

**Knutte, Caitlin**

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**From:** Hendrickson, Cara  
**Sent:** Monday, March 21, 2016 8:58 PM  
**To:** wendy Abrams  
**Cc:** Spillane, Ann M.  
**Subject:** Re: Exxon Document

Thanks, Wendy.

Best,  
Cara

On Mar 21, 2016, at 6:39 PM, wendy Abrams <[REDACTED]> wrote:

I will forward this tomorrow.  
In the meantime, thought you might enjoy the ad that provides a bit more truth in advertising..

[http://youtu.be/XbOezO\\_s-Gs](http://youtu.be/XbOezO_s-Gs)

again, thank you for your time today. I cannot think of a more critical issue at a critical time; this could be a tipping point.

Best,  
Wendy

Begin forwarded message:

**From:** "O'Neill, Christine M." <[coneill2@law.pace.edu](mailto:coneill2@law.pace.edu)>  
**Subject:** Exxon Document  
**Date:** March 21, 2016 at 5:45:53 PM CDT  
**To:** wendy Abrams <[REDACTED]>

Hi Wendy,

Bobby asked me to email the Exxon Mobil document that he sent to Eric Schneiderman. Unfortunately, it's in my email archive folder and I can't access it from home. Would it be okay if I sent to you tomorrow morning when I get to the office?

Thanks,  
Christine

Christine O'Neill  
Executive Assistant, Robert F. Kennedy, Jr.  
Office: 914-422-4343  
Cell: [REDACTED]

**Knutte, Caitlin**

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**From:** wendy abrams <[REDACTED]>  
**Sent:** Tuesday, March 22, 2016 9:35 AM  
**To:** Spillane, Ann M.; Hendrickson, Cara  
**Subject:** Re: Madigan demands Peabody prove it has coal mine-closure money | Environment | thesouthern.com  
**Attachments:** ExxonMobilSchneidermanJan5FINAL.docx

From Robert Kennedy, Jr.

On Mar 22, 2016, at 8:42 AM, Spillane, Ann M. <[aspillane@atg.state.il.us](mailto:aspillane@atg.state.il.us)> wrote:

Thank you!

And thank you for all of your time yesterday - that was really a helpful meeting.

Ann

Sent from my iPhone

On Mar 22, 2016, at 8:39 AM, Wendy <[REDACTED]> wrote:

Wonderful!

Sent from my iPhone

Begin forwarded message:

**From:** Bruce Nilles <[bruce.nilles@sierraclub.org](mailto:bruce.nilles@sierraclub.org)>  
**Date:** March 22, 2016 at 8:07:19 AM CDT  
**To:** Wendy Abrams <[REDACTED]>  
**Subject:** Madigan demands Peabody prove it has coal mine-closure money | Environment | [thesouthern.com](http://thesouthern.com)

She rocks.

[http://thesouthern.com/news/local/environment/madigan-demands-peabody-prove-it-has-coal-mine-closure-money/article\\_152b8a3f-ca38-54d9-9860-df680bd44689.html](http://thesouthern.com/news/local/environment/madigan-demands-peabody-prove-it-has-coal-mine-closure-money/article_152b8a3f-ca38-54d9-9860-df680bd44689.html)

TO: Attorney General, Eric Schneiderman  
FROM: Pace Environmental Litigation Clinic  
DATE: January 5, 2016  
RE: Revocation of ExxonMobil Authority to do Business in New York

“For greed, all of nature is inadequate” – Seneca

## INTRODUCTION

ExxonMobil’s right to do business in New York derives from a state issued certificate of authority.<sup>1</sup> The Attorney General can annul this certificate whenever ExxonMobil exceeds or abuses its authority, when the company fails to serve the “common good” or violates its duty to “do no harm.”<sup>2 3</sup>

## I. FACTUAL BACKGROUND

### A. Background

ExxonMobil is one of the world’s largest and most powerful American publicly traded companies.<sup>4</sup> Since 2001, ExxonMobil has repeatedly broken records for the largest profits of any corporation in history.<sup>5</sup> Recent investigations by three national news organizations have uncovered proof that ExxonMobil has, for nearly forty years, engaged in a malicious campaign to deceive the public about the dangerous impacts of its business activities to human health, global climate and the environment. Since the 1970’s Exxon’s corporate officials and in-house scientists knew that Exxon’s activities were causing catastrophic climate change that might threaten human life and civilization. Instead of coming clean about these hidden risks, Exxon engaged in extraordinary efforts to conceal the truth from the public, press and policy makers. Exxon’s purpose was to derail national and international regulations intended to mitigate the damages from its conduct. The company’s four decade campaign to keep the dangers of its activities secret from the American people has resulted in irreversible harm to our environment.

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<sup>1</sup> Richard Grossman & Frank T. Adams, Exercising Power Over Corporations Through State Charters, in *THE CASE AGAINST THE GLOBAL ECONOMY AND FOR A TURN TOWARD THE LOCAL* 374, 386 (Jerry Mander & Edward Goldsmith eds., 1996).

<sup>2</sup> N.Y. BUS. CORP. LAW § 1303 (McKinney 2007).

<sup>3</sup> Thomas Linzey, *Awakening a Sleeping Giant: Creating a Quasi-Private Cause of Action for Revoking Corporate Charters in Response to Environmental Violations*, 13 PACE ENVTL. L. REV. 219, 244 (1995).

<sup>4</sup> *The World’s 25 Biggest Oil Companies*, FORBES

, <http://www.forbes.com/pictures/cglg45emehm/not-just-the-usual-suspects/> (Last visited Dec 2, 2015).

<sup>5</sup> NBC News & Associated Press, Exxon Mobil Posts Record Profit of \$10.7 Billion: Fourth-Quarter Earnings Top Targets for World’s Largest Oil Company (Jan. 30, 2006), <http://www.msnbc.msn.com/id/11098458/> (last visited Nov. 14); ALISON CASSADY, EXXPOSEEXXON, EXXONMOBIL EXPOSED: MORE DRILLING, MORE, GLOBAL WARMING, MORE OIL DEPENDENCE 11-13 (2005), available at <http://www.exxposeexxon.com/report.pdf>.

## B. What Exxon Knew and When

After months of deep digging, teams of journalists from the Pulitzer Prize-winning website Inside Climate News<sup>6</sup>, the Los Angeles Times<sup>7</sup> and the Columbia Journalism School<sup>8</sup> have uncovered bombshell evidence that ExxonMobil knew, as early as the 1970s that its business activities would cause cataclysmic global warming. Because Exxon long prided itself as the world's leader in carbon science, the company invested millions of dollars to understand the fate and activities of carbon atoms. In this enterprise, ExxonMobil employed the world's leading climate scientists. As early as late 1977, eleven years before NASA scientist, James Hansen alerted the world to the perils of global warming in his testimony before Congress, Exxon scientists were briefing top executives that climate change was real, dangerous, and caused by their product. By the early 1980s, Exxon researchers were issuing dire warnings to Exxon's corporate leadership about the danger of carbon induce global warming; Exxon's own climate models were predicting—with great accuracy—the track that the global temperature has taken ever since. Exxon believed its own climate models and used them to guide corporate efforts in the newly melting Arctic, whereas the company's senior researcher observed “warming will clearly affect sea ice, icebergs, permafrost and sea levels. Indeed”, he added cheerfully, climate change “can only help lower exploration and development costs,” thereby making Exxon's bids for Arctic lease rights more profitable.

Instead of warning the public and policy makers about the existential peril, Exxon made its balance sheet top priority. Beginning in the late 1980's, the company began to systematically fund climate denial; lying to the public, the press and politicians about the state of the science. In 1997, during a key presentation to China's leading officials, Exxon CEO, Lee Raymond, whose responsibilities included overseeing Exxon's climate researchers, insisted that the globe was probably cooling.<sup>9</sup> Lee Raymond used that extraordinary speech to urge the Chinese government to subvert what was then US foreign policy promoting the Kyoto Accords. In Exxon's 1999 annual shareholders meeting, Raymond dismissed climate change warnings as mere “projections based on completely unproven climate models, or, more often, on sheer speculation.” Raymond's successor as Exxon's, CEO Rex Tillerson continued the charade, adding insult to injury, telling world leaders in Davos, on January 25<sup>th</sup>, 2007 that oil companies should not be held responsible

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<sup>6</sup> Neela Banerjee Lisa Song & David Hasemyer, *Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago*, InsideClimate News, Sep. 16, 2015, <http://insideclimatenews.org/news/08072015/email-shows-exxon-was-studying-its-climate-impact-80s>

<sup>7</sup> Sara Jerving, Katie Jennings, Masako Melissa Hirsch & Susanne Rust, *What Exxon knew about the Earth's melting Arctic*, L.A. Times, Oct. 9, 2015, <http://graphics.latimes.com/exxon-arctic/>, Kaktie Jennings, Dino Grandoni & Susanne Rust, *How Exxon went from leader to skeptic on climate change research*, L.A. Times, Oct. 23 2015, available at <http://graphics.latimes.com/exxon-research/>

<sup>8</sup> See The Energy and Environment Reporting, Columbia Journalism School, <http://www.journalism.columbia.edu/page/1184-the-energy-and-environment-reporting-fellowship/8> (list of links to articles in L.A. Times that were written or contributed by Staff, Alumni and Fellows.)

<sup>9</sup> Raymond Spoke made these accusations at the 15th World Petroleum Congress on October 15, 1997. See Global Warming: Is There Still Room for Doubt?, BLOOMBERG BUSINESS (Nov. 2, 1997),

for global warming. The blame, he argued, rests with the very consumers and government officials his company has spent millions of dollars manipulating and deceiving.<sup>10</sup>

### **C. The costs of Exxon's engineered delay**

#### **a) Costs to the planet**

When scientists like NASA's Jim Hansen first raised public awareness of climate change, Exxon's CEO might have gone to Congress, and confirmed that the company's internal scientific efforts supported Hansen's predictions. Instead, Exxon went to work lobbying against carbon regulation, funding climate-denial outfits and working with veterans of the tobacco wars to help raise similar doubts about climate science. By promoting a narrative that the company knew was false, Exxon's efforts helped to postpone the day of reckoning for 25 years. It was a critical quarter century in planetary history.

When Dr. Hansen testified before a Congressional committee in 1988, the atmospheric level of CO<sub>2</sub> was just passing 350 parts per million ("ppm"). Today we've gone beyond 400 ppm and as the unspeakable miseries of Exxon's own as climate models long ago predicted, the Arctic is melting, the planet's oceans are acidifying, causing mass extinctions of coral and shellfish and zooplankton. Glaciers are shrinking on every continent, contributing to droughts, famines, wars and millions of environmental refugees. As climate models have long projected, global sea levels are rising, and coastal cities are drowning. We are enduring the floods, fires and expanding deserts forecast by the global warming science for three decades. Superstorm hurricanes like Katrina or like Sandy and Irene, which devastated New York in recent years are only the tip of the bad weather iceberg. In recent weeks, "thousand-year-rainfalls" have struck South Carolina and Southern California. A superstorm with record-breaking winds of 200 mph hit Mexico and a typhoon on steroids dropped a meter of rain on the Philippines. Thanks, in part, to Exxon's willingness to sucker the world, our only home planet is now a chaotic mess. America is a decade late in addressing the serious threat from global warming due, in part, to ExxonMobil's campaign of deliberate deception.

#### **b) Costs to New York**

ExxonMobil's subterfuge amounts to a crime against humanity. By delaying government action for a quarter century, ExxonMobil has caused massive and predictable environmental damage in New York State. The costs of Exxon's deceit to New Yorkers are impossible to quantify, but any accounting would produce horrendous sums; In 2011 Hurricane Irene caused nearly \$6.5 billion in damages and just over a year later Hurricane Sandy<sup>11</sup> caused over \$65 billion in damages, and 159 deaths.<sup>12</sup>

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<sup>10</sup> Alan Beattie & Mark Coleman, *Mandelson Hopes for Trade Deal After Davos*, THE IRISH TIMES, Jan. 26, 2007, at FINANCE1, available at <https://advance.lexis.com/document/teaserdocument/?pdmfid=1000516&crd=03305599-d5bb-4e2d-8b9f-094cc55fcc81&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4MX3-RTH0-TX39-J2X9-00000-00&pddocid=urn%3AcontentItem%3A4MX3-RTH0-TX39-J2X9-00000-00&pdcontentcomponentid=142626&pdteaserkey=h1&ecomp=f8-g&earg=sr1&prid=a24fc090-1474-4d1d-bc18-9b253e10ba5a>.

<sup>11</sup> NOAA, SERVICE ASSESSMENT, HURRICANE IRENE, AUGUST 21-30 2011, (Sept 2012), available at <http://www.nws.noaa.gov/om/assessments/pdfs/Irene2012.pdf>

<sup>12</sup> Billion-Dollar Weather and Climate Disasters: Table of Events, NOAA, <http://www.ncdc.noaa.gov/billions/events> (last visited Nov 4, 2015).

The costs of Exxon's malfeasance were predictable. Long before Hurricane Sandy devastated New York, climate models including Exxon's in-house science forecasted that global warming would lead to this type of storm. The fact that climate change would have a catastrophic impact in New York was well established. Various publicly available studies, predicted that business as usual could push up temperatures in the New York metropolitan region from two to five and a half degrees Fahrenheit by 2050 and cause sea levels to rise by six to twelve inches. Low lying areas and 578 miles of waterfront, make New York especially vulnerable to flooding from rising oceans. Climate models have long predicted that sea level rise, stronger storms, including hurricanes and Nor'easters will disproportionately harm New York City with wind damage and extreme flooding. Heightened storms will inundate New York City's subways, tunnels and sewage treatment system making the city's wastewater management a major challenge. Additionally, sea level rise would increase beach erosion, and threaten water supplies.<sup>13</sup>

The established science also predicted various other impacts to New York. In September 1997, the United States Environmental Protection Agency ("EPA") reported that a one-degree Fahrenheit warming could more than double heat-related deaths in New York City, from 300 to 700 per year.<sup>14</sup> Exxon also had good reason to know that New York's rich ecosystems will be dramatically diminished. Rising global temperatures will deplete and biologically impoverish New York's diverse range of hardwood forests as dominant species disappear or retreat northward. Between 50-70% of New York's maple trees could be lost, affecting the maple syrup industry and the spectacular foliage that brings preserve and tourist dollars to upstate rural communities. Entire ecosystems will collapse, impacting everything from pest control, to trout habitat, fisheries and cranberry production. All of these dangers underline the urgency for government action to address global warming. Exxon has focused on derailing government action.

#### **D. ExxonMobil Has Funded A Two Decade Global Warming Misinformation Campaign**

Despite its internal reports, broad international scientific consensus and contrary actions by other oil companies, ExxonMobil's posture has been to deny that global warming exists and to wage a successful two decade multi-million propaganda campaign to deceive the public, press and policy makers about catastrophic climate change.<sup>15</sup> Its purpose has been to derail government efforts to address global warming and to hinder international treaties intended to

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<sup>13</sup> *Climate Change: International: Introduction to Global Issues*, EPA, (last visited Dec. 2, 2015). <http://www3.epa.gov/climatechange/impacts/international.html#content>

<sup>14</sup> *Climate Change and New York*, p. 3 EPA, Sep. 1997, available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/400001XU.PDF?Dockey=400001XU.PDF>

<sup>15</sup> See generally National Resources Defense Council, *Global Warming Science: An Annotated Bibliography*, <http://www.nrdc.org/globalWarming/fgwscience.asp> (last visited March 1, 2007); ALISON CASSADY, EXXPOSE EXXON, EXXON MOBIL EXPOSED: MORE DRILLING, MORE GLOBAL WARMING, MORE OIL DEPENDENCE 7-8 (2005), available at <http://www.exxposeexxon.com/report.pdf>.

mitigate global warming.<sup>16</sup> Lee Raymond, Exxon's CEO, from 1993-2005, was the world's leading skeptic on mainstream climate science. His successor Rex Tillerson, inherited that role when he took over the company in 2005.

*i. ExxonMobil Funded Faulty Science to Prevent Action on Global Warming*

Using phony think tanks like the Competitive Enterprise Institute, scientists-for-hire known as "biostitutes", slick public relations firms and its indentured servants in the political process, Exxon has intentionally defrauded the public by promoting the notion that global warming is a hoax or a questionable theory that requires more study. Its decade of mischief is<sup>17</sup> well documented. Exxon dished out at around \$31 million dollars since the negotiation of the Kyoto Protocol (1997) to fund an elaborate network including over 75 industry front groups mobilized in a misleading campaign to cloud public understanding of global warming. Exxon's front groups have preached skepticism about the oncoming climate catastrophe, and worked to counter efforts to regulate global warming pollution.<sup>18</sup> Exxon's objective has been to counterbalance the overwhelming scientific evidence of man-induced climate change with pseudo-scientific denials in order to torpedo political remedies to climate change that might diminish Exxon's profits. In 2005, ExxonMobil paid over \$3.5 million to 49 different front groups, according to the company's own records, which are collected each year by ExxonSecrets.org and the "Exxpose Exxon" coalition. Since 1997, Exxon has also donated over \$1.87 million to Republicans in Congress who deny climate change. A report released in July of 2015 by the Union of Concerned Scientists traces the roots of this fraudulent propaganda campaign and many of its prime actors— back to the tobacco industry's tactical war on science. No other public company has worked harder or spent more to support those who are attempting to debunk global warming.<sup>19</sup>

A few specific examples of ExxonMobil's generous contributions are telling.

1. **Competitive Enterprise Institute (CEI):** A Washington based conservative think tank at the center of the global warming misinformation campaign. From 1998 to 2005, ExxonMobil provided CEI with approximately \$2,005,000 for its global climate change endeavors, legal work, and general operating support.<sup>20</sup> CEI prides itself on being "a leader

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<sup>16</sup> See ExxposeExxon, Exxposing ExxonMobil's Agenda: Keeping You Addicted to Oil, [http://www.exxposeexxon.com/facts/ExxposingExxon\\_rev0107.pdf](http://www.exxposeexxon.com/facts/ExxposingExxon_rev0107.pdf).

<sup>17</sup> *ExxonMobil's Funding of Climate Science Denial*, DESMOGBLOG <http://www.desmogblog.com/exxonmobil-funding-climate-science-denial> (last visited Dec 2, 2015).

<sup>18</sup> Greenpeace, Exxon Secrets 2006, available at <http://www.exxposeexxon.com/facts/ExxonSecrets2006-1.pdf>; see also Exxonsecrets.org, ExxonMobil's Funding of Climate Change Skeptics, List of Organizations, <http://www.exxonsecrets.org/html/listorganizations.php> (last visited Dec 2, 2015); Put a Tiger in your Think Tank, MOTHER JONES, May/June, 2005, available at [http://www.motherjones.com/news/featurex/2005/05/exxon\\_chart.html](http://www.motherjones.com/news/featurex/2005/05/exxon_chart.html) (last visited March 12, 2007); ALISON CASSADY, EXXPOSEEXXON, EXXONMOBIL EXPOSED: MORE DRILLING, MORE GLOBAL WARMING, MORE OIL DEPENDENCE 8 (2005), available at <http://www.exxposeexxon.com/report.pdf>.

<sup>19</sup> See Chris Mooney, *As the World Burns*, MOTHER JONES, May/June, 2005, available at [http://www.motherjones.com/news/feature/2005/05/some\\_like\\_it\\_hot.html](http://www.motherjones.com/news/feature/2005/05/some_like_it_hot.html) (last visited Dec 2, 2015) (citing Myron Ebell of the Competitive Enterprise Institute as saying "[m]any corporations have funded, you know, dribs and drabs here and there, but I would be surprised to learn that there was a bigger one than Exxon").

<sup>20</sup> See generally Exxonsecrets.org, Fact Sheet: Competitive Enterprise Institute, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=2> (last visited Dec 2, 2015). See also Exxon Mobil Corporation, 2003 Contributions, at 41, available at [http://www.environmentaldefense.org/documents/5910\\_2003.giving\\_report.pdf](http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf); Exxon Mobil Corporation 2004 Worldwide Contributions and Community Investments, Public Information and Policy Research, at 3, available at

in the fight against the global warming scare.”<sup>21</sup> CEI publishes studies and writes articles critiquing the science underlying global warming and advancing its own theories to bolster claims that global climate change is not a problem.<sup>22</sup> CEI proclaims, for example that “the negative impacts of predicted warming have been vastly exaggerated” and it is unlikely that global warming will cause problems in the future.<sup>23</sup> Among its many public statements denying the seriousness of global warming, CEI has argued that climate change would “create a milder, greener, more prosperous world.”<sup>24</sup> CEI makes concerted efforts to convince the public to continue unabated energy consumption, and that, any energy cuts would cause disastrous consequences to the world’s economies.<sup>25</sup> Unlike many organizations which simply express such views, CEI has forced action through the courts and the legislative process.<sup>26</sup> In 1997, CEI formed the Cooler Heads Coalition, a kind of flat earth society to support climate change denial and to frighten the public about the perilous economic impacts of proposals to reduce greenhouse gas emissions.<sup>27</sup>

2. **American Enterprise Institute for Public Policy Research (AEI):** Under the leadership of its vice chairman, Lee Raymond, then CEO of Exxon Mobil, AEI became, during the George W. Bush administration, one of the richest and most influential think tanks in the United States. AEI boasted of its close ties to the powerful oil industry lobbyists within the George

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[http://www.exxonmobil.com/corporate/files/corporate/giving04\\_enviro.pdf](http://www.exxonmobil.com/corporate/files/corporate/giving04_enviro.pdf); ExxonMobil Corporation, 2002 Public Information and Policy Research, at 3, *available at*,

[http://www.environmentaldefense.org/documents/5909\\_2002.giving.report.pdf](http://www.environmentaldefense.org/documents/5909_2002.giving.report.pdf).

<sup>21</sup> Competitive Enterprise Institute, Global Warming, <http://www.cei.org/sections/subsection.cfm?section=3> (last visited March 11, 2007).

<sup>22</sup> See, e.g., Marlo Lewis, Jr., Competitive Enterprise Institute, *Al Gore's Science Fiction: A Skeptic's Guide to An Inconvenient Truth*, (Congressional Working Paper, 2007); Iain Murray, Competitive Enterprise Institute, *Global Warming FAQ: What Every Citizen Needs to Know About Global Warming*, *available at* <http://www.cei.org/pdf/5331.pdf>.

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

<sup>24</sup> Exxonsecrets.org, Fact Sheet: Competitive Enterprise Institute, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=2> (last visited Dec 2, 2015).

<sup>25</sup> See Iain Murray, Competitive Enterprise Institute, *Global Warming FAQ: What Every Citizen Needs to Know About Global Warming*, *available at* <http://www.cei.org/pdf/5331.pdf>. CEI has also put out television spots refuting the global warming problem, urging people that carbon dioxide is essential to life, touting, “they call it pollution; we call it life.” See Competitive Enterprise Institute, We Call It Life, <http://www.cei.org/pages/co2.cfm> (last visited March 10, 2007).

<sup>26</sup> See generally Exxonsecrets.org, Fact Sheet: Competitive Enterprise Institute, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=2> (last visited Dec 2, 2015). For example, in 2002, CEI advised President Bush to distance himself from an EPA report which stated, for the first time from a U.S. government agency, that climate change is real, and Bush did so! *Id.* In 2003, CEI filed a lawsuit against the U.S. government demanding that the National Assessment, a report on climate change, not be disseminated by the government. See Chris Mooney, *Earth Last*, THE AMERICAN PROSPECT ONLINE EDITION, May 4, 2004, *available at* <http://www.prospect.org/web/page.wv?section=root&name=ViewPrint&articleId=7603> (last visited March 10, 2007).

<sup>27</sup> See generally The Cooler Heads Coalition, <http://www.globalwarming.org/article.php?uid=562> (last visited Dec 2, 2015).



W. Bush Administration and their critical role in setting back carbon regulation by a decade.<sup>28</sup> AEI is an avid opponent of all climate treaties including the Kyoto Protocol and critiques regulatory measures to address climate change.<sup>29</sup> It preaches that the science of global warming is uncertain, and that the U.S. should therefore not rush into regulatory programs that would unnecessarily risk the carbon based energy system.<sup>30</sup> Since 1998, ExxonMobil has provided AEI with \$3,615,000 for its policy research.<sup>31</sup> In one stark example of this organization's attempts to distort science, on February, 2007, AEI offered a \$10,000 bounty to each scientist or economist who could produce an article undermining a recently published report on climate change by the U.N. Intergovernmental Panel on Climate Change ("IPCC").<sup>32</sup> The IPCC report is widely regarded as the most comprehensive review yet of climate change science.<sup>33</sup>

3. **American Petroleum Institute (API):** Exxon is one of the lead funders of API in the petroleum industry giving roughly \$20 million annually to the organization.<sup>34</sup> Exxon CEO, Lee Raymond, served as trustee for API, was two time chairman of the organization and served as chair of API's climate change committee. In 1988, Exxon and API launched a secret campaign to confuse the public about the science behind climate change. A document summarizing the campaign strategy warned that the carbon industry was losing the battle on the science and promoted a massive PR campaign to sow doubt about climate science,

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<sup>28</sup> For example, in 2003, President Bush was the key-note speaker at AEI event, where he said that at AEI, "[s]ome of the finest minds of our nation are at work on some of the greatest challenges to our nation. You do such good work that my administration has borrowed twenty such minds. I want to thank you for your service." See Exxonsecrets.org, Fact Sheet: American Enterprise Institute for Public Policy Research, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=9> (last visited Dec 2, 2015).

<sup>29</sup> See Paula Dobriansky, *Climate Change Policy* (November 19, 2003), available at [http://www.aei.org/publications/pubID.19525,filter.all/pub\\_detail.asp](http://www.aei.org/publications/pubID.19525,filter.all/pub_detail.asp) ("Kyoto Protocol . . . [is] fundamentally flawed. It is unrealistic, unfair and poses serious and unnecessary risks to our economic wellbeing.").

<sup>30</sup> See *id.* ("Significantly, the extent to which the man-made portion of greenhouse gases is causing temperatures to rise is still unknown, as are the long-term effects of this trend. Predicting what will happen fifty or one hundred years in the future is difficult."); see also Samuel Thornstrom, "Censorship" and the Uncertain Science of Climate Change, ENVTL. POLICY OUTLOOK, Oct. 1, 2003), available at [http://www.aei.org/publications/pubID.19348,filter.all/pub\\_detail.asp](http://www.aei.org/publications/pubID.19348,filter.all/pub_detail.asp).

<sup>31</sup> See generally Exxonsecrets.org, Fact Sheet: American Enterprise Institute for Public Policy Research, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=9#src10> (last visited March 10, 2007); see also Exxon Mobil Corporation, 2003 Contributions, at 39, available at [http://www.environmentaldefense.org/documents/5910\\_2003.giving\\_report.pdf](http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf); Exxon Mobil Corporation 2004 Worldwide Contributions and Community Investments, Public Information and Policy Research, at 2, available at [http://www.exxonmobil.com/corporate/files/corporate/giving04\\_environ.pdf](http://www.exxonmobil.com/corporate/files/corporate/giving04_environ.pdf); ExxonMobil Corporation, 2002 Public Information and Policy Research, at 1, available at [http://www.environmentaldefense.org/documents/5909\\_2002.giving\\_report.pdf](http://www.environmentaldefense.org/documents/5909_2002.giving_report.pdf).

<sup>32</sup> Ian Sample, *Scientists Offered Cash to Dispute Climate Study*, GUARDIAN UNLIMITED, Feb. 2, 2007, available at <http://www.guardian.co.uk/international/story/0,,2004230,00.html?gusrc=rss&feed=11> (last visited March 12, 2007).

<sup>33</sup> *Id.*

<sup>34</sup> Steve Mufson, *Jack Gerard, the Force Majeure Behind Big Oil*, WASH. POST. (Apr. 7, 2012), [https://www.washingtonpost.com/business/economy/jack-gerard-the-force-majeure-behind-big-oil/2012/04/06/gIQA1hjCOS\\_story.html](https://www.washingtonpost.com/business/economy/jack-gerard-the-force-majeure-behind-big-oil/2012/04/06/gIQA1hjCOS_story.html)

including recruiting front groups, compliant scientists and other spokesmen to carry this message in the public media.<sup>35</sup> According to the memo, “[v]ictory would be achieved” when “citizens ‘understand’ (recognize) uncertainties in climate science” to the point that denial becomes “conventional wisdom”.<sup>36</sup> Another point of victory sought by the memo would be that “[t]hose promoting the Kyoto treaty on the basis of science appears to be out of touch with reality”<sup>37</sup> To achieve this goal they were to create the (“GSDC”) that would “become a one-stop resource on climate science for members of Congress, the media, industry and all others concerned.”

4. **Global Climate Coalition:** Lee Raymond co-founded the Global Climate Coalition, a group of fossil fuel companies bent on delaying action on climate change and clouding public understanding of the issue. Exxon and Mobil were the leading members of the notorious Global Climate Coalition (“GCC”). Exxon, Mobil and other large companies launched GCC in 1989 derail the Kyoto Protocol to stop other international treaties and regulation of global warming pollution and GCC was “a coalition of companies and trade associations seeking to present the views of industry in the global warming debate.” Until it disbanded in 2002, GCC was one of the most influential and outspoken groups battling global commitments to emissions reductions. GCC lobbied Congress, the White House, State Legislature, disseminated “climate denial” reports and supplied well-known climate skeptics as “experts” for press conferences and media appearances to undermine the credibility of climate science. In 1997, BP was the first to break from GCC group after it declared that global warming was a real threat. Shell, Texaco, Ford, General Motors, and DaimlerChrysler followed suit shortly thereafter; ExxonMobil remained until the bitter end when the GCC broke up in 2002.
5. **American Legislative Exchange Council (ALEC):** ALEC organizes various task forces that provide state legislators with model legislation that is favorable to the oil industry. It crafts legislation rejecting carbon dioxide emission reductions and attempts to discredit state legislation aimed at providing incentives to cut global warming pollution; ALEC staffers frequently write “white papers” explaining why global warming is not a problem, and how policies to reduce global warming pollution will devastate the economy. In total since 1998, ExxonMobil has given ALEC \$1,619,700.<sup>38</sup>
6. **Heritage Foundation:** Heritage is the leading “denier” think tank. From 1998-2005, ExxonMobil provided this group with roughly half a million dollars.<sup>39</sup> This organization is a fervent opponent of the Kyoto Protocol and otherwise seeks to undermine regulatory efforts to address global climate change.<sup>40</sup> Heritage denies that global warming is connected to human activities.<sup>41</sup>

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<sup>35</sup> Memorandum From Joe Walker, API, to “Global Climate Science Team, Michelle Ross & Susan Moya, *Draft Global Climate Science Communications Plan*, April 1998, available 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>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Exxonsecrets.org, Fact Sheet: ALEC, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=10> (last visited Dec. 2, 2015).

<sup>39</sup> See generally Exxonsecrets.org, Fact Sheet: Heritage Foundation, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=42> (last visited Dec. 2, 2015); see also Exxon Mobil Corporation, 2003 Contributions, at 42, available at [http://www.environmentaldefense.org/documents/5910\\_2003.giving\\_report.pdf](http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf); 2002 Public Information and Policy Research, at 4, available at, [http://www.environmentaldefense.org/documents/5909\\_2002.giving.report.pdf](http://www.environmentaldefense.org/documents/5909_2002.giving.report.pdf).

7. **National Center for Public Policy Research ("NCPPR"):** Since 1998, ExxonMobil has given \$445,000 to NCPPR, to fund the "denier groups", including EnvironTruth website, which outlines the "myths and misunderstandings surrounding the topic of climate change," the first myth being that humans are causing global climate change.<sup>42</sup> NCPPR otherwise informs the public about the "truth" regarding global warming, i.e., that it is not harmful and not caused by humans.<sup>43</sup>
8. **George C. Marshall Institute:** This tax-exempt public policy organization, states that its mission "is to encourage the use of sound science in making public policy about important issues for which science and technology are major considerations . . . [through] accurate and impartial analyses."<sup>44</sup> The Institute's goal of using "sound science" involves attacking the apparently "unsound science" linking oil combustion to global warming.<sup>45</sup> From 1998-2005, ExxonMobil donated \$630,000 to the Institute for such "impartial analyses."<sup>46</sup>

ii. **Exxon Manipulated Government Officials To Weaken Government Response To Climate Change**

Through its vast political contributions and lobbying clout, ExxonMobil has, for two decades, manipulated government officials and influenced government to dampen the regulatory response to climate change. Its influence was particularly evident during the critical years of the George W. Bush administration. Exxon used vast political influence to guide the Bush administration's posturing on climate change. For example, in 2002, ExxonMobil successfully arranged the ousting of the world's top climate scientist, Robert Watson, as chairman of the Intergovernmental Panel on Climate Change ("IPCC") in an effort to disrupt the principal international science assessment program on global warming. An ExxonMobil memo to President Bush's top staffers asked bluntly "[c]an Watson be replaced now at the request of the U.S.?" The White House's carbon cronies obligingly complied, arranging for Watson's dismissal. He was replaced by a little known scientist from New Delhi who would not be regularly available for Congressional hearings.

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<sup>40</sup> See e.g., Ben Lieberman, The Heritage Foundation, Don't Rush to Judgment on U.N.'s IPCC Global Warming Summary, WebMemo #1351, Feb. 7, 2007, <http://www.heritage.org/Research/EnergyandEnvironment/wm1351.cfm> (last visited March 10, 2007).

<sup>41</sup> See e.g., *id.*; Helle Dale, The Heritage Foundation, *Just the Facts* (Feb. 8, 2007), <http://www.heritage.org/Press/Commentary/ed020807b.cfm> (last visited March 10, 2007).

<sup>42</sup> ALISON CASSADY, EXXPOSEEXXON, EXXONMOBIL EXPOSED: MORE DRILLING, MORE GLOBAL WARMING, MORE OIL DEPENDENCE 10 (2005); see also <http://www.envirotruth.org/>.

<sup>43</sup> National Center for Public Policy Research, Global Warming Information Center, Global Warming Earth Summit Fact Sheet, <http://www.nationalcenter.org/KyotoFactSheet.html> (last visited March 10, 2007).

<sup>44</sup> GEORGE C. MARSHALL INSTITUTE, <http://www.marshall.org/> (last visited March 10, 2007).

<sup>45</sup> See, e.g., GEORGE C. MARSHALL INSTITUTE, CLIMATE ISSUES AND QUESTIONS 1 (2004), available at <http://www.marshall.org/pdf/materials/268.pdf> (stating that "there is not a robust scientific basis for drawing definitive and objective conclusions about the extent of human influence and future climate).

<sup>46</sup> Exxonsecrets.org, Fact Sheet: George C. Marshall Institute, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=36> (last visited March 10, 2007); see also Exxon Mobil Corporation, 2003 Contributions, at 42, available at [http://www.environmentaldefense.org/documents/5910\\_2003.giving\\_report.pdf](http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf); 2002 Public Information and Policy Research, at 3, available at [http://www.environmentaldefense.org/documents/5909\\_2002.giving\\_report.pdf](http://www.environmentaldefense.org/documents/5909_2002.giving_report.pdf).

A 2002 Exxon memo shows the oil company coaching one of the President's top environmental advisers, Philip Cooney, chief of staff at the White House Council on Environmental Quality on how to weaken the governmental scientific research on climate change by emphasizing "significant uncertainties" in the science. The New York Times later revealed that Cooney, a former lobbyist for the American Petroleum Institute which is generously funded by Exxon, made myriad changes to government climate studies designed to weaken their strong conclusions about the need to act on global warming. Typically Cooney would insert the words "significant and fundamental" before "uncertainties" in the reports. Cooney, a non-scientist, helped suppress or alter several major taxpayer funded scientific studies on global warming including a decade-long study commissioned by President George W. Bush's father. Cooney resigned two days after the Times broke the story. Within a week ExxonMobil announced it had hired him.

In a further effort to block public access to information on global warming, ExxonMobil extended its influence to kill the distribution of An Inconvenient Truth to schools around the country. When the producers of the documentary offered 50,000 free DVDs to the National Science Teachers Association ("NSTA") for educators to use in their classrooms, Exxon pressured the organization to decline the offer. Though the film has been endorsed by leading climate scientists worldwide, NSTA explained that it had to accept the DVDs or it would jeopardize funding from Exxon. ExxonMobil had given the organization over \$6 million since 1996, much of it for the "Building a Presence for Science" program, an electronic networking initiative intended to bring standards-based teaching and learning into schools.

*iii. Of All the Major Oil Companies ExxonMobil Has, By Far, the Most Aggressive Record of Global Warming Denial*

Even as other oil companies began to acknowledge their contribution to climate change around 2005, Exxon dug in its heels and adopted the hardest line in the industry. As recently as last month, Exxon's unrepentant PR spokesman told the LA Times that the paper's revelations about Exxon's campaign of deception were "complete bullshit". This response is consistent with ExxonMobil's long history as the industry's most entrenched and adamant global warming denier. Exxon adopted this posture even as its competitors acknowledged their contribution to climate chaos. As early as 2005, BP's corporate policy acknowledged that "[t]here is an increasing consensus that climate change is linked to the consumption of carbon based fuels and that action is required now to avoid further increases in carbon emissions as the global demand for energy increases."<sup>47</sup> Chevron recognizes that "[t]he use of fossil fuels to meet the world's energy needs has contributed to an increase in greenhouse gases," and that a critical challenge facing the world today is to reduce "long-term growth in GHG emissions."<sup>48</sup> Shell announced

that it "shares the widespread concern that the emission of greenhouse gases from human activities is leading to changes in the global climate."<sup>49</sup> To be sure, these other oil companies

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<sup>47</sup> BP Global, Environment and Society, Climate Change Overview, <http://www.bp.com/sectiongenericarticle.do?categoryId=9007616&contentId=7014482> (last visited March 10, 2007).

<sup>48</sup> Chevron, Global Climate Change, [http://www.chevron.com/social\\_responsibility/environment/global\\_climate.asp#intro](http://www.chevron.com/social_responsibility/environment/global_climate.asp#intro) (last visited March 10, 2007).

<sup>49</sup> Shell, Climate Change, [http://www.shell.com/home/Framework?siteId=envandsoc-en&FC2=/envandsoc-en/html/iwgen/leftnavs/zzz\\_lhn7\\_1\\_1.html&FC3=/envandsoc-](http://www.shell.com/home/Framework?siteId=envandsoc-en&FC2=/envandsoc-en/html/iwgen/leftnavs/zzz_lhn7_1_1.html&FC3=/envandsoc-)

could have done much more to address the global warming problem; however, by recognizing that global warming exists and acknowledging the need for public policies and action plans to deal with it, they put themselves across the moral milestone from ExxonMobil. Despite its secret internal science, ExxonMobil stuck by its 2002 statement that the “nature and causes of climate change are still debated,”<sup>50</sup> that “science is not now able to confirm that fossil fuel use has led to any significant global warming,”<sup>51</sup> and that “the corporation intends to ‘stay the course’ in its skepticism regarding global warming ‘until someone comes along with new information.”<sup>52</sup>

Exxon responded to roars of outrage in 2006 over its sociopathic antics by announcing that it would stop funding the Competitive Enterprise Institute - which had collected over \$2 million from the oil giant since 1998, to weave lies about climate change - and 4-5 other groups that Exxon refused to name. Exxon's contrition was hardly sincere.<sup>53</sup> The company apparently continued to fund some 40 other groups that had previously received Exxon's support in its unrelenting campaign of deception.<sup>54</sup>

When, on January 22, 2007, a coalition of ten major companies - including industry giants like DuPont, Dow and Alcoa - and leading environmental groups launched the U.S. Climate Action Partnership, calling for firm limits on carbon dioxide emissions to aggressively combat climate change. Exxon refused to join.

## II. LEGAL BACKGROUND

### A. Applying the “Corporate Death Penalty” to Exxon

Corporations exist by virtue of their corporate charter.<sup>55</sup> The charter conditionally grants the corporation privilege to operate within a particular state and to benefit from state laws in exchange for its promise to “serve the common good”<sup>56</sup> and “cause no harm.”<sup>57</sup> Once

incorporated in one state, a corporation seeking to conduct business in other states, must apply for a certificate of authority to do business as a foreign corporation. That certificate imposes similar obligations as a charter. If a corporation does not maintain the condition in its corporate charter or certificate—the state may revoke its right to exist. Laws in every state pre-condition a corporation's right to conduct business upon established standards of good corporate citizenship, which if not met, expose a corporation to dissolution.

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en/html/iwgen/key\_issues\_and\_topics/global\_environmental\_issues/climate\_change/dir\_climate\_change\_12042006.html (last visited Dec. 2, 2015).

<sup>50</sup> Art Hobson, *Boycott Exxon*, NWA TIMES, Aug. 20, 2005, available at

<http://physics.uark.edu/hobson/NWAT/04and05/05.08.20.html> (Date of statement not provided)

<sup>51</sup> Andy Rowell, *Exxon's 25 Year "Drop Dead" Denial Campaign*, OIL CHANGE INT'L., April 14, 2014, available at <http://priceofoil.org/2014/04/14/exxons-25-year-drop-dead-denial-campaign/>. (Statement made May 31<sup>st</sup>, 2002)

<sup>52</sup> *Id.* (Statement was made on March 11, 2002)

<sup>53</sup> MSNBC, *Exxon cuts ties to global warming skeptics* (Jan. 12, 2007), available at

<http://www.msnbc.msn.com/id/16593606/>.

<sup>54</sup> Letter from ExxposeExxon, to Ken Cohen, Vice President of Public Affairs, ExxonMobil Corp. (Jan. 12, 2007), available at <http://www.exxposeexxon.com/ExxposeExxon-to-Ken-Cohen-1-12-07.pdf> (requesting ExxonMobil to reveal who they were no long funding; ExxonMobil did not respond).

<sup>55</sup> Richard Grossman & Frank T. Adams, *Exercising Power Over Corporations Through State Charters*, in THE CASE AGAINST THE GLOBAL ECONOMY AND FOR A TURN TOWARD THE LOCAL 374, 375 (Jerry Mander & Edward Goldsmith eds., 1996).

<sup>56</sup> *Id.* at 375.

<sup>57</sup> *Id.*

New York has an especially expansive law for both charter revocation and annulment of the authority to do business. Pursuant to New York Business Corporation Law section 1101(a)(2), if:

[t]he corporation has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or **transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the state** has become liable to be dissolved.<sup>58</sup>

The ExxonMobil Corporation is incorporated in the State of New Jersey and is therefore a foreign business corporation. As such, New York Business Corporation Law section 1303 applies:

[t]he attorney general may bring an action or special proceeding to annul the authority of a foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause of dissolution under section 1101 . . . .<sup>59</sup>

New York courts have held that before the State can obtain judicial dissolution of a corporation, the Attorney General must show that the defendant engaged in a grave and substantial continuing abuse, involving a public right.<sup>60</sup> When applying this standard, the courts give a considerable deference to the Attorney General's determination that dissolution is warranted.<sup>61</sup>

In 1998, Republican Attorney General Dennis Vacco revoked the charters of two non-profit tax-exempt tobacco industry front groups, the Tobacco Institute and Council for Tobacco Research.<sup>62</sup> **City of New York v. Tobacco Institute, Inc., 1997 WL 760502 (S.D.N.Y. 1997)**<sup>63</sup> Both defendants were officially incorporated "to provide truthful information about the effects of smoking on public health," Vacco explained that they were instead "[feeding] the public a pack of lies in an underhanded effort to promote smoking to addict America's kids."<sup>64</sup> Attorney

General Vacco seized all assets of these corporations and distributed the proceeds to public institutions.<sup>65</sup> Just as the tobacco industry created front-groups to misrepresent the effects of cigarette products, ExxonMobil has abused its authority to do business by misrepresenting the effects of its products.

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<sup>58</sup> N.Y. BUS. CORP. LAW § 1101(a)(2) (McKinney 2007) (emphasis added).

<sup>59</sup> N.Y. BUS. CORP. LAW § 1303 (McKinney 2007).

<sup>60</sup> *People by Abrams v. Oliver Sch.*, 206 A.D.2d 143, 146 (4th Dep't 1994) (citing *People v. North Riv. Sugar Ref. Co.*, 121 N.Y. 582, 608 (N.Y. 1980) (discussing that judgment of corporate death "must rest upon grave cause, and be warranted by material misconduct")).

<sup>61</sup> *Id.* at 147-48 (citing *People v Buffalo Stone & Cement Co.*, 131 N.Y. 140, 143 (N.Y. 1892); *Instalment Dept. v State of New York*, 21 A.D.2d 211, 212 (3d Dep't 1964)).

<sup>62</sup> Charlie Cray and Lee Drutman, *Corporations and the Public Purpose: Restoring the Balance*, 4 SEATTLE J. SOC. JUST. 305, 323 (2005).

<sup>63</sup> See Dana Gold, Solage E. Bitol-Hanson, Charlie Cray & Bruce Freed, *Protecting the Polity: Strategies for Reform*, 30 Seattle U. L. Rev. 991, 1001 f. 18 (2007)

<sup>64</sup> *Id.*

<sup>65</sup> Paul Cienfuegos, EARTH ISLAND JOURNAL, Mar. 22, 2001, at 35.

## B. Summary of New York Case Law

(1) *People v. North Riv. Sugar Ref. Co. (1890)*<sup>66</sup>: The Attorney General dissolved a corporation found to be an illegal sugar trust.

(2) *State v. Saksniit (1972)*<sup>67</sup>: The Attorney General dissolved a corporation operating a business that offered the preparation and sale of term papers to high school and college students.<sup>68</sup> The court found that the corporation was committing acts contrary to public policy.

(3) *State v. Cortelle Corp. (1975)*<sup>69</sup>: The Attorney General sought to dissolve a corporation that committed fraud by inducing homeowners facing foreclosure to convey their title to the corporation in order to obtain loans, and then refused to reconvey title even after those loans were paid by the customers.<sup>70</sup> Notably, the Appellate Division held that the statute of limitations did not apply to dissolution actions.<sup>71</sup>

(4) *People by Abrams v. Oliver Sch. (1994)*<sup>72</sup>: The Attorney General brought an action to judicially dissolve defendant business school chain under New York Business Corporation Law section 1101 because the defendant had used student loan refunds in a fraudulent manner.<sup>73</sup>

## C. Summary of Other State Cases

(1) Pennsylvania: In *Commonwealth ex rel. v. Potter County Water Company (1905)*, the Supreme Court of Pennsylvania upheld the order of the trial court revoking the water company's corporate charter for the purpose of providing water for drinking and fire suppression. The Attorney General alleged that the company had lied about the freshness of its water which was contaminated by runoff from a mill pond and sewage efficient pump.

(2) *Michigan*: In *Attorney General v. Capitol Service, Inc. (1959)*, the Michigan Attorney General successfully ousted the defendant of its corporate franchise<sup>74</sup> upon finding that the defendant was engaging in educational activities as a general corporation, in contravention of a state statute requiring educational institutions to be incorporated as such.<sup>75</sup>

(3) *California*: In *Citizens Utilities Company of California v. Superior Court of Alameda County (1976)*, the Attorney General revoked charter and the Citizen Utilities Company of California for delivering "discolored and malodorous" water to its customers.

(2) *Pennsylvania*: In *Commonwealth ex rel. v. Potter County Water Company (1905)*, the Supreme Court of Pennsylvania upheld the order of the trial court revoking the water company's corporate charter for the purpose of providing water for drinking and fire suppression.<sup>76 77</sup> The Attorney General alleged that the company had lied about the freshness of its water which was contaminated by runoff from a mill pond and sewage efficient pump.<sup>78 79</sup>

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<sup>66</sup> *People v. North Riv. Sugar Ref. Co.* 121 N.Y. at 608.

<sup>67</sup> *State v. Saksniit*, 69 Misc. 2d 554 (Sup. Ct. New York County 1972).

<sup>68</sup> *Id.* at 555.

<sup>69</sup> *State v. Cortelle Corp.*, 38 N.Y.2d 83 (N.Y. 1975).

<sup>70</sup> *Id.* at 85-86.

<sup>71</sup> *Id.* at 89.

<sup>72</sup> *People by Abrams v. Oliver Sch.*, 206 A.D.2d 143, 144 (4th Dep't 1994).

<sup>73</sup> *Id.* at 144.

<sup>74</sup> *Attorney Gen. v. Capitol Servs., Inc.*, 94 N.W.2d 814 (Mich. 1959).

<sup>75</sup> *Id.* at 816-17.

<sup>76</sup> *Commonwealth ex rel. v. Potter County Water Co.*, 61 A. 1099, 1101 (Pa. 1905).

<sup>77</sup> *Id.* at 1101.

<sup>78</sup> *Id.* at 1099.

(4) *Washington*: In *Washington v. Brotherhood of Friends* (1952), the Prosecuting Attorney of Spokane County, Washington successfully ousted the corporate charter of a non-profit social club for operating illegal slot machines.<sup>80</sup>

(4) *California: (1976)*: In *Citizens Utilities Company of California v. Superior Court of Alameda County* (1976), the Attorney General revoked charter and the Citizen Utilities Company of California for delivering “discolored and malodorous” water to its customers.<sup>81</sup>

### **C. The Impacts of Charter Revocation Annulment Would Diminish But Not Eliminate ExxonMobil’s Ability to Conduct Business in New York**

#### ***i. Exxon’s Current Business in New York***

The application of the corporate death penalty against Exxon for its violations of Corporation Law section 1303 would substantially limit but not eliminate ExxonMobil’s current presence in New York. Exxon has around fourteen entities registered with New York Secretary of State, including a pipeline company, a retiree club, a foundation a chemical company office, a risk management office, a transportation and equipment company office **and** a sales and supply company<sup>82</sup>, all of which may be affected by charter revocations. ExxonMobil’s stock is traded on the New York Stock Exchange. The New York State Common Retirement Fund has a little under a billion dollars in Exxon Stock (as of June 2015).<sup>83</sup> Most significantly, ExxonMobil operates contracts or manages around 1,050 New York gas stations.<sup>84</sup>

Prior to revoking Exxon’s charter, the Attorney General would want to understand which entities will be impacted and whether revocation will result in negative impacts to the welfare and people of New York State.

As established above, New York Business Corporation Law section 1301(a) provides that foreign corporations may do business in New York State only if it is authorized by a certificate of authority. However, not every business transaction requires a certificate of authority. New

York broadly defines “doing business within the state” by narrowly categorizing the activities that do not fall within this definition.<sup>85</sup> Among the activities not covered by the statute are “maintaining or defending a legal proceeding, shareholders’ and directors’ meetings, maintaining bank accounts, and maintaining offices and agencies related to the foreign corporation’s securities.<sup>86</sup> Even after charter revocation, Exxon could continue to conduct these sorts of activities in New York State, without consequence.

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<sup>79</sup> *Id.*

<sup>80</sup> *Washington v. Bhd. of Friends*, 247 P.2d 787, 789 (1952).

<sup>81</sup> *See Citizens Utilities Company of California v. Superior Court of Alameda County*, 56 Cal. App. 399, 402 (1976).

<sup>82</sup> NYS Department of State Division of Corporation, Search term “ExxonMobil”, [https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.SELECT\\_ENTITY?p\\_srch\\_results\\_page=0&p\\_entity\\_name=Exxon&p\\_name\\_type=A&p\\_search\\_type=BEGINS](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.SELECT_ENTITY?p_srch_results_page=0&p_entity_name=Exxon&p_name_type=A&p_search_type=BEGINS)

<sup>83</sup> Thomas D. DiNapoli, *New York State Local Retirement System 2015 Comprehensive Annual financial Report for the Fiscal Year Ended March 31, 2015*, p. 93, available at [http://www.osc.state.ny.us/retire/word\\_and\\_pdf\\_documents/publications/cafr/cafr\\_15.pdf](http://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/cafr_15.pdf)

<sup>84</sup> Exxon Mobil Stations, <http://www.exxonmobilstations.com/station-locations/united-states/new-york>

<sup>85</sup> *See* N.Y. BUS. CORP. LAW § 1303(b) (McKinney 2007).

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



Determining which of Exxon's activities constitute "doing business within the state" and therefore are covered by the statute is a quantitative and qualitative factual determination dependent on the extent of the corporation's activity within the state.<sup>87</sup> Isolated, occasional and non-continuous business transactions are not "doing business within the state."<sup>88</sup> While maintenance of an office is merely a factor and is not itself dispositive<sup>89</sup> one court has held that "[a] series of extensive and persistent transactions involving various phases of construction work with men and machines in this state over varying periods of time signify an intent to establish a permanent situs in this state."<sup>90</sup>

Under the case law, a foreign sales corporation engaged in continuous high volume sales in the state is "doing business in the state."<sup>91</sup> In *Berkshire*, the court held that the defendant's homebuilding activities constituted doing business within the state.<sup>92</sup> When activities included erecting structures and signs, stationing equipment, transportation of materials into the state and making its services available for local business needs, including through telephone listings.<sup>93</sup> Under the ruling, Exxon would be principally impacted by having to sell its New York gas stations. A typical gas station is similar to the homebuilding operation in *Berkshire* because it involves erecting structures and signs, stationing equipment, moving commodities (petroleum) into the state and advertising to local consumers.

Annulment would limit ExxonMobil's ability to sell refined oil products to New York State. Section 1301 of the statute prevents unauthorized foreign corporations from engaging in regular high volume sales into the state.<sup>94</sup> The regular and direct sales of millions of gallons of refined oil products to retail stations constitutes doing business in the state.<sup>95</sup> However, ExxonMobil could legally continue to direct its products to the state through an intermediary. In *New York Automatic Canteen Corp. v. Keppel & Ruof*,<sup>96</sup> an unauthorized Pennsylvania candy manufacturer sold directly to retailers in New York State through an independent sales representative. The *Keppel* court held that this activity did not constitute doing business in New

York.<sup>97</sup> It should be noted that the defendant in *Keppel* did not have a physical presence in the state and the sales in New York only accounted for seven percent of the defendant's total business.<sup>98</sup>

ii. *Charter Revision Would Not Have Grave Negative Impacts on New York State*

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<sup>87</sup> See, e.g., *Netherlands Shipmortgage Corp. v. Madias*, 717 F.2d 731, 738 (2d Cir. 1983).

<sup>88</sup> *Id.* at 923

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 924.

<sup>91</sup> *Berkshire Eng'g Corp. v. Scott-Paine*, 217 N.Y.S.2d 919, 923 (N.Y. Co. Ct. 1961).

<sup>92</sup> 217 N.Y.S.2d at 923.

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

<sup>94</sup> *Berkshire*, 217 N.Y.S.2d at 923.

<sup>95</sup> *Cf. id.*

<sup>96</sup> *New York Automatic Canteen Corp. v. Keppel & Ruof, Inc.*, 90 N.Y.S.2d 454, 458 (N.Y. City Ct. 1949).

<sup>97</sup> *Id.*

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

According to the opinion of a high-level oil industry insider, (the CEO of Exxon's competitor) the negative potential political and economic repercussions of decertifying ExxonMobil in New York State would be minimal:

- ExxonMobil does \$4 billion per year in sales in New York State. It has 21% of the auto fuels market, which is significant. However, revoking the certificate would not have a noticeable impact on gasoline supply in New York State because of the many other suppliers that could quickly fill supply gaps. There would be no long-term shortage. At most, there would be a short term spike in gasoline prices that would last no more than "a couple of weeks." Even this could be avoided by alerting the industry in advance. Refill is every seven days, so the response time by ExxonMobil's competitors would be fast in any case. Furthermore, ExxonMobil gas prices tend to be higher than its smaller competitors, so its withdrawal from the market will not result in any inflation of statewide gasoline prices. There are enough oil suppliers that there would be no impact on price or supply lasting over two weeks.
- The impact on ExxonMobil would not be financial, it would be reputational. Revocation of ExxonMobil's Certificate to do Business would be a "big time" psychological shock to the company. "It would ding them for sure. The shock and alarm factor would certainly be effective." However, ExxonMobil is so big globally; there would be no impact on ExxonMobil stock prices or the value of New York State and city pension funds. ExxonMobil stock represents 2.5% or \$1.6 billion of the New York State Common Retirement System's total portfolio and 3%, or \$1.6 billion of the New York State Teachers Retirement Fund—the largest energy holding by a factor of three.
- ExxonMobil once had many terminals in the state, but it has sold most of them off to avoid the environmental liability issues and is selling its six remaining terminals as fast as it can.
- ExxonMobil has 1,050 gas stations in New York State, mostly owned by franchisees. These businesses would suffer transition and other costs as they shifted to other suppliers. Franchisees typically sign 10-year contracts with ExxonMobil that prohibit them from buying from other suppliers. ExxonMobil might have legal actions against them if they tried to switch suppliers.
- ExxonMobil operates a dozen or more stations on the New York State Thruway, which it owns. These stations operate under burdensome contractual strictures and low profit margins that keep smaller independent companies from bidding for the contract. However, the advertising benefits of these locations make them attractive to large majors, one of which will certainly step in to fill the vacuum.

#### **E. Conclusion: Justice - The Public Interest Demands That Exxon Be Punished For Irresponsible Harm Caused By Its Deception**

Mainly elected leaders understand that government officials have a duty to demonstrate that government is able to safeguard the public from sociopathic corporate conduct. Members of Congress—including Ted Lieu and Mark DeSaulnier of California and presidential candidates Governor Martin O'Malley, Senator Bernie Sanders and Senator Hillary Clinton have called on the Department of Justice to prosecute Exxon for its campaign of public fraud. Washington

Monthly condemned Exxon's decades of deceit in language usually reserved for war criminals: "A fossil fuel company intentionally and knowingly obfuscating research into climate change constitutes criminal negligence and malicious intent at best, and a crime against humanity at worst. The Department of Justice has a moral obligation to prosecute Exxon and its co-conspirators accordingly." Even Exxon's hometown newspaper, Dallas Morning News—a virtual oil patch trade journal—delivered a blistering condemnation of Exxon on its front page. Under the headline is 'Exxon's Missed Opportunity to Address Climate Change,' the editors compared Exxon's lies to perfidies of Big Tobacco and concluded:

...Exxon had the opportunity to lead the world toward a measured, manageable approach toward a solution. With profits to protect, Exxon provided climate change doubters a bully pulpit they didn't deserve, and gave lawmakers the political cover to delay global action until long after the environmental damage had reached severe levels. That's the inconvenient truth as we see it.'

Under the most generous construction, Exxon's conduct was immoral. In the worst and more plausible construction, Exxon is guilty of criminal negligence that will contribute to the deaths of human beings, the extinction of species and hundreds of billions of dollars in damages. Exxon's punishment won't bring back those wasted years or lost lives, but will help break the political power that immoral companies exert on our democracy. Law enforcement officials must show that government has the power to reign in rogue companies. Charter revocation will, in this case, demonstrate that government has the power to safeguard the public interest from corporate abuse. Such action will disincentivize efforts by other companies to derail government efforts to address humanity's existential threat. New York State, for historical reasons, is an appropriate place to demonstrate bold leadership in the fight Exxon's corporate abuse. It was a New York State politician – Theodore Roosevelt, who broke up Standard Oil. As the world's largest oil company, the financial leader in this sector and Standard Oil's successor, ExxonMobil should be a role model of good corporate citizenship. Instead, ExxonMobil has made itself the template for unsheathed arrogance of unregulated power, greed and callous disregard toward the cataclysmic misery presaged by its actions.

If we are to have a functioning democracy and a legal system capable of providing justice and holding accountable the richest company in the country, then Exxon must pay a price for its four decade public fraud.