

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

CASE TYPE: Other Civil

Energy Policy Advocates,
Plaintiff,

Court File No: 62-CV-19-5899
Judge: TBD

v.

Keith Ellison, in his official capacity as Attorney
General, Office of the Attorney General,
Defendant.

**AFFIDAVIT OF CHRISTOPHER
HORNER**

STATE OF VIRGINIA)
) ss.
COUNTY OF ALBEMARLE)

CHRISTOPHER HORNER states:

1. My name is Christopher Horner, and I am an attorney for Plaintiff Energy Policy Advocates (“EPA”). I represent EPA through the public interest law firm Government Accountability & Oversight, P.C. (“GAO”). I make this affidavit upon personal knowledge of the facts set forth herein.

2. GAO and EPA have been investigating the involvement of state attorneys general with the New York University School of Law’s State Energy & Environmental Impact Center (“SEEIC” or “Bloomberg NYU Program”) for over two years. Prior to that I and, with some overlap during this time, another attorney with Government Accountability & Oversight, P.C. similarly investigated these relationships on behalf of other public interest groups with open records and publication practices. In the course of this work, we have asked numerous attorneys general offices around the country for documents detailing their relationships and their

interactions with SEEIC and participants in climate-change and environmental litigation. We have asked Minnesota’s Office of Attorney General (“OAG”) for records that are the same as or similar to records produced by other states, based on information we have discovered from those other states and based on other publicly available information.

3. Attached as **Exhibit A** is a true and correct copy of EPA’s request to OAG on December 20, 2018.

4. Attached as **Exhibit B** is a true and correct copy of EPA’s request to OAG on December 26, 2018.

5. Attached as **Exhibit C** is a true and correct copy of OAG’s response to EPA’s December 20, 2018 request.

6. Attached as **Exhibit D** is a true and correct copy of OAG’s response to EPA’s December 26, 2018 request.

7. Public records have revealed numerous “Google groups” created for the purpose of discussing and coordinating public office-private advocate efforts in the areas of climate change and environment-related litigation campaigns, in which employees of public institutions participate. True and correct copies of an ExxonKnew@googlegroups.com email and a ClimateLaw@googlegroups.com email obtained under open records laws are attached as **Exhibit E** and **Exhibit F**, respectively, as two among many examples of these Google groups.

8. Public records also show that @ucsusa.org is the email domain of a pressure group, Union of Concerned Scientists (“UCS”), that both originally recruited AGs to investigate energy companies on various grounds tied to climate change, and also hosted a “secret” briefing for OAGs and “prospective funders” to consider “potential state causes of action against major carbon producers.” Attached as **Exhibit H** is a true and correct copy of a July 31, 2015 email

from UCS's Peter Frumhoff to Edward Maibach of George Mason University and other colleagues affirming UCS's early role in recruiting AGs to investigate energy companies in the name of climate change, obtained under Virginia's Freedom of Information Act. Attached as **Exhibit I** is a true and correct copy of April 20, 2016 and April 22, 2016, Philip Mote emails to an unknown party or parties, Subject: [REDACTED], discussing a "secret meeting" set for April 25, 2016, which was obtained from Oregon State University on March 29, 2018, in response to a January 9, 2018 Public Records Act request. Attached as **Exhibit J** is a true and correct copy of a March 14, 2016, email from Union of Concerned Scientists' Peter Frumhoff to Mote; Subject: invitation to Harvard University-UCS convening, related to "prospective funders," released in response to the same public records production. Attached as **Exhibit K** is a true and correct copy of an April 25, 2016 meeting, "Confidential Review Draft- 20 March 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives," obtained under Vermont's Public Records Act.

9. One "secret meeting" participant wrote her center's primary funder from that meeting to describe the discussion as one "about going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide." A true and correct copy of that email is attached as **Exhibit L**, April 25, 2016 email from UCLA Law School's Cara Horowitz to Harvard and UCLA Emmett Centers' funder Dan Emmett, Subject: UCLA and Harvard Emmetts come together today, obtained under California's Public Records Act.

10. EPA and others have sent records requests to document other states' attorneys general office participation in the SEEIC program, which offices have disclosed substantially more than Minnesota's OAG. These states include Illinois, Virginia, Maryland, New York, Oregon, Washington, and Massachusetts.

11. EPA's similar requests for certain described correspondence with @naag.org have yielded public record productions from several offices. For example, May 6, 2019 and October 30, 2019 requests to Washington's OAG for certain correspondence with the "climate nuisance" tort lawyer Matt Pawa, and with twood@naag.org and jmanning@naag.org, respectively, revealed NAAG's involvement in distributing activists' requests to investigate Exxon to certain "Energy & Environment Bureau Chiefs."

12. A similar request, sent to Oregon's Department of Justice on October 16, 2019, led to release of similar, unredacted emails as well as a thumb drive of the documents presented to NAAG by activists seeking investigation of energy companies, for distribution to certain "Energy & Environment Bureau Chiefs."

13. In response to a February 6, 2019 request, the Massachusetts Attorney General released 300-plus pages of Chief of Staff and Assistant AG Mike Firestone's correspondence about the NYU project and MA OAG's application to participate. These included correspondences solely with internal parties, and correspondence with parties outside OAG. Also, an August 30, 2018, email from Albert Lama of the National Association of Attorneys General "sent to all Chief Deputies/Chiefs of Staff on behalf of Mike Firestone, Massachusetts Chief of Staff," indicates Firestone coordinated and/or is coordinating the "State Energy & Environmental Impact Center Opportunity." In addition, an April 3, 2019 request to the Maryland Office of the Attorney General for correspondence of Attorney General Frosh and certain staff to, from, and copying NYU employees led to the release of, for example, emails between Attorney General Frosh and Connecticut Attorney General Tong discussing and sharing Maryland's application to participate in the program.

14. EPA submitted an Access to Public Records Request to the Rhode Island Attorney General on January 24, 2020 for correspondence using @dropbox.com, among other terms, and received 155 pages of responsive documents on March 6, 2020.

15. EPA submitted an identical request to the Vermont Attorney General January 24, 2020 and received 134 pages of responsive records on February 14, 2020.

16. EPA and others have received volumes of records from the Massachusetts and Vermont Offices of Attorney General, UCLA and Oregon law schools and Virginia's George Mason University related to the Union of Concerned Scientists and its role in coordinating recruiting for attorney general investigations of energy companies, briefing AGs and, separately, attorneys from OAGs in pursuit of the same objective, and organizing the "secret meeting" about "going after denialism with a bunch of state and local prosecutors nationwide."

17. These and other productions demonstrate these state attorneys general and other public institutions working with OAGs, the tort bar and activists urging OAG investigations of private parties have produced data responsive to EPA's requests here that OAG has not.

18. Other public records document that OAG has been in communication with other state AGs based on the same NYU Bloomberg Program. A true and correct copy of an email confirming a Multistate AG Coordination Call with David Hayes of the Bloomberg NYU Program, former OAG attorney Karen Olson, and Leslie Frederickson of the MPCA listed as invitees, is attached as **Exhibit M**. A true and correct copy of an "Attorneys General Directory" circulated by New York OAG's Michael Myers, listing Karen Olson and Max Kieley as and circulated to Myers to participants in the "bi-weekly multi-state calls" coordinated by the Bloomberg program and Myers, is attached as **Exhibit N**. A true and correct copy of a June 12, 2019 Email from Michigan Special Assistant Attorney General Skip Pruss to Attorney General

Dana Nessel and Deputy Attorney General Kelly Keenan, Subject: NYU Law School State Energy and Environment Impact Center, stating, *inter alia*, “Five states have a formal agreement (attached) with the Impact Center for pro bono services – NY, MA, MD, MN and WA,” is attached as **Exhibit O**.

19. Although a requester’s motive and identity are not considerations in enforcing open records laws, I nonetheless note that the specific search terms in EPA’s requests are relevant to the information EPA seeks related to the Bloomberg NYU Program for several reasons. The California tort law firm named in EPA’s December 20, 2018 request is recruiting governmental plaintiffs to pursue “climate” litigation. See, e.g., Proposed Amicus brief on Behalf of Energy Policy Advocates, *Rhode Island v. Chevron, et al.*, United States Court of Appeals for the First Circuit No, 19-1818, at pp. 2, 11-13, <https://govoversight.org/wp-content/uploads/2020/03/filestamped.pdf>, (accepted by Order of March 26, 2020, see <https://climatelitigationwatch.org/wp-content/uploads/2020/04/1st-Cir-Order-allowing-EPA-Amicus.pdf>). This pitch comes on the heels of a now infamous plea by a rival (of that firm)”climate nuisance” tort lawyer pursuing similar cases, the aforementioned Pawa, that, “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.” A true and correct copy of the publication containing that quotation, Climate Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control* (Oct. 2012), <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf> at p. 11. (Summary of the “Workshop on Climate Accountability, Public Opinion, and Legal Strategies”) is attached as **Exhibit P**. Bloomberg “SEEIC” SAAGs are being deployed to support

this tort litigation on behalf of OAGs. See, e.g., Brief of the States of Maryland, California, California, Connecticut, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington as Amici Curiae Supporting Plaintiff-Appellee, *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, 19-1644, United States Court of Appeals for the Fourth Circuit, submitted on behalf of all Amici by Maryland AG Brian Frosh and two Bloomberg-group SAAGs embedded in the Maryland OAG, Joshua Segal and Steven Goldstein. http://www.marylandattorneygeneral.gov/News%20Documents/090319_Baltimore_climate_amicus.pdf

20. Thus, EPA brought this suit to discover items of particular public interest and importance to how public offices, particularly law enforcement divisions and their resources, are used in combination with private interests, relevant to a broader investigation into the manner in which the Bloomberg NYU Program and tort law firms, and activists who are coordinating this effort, are impacting state attorneys general decisions and operations across the country. The Minnesota OAG's response to EPA's request differed substantially from that of other public agencies. It is the sole OAG to make the remarkable assertion that it scrutinized EPA's website (rather even than contacting EPA) to discern EPA's intentions before deciding what might be responsive. The total, typically categorical withholding of all responsive records, as opposed to the release of even redacted records compelled EPA to bring this suit under the MGDPA.

21. Pete Surdo, now a SAAG at the OAG, posted on his personal LinkedIn profile that he had left Robins Kaplan for the Bloomberg NYU Program and would be "embedded with the Minnesota Attorney General's Office as an Environmental Litigator and Special Assistant Attorney General." Attached as **Exhibit G** is a true and correct copy of this LinkedIn posting.

22. Public records obtained from other attorneys general indicate that OAG subsequently engaged the Bloomberg NYU Program for another “embed,” Leigh Currie. These records also reflect that Ms. Currie is involved in energy and environmental cases on behalf of Minnesota. True and accurate copies of emails reflecting this obtained from two different OAGs are attached as **Exhibit Q** (November 7, 2019 email from New York OAG’s Myers to numerous OAG attorneys, Subject: Upcoming Multistate AG Coordination Calls) and **Exhibit R** (email from Michigan OAG’s to Bradley Motl, Deputy Director of Wisconsin Department of Justice’s (DOJ) Environmental Protection Unit, MI OAG’s Robert Reichel, MN OAG’s Leigh Currie, Subject: RE: Michigan v. Enbridge case).

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: April 15, 2020
Albemarle County, Virginia

/s/ Christopher Horner
Christopher Horner