tax rate started low and increased gradually”

The implementation of the carbon tax was staged over five years with the tax rising from CAD \$10 to CAD \$30 to allow time for British Columbians to adjust their energy use and to provide rate certainty. At its current CAD \$30 rate, the tax is about CAD 25 cents per gallon of gasoline or CAD \$1.58 per mmBTU natural gas.<sup>2</sup> As noted in the revenue chart above, tax revenue-recycling measures were also scheduled to increase alongside expected rising revenues from the carbon tax from 2008 to 2012, though the distribution of these recycling measures across different recipients changed with time. In 2010, average carbon tax payments were about CAD \$200 per household, with a range of CAD \$113 per household in the lowest-income 10% rising to CAD \$300 in the top 10%, and CAD \$617 in the top 1% of households.<sup>3</sup>

### **3. “Low-income individuals and families are protected”**

Because direct energy costs make up a larger proportion of total income and spending for lower-income households, the British Columbia carbon tax policy aimed to use carbon tax revenues to compensate this population for what was otherwise considered to be a regressive tax burden with the intent that most low-income households would actually be better off under the carbon tax policy. As of July 2011, low-income households received a tax benefit of approximately CAD \$115.50 per year for adults and CAD \$34.50 for children, phased out above annual incomes of CAD \$30,000 for individuals or \$35,000 for families. This tax benefit is figured based upon previous year tax returns, and it piggy-backs on the existing Canadian federal general sales tax (GST) credit.

Other *ad hoc* compensation as part of the carbon tax policy included the introduction of a “northern and rural homeowner benefit” of CAD \$200 per year to compensate these British Columbia residents who face higher annual home heating costs and a one-time initial direct “Climate Action Dividend” payment of CAD \$100 to all British Columbia residents at the outset of the carbon tax policy’s implementation (which was actually paid for by the previous year’s general government surplus rather than carbon tax revenues).

### **4. “The tax has the broadest possible base”**

The British Columbia carbon tax targets carbon dioxide, methane, and nitrous oxide that is created and emitted through the combustion of hydrocarbon fuels in all sectors of the economy. While not exhaustive, this gives the tax a relatively broad base, estimated to be approximately 70–75% of total provincial anthropogenic GHG emissions.<sup>4</sup> Emissions from biofuels, fuel sold to First Nations (Canadian indigenous) populations, fuel sold for international marine and air travel, non-energy sources (such as waste, agriculture, or industrial chemical reactions), and fugitive emissions are exempted. A fuel-specific tax, published by the government in the fuel’s natural units, is applied at the wholesale level for fuel that is to be sold and combusted within the province and is administered similarly to conventional motor fuel taxes.<sup>5</sup> Businesses and individuals therefore both pay direct carbon taxes on fuel purchased for combustion within the province and are impacted by increased costs for intra-province embedded emissions in goods and services. Emissions which are “embedded” into a non-energy good or service produced outside of the province and imported to be sold within are not estimated or taxed, and non-energy goods or services produced inside the province for export are not refunded for the carbon tax paid to produce them. That is, in the interest of policy simplicity, there is little attempt to enact “border tax adjustments” for non-energy embedded emissions.<sup>6</sup>

### **5. “The tax will be integrated with other measures”**

According to the British Columbia government, its carbon tax policy was created to help achieve previously established provincial GHG emission mitigation and climate change targets of 33% below 2007 levels by 2020 and an 80% reduction by 2050. At the

time of its introduction, however, it was noted that even at its highest scheduled level of CAD \$30 per ton carbon dioxide-equivalent, the carbon tax alone would not be sufficient to meet these goals. It was therefore accompanied by a package of other targeted emission-mitigation policies and strategies, including a stated intent to join the proposed “Western Climate Initiative” cap-and-trade program with several Canadian provinces and western U.S. states at some future point.<sup>7</sup>

### **Region-specific Considerations**

There are several different considerations that are unique to the British Columbia situation that are worth examining as context for its policy choices.

#### ***Extremely low-carbon electricity supply***

Most importantly, 90% of British Columbia’s electricity supply is generated from hydropower or other primary renewable resources that emit very little GHGs, and an even higher percentage of utility electricity distributed to individual consumers is carbon-free. This means that the British Columbia carbon tax policy essentially does not affect provincial electricity prices; most of its impact for individual households is on the price of gasoline used in private vehicles and natural gas used in home heating, and industrial or commercial electricity use is similarly unaffected in price. This variance is highly salient when attempting to extrapolate the viability of a British Columbia-style system to other regions.<sup>8</sup>

Moreover, on the supply side, this existing low-carbon electricity system meant that British Columbia was able to largely avoid having a concentrated carbon tax burden fall on fossil fuel-fired thermal power generators. This removed a key stumbling block that would be a policy design or political challenge elsewhere.<sup>9</sup>

#### ***Economic structure***

British Columbia has been able to recycle carbon tax revenue to the business sector through a straight reduction in general corporate or small business income taxes. Since the 2009/10 carbon tax year, revenue recycling measures to the business sector have exceeded 50% of total revenue distributions, and in the 2011/2012 year business recycling measures were estimated to be 58% of total allocations, equal to nearly 70% of total collected carbon tax revenue.<sup>10</sup> Combined with a relatively non-concentrated GHG emission business profile, as described above, business acceptance of the carbon tax policy (coupled with business tax breaks) has seemed good—too good, perhaps, as corporate tax breaks have now come under popular fire as having been too generous. Exceptions are GHG-intensive export-oriented businesses, which must compete with out-of-province producers not facing British Columbia’s carbon tax. In British Columbia, such industries include cement production and greenhouse growers. For the first time, in 2012, the British Columbia Ministry of Finance announced a one-time targeted relief grant of CAD \$7.6 million to provincial greenhouse growers.<sup>11</sup>

***Broader ongoing tax reforms***

It is important to note that discussion around and implementation of the British Columbia carbon tax policy, attention-worthy on its own, was contemporaneous with broader dramatic tax reform within the province. In fact, considering the context, it seems unlikely that British Columbia could have accomplished its carbon pricing absent a larger tax reform that took political heat away from the carbon issue.<sup>12</sup>

In particular, British Columbia in the later part of the decade was party to Canadian efforts at the federal level to adjust disparate provincial sales tax systems into a more unified and consistent “harmonized sales tax” (HST) whereby taxes on goods and services at the provincial level would follow similar conventions to the existing federal “general sales tax” (GST) system. The aim of this was to simplify the tax code and reduce the compliance and bureaucratic costs of maintaining parallel systems, but it meant that tax burdens within a province would shift from the *status quo* across products and consumers. For our discussion, this is important because it meant that the carbon tax, though novel, was just one of many tax changes that British Columbians had to consider or be impacted by since 2008.<sup>13</sup> The HST caused substantial rifts in the ruling coalition which in many ways overshadowed the carbon tax’s impact.

Post the carbon tax, British Columbia has the lowest income tax for those making under CAD \$120,000, corporate taxes that are the lowest in the G7, and small-business taxes that are the lowest in Canada.

***Compared to existing motor fuel taxes***

It is useful to consider British Columbia’s total tax burden on gasoline and diesel in relation to the carbon tax, as motor fuel is a major incidence of the carbon tax burden and also is subject to numerous other revenue-raising taxes.<sup>14</sup> Given British Columbia’s nearly carbon-free electricity system, motor fuels are the most salient manifestation of the carbon tax for individuals, yet even here the carbon tax’s incidence is small compared to other motor fuel excise taxes and the short-term volatility in the underlying oil product price itself.

Apart from the provincial carbon tax, British Columbia motor fuels are subject to Canadian federal excise (motor fuel tax), a British Columbia Transportation Financing Authority tax, mass transit-funding taxes that vary by region within the province, and the Canadian GST. Taken together, this means that the provincial carbon tax level of CAD 8.5–25.2 cents per gallon over the 2008–2012 period has so far represented between just 6.1–12.1% of total gasoline taxes, or between 2.0–3.9% of the total price per gallon of gasoline in Vancouver.<sup>15</sup> This is a relatively small share of the existing motor fuel tax burden; in fact, in the Vancouver region, new increases in the local mass transit-funding excise tax on gasoline alone since the outset of the carbon tax policy nearly match the entire incidence of the gasoline carbon tax.<sup>16</sup>

## AUSTRALIA

### Policy Design

The Australian government implemented in July 2012 a broad-based tax on GHG emissions from about 350 of the country's largest GHG emitters as part of its climate change strategy. While not explicitly revenue-neutral, this tax policy stipulates that over 50% of carbon revenues will be directly returned to individual households through a combination of income tax breaks and direct payments and that 40% of carbon tax revenues will be dedicated to government spending programs intended to provide targeted assistance to particularly hard-hit business sectors. Similar to British Columbia, the Australian carbon tax has been implemented alongside a broader comprehensive multi-year tax system reform.<sup>17</sup>

The tax is set at AUD \$23.00 per metric ton carbon dioxide-equivalent in 2012–13, rising to AUD \$24.15 in 2013–14 and AUD \$25.40 in 2014–2015 before a scheduled gradual transition to a market-based floating carbon price in 2015, potentially linked to an international carbon cap-and-trade system. Therefore, the set carbon tax is envisioned as just the first step of a two-stage carbon pricing policy in Australia.

Unlike the general fuel-focused British Columbia carbon tax, the Australian carbon tax is applied quite selectively throughout the economy. Only major emitters' GHG pollution is directly covered, though this coverage does include major non-energy and fugitive GHG emissions;<sup>18</sup> these top emitters, whose annual emissions in general exceed 25,000 metric tons per year of carbon dioxide-equivalent, represent about 60% of total Australian GHG emissions. The Australian carbon tax does not cover motor fuel used for on-road transport and also exempts the agriculture and land use sectors, though fuel used for commercial aviation, shipping, and rail services is set for inclusion.

Similar to British Columbia, the Australian carbon tax has been implemented alongside a broader comprehensive multi-year tax system reform.

Although direct final combustion of hydrocarbon fuels such as motor fuels, natural gas, or biomass by small-scale residential and commercial end-users is not directly affected by the Australian carbon tax, individual households are nevertheless expected to see increased consumer costs from higher carbon-intensive electricity rates and the embedded emissions of other goods and services produced within Australia (including, for example, domestically refined gasoline). The Australian government estimates that the consumer price index will rise by 0.7% in the first year as a result of the carbon tax. To address this, at least 50% of carbon tax revenues are allocated for "household assistance" to compensate households for these higher costs, with an average household compensation of about AUD \$10.10 per week,

according to government estimates. Such household assistance includes: (1) increases in pensions, allowances, and “family payments”, and; (2) income tax cuts for annual incomes less than AUD \$80,000, including raising the tax-free threshold for lower income brackets.

Australian businesses do not receive a general corporate tax rate deduction funded through the carbon tax as in British Columbia, but 40% of carbon tax revenues have been allocated help major industries reduce emissions, especially those emission-intensive businesses that compete against untaxed foreign competitors.<sup>19</sup> This laundry list of sectoral carve-outs and targeted benefits is extensive, with the coal-fired power and metallurgic industries receiving a significant share of total benefits. These six spending categories, along with estimates of their fiscal impact, are enumerated in the table below. Note that, similar to the British Columbia case, the Australian government expects the entire carbon-tax program to actually be significantly revenue-negative (i.e. a tax cut):

	FY 2011/12	2012/13	2013/14	2014/15
<b>Gross Carbon Tax Revenue (million AUD)</b>		<b>\$8,600</b>	<b>\$9,080</b>	<b>\$9,580</b>
<b>Household Benefits</b>				
Tax reforms		-3,350	-2,370	-2,320
Direct transfer payments (pensions, family payments, veterans, elderly)	-1,470	-746	-2,301	-2,380
Other (low carbon communities, household efficiency, household assistance)	-63	-100	-132	-125
<i>Households' share of carbon revenue</i>	<i>56%*</i>	<i>49%</i>	<i>53%</i>	<i>50%</i>
<b>Business Benefits</b>				
“Jobs and competitiveness program”		-2,851	-3,059	-3,312
“Clean technology program”	-19	-142	-245	-312
Increased small business instant asset write-off			-100	-100
Regional subsidies		-10	-50	-30
Other business energy efficiency measures	-7	-15	-21	-19
<i>Business' share of carbon revenue</i>	<i>1%*</i>	<i>35%</i>	<i>38%</i>	<i>39%</i>
<b>“Transitional” Measures</b>				
Carbon tax credits for coal-fired power producers				
Negotiated government buyouts of inefficient coal-fired power plants	-1,009	-1	-1,003	-1,042
<b>“Clean Energy Finance Corp.”</b>				
Financing to deploy renewable, low-carbon, and efficiency infrastructure +				
Subsidies to manufacturers of renewable energy equipment	-2	-21	-467	-455
<b>Land and Carbon Sink Measures</b>				
“Carbon Farming Initiative” +				
“Biodiversity Fund” +				
Other carbon sink land management subsidy programs	-69	-131	-506	-489
<b>Governance</b>				
Establishment of a “Clean Energy Regulator” and other administrative costs	-78	-90	-106	-107
<b>Net Government Carbon Tax Revenue</b>	<b>-\$2,716</b>	<b>\$1,144</b>	<b>-\$1,279</b>	<b>-\$1,110</b>

**Source:** Table by authors from data published in the “Clean Future Final Plan”, Australian Government 2011.

\* Share of total payments as no carbon revenues are collected in FY 2011/12.



### **Region-specific Considerations**

The form of the Australian carbon tax policy is practically the reverse of British Columbia's. While both aim to apply a fixed carbon price across a broad swath of economy-wide GHG emissions, Australia has chosen to focus on all GHG emissions from only the largest emitting businesses, whereas British Columbia chose a carbon dioxide-focused fuel tax evenly applied across all end-users, including individual direct combustion for vehicles and home heating (two areas specifically exempted in Australia). And though both policies aim to recycle carbon tax revenues similarly for individual households, they take an opposite approach toward compensating businesses.

#### ***Extremely carbon-intensive electricity sector***

One explanation for this different policy strategy is the nature of the two regions' electricity systems; whereas British Columbian electricity relies on hydropower and is nearly carbon-free, nearly 75% of the Australian electricity system is supplied by carbon-intensive coal and only 8% by low-carbon renewables such as hydropower. The Australian government estimates that electricity price rate increases will represent about one-third of the total carbon tax costs borne by households, or about 10% higher electricity costs. Taken together with higher embedded emission costs from other goods and services produced in Australia's particularly carbon-intensive economy, this means that individual households in Australia will face cost-of-living increases that are similar to (or slightly less than) the increases seen in British Columbia at a comparable carbon price—even with Australian household end-use exemptions on motor fuel.<sup>20</sup>

The carbon-intensive nature of the Australian electricity sector also helps explain why the government has chosen to direct carbon tax revenues to sector-specific business assistance rather than the broad tax breaks adopted in British Columbia. Industry is the largest user of electricity in Australia, and carbon costs will be particularly concentrated in electricity-intensive sectors such as aluminum and mining. Moreover, the coal-fired electric generators themselves, as major GHG emitters, face a heavy carbon tax burden the prospect of uneconomic stranded investments.

#### ***Industry focus***

Because of its natural resource and export-heavy economic structure and coal-dependent fuel profile, GHG emissions in Australia are relatively concentrated in singular large emitters. For example, when accounting for indirect GHG emissions from purchased electricity, the Australian manufacturing and mining sectors together account for 39% of total GHG emissions. Adding GHG emissions from the waste sector, fugitive emissions such as those from energy production, and commercial transport services means that about 60% of total GHG emissions can be accounted for simply by focusing on about 350 of the country's largest emitters out of an estimated 2 million registered Australian businesses.<sup>21</sup> Though embedded carbon emission costs do certainly affect the broader economy, such a targeted approach is thought to

potentially lower bureaucratic and compliance costs of implementing the policy, as well as reduce the number of direct stakeholders. Like the comprehensive carbon cap-and-trade bills attempted in the United States, however, this approach opens the political process to significant opportunities for gaming and regulatory capture by organized business interests.<sup>22</sup>

Like the comprehensive carbon cap-and-trade bills attempted in the United States, however, this approach opens the political process to significant opportunities for gaming and regulatory capture by organized business interests.

## THE UNITED STATES

What can the experiences of British Columbia and Australia teach the U.S.?

Though the United States has not implemented a revenue-neutral carbon tax, the debate regarding carbon pricing, both for and against, has recently been attracting considerable public attention for the diversity of its participants.<sup>23</sup> In the wake of failed attempts to pass an ambitious and complex economy-wide cap-and-trade bill, as an alternative to potential court-ordered direct regulation of carbon emissions by the EPA through the Clean Air Act, and with an eye toward comprehensive federal tax reforms, politicians and economists have once again tabled revenue-neutral carbon taxes as one policy option among the many to be considered. And while the carbon tax experiences of British Columbia and Australia to date do illustrate valuable real-world dynamics and design choices, the energy and economic differences between them and the United States limit their direct relevance.

In the wake of failed attempts to pass an ambitious and complex economy-wide cap-and-trade bill, as an alternative to potential court-ordered direct regulation of carbon emissions by the EPA through the Clean Air Act, and with an eye toward comprehensive federal tax reforms, politicians and economists have once again tabled revenue-neutral carbon taxes as one policy option among the many to be considered.

### Region-specific Considerations

At first look, the United States—though much larger than British Columbia or Australia—is not so dissimilar to these two carbon-taxing regions. With a diverse mix of both high-carbon and low-carbon electricity generation capacity, average United States electric system carbon intensity falls between coal-reliant Australia and hydro-rich British Columbia. Existing United States electricity rates are closer to relatively higher Australian rates but natural gas rates closer to relatively lower British Columbia rates. Per capita energy use in the United States easily exceeds that of both British Columbia and Australia, but per capita carbon dioxide emissions and the carbon dioxide emission intensity of economic activity fall between the two other regions.

But the situations quickly begin to diverge. For example, the GHG-economic structure of the United States is relatively diverse. The United States does have concentrated emission-intensive or emission-linked industries (such as coal fired power generation or oil refining) that would face steep costs from a carbon price, but its economy-wide emissions are not dominated by these sources as they are in Australia. For example, about 5,500 reporting facilities in the United States meet the Australian annual 25,000 ton GHG emission threshold; to attain 60% coverage of United States GHG emissions by focusing on final fuel consumers, as achieved by the top-350 emitter

industry-focused carbon tax scheme in Australia, would require coverage closer to 5,000 facilities.<sup>24</sup>

One particularly exceptional characteristic of the United States energy and emission profile is its transport sector: Americans drive significantly more than those in British Columbia<sup>25</sup> and Australia but existing gasoline prices are significantly lower. So while overall household expenditure on gasoline may be similar across all three regions, a price on carbon would raise annual costs to American drivers by both a higher absolute level and a higher relative proportion of volumetric price. In short, it would be more noticeable.

Another important consideration for the United States is its regional diversity—a potentially key design barrier for any sort of carbon price. Given its large size, the average United States energy-economic characteristics described above are actually the result of significant regional heterogeneity.<sup>26</sup> It would be important then to also consider the geographic in addition to the socioeconomic distributional effects of pricing carbon and recycling that revenue in the United States. For example, unlike in British Columbia, a straight carbon tax in the United States would result in customers in states with highly coal-dependent electricity generation portfolios being impacted more than residents in less carbon-intensive states.<sup>27</sup>

## DISCUSSION

The British Columbia and Australia cases highlight key carbon tax design and implementation issues. These choices and experiences are explored below.

### **What is the goal of the revenue-neutral carbon tax?**

The British Columbian and Australian governments both described their carbon taxes in terms of reducing GHG emissions within their economies so as to help mitigate anthropogenic climate change.<sup>28</sup> Neither government expected that the carbon tax alone would be sufficient to achieve various GHG emission-reduction or technology development goals and so presented the carbon tax alongside other programs and measures. Neither policy explicitly determined prior to implementation how the carbon tax would be evaluated or if it would be adjusted based on its impact or lack thereof on GHG-emitting behavior.

A different option for framing the goals of a carbon tax—not explicitly adopted by British Columbia or Australia—would be in terms of fairness, competition, and efficiency. Namely, because current markets generally do not price the potentially negative impacts of GHG emissions, emission-intensive activities are privileged relative to non-intensive options; this distorts technology development, capital deployment, and fuel choice or other behaviors. Applying a tax to carbon to internalize this distortion could therefore be framed as one step towards “level the playing field” for the supply and demand of energy. Alongside reform of other distortionary energy taxes, subsidies, and mandates, the explicit goal of pricing carbon would then be to achieve fairer competition and efficiency in the energy market.<sup>29</sup> Such a “means-based” (i.e. market function) rather than “ends-based” (i.e. aggregate emissions reduction or climate change mitigation) framing would also have the advantage of being easier to directly evaluate.<sup>30</sup>

### **How are carbon tax revenues returned to the economy?**

A revenue-neutral carbon tax directly returns all tax receipts to the economy, though this return of revenue is redistributive by nature; the carbon price signal faced by GHG emitters is therefore independent of any compensation received, even if net emitter costs from the carbon tax are near zero. Drawing from the British Columbia and Australia cases, revenue recipients can be divided into the following general categories:

- (1) Individuals (further stratified by income level, with additional special classes including low income, vulnerable, or particularly emission-intensive groups), and;
- (2) Businesses (with divisions for small businesses, export-oriented or trade-vulnerable sectors, or particularly emission-intensive sectors).

A revenue-recycling policy could arguably identify any number of these categories to receive a portion of total revenue benefits; as such, this “outflow” element of policy design is subject to stakeholder capture just as the tax incidence itself is on the “intake” side of the policy.

A basic approach to revenue distribution, illustrated in British Columbia, is to apply a simple benefit scheme to both businesses and individuals, but to attempt to correct for the regressive nature of a carbon tax on the individual side by calibrating benefits to the average share of income impacted by the carbon tax for different tax brackets, with further special benefits for particularly impacted individuals.<sup>31</sup> Somewhat surprisingly, however, British Columbia was largely able to avoid similarly segregating revenue benefits to business recipients.

Australia, on the other hand, while adopting a similar benefit scheme for individuals, has chosen to also make business benefits extremely targeted on export-oriented or emission intensive sectors. Furthermore, it has supplemented business benefits through government-managed spending programs to the extent that the policy may not truly be considered revenue neutral. In addition to these demographic and sectoral design considerations, were the United States to adopt a similar simple revenue-neutral carbon tax, the regional distribution of tax or dividend beneficiaries might also have to be considered given heterogeneity in regional energy system carbon intensity.

Apart from the question of who receives how much revenue benefit, there is the issue of the benefit’s form. The revenue benefit’s form is important in determining a government’s control over revenue distributions over time as well as stakeholder support or political feasibility of the overall policy. For example, British Columbia has chosen to recycle most carbon tax revenues through reductions in personal income or general business tax rates. Particularly impacted low-income or emission-intensive households are further compensated by tax credits or the proverbial “check in the mail” akin to the State of Alaska’s mineral royalty “Permanent Fund Dividends” paid annually in an equal proportion to each resident.

Direct “check in the mail” payments to individuals can be a politically appealing choice because of the high degree of salience and accountability it provides regarding the revenue-neutrality of the carbon tax. Such flat dividend payments, however, can potentially become vehicles for significantly progressive wealth redistribution: high income, high consumption households who contribute more payments under a carbon tax would likely be refunded far less than their total tax payments under a flat dividend, even if such individuals adopt strong carbon emission-mitigating choices. Similarly, a flat dividend under a very steep carbon tax could become a significant new entitlement to low income households.<sup>32</sup> This distribution represents both a significant political and policy challenge.



In contrast, tax offsets have been chosen to distribute the bulk of revenue benefits to individuals for both the British Columbia and Australia cases. The British Columbia “tax-shift” choice, in particular, can be seen as using a carbon tax to “fund” a desired tax cut on an existing distortionary tax such as a payroll, personal income, or corporate taxes (i.e., taxes on working or earning profits—neither of which are activities that a government likely wishes to discourage through taxation but does anyway because of funding needs and historical precedent).<sup>33</sup> More specifically, the use of corporate tax breaks can be an appealing option to encourage business buy-in for a revenue neutral carbon tax, but begins to create the hazard of regulatory capture as demonstrated very clearly in the Australia case. To this end, it is worth noting that the British Columbia “tax-shift” was designed and enacted by the provincial Ministry of Finance rather than an environmental or energy agency.

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In addition to affecting political feasibility, the form of benefit distribution can also have important operational implications.<sup>34</sup> One substantial operational concern is balancing the need for true revenue neutrality with a desire to ensure fiscal health. The British Columbia experience illustrates this tension:

- (1) The revenue-recycling benefit mechanism is generally set in advance as part of an implicit contract that emphasizes predictability in what is otherwise a novel taxation system; this can make it difficult or legally impossible to update if problems arise during implementation.
- (2) Revenue expectations from a carbon tax are based on estimates of future fuel consumption or GHG emissions and so are uncertain; likewise, non-discrete revenue benefit measures such as general tax rate reductions depend on estimates of future economic activity in particular sectors and are also uncertain. Net accounts of the carbon tax system, which might be politically significant, are therefore shifting at both ends.
- (3) Similarly, the net distributional impacts of a revenue-neutral carbon tax are subject to numerous additional layers of uncertainty. For example, one sector of the economy may face unanticipated high costs from a carbon tax (such as an external need to switch fuels) while another sector may benefit from an unexpected windfall from revenue-recycling tax breaks.

As described above, the result of such operational uncertainty in British Columbia has meant that the “carbon-shift” has actually been revenue-negative for the government and the distribution of revenue benefits between individuals and business has diverged

from initial expectations. Because the policy design largely tied the government's hands for the first five years of implementation, the government had to assume revenue and benefit payment risks that might have become significant. It is possible, however, that a different design might have been more robust to uncertainty without compromising social acceptance; a direct payment system with a proportional benefit amount determined by that year's estimated tax revenue, for example, would disaggregate the benefit payment risk by transferring it from the government to recipients.

Another notable aspect of the British Columbia carbon tax was its structuring in such a way that seemed to "call" for emissions growth to balance revenues with expenses, as is highlighted in the numbers below from the British Columbia Government. As a result, the British Columbia budget has become more dependent on carbon tax revenue than any jurisdiction on earth, with a forecasted 10% jump in emissions over the initial five year period being necessary to hit revenue targets, as outlined in the table below:<sup>35</sup>

Fiscal Year	Carbon Tax Rate	Est. Carbon Tax Revenues	Inferred Carbon Tax Base	Emissions Growth Requirement
2010/11	CAD \$20/t CO <sub>2</sub> e	CAD \$741 million	37.1 million tons CO <sub>2</sub> e/y	
2011/12	CAD \$25/t CO <sub>2</sub> e	CAD \$960 million	38.4 million tons CO <sub>2</sub> e/y	3.5%
2012/13	CAD \$30/t CO <sub>2</sub> e	CAD \$1,166 million	38.9 million tons CO <sub>2</sub> e/y	1.3%
2013/14	CAD \$30/t CO <sub>2</sub> e	CAD \$1,232 million	41.1 million tons CO <sub>2</sub> e/y	5.7%

**Source:** Table by authors; data compiled from BC MOF Budgets and author calculations.

Of course, these are significant revenues, especially in the context of British Columbia's total budget of just CAD \$43 Billion. One problem with the carbon tax is that having already committed this future revenue stream to finance the corporate and personal income tax rate cuts that it enacted, British Columbia is potentially in a difficult fiscal position of not really wanting carbon dioxide to fall too much in the near future, seemingly defeating the emissions reduction purpose of the tax in the first place.<sup>36</sup>

### **How is the integrity of the tax and revenue-returning measures ensured?**

Once implemented, a revenue-neutral carbon tax is potentially subject to both new exemptions on the taxation side and appropriation of revenues by stakeholders or the government itself on the benefits side. Potential adjustments range from small "tweaking" in response to unanticipated tax burdens that befall certain stakeholders to an outright policy overhaul given a changed economic or political environment. In British Columbia, for example, a "Northern and rural homeowner benefit" payment was established in the third year of policy implementation to compensate this energy-intensive stakeholder group for the higher cost they faced from home heating through the carbon tax. This new benefit amounted to 2.6% of collected third year carbon tax revenue and 7.8% of fourth year tax revenue.

These adjustments were enacted through the benefit payout rather than tax intake side—the tax base remained relatively stable. This is in stark contrast to the Australian case where targeted tax base exemptions are central to policy design from the very outset. And though the British Columbia carbon tax appears to enjoy generally solid public support,<sup>37</sup> anecdotally, popular calls for exemptions or even a redirection of revenues towards “green” government spending do remain present, especially in urban areas.

Moreover, it is unclear if this latest target relief grant to the provincial greenhouse agricultural industry, described above, represents a new approach by the Ministry of Finance toward implementation of the policy and if it will now be successfully followed by further stakeholder requests.

#### **Designing a Lockbox—The Alaska Permanent Fund Dividend**

The question of how to create a “lockbox” around the revenues of any new carbon tax, especially in times of government deficits and across political or economic cycles, is central in assuring the key principle of revenue-neutrality. Returning to United States precedent and the Alaska Permanent Fund Dividend, first paid out to residents in 1982 and uninterrupted through today, it is interesting to note that the constitutional amendment creating the fund specifically granted the state legislature broad flexibility in determining how fund earnings could be spent [Austermann 1999]. The dividend, however, has nevertheless been consistently and successfully distributed since.

The most significant challenge to the dividend came in 1999 when oil prices (and fund principal deposits) were very low; a governor’s proposal to redirect some fund earnings towards general budgetary spending was rejected by popular vote by an overwhelming margin. The dividend continued despite persistent government account deficits in Alaska and it has been suggested that officials today are so anathema to be seen as interfering with the annual dividend that they hesitate to even commission research studies on its operation or effect [Goldsmith 2002]. The only “lockbox” for this case then is virtual; historical precedent, alongside a once non-existent but now significant public constituency (supported by the dividend policy’s extreme simplicity and visibility), has preserved continuity.

It is also interesting to note that, unlike the “shared” tax breaks seen in the British Columbia carbon tax case, business entities in Alaska are not directly involved at all on the receiving side of the permanent fund; dividends are returned only to individuals, and to every individual. The simplicity and transparency of this has likely contributed to the robustness of the Alaska Permanent Fund Dividend over time.

Though this model is robust it is not without critique. In particular, many point out that a flat dividend can become a vehicle for cross-subsidy across income and consumption groups, especially as payouts rise beyond compensation for any incurred direct costs.

**Designing a Lockbox—Using a Carbon Tax to Eliminate an Existing Tax**

Another sensible approach to dealing with revenues while ensuring integrity is to explicitly substitute new revenues for an existing revenue stream. Such a 1-for-1 trade would be a true “tax swap”, completely eliminating—and not just marginally reducing—an existing tax.

To illustrate how this could work we can look at the example of a carbon tax in the United States. The easily measurable carbon dioxide emissions of major energy producers in the United States have been roughly 5 billion metric tons in recent years [US EPA 2012, see below]. Therefore, a carbon tax of USD \$30 per ton would yield about USD \$150 billion in government revenues. Unlike many other federal taxes, however, which grow alongside broader economic activity, carbon tax revenues could be expected to gradually fall over time as the economy becomes less carbon intensive. So what does USD \$150 billion buy from federal government revenues today?

<b>Curent Federal Tax</b>	<b>Typical Revenues</b>
Gasoline	\$25 billion
Diesel	\$8–9 billion
Other Manufacturer / Fuels	\$2–3 billion
Air Travel / Freight + Phone	\$11–12 billion
Highway Trust Fund Supplement	\$8 billion
Capital Gains	\$40–140 billion
Capital Gains, income <100k/200k	\$10–15 billion
Estate and Gift	\$20–30 billion
AMT for individuals	\$5–25 billion

Excise and consumption taxes are one potential target and they are similar in form, though narrower, than a carbon tax. In particular, displacing the federal gasoline and diesel taxes would significantly offset a major consumer and small business pain point. Fuel and transport tax eliminations (~USD \$55 billion) could be paired with elimination of capital gains taxes for medium income households, elimination of the estate and gift taxes, and elimination of the AMT for individuals. Or, instead, the capital gains tax could be completely eliminated. As one reference point, the Romney tax cuts would have “cost” about USD \$215 billion (in static terms). With such a tax-swap model, there are a wide variety of potential tax elimination options that might be both politically salient and reasonably transparent enough to mitigate the risk of future tampering.

**Where is the Tax Applied?**

Setting the ideal carbon tax base is a tradeoff between making coverage as broad as possible (to maximize emission mitigation potential, flexibility, and fairness across the economy) and narrowing the number of directly liable entities or events (to minimize administrative costs, policy complexity, and gaming). The varied British Columbia and Australian approaches to both aspects illustrate that potential strategies are the result of both energy-economic structure and political choice.

Namely, British Columbia chose to apply its tax largely upstream and let it filter broadly through the economy while Australia is focusing more downstream at the

major consumer level and at the point of consumption. Australia's approach allows it to better exempt certain protected sectors like personal transport. Moreover, its entity-based approach—seen more commonly in carbon cap-and-trade schemes<sup>38</sup>—sets Australia up for its intended conversion to an internationally-linked cap-and-trade after 2015. But whereas Australia's downstream carbon tax covers just 60% of the country's total GHG emissions (and must include fugitive emissions to achieve even that), British Columbia's upstream energy-focused tax can ultimately operate more efficiently with its 70–75% coverage of total GHG emissions. British Columbia also notes that its volumetric approach was able to use existing fuel tax administration infrastructure, allowing for simpler implementation.

For comparison, in the United States, the carbon dioxide emissions from fossil fuel combustion alone are about 79% of total greenhouse gas emissions.<sup>39</sup> An upstream and midstream-focused energy-only carbon tax with incidence only on oil refiners, coal producers, and natural gas processors could realistically be expected to cover about 70–75% of total United States greenhouse gas emissions from under just 2,500 total liable entities.<sup>40</sup>

### **Border Considerations**

Many proposed carbon pricing policy designs have struggled with the question of border adjustments—that is, how to penalize imports produced in out-of-jurisdiction regions that do not face a similar carbon price, how to compensate domestic exporters for their carbon tax payments, or how to avoid leakage of economic activities across jurisdictional borders. Politically, such competitiveness-related concerns have even been cited as a primary justification for legislative inaction on carbon pricing. It is interesting to note then that in British Columbia's pioneering revenue-neutral carbon tax efforts, the issue of border adjustments was deemed not to be a showstopper: relatively simple provisions were enacted to address the first-order issue of fuel imports and exports, while the second-order issue of embedded emissions within traded products or services was essentially left aside to be evaluated over time as actual (and not simply anticipated) business impacts were observed.<sup>41</sup>

And while the pragmatic spirit of British Columbia's approach is imitable, it may not be sufficient for trade-heavy countries such as the United States. For example, as described above, emission-intensive trade-exposed industries such as refineries, chemicals, metals, cement, paper, or even agriculture in countries like Australia (or the United States) could reasonably be expected to face negative economic impacts from a relative drop in domestic and international competitiveness against untaxed foreign embedded emissions. For its part, Australia is planning to devote significant tax revenues towards compensating such industries domestically in the early years of its carbon tax with the hope that enough of its trade partners will adopt similar or even harmonized carbon pricing policies into the future to mitigate the problem. Presumably, over time, such border adjustments might be rendered unnecessary as trade partners adopt their own commensurate carbon pricing mechanisms.<sup>42</sup>

## The Politics of a Carbon Tax

In addition to the policy aspects of carbon pricing, experiences abroad also have important lessons about the politics of carbon pricing.

In British Columbia, the major left-wing party were very concerned about the effects on working class incomes of such a tax, causing them to initially oppose it. Despite the opposition of these traditional left-wing proponents of environmental regulations, however, the centrist Liberal party achieved re-election after its advocacy of the tax.<sup>43</sup>

Perhaps most interestingly, the carbon tax proposal was designed by the Liberals explicitly to pull environmentally-minded voters from more left-wing parties to the Liberal party, effectively splitting those parties.<sup>44</sup> One observer commented that “The New Democrats, led by Carol James, fiercely opposed the carbon tax, arguing that it especially hurt rural residents. But the party’s opposition to the tax cost them the support of almost all environmental organizations, which sided with Campbell solely on the issue,” while the nonpartisan Conservation Council launched a campaign telling voters to choose “anybody but James.”<sup>45</sup>

Even before the results came in, some commentators began to speculate on the likely electoral effect of the tax. For the *Globe and Mail*, Dirk Meissner reported on suggestions that the NDP’s stance on the carbon tax might hurt it on election day. In particular, he emphasized the views of Harris Decima’s Senior VP Jeff Walker who suggested that “traditional soft environment voters in British Columbia who usually go into every election vowing to vote Green, but end up going with the NDP are now considering staying Green to punish the NDP.”<sup>46</sup>

Yet despite carbon pricing’s reasonably favorable reception by the British Columbia public and the intriguing politics outlined above, by 2011, “The three major provincial parties in Ontario—the governing Liberals, the Conservatives and the NDP—[had] explicitly vowed not to introduce a carbon tax in that province if they win the upcoming provincial election.”<sup>47</sup> Stéphane Dion, of the Liberals, who ran on a similar “Green Shift” in taxation at the national level in 2008, was resoundingly defeated after being opposed by both Canada’s conservatives, under Stephen Harper and the liberal NDP, both of whom criticized his carbon tax proposal, modeled after British Columbia’s.<sup>48</sup> Looking at the British Columbia case, the evidence for the political feasibility of a revenue-neutral carbon tax could be best described as mixed. It seems most likely to occur in the context of a broader overall tax reform, as occurred in Australia and British Columbia.

Looking at the British Columbia case, the evidence for the political feasibility of a revenue-neutral carbon tax could be best described as mixed.



## CONCLUSION

In this paper we have described the real-world design choices and policy experience to date of the most significant major new global forays into revenue-neutral carbon taxes—that is, those carbon taxes that return substantially all of their revenue collected through tax benefits and direct payments to individuals. Interestingly, one of the few things shared between the British Columbian and Australian approaches is that they both enacted their carbon taxes in the context of a comprehensive tax reform process. Policy details such as tax incidence, sectoral coverage, GHG coverage, business revenue benefits, and the schedule of policy implementation are actually all quite different. And time will tell how public and political support for Australian scheme fares in comparison to the British Columbian experience over the past five years.

For example, it is highly salient that the only largely successful revenue-neutral carbon tax enacted worldwide—in British Columbia—was one that essentially exempted the electricity sector. We argued that the reasons for such divergent approaches are due in part to political choices, but they are also grounded in the quite different energy and economic systems of the two regions. One lesson we might draw then is that the path of even something as seemingly straightforward as a revenue-neutral carbon tax—from economic theory, through the political process, to real-world implementation—is in fact long and winding.<sup>49</sup>

The path of even something as seemingly straightforward as a revenue-neutral carbon tax—from economic theory, through the political process, to real-world implementation—is in fact long and winding.

Moreover, having considered the British Columbia and Australian efforts, it is clear to us that a revenue-neutral carbon tax cannot be considered simply from the perspective of climate change mitigation. Because a carbon tax is ultimately an energy tax (albeit a differentiated one), it, like any fundamental energy system reform, should instead be framed more broadly: by how it affects a country's *environment*, by how it affects *energy security*, and by how it affects the broader *economy*.

The first measure—the *environment*—is the natural domain of a revenue-neutral carbon tax and so one could expect it to score well in that regard. As we have noted above, however, many now expect that a price instrument alone may not be sufficient (or efficient) to meet climate change mitigation goals. For example, the United States and other countries continue to suffer from a persistent underinvestment by both public and private sectors in early-stage, long-term energy R&D. Ultimately, significant climate goals require not just marginal shifting but also groundbreaking new technologies, and there are good reasons why a carbon price alone would not support

enough R&D to deliver these. At the same time, a revenue-neutral carbon tax must also explicitly demonstrate how it can help improve not just global but also the local environmental conditions that remain top-of-mind for average citizens.

The *energy security* impacts of a revenue-neutral carbon tax remain particularly unexamined. Neither British Columbia nor Australia explicitly invoked energy security in their program formulation—both Canada and Australia have very low energy import dependency—but it would be a key consideration in the United States. A revenue-neutral carbon tax would affect national energy security on both the consumption and domestic production sides of the energy equation, and in terms of both volume and form. Because of its pervasiveness, a carbon tax could very well become, *de facto*, the most significant energy security policy in an energy import-dependent market economy—positive or negative. We leave this important issue to further consideration.

Finally, the *economy*. A revenue-neutral carbon tax's impact on a region's economy is likely to be the main debate both politically and in terms of policy design. This was certainly the case in British Columbia and Australia and would be for the United States as well. But while much of that discussion turns on projected impacts to particular industrial sectors, household budgets, employment, or even fiscal health, to consider a carbon tax is also an ideal time to consider the *existing* web of taxes and subsidies that our governments enact throughout the energy system today.

Just as in other countries, the modern United States energy policy offers an often mystifying web of production tax credits, investment tax credits, depletion allowances, domestic manufacturing tax deductions, accelerated depreciation schedules, loan guarantees, and portfolio standards. Built up piecemeal, over time and across industries, these affect costs and prices in both directions for most every form of energy such that it becomes unclear just what market distortions do or do not exist for a revenue-neutral carbon tax to try to fix. Whatever the theoretical merits of a revenue-neutral carbon tax in improving energy market function, to add one on top of our current patchwork of energy market manipulations would clearly add to this complexity. For this reason, rationalizing the United States energy market by creating a level playing field and eliminating energy subsidies should be a necessary part of any carbon tax policy discussion. Ultimately, when the negotiation begins over America's energy and fiscal futures, every chip needs to be on the table.

## ANNEX

Carbon tax shares of fuel tax and total fuel price for gasoline and diesel in the British Columbia “Translink” (Vancouver-area) motor fuel taxation region, for both constant hypothetical fuel prices and actual historical provincial fuel price averages over the carbon tax policy implementation period:

[Note: The Translink service area in 2010 was ~2.3 million people, approximately half of the total British Columbia population; calculations for other British Columbia regions available on request]

	July 1 2008	July 1 2009	Jan. 1 2010	July 1 2010	July 1 2011	April 1 2012	(expected) July 1 2012	(expected) April 1 2013	(expected) July 1 2013
BC – Translink Area Gasoline for personal vehicles									
<i>hypothetical fuel price, cents per liter</i>									
Federal Excise Tax	10	10	10	10	10	10	10	10	10
Provincial Excise Tax	8.5	8.5	8.5	8.5	8.5	8.5	8.5	8.5	8.5
Local Excise Tax	12	12	15	15	15	17	17	17	17
Carbon Tax	0	3.51	3.33	4.45	5.56	5.56	6.67	6.67	6.67
<b>total excise tax</b>	<b>30.5</b>	<b>34.01</b>	<b>36.83</b>	<b>37.95</b>	<b>39.06</b>	<b>41.06</b>	<b>42.17</b>	<b>42.17</b>	<b>42.17</b>
GST	5%	5%	5%	5%	5%	5%	5%	5%	5%
Provincial element of HST	0%	0%	0%	0%	0%	0%	0%	0%	0%
PST	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>total sales tax</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>
Total tax on fuel @:	34.53	36.98	41.17	42.35	43.51	45.61	46.78	46.78	46.78
Total fuel + tax bill @:	84.53	88.21	91.17	92.35	93.51	95.61	96.78	96.78	96.78
Tax percentage of fuel bill @:	40.85%	43.32%	45.16%	45.86%	46.53%	47.71%	48.34%	48.34%	48.34%
Carbon tax percentage of total tax on fuel @:	0.00%	6.33%	8.09%	10.51%	12.78%	12.19%	14.26%	14.26%	14.26%
Carbon tax percentage of fuel bill @:	0.00%	2.69%	3.65%	4.82%	5.95%	5.82%	6.89%	6.89%	6.89%
Total tax on fuel @:	35.78	39.46	42.42	43.60	44.76	46.86	48.03	48.03	48.03
Total fuel + tax bill @:	110.78	114.46	117.42	118.60	119.76	121.86	123.03	123.03	123.03
Tax percentage of fuel bill @:	32.30%	34.48%	36.13%	36.76%	37.38%	38.46%	39.04%	39.04%	39.04%
Carbon tax percentage of total tax on fuel @:	0.00%	6.12%	7.85%	10.21%	12.42%	11.86%	13.89%	13.89%	13.89%
Carbon tax percentage of fuel bill @:	0.00%	2.07%	2.84%	3.75%	4.64%	4.56%	5.42%	5.42%	5.42%
Total tax on fuel @:	37.03	40.71	43.67	44.85	46.01	48.11	49.28	49.28	49.28
Total fuel + tax bill @:	137.03	140.71	143.67	144.85	146.01	148.11	149.28	149.28	149.28
Tax percentage of fuel bill @:	27.02%	28.93%	30.40%	30.96%	31.51%	32.48%	33.01%	33.01%	33.01%
Carbon tax percentage of total tax on fuel @:	0.00%	5.93%	7.63%	9.92%	12.08%	11.56%	13.54%	13.54%	13.54%
Carbon tax percentage of fuel bill @:	0.00%	1.68%	2.32%	3.07%	3.81%	3.75%	4.47%	4.47%	4.47%
<b>Actual average fuel price less taxes for period beginning:</b>									
Total tax on fuel @:	92.95	75.17	77.78	87.53	95.79	102.20			
Total tax on fuel @:	36.67	39.47	42.56	44.22	45.80	48.22			
Total fuel + tax bill @:	129.63	116.51	120.34	131.75	141.59	150.42			
Tax percentage of fuel bill @:	28.29%	32.95%	35.37%	33.57%	32.35%	32.06%			
Carbon tax percentage of total tax on fuel @:	0.00%	6.10%	7.82%	10.06%	12.14%	11.53%			
Carbon tax percentage of fuel bill @:	0.00%	2.01%	2.77%	3.38%	3.93%	3.70%			

BC – Translink Area Diesel for personal vehicles	hypothetical Fuel price, cents per liter	Jan. 1 2008	July 1 2008	July 1 2009	Jan. 1 2010	July 1 2010	July 1 2011	April 1 2012	(expected) July 1 2012	(expected) April 1 2013	(expected) July 1 2013
Federal Excise Tax		4	4	4	4	4	4	4	4	4	4
Provincial Excise Tax		9	9	9	9	9	9	9	9	9	9
Local Excise Tax		12	12	12	15	15	15	17	17	17	17
Carbon Tax		0	2.69	4.04	3.84	5.11	6.39	7.67	7.67	7.67	7.67
<b>total excise tax</b>		<b>25</b>	<b>27.69</b>	<b>29.04</b>	<b>31.84</b>	<b>33.11</b>	<b>34.39</b>	<b>37.67</b>	<b>37.67</b>	<b>37.67</b>	<b>37.67</b>
GST		5%	5%	5%	5%	5%	5%	5%	5%	5%	5%
Provincial element of HST		0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
PST		0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>total sales tax</b>		<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>	<b>5%</b>
Total tax on fuel @:		28.75	31.57	32.99	35.93	37.27	38.61	42.05	42.05	42.05	42.05
Total fuel + tax bill @:		50	81.57	82.99	85.93	87.27	88.61	92.05	92.05	92.05	92.05
Tax percentage of fuel bill @:		50	38.71%	39.75%	41.81%	42.70%	43.57%	45.68%	45.68%	45.68%	45.68%
Carbon tax percentage of total tax on fuel @:		50	8.62%	12.25%	10.69%	13.71%	16.55%	18.24%	18.24%	18.24%	18.24%
Carbon tax percentage of fuel bill @:		50	3.30%	4.87%	4.47%	5.86%	7.21%	8.33%	8.33%	8.33%	8.33%
Total tax on fuel @:		75	32.82	34.24	37.18	38.52	39.86	43.30	43.30	43.30	43.30
Total fuel + tax bill @:		75	107.82	109.24	112.18	113.52	114.86	118.30	118.30	118.30	118.30
Tax percentage of fuel bill @:		75	28.57%	30.44%	33.14%	33.93%	34.70%	36.60%	36.60%	36.60%	36.60%
Carbon tax percentage of total tax on fuel @:		75	8.20%	11.80%	10.33%	13.27%	16.03%	17.71%	17.71%	17.71%	17.71%
Carbon tax percentage of fuel bill @:		75	2.49%	3.70%	3.42%	4.50%	5.56%	6.48%	6.48%	6.48%	6.48%
Total tax on fuel @:		100	31.25	35.49	38.43	39.77	41.11	44.55	44.55	44.55	44.55
Total fuel + tax bill @:		100	131.25	135.49	138.43	139.77	141.11	144.55	144.55	144.55	144.55
Tax percentage of fuel bill @:		100	23.81%	26.19%	27.76%	28.45%	29.13%	30.82%	30.82%	30.82%	30.82%
Carbon tax percentage of total tax on fuel @:		100	0.00%	11.38%	9.99%	12.85%	15.54%	17.22%	17.22%	17.22%	17.22%
Carbon tax percentage of fuel bill @:		100	0.00%	2.98%	2.77%	3.66%	4.53%	5.31%	5.31%	5.31%	5.31%
<b>Actual average fuel price less taxes for period beginning:</b>											
Total tax on fuel @:		98.57	77.74	65.82	71.01	83.21	95.48	105.63	105.63	105.63	105.63
Total fuel + tax bill @:		31.18	32.96	33.78	36.98	38.93	40.88	44.84	44.84	44.84	44.84
Total fuel + tax bill @:		129.75	110.70	99.61	107.99	122.13	136.36	150.47	150.47	150.47	150.47
Tax percentage of fuel bill @:		24.03%	29.78%	33.92%	34.24%	31.87%	29.98%	29.80%	29.80%	29.80%	29.80%
Carbon tax percentage of total tax on fuel @:		0.00%	8.16%	11.96%	10.38%	13.13%	15.63%	17.11%	17.11%	17.11%	17.11%
Carbon tax percentage of fuel bill @:		0.00%	2.43%	4.06%	3.56%	4.18%	4.69%	5.10%	5.10%	5.10%	5.10%

## Notes

- 1 Moreover, the carbon tax policy actually stipulates a salary penalty for the minister of finance if annual carbon revenues exceed payouts.
- 2 This results in an annual natural gas bill increase for home and water heating of about CAD \$120 for the typical British Columbia household according to government estimates.
- 3 Marc Lee, February 2012 Sierra Club Study.
- 4 Canada National Inventory Report to the UNFCCC 2011.
- 5 Sellers who pay a security to the government equal the tax amount are reimbursed when they collect final consumer tax payments at the retail level. The natural gas carbon tax is collected at the retail level.
- 6 The carbon tax liability is considered at the point of sale/purchase (as opposed to production) or, where applicable, following self-consumption. This makes border adjustments for fuels relatively transparent: fuels imported from outside the province are subject to the carbon tax when sold for use inside the province; similarly, fuels produced within the province for consumption outside the province are not taxed as part of that transaction (or taxes paid can be refunded).
- 7 No such linkage program is in effect as of 2012.
- 8 Therefore, in British Columbia, much of government guidance on how individuals can reduce their carbon tax burden (and therefore GHG emissions) has focused on efforts such as driving less, switching to a more fuel-efficient vehicle, improving home insulation, or upgrading gas furnaces [BC MOF Budget 2008], rather than the discussions on improving lighting efficiency or reducing home appliance use that figure prominently in the U.S. or other regions with typically carbon-intensive power systems.
- 9 Oil refineries are another major source of industrial GHG emissions that may face particularly large burdens from a carbon tax and therefore demand special policy attention. British Columbia, however, has only two relatively small oil refineries, with a combined capacity of about 65,000 barrels/day representing about 12% of the province's total carbon dioxide emissions (California, for comparison, has about 20 refineries with a combined capacity that exceeds 2 million barrels/day) [refinery capacity data from Oil and Gas Journal 2009].
- 10 BC MOF 2011.
- 11 This "Carve out" creep is notable, because of the lack of carve-outs in the initial proposal, and because the lack of a greenhouse carve-out was specifically mentioned by BC's finance minister at the time (source: conversation with the minister). This shows the political difficulty of maintaining any carbon tax system without favoritism over time.
- 12 It is also notable that, post the carbon tax, British Columbia has the lowest income tax in Canada for those making under CAD 120,000, corporate taxes that are the lowest in the G7, and small-business taxes that are the lowest in Canada ["Tax Cuts Funded by the Carbon Tax" BC MOF 2012].
- 13 British Columbia implemented such a HST system in July 2010, but ultimately, despite strong support from the provincial government, the HST was defeated in a 2011 ballot referendum and efforts are underway to return to the previous provincial sales tax system by April 2013.
- 14 British Columbia's experiment with the HST did not directly influence motor fuel or home energy use prices; both categories were exempted by both tax systems, though this is not true elsewhere in Canada.
- 15 Specifically, the Vancouver "Translink" region.

16 See the annex for a detailed accounting of the carbon tax shares for gasoline and diesel in the Vancouver, British Columbia motor fuel taxation regions for both constant hypothetical fuel prices and actual historical provincial fuel price averages over the policy implementation period.

17 Known as the “Australia Future Tax System Review”, which began in 2008. One of the more notable and controversial parallel tax reforms has been the simultaneous introduction of a “minerals resources rent tax” which uses revenues from a new windfall tax on iron and coal miners to reduce corporate and small business tax rates and invest in regional infrastructure.

18 Including carbon dioxide, methane, nitrous oxide, and perfluorocarbon emissions.

19 Major initiatives designed to do this include a “Jobs and Competitiveness Program” to assist industry (largely steel and aluminum producers); an “Energy Security Fund” to allocate free carbon units and cash payments to coal-fired power generators who publish “Clean Energy Investment Plans”, also used to negotiate the closure of (i.e. buy out) about 2GW of the most inefficient coal facilities by 2020; and a “Clean Energy Finance Corporation” to help fund renewable electricity projects. Other related spending programs include: a “Coal Sector Jobs Package” focused on mines impacted by the reduction in projected coal use; a sectorally-targeted “Clean Technology Program” to encourage low carbon manufacturing and technology innovation; a “Steel Transformation Plan”; and a land use and “Carbon Farming Initiative” offset scheme.

20 BC and Australian government estimates.

21 Australian government calculations. Originally, the Australian government estimated that 500 businesses would exceed the 25,000 ton per year emission threshold; of those, approximately 130 were primarily in the waste sector, 100 were in mining, 60 were electricity generators, 40 were natural gas retailers, and 50 operated in other fossil fuel-intensive sectors.

22 It is interesting to note that the commercial sector in Australia receives no targeted benefit as a result of the carbon tax. In British Columbia, the commercial sector (along with industries) received general corporate tax rate breaks and small business tax breaks as part of the revenue-neutral carbon tax program. In Australia, even if commercial-sector entities are generally not directly taxed for their own emissions, they will still face higher electricity costs, which is typically the majority of their energy use. It can be argued that this demonstrates the relative strength of major industries in the Australian carbon tax development process.

23 The American Enterprise Institute has since 2011 held a series of ad-hoc left-right workshops around a revenue-neutral carbon tax. One held in July 2012 and titled “Price Carbon Campaign / Lame Duck Initiative: A Carbon Pollution Tax in Fiscal and Tax Reform” prompted vigorous discussion within the conservative think tank community. See “Left-right climate group quietly weighing proposals for carbon tax” (July 12 2012) from The Hill’s E2-Wire (online) and a response from the Competitive Enterprise Institute’s Marlo Lewis, “AEI Hosts Fifth Secret Meeting to Promote Carbon Tax” (July 11 2012).

24 see EPA facility level GHG reporting data, 2012.

25 (which is dominated by low average vehicle-mile per year urban residents in its primate city Vancouver; see region summary statistics compiled from respective government sources).

26 For example, just three states (Texas, Louisiana, and California) represent over half of United States refining capacity. Wyoming alone produces 40% of US coal. Hydroelectric power accounts for 75% of Washington state electricity supply, while coal supplies 90% of electric power in Ohio. Because of fuel price disparity, infrastructure, and policy differences, average retail electricity prices are 17.4 cents per kWh in Connecticut but just 6.7 cents in Kentucky. South Carolina per capita expenditures on gasoline are nearly twice that of New York. Per capita energy consumption in California is half that of Texas [all figures US EIA, 2010 data].

27 Recent studies have attempted to quantify the extent and nature of regional heterogeneity in impacts on household incomes from a flat revenue-neutral carbon tax. See, for example, CBO (July 2009) “Two Recent Studies of Regional



Differences in the Effects of Policies That Would Price Carbon Dioxide Emissions” letter from Douglas W. Elmendorf to James Inhofe. Interestingly, they find that though regional disparities exist, the impact is likely less than anticipated.

28 Australia also emphasized the role of the carbon tax in encouraging a broader shift toward a “clean” economy with potential growth opportunities from the adoption of new technologies.

29 The 2012 Joint Committee on Taxation valued total United States energy sector “tax expenditures” at about \$39.3 billion over the 5 years 2011–2015, or about \$6 billion annually [“Estimates Of Federal Tax Expenditures For Fiscal Years 2011–2015” January 17 2012.] Note that estimates of federal government subsidies or tax preferences in the energy industry vary widely, in part because of different ways to conceptualize what should count as a subsidy or tax preference; a 2011 review by the US DOE’s EIA, for example, pegged the *annual* cost of energy sector tax expenditures much higher, at \$16.3 billion, and included a more expansive valuation of “direct federal financial interventions and subsidies” at \$37.2 billion annually (up from \$11.5 billion and \$17.9 billion, respectively in 2007 before ARRA implementation) [“Direct Federal Financial Interventions and Subsidies in Energy in Fiscal Year 2010” July 2011].

30 Even after a few years of experience in pricing carbon, it is difficult for British Columbia to offer robust analytical support of how the carbon tax is impacting provincial emissions. A recent British Columbia government report [“Making progress on B.C.’s climate action plan” 2012] points out that provincial emissions have fallen over the carbon tax period (by 4.5% from 2007–2010) and that fuel sale declines have exceeded the national average trend, while population and GRP growth has exceeded the national average; though a host of other uncontrolled variables (weather, macroeconomic structural shifts, demographics, other tax changes, etc.) make it difficult to argue with certainty how much of that change was due to the carbon tax, this data has nonetheless helped underpin public support for the carbon tax in recent months.

31 This approach can, however, have the problem of potentially reducing some behavioral effects of the tax. Even though benefits are the same within a recipient class regardless of energy usage (which preserves the behavioral affect), it does effectively insulate entire classes that might in fact have the most potential to reduce energy consumption by shifting classes. For example, the British Columbia special tax benefit for rural or northern homeowners might still incent them to improve the energy efficiency of their homes, but it would not necessary encourage them to move to the city and reduce energy use even further as they would lose the special tax benefit in doing so.

32 For example, in the United States, a 2009 Congressional testimony from the CBO estimated that a carbon cap-and-trade program that returned permit auction revenues (similar in function to a carbon tax) as a flat dividend on a per household basis would impact after-tax real household income by +1.8%, +0.7%, -0.1%, -0.6%, and -0.7% for the lowest to highest income quintiles, respectively [Congressional Budget Office (May 7 2009) Distribution of Revenues from a Cap-and-Trade Program for CO2 Emissions. Statement of Douglas W Elmendorf before the United States Senate Committee on Finance.].

33 To the extent that such existing taxes are distortionary within an economy, their displacement by a revenue-generating carbon tax can be an attractive option from an economic efficiency standpoint because it reduces deadweight loss. Aggregate macroeconomic gain achieved through such a pigouvian tax shift (under certain conditions) is referred to as a “double dividend”. See Lawrence Goulder (1995) “Environmental Taxation and the Double Dividend: a reader’s guide” *Tax and Public Finance*, 2:157–183.

34 A significant operational issue is the potential “fence-post” problem with enacting a new carbon tax: to the extent that there exists a time interval between carbon tax payment and revenue dispersal, there is a float generated on the balance of funds. In the British Columbia case, this balance remains with the treasury (mitigated by the accuracy of estimated tax withholdings) and so some taxpayers will see net-negative cash-flow on account of the carbon tax until compensated by end of year tax refunds or more frequent direct payments. The balance can be virtually flipped from the government to the taxpayer over any given time period, however, by distributing benefits in advance of and equal to anticipated tax receipts, though this incurs a temporary but persistent funding deficit to the government.

35 Aldyen Donnelly: British Columbia’s carbon tax quagmire.

36 As noted above, actual British Columbia provincial emissions fell by 4.5% over 2007–2010 on reduced fuel sales.

37 Pembina Institute 2011, Duff 2008.

38 (with entity liability thresholds almost identical to those in cap and trade systems recently announced in California, South Korea, and China's Guangdong Province).

39 US EPA 2012 GHG Emission Inventory, data for 2010.

40 See, for example, the tax liability scheme outlined in Metcalf and Weisbach, 2009, "The Design of a Carbon Tax", *Harvard Environmental Law Review* Vol 33. Note that this discussion has dealt with tax obligation and not tax incidence—tax incidence will likely spread across each fuel's value chain according to existing market forces. A number of studies have attempted to model price impacts of carbon pricing across various economic subsectors. In the United States, see, for example, the CBO's June 2010 working paper "Input-Output Model Analysis: Pricing Carbon Dioxide Emissions", Kevin Perese.

41 This approach has not been without complaint, as witnessed by the protestations of the British Columbia cement industry, for example, as described above. One small border tax perk in British Columbia, however, has been the net positive capture of carbon tax revenues paid by tourists or other non-provincial travellers through fuel and other energy purchases which are subsequently refunded to British Columbians.

42 To that end, the Australian government fastidiously promulgates news of carbon pricing scheme adoption by trading partners on its program website. See, for example, "South Korea passes ETS legislation", May 3 2012, Australian Government Clean Energy Future website.

43 BC Voters Stand By Carbon Tax, <http://www.carbontax.org/blogarchives/2009/05/13/bc-voters-stand-by-carbon-tax>.

44 The Tyee.

45 British Columbia re-elects Liberals (May 12) AFP.

46 "Canadians cool on carbon tax: poll" May 10 2009, The Canadian Press.

47 Jock Finlayson, spokesman for the Business Council of B.C, in "Three years in, B.C. still on its own with carbon tax" June 30 2011, The Canadian Press.

48 The Globe and Mail. September 11 2008. "Layton Lays in Green Shift". <http://www.theglobeandmail.com/news/politics/layton-lays-into-green-shift/article1061159>.

49 That there is actually flexibility in the design of a revenue-neutral carbon tax may dismay supporters who see it as a relatively simple alternative to complex cap-and-trade mechanisms. This flexibility, however, is also an asset, as it means that what a revenue-neutral carbon tax can be, and what goals it can fulfill, should not be considered pre-defined. A United State revenue-neutral carbon tax, if ever implemented, may not be recognizable from the British Columbian perspective, the Australian perspective, by today's domestic carbon tax opponents—or even today's carbon tax supporters.

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**Jeremy Carl**

*Jeremy Carl is a research fellow at the Hoover Institution and director of research for the Shultz-Stephenson Task Force on Energy Policy. His work focuses on energy and environmental policy, with an emphasis on energy security, climate policy, and global fossil fuel markets. In addition, he writes extensively from his experience on US-India relations and Indian politics. He holds degrees in history and public policy from Yale and Harvard Universities.*



**David Fedor**

*David Fedor is a research analyst for the Hoover Institution's Shultz-Stephenson Task Force on Energy Policy. He has worked in energy and the environment across China, Japan, and the United States. Formerly at APEC's Asia Pacific Energy Research Center, Fedor has also consulted for WWF China, the Asian Development Bank, and the Korea Energy Economics Institute. He holds degrees in earth systems from Stanford University.*

## Shultz-Stephenson Task Force on Energy Policy

The Hoover Institution's Shultz-Stephenson Task Force on Energy Policy addresses energy policy in the United States and its effects on our domestic and international political priorities, particularly our national security.

As a result of volatile and rising energy prices and increasing global concern about climate change, two related and compelling issues—threats to national security and adverse effects of energy usage on global climate—have emerged as key adjuncts to America's energy policy; the task force will explore these subjects in detail. The task force's goals are to gather comprehensive information on current scientific and technological developments, survey the contingent policy actions, and offer a range of prescriptive policies to address our varied energy challenges. The task force will focus on public policy at all levels, from individual to global. It will then recommend policy initiatives, large and small, that can be undertaken to the advantage of both private enterprises and governments acting individually and in concert.

*For more information about this Hoover Institution Task Force, please visit us online at [www.hoover.org/taskforces/energy-policy](http://www.hoover.org/taskforces/energy-policy).*



# Exhibit QQ

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

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

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

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

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

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

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

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

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

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

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

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

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

Case 4:16-cv-00468-K Document 76-12 Filed 10/17/16 Page 36 of 51 PageID 2832  
"A lot of people haven't seen through the scam that's being perpetrated," Whitehouse said. "So that's one of the reasons I hope that we get another lawsuit out of the Department of Justice, like the one they brought against the tobacco industry that showed that the whole fraudulent scam was a racketeering enterprise, held them accountable for it."

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

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

*Follow Michael on [Facebook](#) and [Twitter](#)*

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# **Exhibit RR**



# West Virginia AG 'disappointed' in probes of Exxon Mobil

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Exhibit SS

**Luther Strange**  
Alabama Attorney General



June 16, 2016

For More Information, contact:  
Mike Lewis (334) 353-2199  
Joy Patterson (334) 242-7491  
Page 1 of 2

**ATTORNEY GENERAL STRANGE LEADS DEAR COLLEAGUE LETTER TO  
FELLOW ATTORNEYS GENERAL OPPOSING USE OF SUBPOENAS TO ENFORCE  
THEIR CLIMATE AGENDA VIEWS**

(MONTGOMERY) – Alabama Attorney General Luther Strange led a 13-state Dear Colleague letter urging the nation’s Attorneys General to resist using their subpoena powers to target energy industries for their views in the heated climate change debate.

“State Attorneys General should not abuse subpoena power to silence speech or side with one industry against a competitor under investigation,” said Attorney General Strange. “Yet we have seen this very approach used by a group of Attorneys General in an apparent effort to advance a climate change agenda. This is a chilling abuse of power that must be stopped.”

“Several state Attorneys General recently held a press conference under the banner of ‘AGs United for Clean Power,’” the multi-state Dear Colleague letter said. “The media event highlighted an investigation into ‘whether fossil fuel companies misled investors and the public on the impact of climate change on their businesses.’ We think this effort by our colleagues to police the global warming debate through the power of the subpoena is a grave mistake.”

“We are concerned that our colleagues’ investigation undermines the trust the people have invested in Attorneys General to investigate fraud. Investigatory subpoenas were issued to at least one company and one non-profit believed to have made statements minimizing the risks of climate change. At the press conference, one of our colleagues noted that ‘[w]e are pursuing this as we would any other fraud matter.’ We routinely investigate fraud and have done so with many of the states present at the press conference. But this investigation is far from routine. We are unaware of any fraud case combining the following three characteristics: 1) the investigation targets a particular type of market participant; 2) the Attorneys General identify themselves with the competitors of their investigative targets; and 3) the investigation implicates an ongoing policy debate.”

The letter also questioned how one company’s minimizing climate change risk is fraud and yet another company’s exaggeration of climate change impact is not.

“First, this fraud investigation targets only ‘fossil fuel companies’ and only statements minimizing climate change risks. If it is possible to minimize the risks of climate change, then the same goes for exaggeration. If minimization is fraud, exaggeration is fraud.”

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[www.ago.alabama.gov](http://www.ago.alabama.gov)



Attorney General Strange was joined by fellow Attorneys General from Alaska, Arizona, Arkansas, Louisiana, Michigan, Nebraska, Nevada, Oklahoma, South Carolina, Texas, Utah and Wisconsin in the Dear Colleague letter.

*A copy of the Dear Colleague letter is attached*

--30--





STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

501 WASHINGTON AVENUE  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.ALABAMA.GOV

June 15, 2016

Dear Fellow Attorneys General:

Several state Attorneys General recently held a press conference under the banner of “AGs United for Clean Power.” The media event highlighted an investigation into “whether fossil fuel companies misled investors and the public on the impact of climate change on their businesses.”<sup>1</sup> We think this effort by our colleagues to police the global warming debate through the power of the subpoena is a grave mistake.

We all understand the need for a healthy environment, but we represent a wide range of viewpoints regarding the extent to which man contributes to climate change and the costs and benefits of any proposed fix. Nevertheless, we agree on at least one thing—this is not a question for the courts. Using law enforcement authority to resolve a public policy debate undermines the trust invested in our offices and threatens free speech.

We are concerned that our colleagues’ investigation undermines the trust the people have invested in Attorneys General to investigate fraud. Investigatory subpoenas were issued to at least one company and one non-profit believed to have made statements minimizing the risks of climate change.<sup>2</sup> At the press conference, one of our colleagues noted that “[w]e are pursuing this as we would any other fraud matter.”<sup>3</sup> We routinely investigate fraud, and have done so with many of the states present at the press conference. But this investigation is far from routine. We are unaware of any fraud case *combining* the following three characteristics: 1) the investigation targets a particular type of market participant; 2) the Attorneys General identify themselves with the competitors of their investigative targets; and 3) the investigation implicates an ongoing public policy debate.

---

<sup>1</sup> Press Release, New York State Attorney General, *A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change* (March 29, 2016) (available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>).

<sup>2</sup> See, e.g., Attorney General Schneiderman, Press Conference, AGs United For Clean Power (March 29, 2016) (confirming subpoena to ExxonMobil) (video available at <http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>); Subpoena to Competitive Enterprise Institute, *United States Virgin Islands, Office of the Attorney General v. ExxonMobil Oil Corp.*, Case No. 16-002469, Superior Court of the District of Columbia (April 4, 2016).

<sup>3</sup> Attorney General Schneiderman, Press Conference, AGs United For Clean Power, *supra* note 2.

June 15, 2016

Page Two

First, this fraud investigation targets only “fossil fuel companies” and only statements minimizing climate change risks.<sup>4</sup> If it is possible to minimize the risks of climate change, then the same goes for exaggeration. If minimization is fraud, exaggeration is fraud. Some have indicated that Exxon Mobil’s securities disclosures regarding climate change may be inadequate.<sup>5</sup> We do not know the accuracy of these charges. We do know that Exxon Mobil discloses climate change and its possible implications as a business risk. *See* Exxon Mobil Corporation SEC Form 10-k, FY 2014 (listing “Climate change and greenhouse gas restrictions” as an item 1A risk factor). If Exxon’s disclosure is deficient, what of the failure of renewable energy companies to list climate change as a risk? *See, e.g.*, SolarCity Corporation SEC Form 10-k, FY 2014 (omitting from item 1A risk factors any mention of climate change or global warming). If climate change is perceived to be slowing or becoming less of a risk, many “clean energy” companies may become less valuable and some may be altogether worthless. Therefore, any fraud theory requiring more disclosure of Exxon would surely require more disclosure by “clean energy” companies.

Similarly, it has been asserted that “fossil fuel companies” may have funded non-profits who minimized the risks of climate change.<sup>6</sup> Does anyone doubt that “clean energy” companies have funded non-profits who exaggerated the risks of climate change? Under the stated theory for fraud, consumers and investors could suffer harm from misstatements by all energy-market participants and the non-profits they support. Yet only companies and non-profits allegedly espousing a particular viewpoint have been chosen for investigation.

Second, the Attorneys General have taken the unusual step of aligning themselves with the competitors of their investigative targets. The press conference was titled, “AGs United for Clean Power,” apparently to contrast with the power generated by the investigative targets.<sup>7</sup> One of our colleagues emphasized that she looked forward to working with those at the press conference to “advocate for a comprehensive portfolio of renewable energy sources.”<sup>8</sup> Furthermore, the media event featured a senior partner of a venture capital firm that invests in renewable energy companies.<sup>9</sup> If the focus is fraud,

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<sup>4</sup> *See generally* Press Release, New York State Attorney General, *supra* note 1; Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>5</sup> *See, e.g.*, Attorney General Healey, Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>6</sup> *See, e.g.*, Attorney General Schneiderman, Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>7</sup> *See generally* Press Release, New York State Attorney General, *supra* note 1; Press Conference, AGs United For Clean Power, *supra* note 2.

<sup>8</sup> Press Release, New York State Attorney General, *supra* note 1 (quoting Attorney General Madigan).

<sup>9</sup> *See* Press Release, New York State Attorney General, *supra* note 1 (noting presence of Vice President Gore); Press Conference, AGs United For Clean Power, *supra* note 2 (including remarks by Vice President Gore); Press Release, Kleiner Perkins Caufield & Byers, *Al Gore Joins KPCB as Partner and John Doerr Joins Generation’s Advisory Board* (November 12, 2007) (available at

June 15, 2016

Page Three

such alignment by law enforcement sends the dangerous signal that companies in certain segments of the energy market need not worry about their misrepresentations. For example, though some of us may have investigated diesel emissions, we have not launched our investigations with other auto companies present or identified ourselves as “AGs United for Diesel Alternatives.” Implying a safe harbor for the “Clean Power” energy segment, which some estimate at \$200 billion, or approximately the size of the pharmaceutical industry, is a dangerous practice.<sup>10</sup>

Third, this investigation inescapably implicates a public policy debate and raises substantial First Amendment concerns. As our colleagues must know, a vigorous debate exists in this country regarding the risks of climate change and the appropriate response to those risks. Both sides are well-funded and sophisticated public policy participants. Whatever our country’s response, it will affect people, communities, and businesses that all have a right to participate in this debate. Actions indicating that one side of the climate change debate should fear prosecution chills speech in violation of a formerly bi-partisan First Amendment consensus. As expressed by Justice Brandeis, it has been a foundational principle that when faced with “danger flowing from speech ... the remedy to be applied is more speech, not enforced silence.” *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring). Here, the remedy chosen is silence through threat of subpoena. This threat distorts the debate and impoverishes consumers and the general public who may wish to better educate themselves by hearing and evaluating both sides.

Once the government begins policing viewpoints, two solutions exist. The first solution is to police all viewpoints equally. Another group of Attorneys General could use the precedent established by the “AGs United for Clean Power” to investigate fraudulent statements associated with competing interests. The subpoenas currently directed at some market participants could be met with a barrage of subpoenas directed at other market participants. No doubt a reasonable suspicion exists regarding a number of statements relating to the risks of climate change. Even in the press conference, a senior partner at Kleiner Perkins Caufield & Byers (“Kleiner Perkins”) identified “man-made global warming pollution” as “the reason” for 2015 temperatures, the spread of Zika, flooding in Louisiana and Arkansas, Super Storm Sandy, and Super Typhoon Haiyan.<sup>11</sup> Some evidence may support these statements. Other evidence may refute them. Do these statements increase the value of clean energy investments offered for sale by Kleiner Perkins? Should these statements justify an investigation into all contributions to environmental non-profits by Kleiner Perkins’s partners? Should these questions be

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<https://www.generationim.com/media/pdf-generation-kpcb-12-11-07.pdf>); Kleiner Perkins Caufield & Byers public website, available at <http://www.kpcb.com/partner/al-gore> (confirming Vice President Gore’s present status as a “senior partner”).

<sup>10</sup> See, e.g., Informational Report, Environmental Defense Fund, *Climate* (2015), at 2 (noting “U.S. clean energy market grew ... to \$200 billion,” in 2014) (available at [https://www.edf.org/sites/default/files/AR2015/EDF\\_AR2015\\_climate.pdf](https://www.edf.org/sites/default/files/AR2015/EDF_AR2015_climate.pdf)).

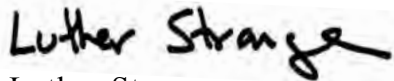
<sup>11</sup> Vice President Gore, Press Conference, AGs United For Clean Power, *supra* note 2.

June 15, 2016

Page Four

settled by our state courts under penalty of RICO charges? May it never be. As Justice Jackson noted, our “forefathers did not trust any government to separate the true from the false for us.” *Thomas v. Collins*, 323 U.S. 516, 545 (1945). We write to urge our colleagues to choose the second, and far superior, solution. Stop policing viewpoints.

Sincerely,



Luther Strange  
Attorney General  
State of Alabama



Bill Schuette  
Attorney General  
State of Michigan



Ken Paxton  
Attorney General  
State of Texas



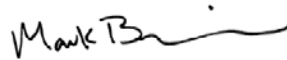
Craig Richards  
Attorney General  
State of Alaska



Doug Peterson  
Attorney General  
State of Nebraska



Sean Reyes  
Attorney General  
State of Utah



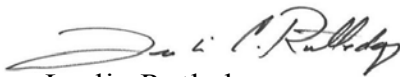
Mark Brnovich  
Attorney General  
State of Arizona



Adam Laxalt  
Attorney General  
State of Nevada



Brad Schimel  
Attorney General  
State of Wisconsin



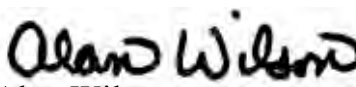
Leslie Rutledge  
Attorney General  
State of Arkansas



Scott Pruitt  
Attorney General  
State of Oklahoma



Jeff Landry  
Attorney General  
State of Louisiana



Alan Wilson  
Attorney General  
State of South Carolina

# Exhibit TT

## Congress

# Environmental groups reject Rep. Lamar Smith's request for information on ExxonMobil climate case

By [Steven Mufson](#) June 1

The battle over ExxonMobil and the issue of climate change took a new turn Wednesday.

Environmental groups, citing constitutional rights, said they would not comply with a sweeping request for information from the House Committee on Science, Space and Technology, led by Chairman Lamar Smith (R-Tex.).

The environmental groups and foundations said the request was unreasonably broad, violated their rights to free speech and free assembly, and interfered with their right to petition government officials.

On May 18, Smith's committee had asked for any communications that might show that eight leading environmental groups and nonprofit foundations — along with the attorneys general from about 20 states — had coordinated a legal strategy to uncover internal information about climate change that they allege ExxonMobil had concealed for decades. Smith also asked for communications between environmental groups related to state investigations into ExxonMobil and whether the oil giant had violated securities and consumer fraud laws.

The environmental groups don't think the committee is entitled to see that communication.

"In a democracy built on principles and the rule of law, 350.org cannot in good faith comply with an illegitimate government request that encroaches so fundamentally on its and its colleagues' protected constitutional rights," said a letter sent Wednesday from the group's law firm, Quinn Emanuel Urquhart & Sullivan.

The Smith letter appeared to be part of a tit-for-tat after state attorneys general sought old ExxonMobil documents related to climate. Case 4:16-cv-00489-K Document 76-12 Filed 10/17/16 Page 50 of 51 PageID 2846

The environmental groups and foundations have been openly pressing state prosecutors to investigate whether ExxonMobil had violated securities and consumer fraud laws by not fully disclosing what it knew about climate change and its potential impact on the company's business as well as the planet.

The oil giant has asserted that it did not violate disclosure requirements and that much of what it knew was publicly available in scientific papers.

"The Committee is concerned that these efforts to silence speech are based not on sound legal or scientific arguments, but rather on a long-term strategy developed by political activist organizations," Smith said in his May 18 letter to the groups. The letter, signed by a dozen other Republicans on the panel, said the committee feared that environmental groups were part of a "coordinated attempt to deprive companies" of their First Amendment rights and impair their ability to fund scientific research "free from intimidation and threats of prosecution."

Sen. Ted Cruz (R-Tex.) has also joined the fray, demanding in a May 25 letter signed by four other GOP senators that the Justice Department halt any investigations of whether ExxonMobil properly disclosed views on climate issues. The Justice Department has not said whether it is conducting such an investigation.

The environmental and nonprofit groups say Smith and Cruz are turning the issue on its head. Abbe David Lowell, the lawyer for Greenpeace, noted the "irony" that Smith's committee, in the name of protecting ExxonMobil's free speech, would "examine" the free speech of environmental groups.

Quinn Emanuel, which also wrote a response for the Rockefeller Family Fund, said that courts have not supported forced disclosure of communications within advocacy groups. It quoted a decision in one case that said: "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."

A letter from the Union of Concerned Scientists said that while the committee said it was acting in the name of "transparency," the Supreme Court has said that "there is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress ... [n]or is the Congress a law enforcement or trial agency."


Harry Sandick, a lawyer at Patterson Belknap Webb & Tyler, representing the Rockefeller Brothers Fund, said that the scope of the committee's request for information was too great a burden. The Smith letter sought all documents and communications of all Fund employees over a four-and-a-half year period when climate change was a core program area for the Fund.

The 350.org letter added that Congress could not interfere with the state attorneys general investigations even if it disagrees with them.



“Because you cannot interfere directly with state investigations and prosecutions, you cannot do so indirectly by requesting communications from private organizations with state attorneys general or others about state investigations and prosecutions,” the Quinn Emanuel letter said.

Maryland Attorney General Brian Frosh also rejected the committee’s request for information about his internal deliberations on the case. Moreover, he said in a letter posted on his Facebook page, “communications between our office and scientists ought to be cause for praise from the ‘Science’ Committee, not suspicion.” He said that the committee “does not have jurisdiction to intrude upon the law enforcement actions of the chief legal officer of a sovereign state, much less scrutinize the privileged internal deliberations that underlie those actions.”

Steven Mufson covers energy and other financial matters. Since joining The Post, he has covered the White House, China, economic policy and diplomacy. Follow @StevenMufson.  Follow @StevenMufson

### **The Post Recommends**

## **Trump lost the debate in these three lines (if not all the others)**

He disqualified himself for any political office, let alone the most powerful in the world.

## **Crowd hurls slurs at all-black youth football team as some players kneel during anthem, coach says**

"Out of nowhere you just hear, ‘If the little n-word want to take a knee, they shouldn't be able to play,'" youth football coach Marcus Burkley said.

## **The GOP’s biggest fear appears to be coming true: Independents ditching Donald Trump**

New polls confirm it.

# Exhibit UU

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# AG Won't Send Documents on Probe of Exxon Mobil

The Associated Press

June 3, 2016

Attorney General Eric Schneiderman is refusing to send requested documents about his investigation into Exxon Mobil to a congressional committee, saying Congress lacks jurisdiction over state law enforcement.

Schneiderman told U.S. Rep. Lamar Smith, a Texan who chairs the House Committee on Science, Space and Technology, that his request two weeks ago "raises serious constitutional concerns."

Smith and 12 other committee Republicans wrote two weeks ago to Schneiderman and 16 other attorneys general, requesting documents and saying they've been pushed by environmental activists "to use their prosecutorial powers to stifle scientific discourse" over climate change.

Schneiderman is investigating whether the Texas-based oil giant misled investors and consumers about global warming from burning fossil fuels and the business risks.

The congressional letter was sent after the attorneys general on March 29 announced their coordinated effort to use their offices to address threats from climate change. Schneiderman and at least two others are investigating Exxon Mobil's representations. The company has denied any wrongdoing, saying it has provided shareholders information about the business risks for years.

"In the weeks since the March 29 press conference, legal actions against those who question climate change orthodoxy ... have rapidly expanded to include subpoenas for documents, communications and research that would capture the work of more than 100 academic institutions, scientists and nonprofit organizations," the committee members wrote.

In his response, Schneiderman wrote that the lawmakers' letter made "unfounded claims" about his motives. "Second, Congress does not have jurisdiction to demand documents and communications from a state law enforcement official regarding the exercise of a state's sovereign police powers," he said.

Schneiderman added that his office was unaware of any precedent supporting congressional oversight or investigation of a state attorney general and his investigations of potential violations under state law.

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# **Exhibit VV**



**TOTAL \$30,925,235**

Documenting Exxon-Mobil's funding of climate change skeptics.

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.

[List Organizations](#)

[Launch Interactive Map](#)

Search:

[FAQ](#)

Search Exxon Secrets using Google Search:

A   
 project.

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

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Organization

Showing 1 to 69 of 69 entries



# **Exhibit WW**



**RECEIVED**

**MAR 22 2016**

**S. JACK BALAGIA JR.**

**DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**

34-38 KIRK PRINDSENS GADE  
GERS COMPLEX, 2ND FLOOR  
ST. THOMAS, U.S. VIRGIN ISLANDS 00802  
(340) 774-5000 FAX: (340) 7708404

#0040 ESTATE CASTLE COAKLEY  
DESIGN CENTER BUILDING  
CHRISTIANSTED, ST. CROIX VI 00820  
(340) 773-0205 FAX: (340) 773-1425

March 15, 2016

Exxon Mobil Corporation  
5959 Las Colinas Boulevard  
Irving, Texas 75039-2298

To Whom It May Concern:

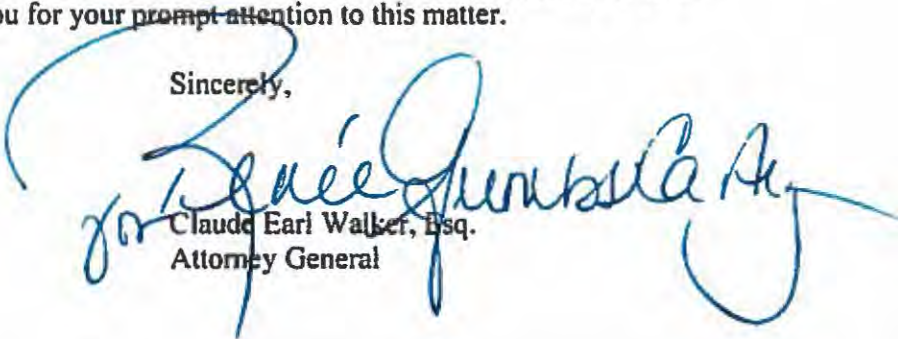
Attached please find a subpoena issued today by this Office. We appreciate your prompt attention to its requests.

Your responses to the subpoena should be directed to me and should be produced in the format described in the instructions. Please copy our national counsel, Linda Singer, of Cohen Milstein Sellers & Toll PLLC, on all productions and correspondence relating to this subpoena at the address below.

Linda Singer  
Cohen Milstein Sellers & Toll PLLC  
1100 New York Avenue, NW, Suite 500  
Washington, DC 20005  
(202) 408-4600  
lsinger@cohenmilstein.com

Please feel free to direct any questions regarding our requests or your production to either me or to Ms. Singer. Thank you for your prompt attention to this matter.

Sincerely,

  
Claude Earl Walker, Esq.  
Attorney General

APP. 459

**UNITED STATES VIRGIN ISLANDS  
DEPARTMENT OF JUSTICE**

**IN RE INVESTIGATION OF VIOLATIONS )  
OF THE CRIMINALLY INFLUENCED AND )  
CORRUPT ORGANIZATIONS ACT )**

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**SUBPOENA**

**TO: Exxon Mobil Corporation  
5959 Las Colinas Boulevard  
Irving, Texas 75039-2298**

You are suspected to have engaged in, or be engaging in, conduct constituting a civil violation of the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. § 605, by having engaged or engaging in conduct misrepresenting Your knowledge of the likelihood that Your products and activities have contributed and are continuing to contribute to Climate Change in order to defraud the Government of the United States Virgin Islands (“the Government”) and consumers in the Virgin Islands, in violation of 14 V.I.C. § 834 (prohibiting obtaining money by false pretenses) and 14 V.I.C. § 551 (prohibiting conspiracy to obtain money by false pretenses).

Therefore, YOU ARE HEREBY DIRECTED, by the authority granted to the Attorney General of the United States Virgin Islands (“USVI”), pursuant to the provisions of 14 V.I.C. § 612, to produce and deliver the documents responsive to the inquiries set forth herein, on or before **April 15, 2016**, directed to the attention of Attorney General Claude Earl Walker, Esq.

Failure to comply with this subpoena may result in an enforcement action being brought against you pursuant to 14 V.I.C. § 612(k).

**INSTRUCTIONS**

A. If any document, report, study, memorandum or other written material or information is withheld or not identified under claim of privilege, furnish a list identifying each document or requested information together with the following information (as relevant): date, author, sender, recipient, persons to whom copies were furnished or information provided together with their job titles, subject matter of the document, the basis for the privilege, and the paragraph or paragraphs of the Request(s) to which the document or information is responsive.

B. In each instance in which a document is produced in response to a Request, the current version should be produced together with all earlier versions, or predecessor documents serving the same function during the relevant time period, even though the title of earlier documents may differ from current versions.

C. Any document produced whose text is not already searchable should be processed through Optical Character Recognition ("OCR") so that it is fully searchable.

D. This Investigative Subpoena calls for all described documents in your possession, custody, or control without regard to the person or persons by whom or for whom the documents were prepared (e.g., your company employees, contractors, vendors, distributors, service providers, competitors, or others).

E. The following procedures shall apply to the production, inspection, and copying of documents:

- (a) You shall produce original, complete documents. Documents shall be produced in the order that the documents are maintained in your files, in original folders, with the folder's original file tabs. In response to this Subpoena, true copies of original

documents may be submitted in lieu of originals, provided that you retain the original documents in such manner as to be able to produce them if later required.

1. Any documents produced in response to this Investigative Subpoena should be provided as a Group 4 compression single-page "TIFF" image that reflects how the source document would have appeared if printed out to a printer attached to a computer viewing the file. Extracted text should be included in the manner provided herein. **To the extent that extracted text does not exist, these images should be processed through OCR so that they are fully searchable.** Extracted text and OCR should be provided in separate document level text files. "Load files" shall be produced to accompany the images and shall facilitate the use of the litigation support database systems to review the produced images.
2. **Document Unitization.** Each page of a document shall be electronically converted into an image as described above. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original when creating the image file and appropriately designated in the load files. The corresponding parent/attachment relationships, to the extent possible, shall be provided in the load files furnished with each production.
3. **Bates Numbering.** Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically branded onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. To ensure that the Bates Numbers do not obscure portions of the documents, the images may be proportionally reduced to create a larger margin in which the Bates Number may be branded. There shall be no other legend or stamp placed on the document image, except those sections of a document that are redacted to eliminate material protected from disclosure by the attorney-client or work product privileges shall have the legend "REDACTED" placed in the location where the redaction(s) occurred or shall otherwise note the location and/or location of the information for which such protections are claimed.
4. **File Naming Conventions.** Each document image file shall be named with the unique Bates Number of the page of the document in the case of single-page TIFFs, followed by the extension "TIF". Each document shall be named with a unique document identifier. Attachments shall have their own unique document identifiers.
5. **Production Media.** The documents should be produced on CD-ROM, DVD, external hard drive (with standard Windows PC compatible interface), (the "Production Media"). Each piece of Production Media shall identify a production number corresponding to the production "wave" the documents on the Production Media are associated with (e.g., "V001", "V002"), as well as the volume of the material in that production wave (e.g., "-001", "-002").



For example, if the first production wave comprises document images on three hard drives, you shall label each hard drive in the following manner: "V001-001", "V001-002", "V001-003". Additional information that shall be identified on the physical Production Media shall include: (1) text referencing that it was produced in response to this Investigative Subpoena, (2) your name, (3) the production date, and (4) the Bates Number range of the materials contained on the Production Media.

6. **Objective Coding/Extracted Meta Data.** You shall produce with each production of documents extracted metadata for each document (the "Objective Coding") included in the load file. The data file shall include the fields and type of content set forth in the **"SPECIAL INSTRUCTIONS FOR ELECTRONICALLY STORED MATERIAL"** section. Objective Coding shall be labeled and produced on Production Media in accordance with the provisions set forth above.
  7. **Native format for Excel and databases.** To the extent that such documents exist in Excel or some other spreadsheet, produce the document in Excel. To the extent that the document constitutes a database, produce the document in Access.
- (b) All attachments to responsive documents shall be produced attached to the responsive documents.
  - (c) No portion of any documents will be masked and the entire document shall be produced.
  - (d) The documents shall be produced at the location set forth or at such other locations as counsel agree.
  - (e) Documents shall be available on reasonable notice for inspection and copying after initial production throughout the term of the investigation or litigation. The documents shall be maintained in the order in which they were produced.
  - (f) You shall label each group of documents in the following manner: Response to Request No. 1; Response to Request No. 2, etc., and identify the Bates Number range for the corresponding documents that are responsive or written responses.
  - (g) Provide a key to all abbreviations used in the documents, providing a method of identifying all documents requiring use of the key.
  - (h) If you obtain information or documents responsive to any request after you have submitted your written responses or production, you should supplement your responses and/or production with any new and or different information and/or documents that become available to you.

(i) If any document responsive to this Subpoena was lost or has been removed, destroyed, or altered prior to the service of this Subpoena, furnish the following information with respect to each such document:

- a description to the extent known, and the last time and location that the document was known to be or is believed to have existed;
- the date, sender, recipient, and other persons to whom copies were sent, subject matter, present location, and location of any copies; and
- the identity of any person authorizing or participating in any removal, destruction, or alteration; date of such removal, destruction or alteration; and the method and circumstances of such removal, destruction, or alteration.

F. This subpoena imposes a continuing duty to produce promptly any responsive information or item that comes into your knowledge, possession, custody, or control after your initial production of responses to the requests.

#### **SPECIAL INSTRUCTIONS**

Electronic documents should be produced in accordance with the following instructions:

A. Single page TIFFs at a 300 DPI resolution which are named for the Bates Number of the page. There should NOT be more than 1000 images per folder.

B. Document level text files containing OCR or extracted text named with the Bates Number of the first page of the document.

C. Data load file containing all of the metadata fields (both system and application – see list below) from the original Native documents – .dat for Concordance.

D. The Concordance .dat file of extracted metadata should be delimited with the Concordance default characters – ASCII 020 for the comma character and ASCII 254 for the quote character. The use of commas and quotes as delimiters is not acceptable.



E. The database field names should be included in the first line of the metadata file listed in the order they appear in the file.

F. An image load file for Concordance – such as “.opt.”

G. For electronic documents created in Excel (spreadsheets) or Access (databases), provide those documents in Native format as well as a TIFF placeholder.

H. For all documents produced, provide the following:

Field #	Field Name	Format	Description
1	BEGDOCNO	Text	Image key of first page of document
2	ENDDOCNO	Text	Image key of last page of document
3	BEGATTACH	Text	For emails/attachments ONLY: Image key of the first page of the parent email. Please DO NOT populate these fields for emails with no attachments.
4	ENDATTACH	Text	For emails/attachments ONLY: Image key of the last page of the last attachment. Please DO NOT populate these fields for emails with no attachments.
5	CUSTODIAN	Text	Custodian from whom documents were collected (semi-colon delimited, if multiple entries)
6	AUTHOR	Text	Email “From” data or user/author name from electronic files
7	RECIPIENT	Text	Email “To” data (semi-colon delimited, if multiple entries)
8	CC	Text	Email “CC” data (semi-colon delimited, if multiple entries)
9	BCC	Text	Email “BCC” data (semi-colon delimited, if multiple entries)

Field #	Field Name	Format	Description
10	MAILSUBJECT	Text	Email subject. This value should be populated down to any children/attachments of the parent email.
11	MAILDATE	MM/DD/YYYY	Email date sent. This value should be populated down to any children/attachments of the parent email.
12	MAILTIME	HH:MM:SS	Email time sent, in military time. This value should be populated down to any children/attachments of the parent email.
13	ATTACHMENTS	Text	Semi-colon delimited list of the original file names of any attachments to an email
14	FILENAME	Text	For emails: Mail subject For attachments and e-files: File name from source media
15	HASH_VALUE	Text	Hash value generated for purposes of de-duplication if performed
16	FileExt	Text	Original file extension for the email or electronic file being produced (e.g., .eml, .pdf, .xls, .doc)

### DEFINITIONS

1. "All" shall be construed to include the collective as well as the singular and shall mean "each," "any," and "every."
2. "Any" shall be construed to mean "any and all."
3. "Climate Change" refers to the general subject matter of changes in global or regional climates that persist over time, whether due to natural variability or as a result of human activity. Any documents or communications using any of the terms "climate change," "climatology," "climate science," "climate model," "climate modeling," "global warming," "greenhouse gas," "greenhouse effect," "CO<sub>2</sub> greenhouse," "climate skeptics," "climate skepticism," "global

cooling,” “solar variation,” “arctic shrinkage,” “carbon tax,” “climate legislation,” or “Keeling Curve” concern climate change, although documents or communications need not include any of these terms to concern climate change. Any documents or communications concerning rising sea levels, Arctic and/or Antarctic ice melt, declining sea ice, melting glaciers, declining snowfall, oceanic warming, ocean acidification, or increases in extreme weather events—or the opposites of these phenomena (e.g., dropping sea levels, oceanic cooling)—concern climate change, although documents or communications need not refer to any of these phenomena to concern climate change.

4. “Communications” mean any exchange of information by any means of transmissions, sending or receipt of information of any kind by or through any means including but not limited to: verbal expression; gesture; writings; documents; language (machine, foreign, or otherwise) of any kind; computer electronics; email; SMS, MMS, or other “text” messages; messages on “social networking” platforms (including but not limited to Facebook, Google+, MySpace, and Twitter); shared applications from cell phones, “smartphones,” netbooks, and laptops; sound, radio, or video signals; telecommunication; telephone; teletype; facsimile; telegram; microfilm; or by any other means. “Communications” also shall include, without limitation, all originals and copies of inquiries, discussions, conversations, correspondence, negotiations, agreements, understandings, meetings, notices, requests, responses, demands, complaints, press, publicity or trade releases and the like that are provided by you or to you by others. Any Communications produced, including emails, should include the original sender, all original recipients, the date and time, and any files originally attached to such emails in the form and filetype in which they were originally attached.

5. "Concerning" means directly or indirectly mentioning or describing, relating to, referring to, regarding, evidencing, setting forth, identifying, memorializing, created in connection with or as a result of, commenting on, embodying, evaluating, analyzing, tracking, reflecting, or constituting, in whole or in part, a stated subject matter.
  
6. "Documents" mean any writing or any other tangible thing, whether printed, recorded (in audio, video, electronically or by any other means), reproduced by any process, or written or produced by hand, including but not limited to: letters; memoranda; notes; opinions; books; reports; studies; agreements; statements; communications (including inter-company and intra-company communications); correspondence; telegrams; email; instant messages; chat logs; SMS, MMS or other "text" messages; posted information; messages; chat logs on "social networking" platforms (including but not limited to Facebook, Google+, MySpace and Twitter); logs; bookkeeping entries; summaries or records of personal conversations; diaries; calendars; telephone messages and logs; forecasts; photographs; images; tape recordings; models; statistical statements; graphs; laboratory and engineering reports; notebooks; charts; tabulations; maps; plans; drawings; minutes; bylaws; resolutions; records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; lists of clients or customers or suppliers; reports or summaries of interviews; opinions or reports of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of any document and revisions of drafts of any document; and any other similar paper or record in any form or medium whatsoever. The term also includes a copy of a document where the copy is not exactly the same as the original. The term also includes emails and other documents made or stored in electronic form, whether kept on computers, computer tapes,

disks, drives, Cloud storage, or other media upon which information may be recorded of any type.

7. "Identify" means:

- (a) When used in connection with a Document, provide the nature of the Document, its title, its description (e.g., memorandum, letter, contract), date, author, its current location, its current custodian, and the number of pages.
- (b) When used in connection with a person, provide that person's name, current residential address and telephone number, job title, and current business address and telephone number. (If current information is not available, provide last-known address and telephone number.)
- (c) When used in reference to an "artificial person" or entity such as a corporation or partnership, provide (1) the organization's full name and trade name, if any; (2) the address and telephone number of its principle place of business; and (3) the names and titles of the entity's officers, directors, managing agents, or employees.
- (d) When used in connection with an oral communication, provide the nature of that communication, the parties to it, the date, place, and substance of that communication, and the identification of any document concerning it.

8. "Including" is used merely to emphasize that a request for certain types of documents or information should not be construed as limiting the request in any way.

9. "Person" means any natural person or such person's legal representative; any partnership, domestic or foreign corporation, or limited liability company; any company, trust, business entity, or association; and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, or trustee.

10. "You" or "Your" refers to Exxon Mobil Corporation, any present or former predecessor, successor, parent, subsidiary, division, d/b/a company, and affiliated entities, as well as all owners, officers, agents, employers, employees, or other representatives thereof, or any other person acting in whole or in part on behalf of any of the foregoing entities. These terms also



refer to the ExxonMobil Foundation, formerly known as the Esso Education Foundation, and/or the Exxon Education Foundation.

### **RELEVANT TIME PERIOD**

The relevant time period, unless otherwise indicated in a specific request, is from January 1, 1977 to the present. The time limits should not be construed as date limits; for example, if a policy, contract, or other document in effect during the relevant time period was created before the relevant time period, then such document must be produced.

### **DOCUMENTS AND INFORMATION TO BE PROVIDED**

1. All Documents or Communications reflecting or concerning studies, research, or other reviews You conducted or funded (in whole or in part) regarding the certainty, uncertainty, causes, or impacts of Climate Change and models to assess or predict Climate Change or its impacts, as well as all Documents or Communications reflecting or concerning steps You took to address the potential impact of Climate Change on Your operations.
2. All Documents or Communications reflecting or concerning studies, research or other reviews You conducted or funded (in whole or in part) regarding whether and how Your products or activities impact Climate Change at a regional or global level.
3. All public statements You made, including but not limited to advertisements, op-eds, letters to the editor, speeches, and corporate publications, concerning Climate Change, including all drafts of such statements and internal Communications regarding such statements.

4. All minutes of meetings of Your Board and any Board committees reflecting discussions concerning Climate Change and any memoranda to the Board or from Board members concerning Climate Change.
5. All Documents or Communications concerning any potential impacts on Your sales, revenue, or business caused by Climate Change itself, by public policies responding to Climate Change (including any legislation or regulation concerning Climate Change), or by public perceptions of Climate Change.
6. All Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews, or public opinions regarding Climate Change sent to or received from: Global Climate Coalition; Global Climate Science Communications Team (GCSCT, also known as the Global Climate Science Team); Science & Environmental Policy Project (SEPP); National Center for Public Policy Research (NCPFR); Committee for a Constructive Tomorrow (CFACT); Environmental Literacy Council (ELI); Independent Commission on Environmental Education; Environmental Issues Council (EIC); Science and Public Policy Institute (SPPI); Advancement of Sound Science Coalition (or Advancement of Sound Science Center); Heartland Institute; Center for the Study of Carbon Dioxide and Global Change; Tech Central Science Foundation; Beacon Hill Institute at Suffolk University; American Petroleum Institute (AEI); Competitive Enterprise Institute (CEI); American Legislative Exchange Council (ALEC); U.S. Oil & Gas Association; International Petroleum Industry Environmental Conservation Association; American Council for Capital Formation and its Center for Policy Research; Frontiers of Freedom, or its Center for Free Market Environmentalism and Conservation, or its Center for Science and Public Policy; Annapolis Center for Science-Based Public Policy; Atlas Economic Research Foundation; National Black Chamber of Commerce;



U.S. Chamber of Commerce Foundation; George C. Marshall Institute; Heritage Foundation; Manhattan Institute; National Taxpayers Union Foundation; Heartland Institute; Pacific Research Institute for Public Policy; National Center for Policy Analysis; Communications Institute; Washington Legal Foundation; Center for American and International Law (formerly Southwestern Legal Foundation); Foundation for Research on Economics and the Environment (FREE); George Mason University Law and Economics Center; National Center for Public Policy Research; Smithsonian Astrophysical Observatory; International Policy Network; FreedomWorks; Citizens for a Sound Economy; Citizens for a Sound Economy Foundation; Americans for Prosperity; Mercatus Center at George Mason University; Acton Institute for the Study of Religious Liberty; Media Research Center (formerly Cybercast News Service and Conservative News); Institute for Energy Research; Congress of Racial Equality; Reason Foundation; Reason Public Policy Institute; Hoover Institution; Pacific Legal Foundation; Capital Research Center; Center for Defense of Free Enterprise; Federalist Society for Law and Public Policy Studies; National Association of Neighborhoods; National Legal Center for the Public Interest; Center for a New Europe-USA; American Council on Science and Health; Chemical Education Foundation; Property and Environment Research Center (PERC, formerly Political Economy Research Center); Cato Institute; Federal Focus; Fraser Institute; Media Institute; American Spectator Foundation; International Republican Institute; American Conservative Union Foundation; Landmark Legal Foundation; Independent Institute; Free Enterprise Education Institute; Texas Public Policy Foundation; Institute for Study of Earth and Man; Independent Women's Forum; Consumer Alert; Mountain States Legal Foundation; Free Enterprise Action Institute; Regulatory Checkbook; Lindenwood University in St. Charles, Missouri; Institute for Senior Studies; Science and Environmental Policy Project;

Lexington Institute; Institute for Policy Innovation; Africa Fighting Malaria; American Friends of the Institute of Economic Affairs; Atlantic Legal Foundation; Weidenbaum Center at Washington University (formerly Center for the Study of American Business); Mackinac Center for Public Policy; Arizona State University Office of Climatology; DCI Group; and any other organizations engaged in research or advocacy concerning Climate Change or public policies, including legislation, relating to Climate Change. In Your Response to this Request, include all Communications concerning the role of each of these organizations in conducting research, studies, or reviews of Climate Change or in attempting to affect public opinions regarding Climate Change. In Your Response to this Request, include all records of payments to entities covered by this Request.

7. All Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews, or public opinions regarding Climate Change sent to, received from, or about: Wallace Broecker; Taro Takahashi; Mike MacCracken; Martin Hoffert; John Christy; Richard Lindzen; Will Ollison; Joe Walker; Sallie Baliunas; Robert C. Balling, Jr.; Ross McKittrick; Wei-Hock "Willie" Soon; Patrick J. Michaels; S. Fred Singer; Roger Bate; Sherwood B. Idso; Frederick Seitz; Myron Ebell; Robert Ferguson; David R. Legates; Hugh Ellsaesser; George Taylor; Tom Synhorst; Doug Goodyear; Timothy N. Hyde; Michelle Ross; Susan Moya; A. John Adams; Alan Caudill; Candace Crandall; David Rothbard; Jeffrey Salmon; Lee Garrigan; Lynn Bouchey; Myron Ebell; Peter Cleary; Robert Gehri; Sharon Kneiss; Steven J. Milloy; Paul Driessen; and any other persons conducting research or advocacy concerning Climate Change. In Your Response to this Request, include all Communications regarding the role of each of these individuals in conducting research, studies or reviews of Climate Change or in attempting

to affect public opinions regarding Climate Change. In Your Response to this Request, include all records of payments to individuals covered by this Request.

8. All Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews, or public opinions regarding Climate Change sent to or received from: James F. Black; Andrew Callegari; Roger Cohen; Edward E. David, Jr.; Brian Flannery; Edward Garvey; David Slade; Henry Shaw; N. Richard Werthamer; Harold N. Weinberg; Ed K. Wiley; Robert E. Barnum; Mike P. Margolis; Haroon Khesghi; Randy Randol; and any other current or former employees or contractors conducting research or advocacy concerning Climate Change. In Your Response to this Request, include all Communications regarding the role of each of these individuals in conducting research, studies or reviews of Climate Change or in attempting to affect public opinions regarding Climate Change. In Your Response to this Request, include all records of payments to individuals covered by this Request.
9. All Documents or Communications concerning Your efforts to employ, fund, associate with, collaborate with, or work with any organizations, entities, associations, individuals, or groups of persons to influence public views regarding the likelihood that or extent to which carbon dioxide, methane, oil and gas extraction or use, or any of Exxon Mobil Corporation's products or activities directly or indirectly impact Climate Change. Include Documents or Communications evidencing such employment, funding, association, collaboration, or work.
10. All Documents concerning the "CO<sub>2</sub> Greenhouse" research project or any other project researching the greenhouse effects of carbon dioxide or other greenhouse gases.
11. All Documents (including drafts) sent to or received by, and all Communications with or about, public relations firms regarding Your statements concerning or strategies for addressing

Climate Change. Include in your response a list, or Documents sufficient to Identify, all public relations firms that have been retained or consulted by You or made proposals to You concerning Climate Change.

12. All Documents and Communications concerning your strategies for publicly discussing Climate Change, including but not limited to Communications to employees and spokespersons about how to discuss Climate Change.
13. All Documents and Communications concerning the following articles, their authors, their content, or their impact:
  - (a) All articles in the series "Exxon: The Road Not Taken," published by *InsideClimate News* since September 1, 2015.
  - (b) Articles published in the *Los Angeles Times* since September 1, 2015 concerning You and Climate Change
14. All Documents and Communications concerning investigations of your statements regarding Climate Change by any state attorney general, other enforcement agency, or environmental or other organization.
15. All Communications since June 1, 2015 with or about the Royal Society of the United Kingdom.
16. All Documents concerning Your budget, spending, or plans for public relations, advertising, or other advocacy relating to Climate Change.

**NOTE:** This subpoena does not require that you travel to the United States Virgin Islands or to the Department of Justice. You may comply with this Subpoena Duces Tecum by forwarding a true and correct copy of any document or other item requested, postmarked prior to the date for which production has been designated, with a signed and notarized copy of the attached

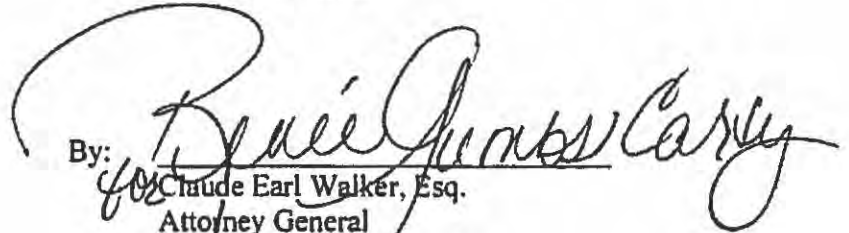
“CERTIFICATE OF CUSTODIAN OF RECORDS.” Failure to appear with, or deliver the requested information, as stated above, shall be deemed a violation of 14 V.I.C. § 612 and will subject you to such sanctions and penalties as are determined by law. Failure to deliver a signed and notarized copy of the attached “CERTIFICATE OF CUSTODIAN OF RECORDS” will be considered a failure to comply with this subpoena.

WHEREFORE, I have set my hand this 15 day of March, 2016.

SUBMITTED BY:

CLAUDE EARL WALKER  
Attorney General

By:



Claude Earl Walker, Esq.  
Attorney General  
3438 Kronprindsens Gade  
GERS Complex, 2nd Floor  
St. Thomas, U.S. Virgin Islands 00802  
(340) 774-5666



**CERTIFICATE OF CUSTODIAN OF RECORDS**

UNITED STATES VIRGIN ISLANDS )  
 )  
 )

COMES NOW \_\_\_\_\_, first being duly sworn, deposes and says:

1. That the deponent is the \_\_\_\_\_ for Exxon Mobil Corporation and, in such capacity, is its custodian of records.

2. That on the \_\_\_ day of \_\_\_\_\_, 2016, the deponent was served with a subpoena calling for the production of records.

3. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the act, event, condition or opinion recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or the office or company in which the deponent is engaged.

5. I further certify to the best of my knowledge, information, and belief that all documents or things required to be produced pursuant to the attached subpoena issued on \_\_\_\_\_, 2016 have been produced.

DATED this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
CUSTODIAN OF RECORDS

SUBSCRIBED and SWORN TO before me  
by \_\_\_\_\_ this  
\_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

# **Exhibit C**



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

EXXON MOBIL CORPORATION,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	No. 4:16-CV-469-K
MAURA TRACY HEALEY, Attorney	§	
General of Massachusetts, in her official	§	
capacity,	§	
	§	
Defendant.	§	
	§	

**ORDER GRANTING MOTION FOR  
LEAVE TO FILE AN AMENDED COMPLAINT**

Before the Court is Plaintiff Exxon Mobil Corporation’s Motion for Leave to File an Amended Complaint. After considering the motion, the relevant briefing, and the applicable law, the Court ORDERS that Plaintiff’s Motion for Leave to File an Amended Complaint is GRANTED.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
ED KINKEADE  
UNITED STATES DISTRICT JUDGE