



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETTITIA JAMES
ATTORNEY GENERAL

Via NYSCEF and Hand Delivery

June 19, 2019

The Honorable Barry R. Ostrager
Supreme Court, New York County
60 Centre Street, Room 232
New York, NY 10007

Re: *People of the State of New York v. Exxon Mobil Corporation*, Index No.
452044/2018 (Sup. Ct. N.Y. Cnty.)

Dear Justice Ostrager:

The Office of the Attorney General (“OAG”) hereby submits, for *in camera* review, all documents responsive to Exxon Mobil Corporation’s (“ExxonMobil”) request for reports to the State Energy & Environmental Impact Center at New York University Law School (“NYU Center”) or to any Bloomberg affiliate concerning the activities of NYU Center fellows, as agreed by the parties at oral argument on June 12, 2019.

At the argument, ExxonMobil articulated a request for “the reports that have been provided by the fellows back to the State impact Center and apparently to Bloomberg philanthropists.” Dkt. No. 240, Tr. 54 (“Tr.”). The OAG opposed – and continues to oppose – that request on the basis that it is irrelevant to any theory of selective enforcement. *Id.* at 55. In response, ExxonMobil argued that it “suspect[s] those reports would bear directly on . . . selective enforcement, because [of] the way they describe what the action is against Exxon Mobil, the significance of the action against Exxon Mobil and what steps the AG is taking to accomplish those goals.” *Id.* at 55. In its opposition to the OAG’s motion to dismiss, however, ExxonMobil limited its discussion of the NYU Center fellows to the challenged defense of conflict of interest and made no reference to the program in asserting the defense of selective enforcement.¹ Nevertheless, in the interest of efficiency, the OAG agreed to submit any such documents to the Court for *in camera* review. *Id.* at 56-57.

¹ Compare ExxonMobil Opposition to OAG’s Motion to Dismiss, Dkt. No. 114 (“Opp”), at 14-16 (“ExxonMobil’s conflict of interest defense is supported by the Attorney General’s decision to accept Center fellows and to allow them to work on this matter, and to otherwise solicit financial benefits from third parties in connection with these

As a threshold matter, the two NYU Center fellows working in this Office never sent any reports to the NYU Center or any other outside party concerning their work for the OAG. *See* Affirmation of Lemuel M. Srolovic (“Srolovic Aff.”) ¶ 6. Indeed, the Secondment Agreement between NYU and the OAG has no provision for reporting by the fellows to the NYU Center or to any funder of the NYU Center, or to any other third party regarding their work in the OAG. *See* Srolovic Aff., Ex. A (“Secondment Agreement”). As the Secondment Agreement makes clear, the fellows report only to the OAG: the fellows’ work is “supervised exclusively by the OAG,” and the fellows are “under the direction and control of, and owe a duty of loyalty to, the OAG.” *Id.* at ¶¶ A.3, B.5.²

Paragraph D.3 of the Secondment Agreement provides that, subject to protecting confidential information, the OAG will provide periodic reports to the NYU Center regarding the work of the fellows. The OAG has provided only one such report to the NYU Center. That report, by email dated May 7, 2018, is hereby submitted for *in camera* review.³ No other written or verbal reports have been provided to, or requested by, the NYU Center regarding the work of the fellows. *See* Srolovic Aff. ¶ 4. Finally, the Secondment Agreement has no provision for the OAG to report any information to any funder of the NYU Center, or any other third party. *See* Secondment Agreement. The OAG never provided any such reporting. *See* Srolovic Aff. ¶ 6.

Finally, in addition to the reports that ExxonMobil requested at oral argument, ExxonMobil suggested in separate correspondence that the OAG was required to produce “[g]rant applications” associated with the fellowship program and “[i]nternal OAG summaries or reports” about the fellows. ExxonMobil did not raise either of these additional requests at oral argument, nor were these requests included in the extensive negotiations between the parties over the last several months. Nonetheless, in the interest of efficiency, the OAG is proactively submitting, for *in camera* review, its application to the NYU Center for two fellows by email dated September 15, 2017. The OAG is unaware of any internal summaries or reports concerning the fellows. To the extent ExxonMobil is requesting that the OAG turn over its personnel records concerning the fellows, that request is improper and should be withdrawn or struck by the Court.

The OAG encloses herein the Affirmation of Lemuel M. Srolovic (with Exhibits A and B), Affirmation of Matthew Eisenson, and Affirmation of Gavin G. McCabe. The OAG also encloses documents responsive to ExxonMobil’s request for *in camera* review in a separate envelope delivered to the court with this letter.

proceedings. . . . Multiple aspects of the Attorney General’s acceptance of fellows create a conflict that violates state and federal law. . . . This conduct creates the appearance that the Attorney General is accountable to the Center, rather than the public, for its prosecutorial decisions.”), *with* Opp. at 13-14 (asserting that “ExxonMobil’s selective enforcement defense is supported by allegations that the Attorney General targeted ExxonMobil because of its speech on climate policy” with no mention of the NYU Center fellows).

² Based on these safeguards and others, the New York State Joint Commission on Public Ethics (“JCOPE”) concluded in an informal opinion that the NYU fellowship program complies with the ethics rules in the Public Officers Law. *See* Srolovic Aff., Ex. B.

³ To be precise, ExxonMobil only requested reports “by the fellows,” but the OAG is construing its request more broadly to include reports by the OAG. *See* Tr. at 54.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marc Montgomery', written over a horizontal line.

Marc Montgomery

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

PEOPLE OF THE STATE OF NEW YORK,
By LETITIA JAMES,
Attorney General of the State of New York,

Plaintiff,

– against –

EXXON MOBIL CORPORATION,

Defendant.

Index No. 452044/2018

IAS Part 61

Hon. Barry R. Ostrager

**AFFIRMATION OF
LEMUEL M. SROLOVIC**

Lemuel M. Srolovic, under penalty of perjury, affirms:

1. I am the Chief of the Environmental Protection Bureau for the New York State Office of the Attorney General (“OAG”) and have held that position since April 2011. This affirmation is provided in connection with the Court’s resolution at oral argument on June 12, 2019 of Exxon’s request for reports by fellows of the State Energy & Environmental Impact Center at New York University School of Law (“NYU Center”) seconded to OAG concerning their work in the OAG.

2. I have overseen all hiring and staffing issues related to the OAG’s participation in the NYU Center’s fellowship program since OAG’s participation began in 2017.

3. The provision of NYU Center fellows is governed by the terms of a Secondment Agreement entered into by the OAG and NYU on December 22, 2017, which is attached to this Affirmation as Exhibit A.

4. Paragraphs D.2 and D.3 of the Secondment Agreement provide that, subject to protecting confidential information, including attorney work product, attorney-client communication, materials the disclosure of which would interfere with a law enforcement

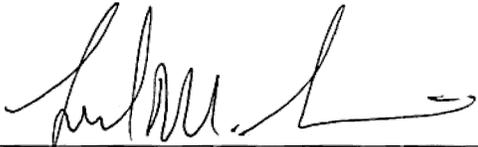
investigation, and deliberative materials, the OAG will provide periodic reports to the NYU Center regarding the work of the fellows. The OAG has provided only one such report to the NYU Center. That report, by email dated May 7, 2018, is hereby submitted for *in camera* review. No other written or verbal reports have been provided to, or requested by, the NYU Center regarding the work of the fellows.

5. The Secondment Agreement has no provision for the OAG to report any information to any funder of the NYU Center, or any other third party. To my knowledge, the OAG has provided no such reporting.

6. The Secondment Agreement has no provision for reporting by the fellows to the NYU Center or to any funder of the NYU Center, or to any other third party regarding their work in the OAG. I have confirmed with both NYU fellows in the OAG that they have provided no such reporting.

7. On October 22, 2018, the OAG requested an opinion from the New York State Joint Commission on Public Ethics (“JCOPE”) concerning the application of the Public Officers Law to the Fellowship Program. In response, JCOPE issued an informal opinion that the Fellowship Program complies with the ethics rules in the Public Officers Law. That opinion is attached as Exhibit B to this Affirmation.

Dated: June 19, 2019
New York, New York



Lemuel M. Srolovic

EXHIBIT A

**Employee Secondment Agreement between the Attorney General of the State of New York
and the
State Energy & Environmental Impact Center at NYU School of Law**

This AGREEMENT (“Agreement”) is entered into as of December 22, 2017, by and between NEW YORK UNIVERSITY (“NYU”), a New York not-for-profit education corporation, on behalf of the NYU School of Law’s State Energy and Environmental Impact Center (the “State Impact Center”), and the Attorney General of the State of New York (“OAG”).

WHEREAS, The State Impact Center seeks to provide a supplemental resource to state attorneys general on clean energy, climate change and environmental matters of regional and national importance; and

WHEREAS, As part of its activities, the State Impact Center conducts a legal fellowship program (“Legal Fellowship Program”), which seeks to provide attorneys to act as fellows in the offices of certain state attorneys general (“Legal Fellows”); and

WHEREAS, The OAG has been selected by the State Impact Center to participate in the Legal Fellowship Program; and

WHEREAS, The OAG has the authority consistent with applicable law and regulations to accept a Legal Fellow whose salary and benefits are provided by an outside funding source.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and OAG agree to the following:

A. Terms of Service for the Legal Fellowship Program at the OAG:

1. The State Impact Center will provide the services of two attorneys to the OAG to act as a Legal Fellow.
2. The specific start and end dates for services will be determined with the mutual agreement between the Legal Fellow, the OAG, and the State Impact Center, provided, however, that the term of the fellowship will be for two years (the “Fellowship Period”), although the parties may terminate the Fellowship earlier as described in paragraph A.6, below.
3. During the Fellowship Period, the Legal Fellow will be under the direction and control of, and owe a duty of loyalty to, the OAG, and will be subject to NY Public Officers Law §§ 73 & 74 as well as the OAG’s policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellow will receive instruction and materials regarding these requirements from the OAG at the commencement of his or her

fellowship.

4. During the Fellowship Period, salary and benefits will be provided to the Legal Fellow by the NYU School of Law.
5. When acting as a Special Assistant Attorney General, the Legal Fellow will be entitled to defense and indemnification by the State of New York consistent with the provisions of N.Y. Public Officers Law § 17.
6. The OAG may terminate the services of the Legal Fellow upon seven (7) days' written notice to the State Impact Center, provided that the OAG will attempt to resolve any performance or other issues involving the Legal Fellow with the Legal Fellow and the State Impact Center before terminating the services of the Legal Fellow. The State Impact Center may terminate this Agreement upon seven (7) days' written notice to the OAG for (1) lack of funding, (2) the OAG's failure to submit reports as required below, or (3) the OAG's failure to assign the Legal Fellow work and responsibility as described in paragraph B.2, below. The State Impact Center shall compensate the Fellow for all time worked prior to termination of this Agreement.
7. Subject to the availability of lawful appropriations and consistent with Section 8 of the State of Claims Act, the OAG shall hold NYU harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the OAG's material breach of this Agreement or to the negligence of the OAG or of its officer or employees when acting within the course and scope of their appointment. The State Impact Center will indemnify, defend and hold OAG harmless from any claims, causes of action, or judgments arising out of the State Impact Center's breach of this Agreement.

B. Nature of the Fellowship Position at the OAG

1. During the Fellowship Period, the OAG will provide the Legal Fellow the title of Special Assistant Attorney General.
2. The OAG will assign the Legal Fellow substantive work and responsibility matching that of other attorneys in the agency with similar experience and background. The Legal Fellow's substantive work will be primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance.
3. The OAG will aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions and court appearances.
4. The OAG will afford the Legal Fellow the opportunity to partake in the extensive legal education, including CLEs, offered by the OAG to its attorneys.
5. The Legal Fellow's work as a Special Assistant Attorney General will be supervised

exclusively by the OAG.

6. The OAG will have a proprietary interest in all work product generated by the Legal Fellow as a Special Assistant Attorney General.

C. Prohibited Activity

1. The OAG may not request or permit the Legal Fellow to engage in any activities that would constitute any of the following:
 - a. to carry on propaganda, or otherwise attempt to influence any specific legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;
 - b. To engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;
 - c. to influence the outcome of any specific public election; or
 - d. to support the election or defeat of a candidate for public office, finance electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.
2. The OAG may not request or permit the Legal Fellow to participate in any matter that involves New York University or any of its affiliates; and, to the extent that the OAG participates in a matter that involves New York University or any of its affiliates, the OAG will create an ethical wall between the Legal Fellow and the OAG with regard to the matter to ensure that the Legal Fellow has access to no information relating to the matter.
3. The OAG has determined that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to the OAG do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce OAG to undertake or refrain from undertaking any action within the purview of OAG. OAG retains sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving New York University or any of its affiliates.

D. Communications and Reporting

1. The State Impact Center will not have a proprietary interest in the work product generated by the Legal Fellow during the fellowship. The State Impact Center will not be authorized to obtain confidential information from the Legal Fellow unless the Legal Fellow has obtained prior authorization from the Legal Fellow's supervisor at the OAG.
2. The OAG does not intend to share confidential information with NYU pursuant to this agreement. Confidential information includes, for example, attorney work product, attorney-client communications, materials the disclosure of which would interfere with a law enforcement investigation, and draft or deliberative materials.
3. To the extent practical without divulging confidential information, the OAG will provide periodic reports to the State Impact Center regarding the work of the Legal Fellow. These reports will include a narrative summary of the work of the legal fellow and the contribution that the legal fellow has made to the clean energy, climate change, and environmental initiatives of the OAG. These reports will be provided pursuant to the following schedule:
 - a. Activity for the period from the beginning of the Fellowship Period until April 30, 2018 will be provided no later than May 15, 2018.
 - b. Activity for the period from May 1, 2018 through July 31, 2018 will be provided no later than August 15, 2018.
 - c. Activity for the period from August 1, 2018 through January 31, 2019 will be provided no later than February 15, 2019.
 - d. A final report for activity from the beginning of the Fellowship Period until the end of the Fellowship Period will be provided within fifteen (15) days of the end of the Fellowship Period.
4. The OAG acknowledges that New York University may be required to make filings or disclosures that reference the OAG, the Legal Fellow, or the Legal Fellowship Program, and that the OAG is not required to review or approve any such filings as they pertain to the Legal Fellowship Program, except where New York University requests such review or approval.
5. In addition to the formal reporting requirements, the OAG will collaborate with the State Impact Center on public announcements relating to clean energy, climate change, and environmental matters in which the Legal Fellow is engaged.
6. Notifications to the OAG relating to this agreement should be directed to:
Lemuel Srolovic
Bureau Chief, Environmental Protection Bureau
New York State Office of the Attorney General

120 Broadway
New York, NY 10271
212-419-8448
Lemuel.Srolovic@ag.ny.gov

7. Notifications to the State Impact Center relating to this agreement should be directed to:

Elizabeth Klein
Deputy Director
State Energy & Environmental Impact Center
NYU School of Law
c/o Resources for the Future
1616 P Street NW
Washington, DC 20036
202-328-5186
Elizabeth.klein@nyu.edu

E. Miscellaneous

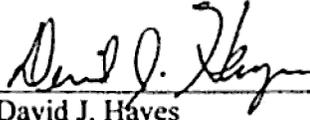
1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties and shall be governed by the laws State of New York. No amendment to this Agreement will be valid and binding unless reduced to writing and signed by the parties.
2. This agreement shall not be assigned by either party without the consent of the other party.
3. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original and all of which together will constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

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Dated: December 22, 2017

State Energy & Environmental Impact Center at
NYU School of Law



By: David J. Hayes
Executive Director
State Energy & Environmental Impact Center
NYU School of Law
c/o Resources for the Future
1616 P Street NW
Washington, DC 20036
202-258-3909
david.hayes@nyu.edu

Dated: December ____, 2017

New York State Office of the Attorney General

By: Lemuel Srolovic
Bureau Chief, Environmental Protection Bureau
New York State Office of the Attorney General
120 Broadway
New York, NY 10271
212-419-8448
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EXHIBIT B

MICHAEL K. ROZEN
CHAIR

ROBERT COHEN
JAMES E. DERING
COLLEEN C. DIPIRRO
JULIE A. GARCIA
MARVIN E. JACOB
GARY J. LAVINE
J. GERARD McAULIFFE, JR.
DAVID J. McNAMARA
BARRY C. SAMPLE
GEORGE H. WEISSMAN
JAMES A. YATES
MEMBERS



SETH H. AGATA
EXECUTIVE DIRECTOR

NEW YORK STATE
JOINT COMMISSION ON PUBLIC ETHICS

540 BROADWAY
ALBANY, NEW YORK 12207
www.jcope.ny.gov

PHONE: (518) 408-3976
FAX: (518) 408-3975

December 18, 2018

Via Email

Leslie Dubeck
NYS Office of the Attorney General
leslie.dubeck@ag.ny.gov

Dear Ms. Dubeck:

On behalf of the Joint Commission on Public Ethics ("Commission"), I am responding to your inquiry, on or about October 22, 2018, regarding the application of the ethics provisions in the Public Officers Law to an fellowship program that allows the New York University School of Law to provide and compensate attorneys who serve as Legal Fellows in the Office of the Attorney General.¹ Based on the information provided, Commission staff conclude that the program *does not violate* Public Officers Law §§ 73 or 74.

BACKGROUND

In 2017, New York University School of Law ("NYU School of Law") founded the State Energy & Environmental Impact Center ("Impact Center") with initial financial support from Bloomberg Philanthropies. The Impact Center provides supplemental resources to state attorneys general on clean energy, climate change, and environmental matters of regional and national importance, and help to coordinate efforts across multiple state attorney general offices and other interested parties.² These efforts include a fellowship program, which the Impact Center describes on its website as follows:

In 2017, following the launch of the State Impact Center, all attorneys general and their senior staff were invited to apply to the NYU Law Fellow

¹ Generally, it is the Commission's policy not to opine informally on conduct that has already occurred. The Commission finds it appropriate to issue an informal opinion in the instant matter because it relates to an active, ongoing program.

² <http://www.law.nyu.edu/centers/state-impact/about>.

program. Interested attorneys general described their need for additional support on clean energy, climate and environmental matters, and certified that they could participate in the program under applicable federal and state laws.

NYU pays the salaries of the law fellows, but the fellows' sole duty of loyalty is to the attorney general in whose office he or she serves. All work performed by the fellows is entirely identified and managed by their respective AG offices. The law fellows serve as Special Assistant Attorneys General for a limited term on clean energy, climate, and environmental matters with regional or national significance.³

As of October 5, 2018, Legal Fellows from the Impact Center have assisted attorneys general in 26 states (including New York) and the District of Columbia.⁴

In or about September 2017, the New York State Office of the Attorney General (OAG) applied to participate in the Impact Center's Fellowship program. The OAG's application described the office's commitment to enforcing environmental protection laws, and specifically referenced its participation in multi-state efforts:

[E]xtending back for years but especially so now, the [OAG] is a state attorney general's office that coordinates and often leads multi-state coalitions of attorneys general in enforcing against the federal government the federal environmental and procedural laws that protect human health and the environment when federal agencies fail to implement those laws, defending those laws when challenged by industry and allied states and, more recently, challenging federal agencies as they seek to delay, suspend and repeal regulations implementing those laws. Presently, [OAG] is leading or is an active participant in nearly twenty such lawsuits – in courts around the country – concerning climate change, oil and gas development on federal lands, interstate air pollution from stationary and mobile sources, water pollution and toxic pesticides.⁵

The application described several environmental lawsuits and advocacy efforts the OAG had joined in 2017 alone, and cited the OAG's "acute need" for additional environmental litigators. It specified the qualifications the OAG was looking for in fellows, and it explained that the fellows would be assigned "within the Environmental Protection Bureau and managed like their peers within the bureau," and "their line of reporting would be to a section chief, deputy bureau chief and bureau chief."

On or about December 22, 2017, the OAG and the Impact Center executed an Employee Secondment Agreement ("Agreement") to establish a Legal Fellowship Program within the OAG.

³ <http://www.law.nyu.edu/centers/state-impact/fellows-program>.

⁴ See <http://www.law.nyu.edu/centers/state-impact/AG-Actions/By-State>.

⁵ OAG application at pp. 2-3.

Pursuant to the Agreement, the Impact Center provides the services of two attorneys to the OAG to act as a Legal Fellow for a period of two years. Their salaries and benefits are paid by the NYU School of Law. Numerous provisions in the Agreement ensure that the Legal Fellows' work advances the interests of the OAG and the state, including that:

- The Legal Fellows will be subject to Public Officers Law §§ 73 and 74,⁶ as well as the OAG's policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interest, and confidentiality.
- The Legal Fellows will be under the direction and control of, and owe a duty of loyalty to, the OAG.
- The Legal Fellows' work will be supervised exclusively by the OAG.
- The OAG (and not the Impact Center) will have a proprietary interest in all work product generated by the Legal Fellow.
- The OAG will create an "ethical wall" between the Legal Fellow and the OAG with regard to any matter that involves New York University or any of its affiliates, and will ensure that the Legal Fellow has access to no information relating to any such matter.
- The OAG may terminate the services of a Legal Fellow upon seven (7) days written notice, after attempting to resolve any performance or other issues involving the Legal Fellow.

You have asked whether the OAG's participation in the Impact Center's Legal Fellows program complies with the ethics provision in the Public Officers Law, including the restrictions on gifts and the provisions on conflicts of interest.

DISCUSSION

Public Officers Law § 73(5) prohibits a State employee from soliciting, accepting, or receiving any gift having a more than nominal value "under circumstances in which it can be reasonably inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her, in the performance of his or her official duties or was intended as a reward for any official action on his or her part." Additionally, Public Officers Law § 74 prohibits acts that raise the appearance of a conflict of interest, and must also be considered in the context of gifts.

It is important to distinguish between gifts to individual State employees, which are governed by these statutes, and gifts to a State agency, which are not subject to the Public Officers

⁶ The OAG's application to participate in the Legal Fellows program (pp. 9-10) correctly cited the Commission's precedent in noting that the Legal Fellows would be subject to Public Officers Law §§ 73 and 74, and this would have been so even if it were not expressly stated in the Agreement. *See* New York State Comm'n on Pub. Integrity Advisory Op. 10-02 (holding that unpaid, volunteer attorneys working for the Department of Environmental Conservation were bound by Sections 73 and 74 where, *e.g.*, they functioned in roles that were substantially the same as other State employees, and they were subject to the direction and control of supervisory agency staff.)

Law.⁷ Agency gifts are distinguished from personal gifts as follows:

. . . an agency gift must remain with the agency no matter what personnel changes take place. For example, if the agency accepts a donation of a snowmobile and assigns it to a particular [employee], that snowmobile must remain with the agency after the [employee] leaves State service. If it were given to the [employee], it would be a personal gift governed by §§73(5) and 74.⁸

Under this standard, to the extent the services of the Legal Fellows constitute a gift, they must be analyzed as a gift to the OAG, and not to a specific individual. Public Officers Law §§ 73 and 74 are not enforceable against a State agency, but the Commission has held that they can serve as guidelines for assessing the propriety of a gift to a State agency.⁹ Using this approach, the Commission has opined that State agencies generally may accept donations, subject to certain restrictions.

First, a State agency is prohibited from accepting donations from persons or entities involved in litigation with the agency or under investigation by the agency,¹⁰ or have matters pending before the agency.¹¹ Second, gifts from donors whose relationship might create the appearance of impropriety, such as lobbyists and those doing business with the agency, must be subjected to careful analysis of the source, timing, and value of the donation.¹² If the public could reasonably perceive the donation as an attempt to improperly influence the agency in the administration of its public duties, the agency should not accept the gift.¹³ Additionally, a donor cannot place any conditions, such as a commitment to use the equipment in a particular geographic area, on the offer of a gift, and the agency must be free to use agency resources as it deems necessary.¹⁴

You report that the OAG has no open or recently closed matters – no litigation, investigation, business relationship, or other matter – involving New York University (NYU). NYU's registration as the client of a lobbyist discloses lobbying activity on the State level directed to the Legislature, the Governor's Office, the State Education Department, the Department of Health, and the Empire State Development Corporation, but none directed to the OAG. Clearly, the Legal Fellows program was not created specifically to benefit the OAG, as every attorney general in the country was invited to apply,¹⁵ and more than two dozen attorneys general offices

⁷ See the gift regulations at Title 19 NYCRR Part 933 (eff. Jun. 18, 2014), which do not apply to the acts of State agencies; New York State Comm'n on Pub. Integrity Advisory Op. 08-01; New York State Ethics Comm'n Advisory Op. 94-16.

⁸ New York State Ethics Comm'n Advisory Op. 95-38.

⁹ *Id.*

¹⁰ New York State Ethics Comm'n Advisory Ops. 97-06, 95-38, 92-01.

¹¹ New York State Ethics Comm'n Advisory Op. 96-02.

¹² New York State Ethics Comm'n Advisory Op. 97-06, *also see* 95-38, 92-01.

¹³ *Id.*

¹⁴ New York State Ethics Comm'n Advisory Op. 95-38.

¹⁵ <http://www.law.nyu.edu/centers/state-impact/fellows-program>.

have participated in the program.¹⁶

Moreover, the Agreement contains significant safeguards to protect the interests of the OAG and the state. The Legal Fellows are supervised and controlled by, and owe a duty of loyalty to, the OAG. The Legal Fellows, although not paid by the State, are subject to Public Officers Law §§ 73 and 74, including the post-employment restrictions and the rules on conflicts of interest and confidentiality. The OAG retains “sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving New York University or any of its affiliates.” The Impact Center has placed no improper conditions on the Legal Fellows’ services, and the OAG retains full and sole discretion to direct the Legal Fellows’ work. Additionally, the Legal Fellows will not be permitted to participate in, or have access to information regarding, any matter that involves NYU or its affiliates.

It appears the OAG applied to participate in the Legal Fellows program after determining that the program complimented the OAG’s already-established environmental protection agenda. There is no reasonable basis to infer that the Legal Fellows program was offered to the OAG to influence official action by the OAG, or to reward an official action already taken.¹⁷ Therefore, Commission staff conclude that the OAG’s participation in the Impact Center’s Legal Fellowship program *does not violate* the ethics rules in the Public Officers Law.

* * *

Please note that Commission staff has relied upon the accuracy and completeness of the information you have provided in preparing this informal opinion. In the event of a material change of circumstances you are welcome to contact the Commission for guidance.

This letter sets forth the Commission staff’s understanding of the application of the post-employment restrictions in the Public Officers Law to your circumstances. No person other than you may rely upon this informal opinion. If you wish to have a formal opinion of the Commission, or wish to clarify or supply further information to the Commission concerning your request, please do not hesitate to contact us again.

Sincerely,



Michael E. Sande
Deputy Director of Ethics Guidance

¹⁶ See n.4.

¹⁷ Bloomberg Philanthropies is subject to regulation by the OAG as a registered charity in the state. However, you report that it does not have any open or recently closed matters before the OAG, and it is not a registered lobbyist or client of a lobbyist. Moreover, the OAG’s established commitment to environmental law issues pre-dates Bloomberg Philanthropies’ grant to the Impact Center. There is no reasonable basis to infer that the grant to the Impact Center was an attempt to influence official action by the OAG, or to reward an official action already taken.

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

PEOPLE OF THE STATE OF NEW YORK,
By LETITIA JAMES,
Attorney General of the State of New York,

Plaintiff,

– against –

EXXON MOBIL CORPORATION,

Defendant.

Index No. 452044/2018

IAS Part 61

Hon. Barry R. Ostrager

**AFFIRMATION OF
MATTHEW EISENSEN**

Matthew Eisenson, under penalty of perjury, affirms:

1. I am a Special Assistant Attorney General in the New York State Office of the Attorney General (“OAG”) pursuant to a fellowship program between the State Energy & Environmental Impact Center at New York University School of Law (“NYU Center”) and the OAG. I have held this position since February 26, 2018. The last of my fellowship will be June 26, 2019. On June 27, 2019, I will begin a permanent position as an Assistant Attorney General at the OAG.

2. Throughout the course of my fellowship, I have not provided any reports to – or received any direction from – the NYU Center or any third party concerning my work in the OAG, nor have any reports been requested.

Dated: June 19, 2019
New York, New York


Matthew Eisenson

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

PEOPLE OF THE STATE OF NEW YORK,
By LETITIA JAMES,
Attorney General of the State of New York,

Plaintiff,

– against –

EXXON MOBIL CORPORATION,

Defendant.

Index No. 452044/2018

IAS Part 61

Hon. Barry R. Ostrager

**AFFIRMATION OF GAVIN
G. McCABE**

Gavin G. McCabe, under penalty of perjury, affirms:

1. I am an Assistant Attorney General in the New York State Office of the Attorney General (“OAG”) and have held that position since March 28, 2019. Previously, I served as a Special Assistant Attorney General pursuant to a fellowship program between the State Energy & Environmental Impact Center at New York University School of Law (“NYU Center”) and the OAG from April 26, 2018 to March 19, 2019.

2. Throughout the course of my fellowship, I never provided any reports to – or received any direction from – the NYU Center or any third party concerning my work in the OAG, nor were any reports requested.

Dated: June 18, 2019
New York, New York



Gavin G. McCabe