

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

In the matter of:)
)
PEOPLE OF THE STATE OF NEW YORK)
)
Plaintiff,)
)
v.)
)
EXXON MOBIL CORPORATION)
)
Defendant.)

Index No.: 0452044/2018

**EXHIBIT 1 TO
PROPOSED INTERVENORS'
RESPONSE BRIEF
IN OPPOSITION TO
MATTHEW PAWA'S
MOTION TO APPEAR
AS AMICUS CURIAE**

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF GREENE)

COMES THE AFFIANT, Matthew D. Hardin, and, having been duly sworn, does hereby state as follows:

1. In his brief, Mr. Pawa bemoans the open records work in which Proposed Intervenor Energy Policy Advocates is involved, generally and specifically, which work has uncovered much about his involvement in the deployment of public institutions toward private-advocacy ends. Pawa similarly expresses concern that counsel have previous open records litigation experience for other clients inquiring into the attorneys general investigations he lobbied for.
2. Energy Policy Advocates is a nonprofit organization which conducts research on energy policy issues, usually through open records requests.
3. Such requests have revealed Mr. Pawa's role in inducing attorneys general to investigate his ideological and legal opponents.

4. Through open records requests, Energy Policy Advocates has obtained information about how institutions beyond law enforcement are being similarly employed in unprecedented ways, including universities and law schools taking it upon themselves, in concert with activists, the plaintiff's tort bar, major financial contributors and other "prospective funders" (see *infra*), and these same state attorneys general, to institute legal actions against political opponents.
5. For example, as UCLA Law School Prof. Cara Horowitz candidly if indelicately described this campaign in an email to her Center's principal benefactor, this entails "going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide."¹
6. With Mr. Pawa's active encouragement, that campaign has led to attorney general investigations of private parties², and targeted more than 100 research and advocacy groups, scientists and other private parties and entities.³
7. Records already obtained from numerous public institutions affirm various attorneys general and, e.g., university faculty's role in this effort, including participating in a "secret meeting at

¹ "Hi Dan, Thought you would like to hear that Harvard's enviro clinic, UCLA Emmett Institute, and the Union of Concerned Scientists are talking together today about going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide. Good discussion." April 25, 2016 email from UCLA Law School's Cara Horowitz to Dan Emmett, namesake and funder of the Harvard and UCLA centers, Subject: See, e.g., <https://climatelitigationwatch.org/on-the-subject-of-recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/>.

² *People of the State of New York v PricewaterhouseCoopers and Exxon Mobil Corporation*, New York State Supreme Court, New York County, No. 451962/2016, and 1:17-cv-2301 in U.S. District Court, Southern District of New York; *People of the State of New York v. Exxon Mobil Corporation*, Supreme Court of New York Index No. 452044/2018; *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Suffolk County Superior Court, 19-3333.

³ See, e.g., Valerie Richardson, "Exxon climate change dissent subpoena sweeps up more than 100 U.S. institutions", Washington Times, May 3, 2016, <https://www.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-communications/>; Walter Olson, "Massachusetts AG to Exxon: hand over your communications with think tanks", June 16, 2016, <https://www.overlawyered.com/2016/06/+setts-ag-exxon-hand-communications-think-tanks/>.

Harvard”⁴ in March 2016 with plaintiff’s tort lawyers to brief staff of state attorneys general, activists, and “prospective funders”⁵ of a coordinated campaign pushing “potential state causes of action against major carbon producers”.⁶

8. This campaign flowed from the 2102 legal strategies meeting in La Jolla, California, with which this Court is familiar but about which Proposed Intervenors have recently learned a remarkable fact: an Office of Attorney General was in fact involved in the event, at minimum in preparing it and, it appears, also as the party asked “to lead the discussion” of the litigation presentations, including Mr. Pawa’s.⁷

⁴ “I will be showing this Monday at a secret meeting at Harvard that I’ll tell you about next time we chat. very [sic] exciting!” April 22, 2016, email from Oregon State University Professor Philip Mote to unknown party, Subject: [REDACTED], and “I’m actually also planning to show this in a secret meeting next Monday—will tell you sometime.” April 20, 2016, Philip Mote email to unknown party, Subject: [REDACTED]. Available at <https://climatelitigationwatch.org/mote-re-harvard-secret-meeting-copy/>.

⁵ “We will have as small number of climate science colleagues, as well as prospective funders, at the meeting.” March 14, 2016, email from Frumhoff to Mote; Subject: invitation to Harvard University—UCS convening. Email available at <https://climatelitigationwatch.org/more-on-house-hearing-witnesses-secret-meeting-at-harvard-list-of-ag-offices-meeting-with-prospective-funders/>.

⁶ “Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives.” Obtained in *Energy & Environment Legal Institute v. Attorney General, Superior Court of the State of Vermont*, 349-16-9 Wnc, December 6, 2017. Available at <https://climatelitigationwatch.org/wp-content/uploads/2018/08/Harvard-agenda-RICO-etc-scheme-players.pdf>.

⁷ “We’d like the lead discussants to be: Janill Richards, Joe Mendelson, Ana Unruh-Cohen. We will turn to you for reaction to the panel before opening the session up for general discussion.” May 24, 2012 email from Angela Anderson, Union of Concerned Scientists, to, *inter alia*, janill.richards@doj.ca.gov, Subject: Your participation: Climate Accountability Workshop June 14-15, La Jolla, produced by the University of Oregon School of Law to Competitive Enterprise Institute and now posted at <https://climatelitigationwatch.org/wp-content/uploads/2020/02/Janill-Richards-should-lead-legal-discussion.png>; see also <https://climatelitigationwatch.org/wp-content/uploads/2020/02/Janill-Richards-a-Workshop-Participant-as-of-6.4.12.png>.

9. This La Jolla meeting, as public records reveal, was convened to contemplate the general failure of legislative efforts to impose the “climate” agenda, the summary of which meeting stated, *inter alia*, “State attorneys general can also subpoena documents, raising the possibility that a single sympathetic state attorney general might have substantial success in bringing key internal documents to light. In addition, lawyers at the workshop noted that even grand juries convened by a district attorney could result in significant document discovery.”⁸
10. This is inherently of great public interest and the records that Proposed Intervenor seeks to unseal in this matter are, like others obtained from, e.g., other state attorneys general, educational for the public to learn how this use of such institutions came about.
11. One of the Proposed Intervenors is a party to an action in Massachusetts, *Energy Policy Advocates v. Energy Policy Advocates v. Healey, et al.* Suffolk County, Civil Action 19-17530, Massachusetts Superior Court. At issue in that matter were six pages of emails between Mr. Pawa and OAG attorneys. In refusing to produce those records, the Massachusetts OAG claimed with a familiar refrain that the emails were exempt under a broad construction of the law enforcement exemption to Massachusetts’s open records law, that “[d]isclosure of these records could prejudice ongoing and incomplete investigations by revealing the nature and extent of [OAG’s] information gathering to both targets and other parties – to the detriment of the AGO and the general public, whose interests we represent.”⁹

⁸ Climate Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control* 11 (Oct. 2012), <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf> (Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies).

⁹ See, e.g., <https://climatelitigationwatch.org/wp-content/uploads/2020/02/MA-SecState-agreement-w-appeal-re-Pawa-Edling-2016-corresp.pdf>.

12. As Proposed Intervenor Energy Policy Advocates noted in Massachusetts, everything in the public record about the likely content of those correspondence, like these, suggested they were not communications OAG has any legitimate interest in protecting from the horrors of public scrutiny. Instead, they were most likely politically embarrassing (neither an open records exemption, anywhere, nor a reason to seal records). There, as here, the Proposed Intervenor acknowledged some chance that release could discredit OAG investigations as tainted from the start or, at minimum, of curious origin. Regardless, they were not properly exempt.

13. Massachusetts' OAG maintained the above-described posture through a round of administrative appeals. However, after Proposed Intervenor EPA filed suit, and as the day approached on which OAG would have to answer EPA's specific factual allegations about the office's relationship with Mr. Pawa's recruiting campaign, on September 11, 2019 that Office instead merely produced the records it had previously maintained would "prejudice law enforcement efforts and related pending litigation".¹⁰

14. That release, both the act and its contents, proved that these claims of applicability of a "law enforcement" exemption to or other threat to law enforcement by the release of correspondence with Mr. Pawa recruiting the OAG to his cause were simply unsupportable.

15. Thanks precisely to public records requests like that one, Pawa's efforts to recruit and coordinate with OAGs are well-documented.¹¹ It is well-known that Pawa aggressively

¹⁰ See, e.g., Ibid.

¹¹ See, e.g., Christopher Horner, "Law Enforcement for Rent: How Special Interests Fund Climate Policy through State Attorneys General", Competitive Enterprise Institute, August 28, 2018, <https://cei.org/AGclimatescheme>. See also, e.g., Editorial, "Is Eric Schneiderman Colluding with Other AGs in an Illicit War on Exxon?", N.Y. Post (Apr. 19, 2016), <https://nypost.com/2016/04/19/is-eric-schneiderman-colluding-with-other-ags-in-an-illicit-war-on-exxon/>.

marketed his services to AGs and otherwise recruited to enlist them in aid of his litigation.

Public record productions reveal his presentations, during the approximately contemporaneous period when he recruited the New York OAG to his cause (late 2015 through early 2016), to the OAGs of California, Connecticut, Illinois,¹² and of course nearly 20 AGs with investor Al Gore on March 29, 2016. As this Court is aware, his participation in that latter session was something the New York and Vermont OAGs asked Pawa to keep to himself.¹³

16. So far, two courts in Texas have issued scathing rulings noting these revelations: one the federal district court for the Northern District of Texas¹⁴ followed by a state court in Tarrant County.¹⁵ The federal district court focused on an email in which then-NY AG Schneiderman's office asks Pawa to mislead a reporter about his role in briefing the AGs and Al Gore in the back room just before the March 29, 2016, Manhattan press conference announcing a whatever-means- necessary campaign against opponents.¹⁶ Pawa w received 45

¹² "Law Enforcement for Rent", <https://cei.org/sites/default/files/Christopher%20Horner%20-%20Law%20Enforcement%20for%20Rent%20-%20Without%20Appendix%20-%20FINAL.pdf> at pp. 49-50.

¹³ See "Law Enforcement for Rent" at pp. 20-21 and discussion, *infra*.

¹⁴ Order permitting jurisdictional discovery, Kinkeade, J, N.D. TX, 4:16-CV-469-K, October 13, 2016, http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2016/20161013_docket-416-cv-00469_order.pdf. Order transferring action to the S.D.N.Y, Kinkeade; J, N.D. TX, 4:16-CV-469-K, March 29, 2017.

¹⁵ Findings of Fact and Conclusions of Law, Exxon Mobil Corporation, Petitioner, Cause No. 096- 297222-18, District Court of Tarrant County, TX, April 25, 2018, <http://eidclimate.org/wp-content/uploads/2018/04/Tarrant-County-Facts- and-Conclusions.pdf>.

¹⁶ <https://ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>. See also the transcript at <https://www.courthousenews.com/wp-content/uploads/2018/01/ExxonDepositions.pdf>, Exhibit 5 at App. 64-83. The plan is "to ensure that this most important issue facing all of us, the future of our planet, is addressed by a collective of states working as creatively, collaboratively, and aggressively as possible" (transcript, p. 2), and "we intend to work as aggressively as possible" (p. 18).

minutes to provide arguments on “climate change litigation” and “the imperative of taking action now,” according to the agenda prepared by Schneiderman’s office and circulated to participating OAGs.¹⁷

17. The day following the press conference, March 30, 2016, Pawa wrote to Lem Srolovic of Schneiderman’s office and Vermont Deputy AG Scot Kline seeking help. A Wall Street Journal reporter wanted to talk to Pawa, and he asked the two officials: “What should I say if she asks if I attended?” Srolovic replied: “My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event”.¹⁸ Pawa agreed that that “makes good sense”, for which the Vermont Deputy AG Scot Kline thanks him.¹⁹

18. In a case Mr. Pawa does not mention, prior stonewalling of records relating to this campaign by the Vermont OAG was so egregious that, after ordering it to release certain documents central to this paper in December 2017, the court awarded requesters every dollar in fees requested, for every hour requested, at the rate requested—which is almost unheard of in open records cases.²⁰

¹⁷ Available at <https://climatelitigationwatch.org/wp-content/uploads/2020/02/NY-pre-mtg-Pawa-agenda.pdf>.

¹⁸ March 30, 2017, email thread between Pawa, Srolovic and VT OAG’s Scot Kline, Subject: Wall st journal [sic].

¹⁹ Available at <https://climatelitigationwatch.org/wp-content/uploads/2020/02/VT-thanks-Pawa-for-concluding-misleading-on-AGs-briefing-makes-sense.png>.

²⁰ J. Teachout, “Decision, Plaintiffs’ Motions for Attorney Fees and Litigation Costs,” Docket Nos. 349-6-16, 558-9-16, 450-8-17. See also Dave Gram, “Judge: Vermont Attorney General Must Pay \$66,000 in Legal Fees for Records Denial,” *Vermont Digger*, July 4, 2018, <https://vtdigger.org/2018/07/04/court-says-ag-must-pay-legal-fees-for-records-denial/>.

19. Bashfulness notwithstanding, from the available public records, it seems facially apparent that Pawa's correspondence with OAG at issue here was pursued in his capacity as Founder of the Global Warming Legal Action Project²¹, an organization no longer in existence which served as a non-profit funding source for Pawa to pursue pro-bono litigation against industry,

²¹ See, e.g., FN 8, *supra*; the La Jolla report lists Pawa attending the 2012 La Jolla conference initiating this campaign as "President, Pawa Law Group, P.C., Founder, The Global Warming Legal Action Project Founder, Global Warming Legal Action Project".

and underwrote his recruitment of clients for contingency fee “climate nuisance” litigation as well as of AG investigations of his targets to assist that campaign.²²

²² “The Global Warming Legal Action Project was founded in 2001 by the Civil Society Institute and Attorney Matt Pawa. The Project advances CSI’s goals of promoting social progress on the vital problem of global warming and educating the public and legal community about global warming. The specific goals and activities of the Project are to:

- Develop and apply a tort law approach to global warming that will require major greenhouse gas emitters and fossil fuel companies to internalize the costs of their contributions to global warming;
- Provide legal assistance to states and others in defending global warming laws from legal challenges by industry or other groups opposed to such laws;
- Provide legal assistance to non-profit citizens groups, such as Clean Power Now, Inc., seeking to promote alternative energy developments;
- Serve as a forum for sharing strategy and ideas with attorneys nationwide and worldwide who are seeking to use legal action to promote progress on reducing global warming;
- Educate members of the bar and the public regarding industry is potential liability for global warming injuries by participating in legal symposia, publication of articles and similar activities; and
- Undertake such additional legal work that will further CSI’s mission of combating global warming and promoting clean energy solutions.”

https://web.archive.org/web/20081024234513/http://www.civilsocietyinstitute.org/global_warm_action.cfm, snapshot of GWLAP webpage on November 17, 2013 on the Internet’s Wayback Machine, accessed January 26, 2020.

See also, “Between 2010-2011, GWLAP received over \$500,000 from the Nathan Cummings Foundation, RBF, Tides Foundation and Energy Foundation, while Pawa was working on *Kivalina v. ExxonMobil Corp.* Most recently, GWLAP took in at least \$150,000 from RBF and the Wallace Global Fund in 2016 for “support for work holding liable the corporations most responsible for the rapidly changing climate and its impacts on people and property.” Just one year later, Pawa filed climate lawsuits on behalf of the cities of Oakland and San Francisco, and New York City.” Manufacturers Accountability Project, “Beyond the Courtroom: Climate Liability Litigation in the United States”, https://mfgaccountabilityproject.org/wp-content/uploads/2019/08/NAM_manufacturers_accountability_report_ch2_final.pdf (internal citations omitted).

20. It appears GWLAP never existed as a corporate entity, but proceeded as “a special project for the Civil Society Institute”²³. As such, it is unclear when Pawa disbanded GWLAP, though the last contributions to the organization in the public record apparently occurred in 2016,²⁴ after which Pawa moved his pursuit of climate litigation to a new law firm, Hagens Berman Sobol Shapiro.²⁵

21. For example, a February 16, 2016 email from Pawa headed “Global Warming Legal Action Project Update Feb 2016” to “Friends of the Global Warming Legal Action Project”, obtained by Proposed Intervenor EPA from the Washington State Office of Attorney General states, *inter alia*:

“Dear Friends of the Global Warming Legal Action Project,

I wanted to take this opportunity to update you on our work - which is exploding. We are faced with a unique opportunity on global warming liability and are doing everything we can to seize this moment.

You may have seen the news over the last few months that "Exxon Knew." Two news outlets have disclosed internal Exxon documents from the 1970s and 1980s demonstrating that Exxon scientists knew the key information on global warming a long time ago and informed the company's management. We have been deeply engaged on this

²³ <https://mfgaccountabilityproject.org/wp-content/uploads/2019/06/MAP-Beyond-the-Courtroom-Chapter-One.pdf>

²⁴ The Rockefeller Brothers Foundation IRS Form 990 for 2016 shows it gave a final \$75,000 for the GWLAP via the Sustainable Markets Foundation, <https://www.rbf.org/grantees/sustainable-markets-foundation>, to “develop and apply a tort law approach to global warming”, <https://eidclimate.org/how-the-rockefellers-manufactured-the-climate-liability-campaign/>. Sustainable Markets Foundation does not reflect that grant expressly, but lists Pawa Law Group as a recipient in 2016 of \$370,500 for “Legal Services”.

²⁵ See, e.g., <https://www.hbsslaw.com/cases/closed-case/pressrelease/closed-case-hagens-berman-doubles-down-on-environmental-law-adding-three-environmental-law-trailblazers-to-firm-roster>.

issue. We are partnering with Sharon Eubanks (the former federal government lawyer who led the tobacco litigation) and other highly reputable law firms. We are making sure attorneys general offices are aware of the issue and we have provided] extensive factual and legal resources to attorneys general (and their staffs) and other government officials. Obviously, our work is confidential in this regard but suffice it to say that we are busier than we ever have been.”²⁶

22. Relevant to understanding the role Pawa proposes for himself as a friend of the Court, major funders of the GWLAP organization on whose behalf Mr. Pawa apparently recruited AGs included the Rockefeller Brothers Fund, Wallace Global Fund, the Tides Foundation and the Energy Foundation.²⁷ These organizations have been instrumental financial backers for many of the organizations involved in the climate litigation campaign, Whether these are among the “prospective funders” for whom AGs participated in the “secret meeting at Harvard” to entertain “potential state causes of action against major carbon producers”, we do not know.
23. Insofar as public records already in the public domain reveal that the records in question in this case likely relate to a lobbying campaign, financed by private interests as described above, Energy Policy Advocates has reason to believe that unsealing of the records at issue in this case would serve the public interest and further its research.

²⁶ February 16, 2016 email from Pawa to bcc list of recipients, Subject: FW: Global Warming Legal Action Project Update Feb 2016. Produced to EPA via Matthew Hardin on July 16, 2019 as document PC-B2-1-2019-0372-ECY-KayS_Redacted copy.PDF in response to PRR-2019-0372 (May 6, 2019). Available at <https://climatelitigationwatch.org/wp-content/uploads/2019/09/Pawa-tells-OAGs-supporters-hes-been-briefing-AGs.pdf>.

The recipients, “Friends of the Global Warming Action Project” included at minimum Stuart Clark of the Washington State Department of Ecology. Other such newsletters have been produced by the University of Oregon School of Law (sent to Prof. Mary Wood).

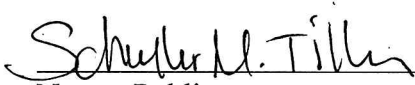
²⁷ <https://www.insidesources.com/whos-at-the-bottom-of-the-climate-change-lawsuit-racket-it-looks-like-matt-pawa/>.

I further certify that the foregoing is based upon either my personal knowledge or facts which I have come to obtain through my legal representation of Energy Policy Advocates in various open records matters, and/or through my previous service as Executive Director of Energy Policy Advocates.

FURTHER AFFIANT SAYETH NAUGHT.


Matthew D. Hardin

Subscribed and sworn before me in the City/County of Greene, Virginia, this the 5 day of February, 2020.


Notary Public
My commission expires: 07/31/22

