**No. 20-0558**

*In the*

# Supreme Court

*of*

# Texas

EXXON MOBIL CORPORATION,
*Petitioner,*

v.

CITY OF SAN FRANCISCO, ET AL.,
*Respondents.*

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE SECOND DISTRICT SITTING IN FORT WORTH, TEXAS, NO. 02-18-00106-CV

# BRIEF OF *AMICUS CURIAE* ENERGY POLICY ADVOCATES *In Support of Appellant and Reversal*

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**IN SUPPORT OF APPELLANT AND REVERSAL**

NOW COMES ENERGY POLICY ADVOCATES, by and through undersigned counsel, and moves for leave to file the attached brief as an *amicus curiae*. In support of this Motion, Energy Policy Advocates states as follows:

1) Energy Policy Advocates is a nonprofit organization incorporated under the laws of Washington State, with a mission of bringing transparency to the operations of government using the federal Freedom of information Act and analogous state statutes.

2) Energy Policy Advocates became interested in this matter upon reading the briefs of the Appellees, Matthew Pawa and the City of San Francisco. Those briefs made the case that the Texas courts have no jurisdiction over what the Appellees argue was purely litigious, fairly minimal and lawful conduct conducted in other states, most notably the State of California.

3) Through its work seeking records under various sunshine statutes since 2018, Energy Policy Advocates has become aware that the actions at issue in this case, characterized by the Appellees as *de minimus* and taking place outside of Texas, are actually part of a coordinated, nationwide campaign targeting Texas businesses and far more extensive than characterized by Appellees.

4) Pursuant to Tex. R. App. P. 11, an *amicus curiae* brief must: (a) comply with the briefing rules for parties; (b) identify the person or entity on whose behalf the brief is tendered; (c) disclose the source of any fee paid or to be paid for preparing the brief; and (d) certify that copies have been served on all parties. Energy Policy Advocates therefore certifies as follows:

a. This brief complies with the briefing rules for the parties because it meets the formatting and page-length requirements of the Texas Rules of Appellate Procedure. This Court has received amicus briefs from other parties as recently as January 24, 2022, including an amicus brief from a party that alleges the underlying appellate decision was in violation of applicable ethical rules. Texas courts routinely accept amicus briefs after the briefs of the parties to the case and even after submission of the case by the parties. See, e.g,, *Ex parte Ellis*, 609 S.W.3d 332 (Tex. App. 2020), *Reed v. State*, 117 S.W.3d 260 (Tex. Crim. App. 2003), *Konark Ltd. P'ship v. BTX Sch., Inc*., 580 S.W.3d 194 (Tex. App. 2018).

b. This brief is being filed on behalf of Energy Policy Advocates, a Washington State nonprofit corporation.

c. The source of funds paid for the preparation of this brief is Matthew Hardin, who serves in an unpaid capacity on the Board of Directors

of Energy Policy Advocates and represents Energy Policy Advocates *pro bono* in this matter.

d. Copies of this brief have been served on all parties, as demonstrated by the certificate of service on the brief itself.

5) Texas courts have held that an "amicus curiae is without interest in the proceeding in which it appears." See *In re Wingfield*, 171 S.W.3d 374, 381 (Tex.App.—Tyler 2005, orig. proceeding) (citing *Burger v. Burger*, 156 Tex. 584, 298 S.W.2d 119, 120-21 (Tex. 1957)). An *amicus curiae* is a "bystander" whose mission is to aid the court, to act only for the benefit of the court. *Id.* An *amicus curiae* "is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter." See also *Johnson v. Conner*, No. 07-11-00055-CV, 2011 Tex. App. LEXIS 6505, at *4-5 (Tex. App. Aug. 16, 2011)

6) Pursuant to the authorities cited above, Energy Policy Advocates is not a party to the underlying proceedings, but has an interest in the subject matter. It has also filed as an *amicus curiae* in federal litigation relating to the same subject matter. See, e.g., *Rhode Island v. Shell Oil Products Co.*, 979 F.3d. 50 (1st Cir. 2020), *Shell Oil Products, LLC, et al. v. Rhode Island*, 141 S. Ct. 2666 (2021), *New York v. EPA*, 2021 U.S. App. LEXIS 37835 (D.C. Cir. 2021), *BP, P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021), *American Petroleum*

*Institute, et al. v. State of Minnesota*, No. 21–1752 (8th Cir. 2021), and *City of New York v. Exxon Mobil Corp. et al.*, Case No. 1:21-cv-4807 (S.D.N.Y.) (order granting leave to file dated September 7, 2021).

WHEREFORE, Energy Policy Advocates respectfully requests that this Court grant leave to file the annexed brief.

Dated: February 9, 2022

Respectfully submitted,

*/s/ Michael E. Lovins*

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## *AMICUS CURIAE* BRIEF OF ENERGY POLICY ADVOCATES IN SUPPORT OF APPELLANT AND REVERSAL

## INTRODUCTION

NOW COMES Energy Policy Advocates, and submits this brief as an Amicus Curiae in support of Plaintiff/Appellant and in favor of reversal.

## INTEREST OF AMICUS CURIAE

Energy Policy Advocates ("EPA") is a nonprofit organization incorporated under the laws of Washington State, dedicated to bringing transparency to the actions of government. As part of that mission, EPA has obtained public records that illustrate the genesis and orchestration of the wave of litigation targeting Texas businesses, including the Appellant here, at the root of Appellant's Rule 202 Petition. EPA has obtained records demonstrating the improper use of public institutions toward these ends and the origins of the veritable tsunami of "climate nuisance" and now consumer fraud or consumer protection state-court lawsuits including suits targeting the Appellant in numerous far-flung and inconvenient, yet nevertheless strategically chosen, venues. Additionally, EPA is uniquely positioned, in light of the information that it has obtained through its research mission, to address facts which throw great doubt on assertions made by a federal court in New York, in *Exxon Mobil Corporation v. Schneiderman*, 316 F. Supp. 3d

679 (S.D.N.Y. 2018),[1] minimizing and claiming a "missing link between the activists and the [state attorneys general]" helping drive this campaign of investigations and litigation, specifically with revelations not cited in briefs filed in this matter to date and how they reflect upon claims made by the parties, all of which inform a resolution of the instant case.

## SUMMARY OF ARGUMENT

Appellees in this matter, particularly Matthew Pawa, minimize to the point of gross mischaracterization their actions that led to this action being filed. This matter involves exploration by one Texas corporate citizen which is one of several which are the focus of a multi-front campaign of lawfare demonstrably based on the desire of certain activists and parties to obtain not merely transfers in the hundreds of billions of dollars but also national policy which has eluded them through the proper means, among other improper uses of the judicial system (e.g., to coerce defendants "to the table" on policy issues or prospecting for "sustainable funding streams" or "new streams of revenue," see, *infra*). Mr. Pawa acknowledges that while, an "abuse of process claim fails where it alleges no more than the filing of a complaint" (Respondent Matthew Pawa's Brief on the Merits, at 25, citing *Preston Gate, IP v. Bukaty*, 248 S. W.3d 892, 897 (Tex. App.-Dallas 2008, no

[1] On appeal before the Second Circuit as *Exxon Mobil Corp. v. Healey*, Case No. 18-1170.

pet.)), and "lawsuits by their nature do not obstruct the law. Extraordinary actions taken *outside* of court that obstruct Texas law might be imagined" (Respondent Pawa's Brief on the Merits, p. 47, emphasis in original). Mr. Pawa is far too modest about his actions taken outside of court to instigate this "lawfare"[2] which the facts, including those set forth, *infra*, militate toward this Court permitting Texas citizens and courts to examine.

Energy Policy Advocates ("EPA") has obtained voluminous information from its public records requests in the four years since Appellant first filed its Rule 202 petition at issue in this matter. Most of this has come to light only after a federal court in New York State ruled in *Exxon Mobil Corporation v. Schneiderman*, 316 F.Supp. 3d 679 (S.D.N.Y. 2018), dismissing Appellant's (there, plaintiff's) assertions of coordination between state attorneys general, activists, donors and the plaintiff's bar. EPA presents, herein, many revelations some of which are truly remarkable about the coordinated, "nationwide" effort by plaintiffs suing Texas companies in the name of "climate torts" or, more recently, consumer fraud, who were recruited by tort lawyers including but not limited to Mr. Pawa. These revelations have continued to emerge, often grudgingly, in public

[2] "Lawfare is an ugly tool by which to seek the environmental policy changes the [potential defendants] desire, enlisting the judiciary to do the work that the other two branches of government cannot or will not do." Memorandum Opinion by Justice Kerr, *San Francisco, et al., v. Exxon Mobil Corp,* No. 02-18-00106-CV, 2020 WL 3969558 (Tex. App.—Fort Worth June 18, 2020, pet. filed), at 20.

records productions from various state attorney general and municipal custodians. Not all custodians are forthcoming with public records, timely or otherwise. As such, this brief relies principally on records of various compatriot (to Appellees) "climate" plaintiffs who have filed similar suits, making similar claims and often also using the same plaintiff's outside counsel. These public records from numerous institutions across the country demonstrate without ambiguity the common origins and principals, the definitive links and private coordination in underwriting and recruiting governments to file suit against Texas companies, "nationwide." In this campaign, advocacy interests previously revealed to have directly lobbied for these suits and underwritten the media campaign in support of the suits even enjoy sign-off on materials behind the filing of lawsuits in state courts against traditional "fossil fuel" energy companies. After exposure, including in the courts below in the instant matter, these principals have turned to enlisting local activist groups as their intermediaries, and apparently in return for financial support according to emails obtained under public records laws. Records show the intermediaries then recruit law faculty, attorneys general and municipal plaintiffs, to claim billions of dollars of losses at these parties' hands, in a multi-front campaign seeking to extract hundreds of billions of dollars for distribution to political constituencies, as well as influence national policy.

The outside counsel representing many of the Appellees here as plaintiff's counsel also brought in academics to assist its effort, who presented at an organizational meeting which another academic presenter boasted of as a "secret meeting at Harvard",[3] to discuss "Potential State Causes of Action by Major Carbon Producers," held for staff of state attorneys general, local prosecutors, activists, and "prospective funders"[4] (presumably of such actions, despite that they are nominally brought by governmental actors). One such plaintiff's consultant and Hardvard presenter was UCLA School of Law Prof. Cara Horowitz, of the UCLA Emmett Institute on Climate Change and the Environment. The Emmett Center was for years co-counsel to the Defendant/Appellees, via Sher Edling, LLP,[5] from

[3] "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]. Both obtained from Oregon State University on March 29, 2018, in response to a January 9, 2018, Public Records Act (PRA) request by the Competitive Enterprise Institute. https://climatelitigationwatch.org/wp-content/uploads/2019/09/Mote-emails-re-_secret-meeting_-at-Harvard.pdf.

[4] "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. Obtained under same PRA request cited in fn. 3, *supra*. https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-71-Frumhoff-to-Mote-for-AGs-briefing-UCS-fundraiser-copy.pdf

[5] See, e.g., '"There is a lot at stake in this appeal,' said Sean Hecht, co-executive director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law. 'If the cases can move forward in state court, the courts are likely

around the moment of the firm's founding in 2016.[6] From the "secret Harvard" event, Prof. Horowitz wrote an email to Dan Emmett, the principal private financial backer of the Emmett Institute who is also the namesake of a similar

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to take the plaintiffs 'claims seriously, and this may affect prospects for cases in other states as well.' Hecht's environmental law clinic provided legal analysis for the plaintiffs in some of the cases." Susanne Rust, "California communities suing Big Oil over climate change face a key hearing Wednesday," *Los Angeles Times*, February 5, 2020, https://www.latimes.com/california/story/2020-02-05/california-counties-suing-oil-companies-over-climate-change-face-key-hearing-wednesday. See also, "UCLA's Emmett Institute has previously consulted for Sher Edling LLP, the California-based law firm representing many of the challengers in the climate liability litigation, including New York City." Maxine Joselow, "Lawsuits target Exxon's social media 'green washing'," E&E News, July 22, 2021, https://subscriber.politicopro.com/article/eenews/2021/07/22/lawsuits-target-exxons-social-mediagreen-washing-275451. See also, June 24, 2018, email from UCLA's Ann Carlson to Dan Emmett, "And as you may remember the clinic has been working on the nuisance cases." https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-Discretionary-Fund-Requested-Records-20-8371.pdf.

[6] https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf.

Appellee Pawa represented Appellees San Francisco and Oakland when they first filed suit against Appellant Exxon Mobil, as well as climate-plaintiffs in *King County v BP PLC*, Case No. 2:18-cv-758 (W.D. Wash.), and *City of New York v BP PLC*, 993 F.3d 81 (2nd Cir. 2021) (Daniel Fisher, "Oakland, San Francisco Switch Lawyers As Climate Change Lawsuits Face Possible Reckoning," Forbes, November 18, 2018, https://www.forbes.com/sites/legalnewsline/2018/11/28/oakland-san-francisco-switch-lawyers-as-climate-change-lawsuits-face-possible-reckoning/?sh=684cc69022eb). Pawa originally recruited state attorneys general to this cause (see, *infra*).

center at Harvard Law School, describing this campaign as "going after climate denialism - along with a bunch of state and local prosecutors nationwide." [7]

It is possible that, somehow, Prof. Horowitz's characterization does not confess to an organized effort to silence protected speech through litigation. However, records produced in litigation with Vermont's state attorney general reveal it was Prof. Horowitz who, at that very meeting from which she wrote her donor describing the gathering to him, presented the case for "Consumer protection claims," "against major carbon producers"[8] (i.e., Texas companies). Those claims,

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[7] "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: UCLA and Harvard Emmetts come together today. Obtained by the Competitive Enterprise Institute under California's Public Records Act. Available at https://climatelitigationwatch.org/on-the-subject-of-recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/.

[8] "Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives." Released by Vermont in *Energy & Environment Legal Institute v. Attorney General*, Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017. https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-55-Harvard-AGs-briefing-UCS-fundraiser-agenda-copy.pdf. Listed presenters included UCS's policy director Peter Frumhoff, the Oregon State University professor who boasted of the "secret meeting," as well as at least one academic who testified that she had been retained by Appellees' plaintiff's counsel, Naomi Oreskes who, "[t]he New York Times previously reported …"conceived" the infamous 2012 La Jolla conference where the playbook for the entire campaign was developed in her role as co-founder of the Rockefeller-funded Climate Accountability Institute." William Allison, "Bombshell: Naomi Oreskes on Retainer with Plaintiffs' Law Firm," Energy in Depth, May 13, 2021,

of course, have become the re-tooled rationale behind the organized litigation campaign that began as "climate nuisance" and is, at root, at play in the instant matter.[9]

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https://eidclimate.org/bombshell-naomi-oreskes-on-retainer-with-plaintiffs-law-firm/; see also, Matt Egan, "Exxon uses Big Tobacco's playbook to downplay the climate crisis, Harvard study finds," CNN, May 25, 2021, https://www.cnn.com/2021/05/13/business/exxon-climate-change-harvard/index.html. A May 25, 2021, update appended to the story reads: "A previous version of this story misstated the nature of Oreskes' legal work for a complaint. She commented on briefs and complaints on climate cases for a law firm that is leading lawsuits against Exxon and others in the industry." See also list of "Technical Advisors and Experts" produced by California's Office of Attorney General in response to a Public Records Act request by the Competitive Enterprise Institute.

The Massachusetts OAG, which sent five attorneys to this briefing, subsequently filed a complaint against ExxonMobil for "potential violations of the Massachusetts consumer protection statute," now pending. *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Suffolk County Superior Court, 19-3333. See, March 17, 2016, email from OAG's Melissa Hoffer to Harvard Law School's Shaun Goho, Subject: RE: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016. https://climatelitigationwatch.org/wp-content/uploads/2019/10/MA-AAG-Hoffer-to-HLS-on-MA-OAG-attendees.pdf.

[9] This wave of litigation began as public nuisance-focused and later shifted, after failures in federal courts, to consumer protection or consumer fraud causes of action and theories of recovery, in an effort to gain more favorable reception in state courts. Emails obtained by Amicus EPA from a "Disaster Law" listserv (https://sites.law.lsu.edu/coast/), via the University of California at Los Angeles, of sympathetic law faculty affirm a consensus that, e.g., "I've always considered suits like this to be long-shots regardless of forum, though the state courts provide somewhat better odds than federal court", and "There is little chance that the claims will survive federal review in the long-term. By recognizing them in the short-term, the court gets the cases out of state court. The only chance the cases had was to stay in state court, where there might be a sympathetic state judge who would let the cases go forward." March 4, 2018 email from Daniel Farber to disaster law@lists.berkeley.edu, Subject A California Court Might Have Just

The courts below were made aware of and detailed other facts underlying this engineering of a nationwide campaign of governmental lawsuits filed at the instigation of outside policy activists, including how one party, the Rockefeller Family Fund ("RFF"), has long targeted Appellant Exxon Mobil for investigation and prosecution by recruiting elected attorneys general and underwriting supportive media campaigns.[10] This has been further established in judicial proceedings in New York and, ultimately, by the financier's own admission to having organized the media campaign to support the filing of such lawsuits specifically targeting Appellant.[11] However, Amicus EPA is now able to detail much more about RFF's role.

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Opened The Floodgates For Climate Litigation," at https://climatelitigationwatch.org/wp-content/uploads/2021/08/Responsive-Documents-Redacted-21-9211.pdf.

[10] Findings of Fact and Conclusions of Law, Exxon Mobil Corporation, Petitioner, Case No. 096-297222-18 (District Court of Tarrant County, TX), Opinion dated April 25, 2018, which is available at https://climatelitigationwatch.org/wp-content/uploads/2019/10/Tarrant-County-Facts-and-Conclusions.pdf ¶¶ 10-13, 49.

[11] This has been established in judicial proceedings in the states of Texas and New York and, ultimately, by the financier's own admission to having organized the media campaign to support the filing of such lawsuits. See *Exxon Mobil Corporation v. Schneiderman*, 17-cv-02301, and *Exxon Mobil Corp. v. City of San Francisco, et al.,* Tx. Sup. Ct. 20-0558, and in amicus briefs filed in the past two years by Plaintiff Energy Policy Advocates in the United States Courts of Appeal for the 1st, 2nd, 4th, 8th, and District of Columbia Circuits, the United States Supreme Court in *BP, P.L.C. v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, heard in January and decided in May 2021, and the U.S. District Court for the Southern District of New York.

Records obtained under state open records laws, detailed *infra*, reveal important details about the expanding, and arguably improper, deployment of municipalities, attorneys general, public law schools, and tax-exempt advocacy groups by or on behalf of private donors in the climate litigation industry, to target private parties whom the activists hope to coerce "to the table," ultimately enlisting these same targets as supporters in their policy campaign through the same coercive means of multi-front litigation, and to finance their desired "joint projects" of state and local prosecution of their ideological opponents. The links among the various principals in this campaign are undeniable and material to jurisdictional and other aspects of the cases.

As described by the Appellees' own "climate" lawyers and those lawyers' consultants and advisors, after negative outcomes under one theory in federal court including suited initiated by Appellees, these repackaged "climate nuisance" suits have serially been brought quite deliberately in out-of-state courts as the plaintiffs seek to bring their targets "to the table" to agree on public policy, and to provide "new sources of revenue" for activists and other states' budgets. For these reasons and the attendant concerns that accompany such multi-front litigation campaigns (see *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 475 (S.D.N.Y. 2014)), these suits are improper in their motives and rightly viewed as abusive of the industries that are targeted. Such coordinated campaigns cannot be rewarded once their

reality is exposed as an attempt to drain Texas businesses through out-of-state courts in a politically-motivated crusade of litigation; similarly, their proponents cannot be shielded from scrutiny of this unprecedented predatory campaign. Further, these records also provide strong impetus to acknowledge, as a formal matter, that the "climate nuisance" and "failure to warn" litigation campaign of various, largely copycat (and indeed coordinated) lawsuits is an impermissible use of the court system, seeking the most favorable forum to obtain political ends by judicial means in selectively chosen venues. This Court should not reward litigants who abuse Texas businesses in this way in out-of-state *fora*, and it is not powerless to allow its citizens to use this forum to explore the organization of such a campaign when such vexatious litigation is filed.

Finally, but importantly, the documents herein thoroughly undermine the earlier conclusions of at least one court, highly relevant to this matter, of a "missing link between the activists and the AGs" executing this campaign of investigation and litigation, in part to assist tort and now purported consumer protection lawsuits against Texas businesses in the name of purported "climate" sins.

## ARGUMENT

### I. PUBLIC RECORDS AFFIRM THE INTEREST OF TEXAS IN THIS CASE.

Thanks to EPA's tenacious use of public-records laws, it is clear that the litigation campaign of which the Appellant complains and seeks to explore with

pre-suit discovery has a very troubling origin. EPA details herein much of the documentation that this campaign of remarkably similar lawsuits was funded and conceived, and is now being executed, by the same organizers and financiers, and that the suits were quietly midwifed by outside attorneys working with and funded by the same sources. Equally troubling, this litigation appears to have had its genesis not in well-founded investigation of cognizable legal claims, but in lobbying from ideological activists seeking an outcome that could not be obtained through the political process. Only after being so lobbied, these "climate" plaintiffs have claimed to courts across the country that they suffered billions of dollars in damages at the hands of scheming producers and transporters of energy products who, the plaintiffs believe, might provide them with "new sources of revenue," which are "sustainable" (a term apparently used not in the fashionable, political sense but in the sense that they expect the money will keep flowing).

Several years ago one judge below issued a finding of fact that municipal litigation targeting energy companies for ostensible violations of state law in this manner springs from the states' desire "to obtain leverage over these companies… that could eventually lead to… support for legislative and regulatory responses to global warming…," having seen admissions that, e.g., "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties." That alarming conclusion came on a small

fraction of the evidence that now exists, the above-cited confessions of "rent-seeking" by the plaintiffs, and other admissions cited herein about coercing defendants "to the table", as embodied in a remark by an official with climate-plaintiff the City of Boulder, Colorado who wrote, in correspondence obtained by Amicus EPA, "the pressure of litigation could also lead companies…to work with lawmakers on a deal" about climate policies. (See *infra*).

**a) "Our Joint Project": Outside Groups Have Instigated and Funded a Multi-Front Campaign of State Law Tort and "Consumer" Suits to Obtain Policy Goals. Texas is not Powerless to Use its Own State Laws to Protect its Industry.**

These revelations have moved well beyond links between the activists and the attorneys general and municipal plaintiffs who have brought suit as part of this "nationwide" litigation campaign. Indeed, these records document extraordinary levels of private, third-party coordination in drafting and bringing these suits as well as laboring to manufacture state jurisdiction. They also raise substantial questions about the sincerity of the claims made.

As demonstrated in the *Exxon v. Schneiderman* case and as also demonstrated in the Texas state courts below, the Rockefeller Family Fund and Appellee Pawa instigated the first climate suits against oil companies and orchestrated the media campaign supporting the initial pre-suit preparations therefor. Appellee Pawa's role extends far beyond "the filing of a complaint," but instead we now know reflected a zealous campaign soliciting the "sympathetic"

attorney general investigations and litigation of the sort he and his colleagues called for to assist their tort campaigns in a report that, according to emails, was not intended for publication (*infra*).

For example, the New York Attorney General's doomed prosecution of Appellant ExxonMobil for alleged climate crimes, gamely replicated in a filing by Massachusetts AG Maura Healey as the New York case disintegrated in court[12], was preceded by Pawa's lobbying. This included in correspondence with Pawa some of which had been sealed in the New York prosecution, only to be subsequently released under the state's Freedom of Information Law after an administrative appeal by Amicus EPA. Among these records we see correspondence between Pawa and an active political donor named Patricia Bauman[13] — who directs the Bauman Foundation, which is a major donor to the New Venture Fund, Tides Foundation, and Rockefeller Family Fund all of which the public record shows finance components of the climate litigation industry. Ms. Bauman refers Pawa, who at the time is pitching his efforts, to an activist

[12] *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Suffolk County Superior Court, 19-3333. The Massachusetts OAG sent five attorneys to the "secret meeting at Harvard" briefing. See, March 17, 2016, email from OAG's Melissa Hoffer to Harvard Law School's Shaun Goho, Subject: RE: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016. https://climatelitigationwatch.org/wp-content/uploads/2019/10/MA-AAG-Hoffer-to-HLS-on-MA-OAG-attendees.pdf.

[13] https://climatelitigationwatch.org/wp-content/uploads/2020/05/New-Pawa-emails.pdf

attorney and participant in the 2012 La Jolla meeting (*infra*.) named Richard Ayres and New York's then-AG Schneiderman, after which Pawa sent the latter a memo which Schneiderman then forwarded to his staff.[14] This memo pitched Schneiderman on pursuing Appellant for alleged climate sins. The correspondence then shows Pawa followed up with Schneiderman, with one of several emails encouraging the AG to use his office as Pawa had been calling and recruiting support for. These investigations and suits sought by Pawa and RFF were eventually launched by attorneys general, and municipalities, beginning with New York followed soon thereafter by another Pawa recruit, Massachusetts' AG.

The public record is now clear that the principals behind this litigation campaign have a *modus operandi*, common across the various lawsuits. Amicus EPA has actively sought documentation of the climate industry, and how public institutions have come to be used the way they have, from offices and universities across the country. State laws and institutional compliance therewith both vary and, as such, Amicus presents here a composite of documentation about the origins and coordination of these suits. This includes the actions of Appellee Pawa, and certain litigants other than Appellee municipalities but who the original instigators, Rockefeller Family Fund also rrecruited and in whose lawsuits RFF officials have

[14] https://climatelitigationwatch.org/wp-content/uploads/2020/06/PLG-Tobacco-remedy-memo.pdf.

played a behind-the-scenes role. Amicus EPA details, as illustrative examples, those offices from which Amicus has managed to obtain the most public information on the topic.

Much of what Amicus is now able to detail about RFF's role is courtesy of one particularly voluble "cutout" engaged by RFF in one of these matters, whose confessory correspondence has emerged in public record productions in Minnesota. Those records indicate that, after RFF and its Director Lee Wasserman came under much scrutiny for their role in launching these investigations, they outsourced the job of recruiting plaintiffs (and even prosecutorial assistance) to local intermediaries. These intermediaries then work with "lawyers advising Rockefeller family fund" [*sic*], who are described as "Judith [Enck] and Alyssa [Johl]" of a group called the "Center for Climate Integrity" ("CCI"). Public records show Rockefeller interests tour the country raising money for CCI[15], which has also been shown in records obtained by Amicus EPA in Maryland to have recruited that state's climate plaintiffs Annapolis and Anne Arundel County[16], in addition to

[15] See, e.g., June 23, 2019, Ann Carlson email to Dan Emmett, "I'm writing because folks from the Center for Climate Integrity, including Rick Reed (who I think is technically with the Rockefeller Family Fund) have said they've been in touch with you and are coming to LA and would love to meet with you." Available at https://climatelitigationwatch.org/of-smoking-guns-and-just-so-stories/. Records show that meeting did occur and resulted in a $25,000 contribution from Emmett to CCI.

[16] Records pertaining to CCI and the Annapolis and Anne Arundel suits obtained by Prospective Amicus under the Maryland Public Information Act are available at

Hoboken, New Jersey, and the State of Minnesota. In Hoboken, CCI went so far as to pay for private attorneys to bring the municipality's suit,[17] in addition to serving as legal advisors for RFF, which has bankrolled this litigation campaign.

CCI is also implicated in the one case in this campaign of litigation by out-of-state interests against Texas corporations that has made its way to the United States Supreme Court, *BP, P.L.C v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532 (2021). Public records litigation brought by Amicus EPA inquiring into the origins of that action elicited a claim by the City of Baltimore that CCI and the co-host of the "secret meeting at Harvard," Union of Concerned Scientists ("UCS"),[18] are "outside energy firms" whose correspondence with the City should

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https://climatelitigationwatch.org/wp-content/uploads/2021/04/CCAN-CCI-Anne-Arundel-lobbying.pdf and https://climatelitigationwatch.org/wp-content/uploads/2021/04/Problematic-Annapolis-withholdings.pdf, and https://eidclimate.org/annapolis-leaders-admit-activist-group-convinced-city-file-climate-lawsuit/.

[17] See, William Allison, "Key Documents Raise Troubling Questions About Money Behind Hoboken Climate Lawsuit," Energy In Depth, September 3, 2020, https://eidclimate.org/key-documents-raise-troubling-questions-about-money-behind-hoboken-climate-lawsuit/.

[18] UCS's role in attempting to influence government actors to pursue a certain agenda is illuminated at, e.g., Findings of Fact and Conclusions of Law, Exxon Mobil Corporation, Petitioner, Case No. 096-297222-18 (District Court of Tarrant County, TX), Opinion dated April 25, 2018. See also, e.g., https://climatelitigationwatch.org/emails-suggest-ucusa-union-of-concerned-scientists-is-at-the-center-of-the-climate-litigation-industry/, https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-42-UCS-says-working-the-state-AGs-copy.pdf, https://climatelitigationwatch.org/fn-51-frumhoff-coordinated-with-ags-in-prior-briefings/,

be shielded from the public as the work product of consulting experts.[19] The public record makes clear that this in no way accurately characterizes these groups — which in fact have filed amicus briefs supporting plaintiffs in this series of litigation even in suits they in fact helped arrange[20], including in the very same *City of Baltimore* case and, most recently, in the 8th Circuit. The City of Baltimore later changed tack to characterize these groups instead as "outside, for lack of a better way to describe them, environmental groups who are, you know, climate change environmental groups,"[21] and "groups that we were working with and

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https://climatelitigationwatch.org/fn-71-frumhoff-to-mote-for-ags-briefing-ucs-fundraiser/, https://climatelitigationwatch.org/fn-frumhoff-has-made-this-argument-to-ags-in-prior-briefings/.

[19] See, e.g., Mayor and City Council of Baltimore's Motion To Dismiss, Or In The Alternative, Motion For Summary Judgment and Request For Hearing, *Energy Policy Advocates v. Mayor and City Council of Baltimore*, Circuit Court of Baltimore City, Case No. 24-C-20-001784.

[20] In addition to CCI's amicus brief in *Mayor & City of Baltimore v. BP P.L.C. ., et al.*, 4th Cir. 19-1644, other cases include *State of Rhode Island v. Shell Oil Prods. Co., et al.*, 1st Cir. 20-900)(CCI and UCS), *City of Oakland v. BP P.L.C., et al*, 9th Cir., 18-16663 (CCI and UCS), *County of San Mateo v. Chevron Corp*., *County of Imperial Beach v. Chevron Corp., County of Marin v. Chevron Corp*.,, *County of Santa Cruz v. Chevron Corp.*, 9th Cir., 18-15499, 18-15502, 18-15503, 18-16376, *State of Minnesota v. American Petroleum Institute*, United States Court of Appeals for the Eighth Circuit, 21-1752 (CCI). CCI filed the 8th Circuit brief together with, *inter alia*, its partner in engineering that Minnesota lawsuit, a local activist group called Fresh Energy which RFF engaged for the purpose as detailed, *infra*.

[21] *Energy Policy Advocates v. Mayor and City Council of Baltimore*, Circuit Court of Baltimore City, Case No. 24-C-20-001784, Transcript of October 23, 2020, hearing at 4:13 *et seq*.

talking to" prior to filing a climate nuisance and product liability lawsuit against nearly two dozen entities.[22]

Although the City of Baltimore has refused to produce its correspondence with CCI and UCS to Amicus, and Annapolis and Anne Arundel County have stopped producing and forced litigation before releasing more correspondence, emails released by the University of Minnesota illustrate the anatomy of these RFF/CCI-instigated suits, in the context of a similar lawsuit whose removal is now pending before the 8th Circuit.

Emails and text messages obtained by Amicus EPA show that, prior to that suit being filed, RFF Director Lee Wasserman emailed a Minnesota advocacy group's director, a man named Michael Noble with Fresh Energy. Wasserman attached pleadings which Wassermann suggested the activist review prior to "making initial calls," to familiarize himself with RFF's desires — and Noble's own newfound priority, for which his group "only accepted a modest amount of money" at the outset, because he did not "want to launch any big effort unless" the AG was receptive.[23] It is not yet clear how much money Fresh Energy then accepted once it became clear they had a receptive attorney general.

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[22] *Id*., at 6:21-7:1.

[23] December 30, 2018, email from Michael Noble to Alexandra Klass, Subject: materials, https://climatelitigationwatch.org/wp-

Wasserman, whose involvement had emerged as an issue in such litigation including before the courts below, concluded his email, "PS using this email for a specific reason we can discuss when we next talk."[24] Given the history and context, the reasonable conclusion is that Wasserman's rationale for using an alternate email account, to be explained on a phone call or in-person involves litigation discovery and public records requests: at that time, RFF had already become a focus of discussion in two proceedings then underway in state courtrooms in New York and Texas. Noble helpfully forwarded Wasserman's private-account email to a public institution, the University of Minnesota's law school, with a note to a faculty member there he had recruited to "this project,"[25] "I think the politics of the day will give [Minnesota Attorney General Keith Ellison] cover… I'll call the folks in NY and we'll get the whole team on a call."[26] "This project" was to enlist Minnesota's Ellison to also enter the multi-front climate litigation campaign

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content/uploads/2021/05/aklass_4366_20200325_export0001-SD-red_Redacted.pdf.

[24] November 19, 2018, email from Lee Wasserman to Michael Noble, Subject: materials.

[25] Government Accountability & Oversight, "Private Funders, Public Institutions: 'Climate' Litigation and a Crisis of Integrity" (May 18, 2021), available at: https://climatelitigationwatch.org/wp-content/uploads/2021/05/GAO-EPA-CCI-RFF-Climate-Paper.pdf, at pp. 5-6, and November 19, 2018, email from Lee Wasserman to Michael Noble, Subject: materials.

[26] December 30, 2018, email from Michael Noble to Alexandra Klass, Subject: materials,

against Appellant and, *inter alia*, other Texas companies, what Noble also called "our joint project"[27] in another email to Wasserman, CCI, a law professor, and an environmental activist.

The faculty member who emailed Noble following Wasserman's engagement is University of Minnesota Law Professor, Alexandra Klass, to whom Noble's opening missive was titled, "Big idea! Need your reaction (and hopefully enthusiasm)."[28] Noble then arranged for Klass to work with "lawyers advising Rockefeller family fund [*sic*]," and learn, from "the folks at Rockefeller,"[29] "what is needed"[30] for a memo to Minnesota AG Ellison urging him to file his lawsuit

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[27] June 19, 2019, email from Michael Noble to Alexandra Klass, Lee Wasserman, Jeff Blodgett, Judith Enck, Subject, Project Update Call. Available at https://climatelitigationwatch.org/wp-content/uploads/2021/08/aklass_21-319_20210730_LBK_Redacted.pdf.

[28] November 30, 2018, email from Michael Noble to Alexandra Klass, Subject: Big idea! Need your reaction (and hopefully enthusiasm), at https://climatelitigationwatch.org/wp-content/uploads/2021/05/aklass_4366_20200325_export0001-SD-red_Redacted.pdf.

[29] "Should the three of us speak with the folks at Rockefeller?", December 29, 2018 email from Alexandra Klass to Michael Noble, Subject: materials, at https://climatelitigationwatch.org/wp-content/uploads/2021/05/aklass_4366_20200325_export0001-SD-red_Redacted.pdf.

[30] "Then, yes, I (or both of us) should do a phone call to see what is needed. I don't have a good sense of that right now." December 29, 2018 email from Alexandra Klass to Michael Noble, Subject: materials, at https://climatelitigationwatch.org/wp-

very similar to the others in the litigation campaign of which Appellees are a part. The professor then produced a memo with these outside lawyers with CCI but placed the memo on Minnesota letterhead as the scholarship of the professor and four research-assistant students.[31] The four law students listed as co-authors on the memo to Ellison were paid by Fresh Energy, with the payment very intentionally run through the University, on the grounds that Prof. Klass "strongly agrees that there shouldn't be Fresh Energy funding law students direct."[32] [*sic*] Whether that funding came from Rockefeller Family Fund or was routed through another entity also is still unclear.

Other public records obtained by Amicus EPA, specifically text messages between Noble and Klass, state that Noble and CCI both ran the draft "University of Minnesota" memo by RFF's Director Wasserman, and RFF consultant Rick Reed, prior to sending it to AG Ellison on University stationery.[33] For example,

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content/uploads/2021/05/aklass_4366_20200325_export0001-SD-red_Redacted.pdf.

[31] Memorandum, March 11, 2019 at, e.g., https://climatelitigationwatch.org/wp-content/uploads/2021/05/aklass_4366__export0003-SD-LBK_Redacted.pdf.

[32] January 8, 2019 email from Michael Noble to Ellen Palmer, copy Alexandra Klass, Subject: $3k contract, https://climatelitigationwatch.org/wp-content/uploads/2021/05/aklass_4366_20200325_export0001-SD-red_Redacted.pdf.

[33] The University's Board of Regents Policy, *Individual Business or Financial Conflict of Interest* and Board of Regents Policy: *Institutional Conflict of Interest*, suggests that it was improper to place an advocacy document prepared for a private interest on University of Minnesota stationery, which bore no disclosure either of

Responding to Noble's text message that "I want to assemble my documents as a package today to send to Lee and Rick at RFF," prior to signing off on its presentation to the state attorney general, the professor confessed that she was running the purported University scholarship past the RFF's outside lawyers first: "Judith and Alyssa…seem to want to run it by their people first so check with them before going forward." Noble replied, "Yes I am running all the docs by the same people they are running them by."[34]

Emails show RFF's Wasserman recruited Noble and his group Fresh Energy almost immediately after Ellison was elected AG in November 2018.[35] Noble excluded this from his logorrheic acclamation of Fresh Energy's organic role in enlisting the AG to pursue RFF's opponents with climate litigation, which boast soon made its way to YouTube stating, incompletely, that his group had been

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Fresh Energy's role or the co- authorship of the memo by those outside "lawyers advising the Rockefeller family fund," who Prof. Klass understood would advise her "what is needed" in the memo. According to this policy, University faculty may not represent their participation in service of Outside Commitments as being performed in their capacity as faculty, and shall not use University stationery in these pursuits. Outside Commitments also must be approved through a formal process involving University administration.

[34] Text messages released by University of Minnesota to Amicus are available, in full, at https://climatelitigationwatch.org/wp-content/uploads/2021/07/Klass-Noble-texts.pdf-redacted.pdf.

[35] November 19, 2018, email from Lee Wasserman to Michael Noble, Subject: materials.

approached by CCI.[36] That detail aside, public record productions from both the University of Minnesota Law School and AG Ellison's Office otherwise affirm the troubling chain of events described here.

These records also show that the local activist Noble in turn engaged Ellison post-election transition team members, including another Minnesota Law faculty member named Prentiss Cox who, public records show, then began using an Office of the Attorney General email account, which he provided to Noble to correspond about this matter despite having no publicly acknowledged position with the AG's Office.[37]

After the Wasserman private-account email giving sample pleadings to Noble, Noble describing this enlistment of law enforcement to Wasserman as "our joint project," Noble and Klass admitting that RFF got sign-off on the purported University scholarship providing AG Ellison with his case all described, *supra*, the final detail of how these suits are in fact mere extensions of private activists'

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[36] https://www.youtube.com/watch?v=jbK9XjjkJrs, last viewed August 23, 2021, full video available at https://www.youtube.com/watch?v=2MqX14GTm-o, see 1:45 - 2:26.

[37] April 19, 2019 email from Prentiss Cox to Michael Noble, Subject untitled, https://climatelitigationwatch.org/wp-content/uploads/2021/07/coxxx-211_21-102.pdf See also other Noble correspondence about conversations with Cox at https://climatelitigationwatch.org/wp-content/uploads/2021/05/aklass_4366_20200325_export0001-SD-red_Redacted.pdf.

requests emerged. In another email obtained by Amicus EPA, from Noble to RFF's Wasserman and copying Prof. Klass, an outside activist named Jeff Blodgett, and one of "the lawyers advising Rockefeller family fund" Judith Enck, Noble writes, *inter alia*:

> "As you recall, we are waiting for the hire of the "environmental fellows". They have been chosen… One is longtime MCEA Energy and Climate Program Director Leigh Currie who Fresh Energy has worked with extremely closely her entire public interest career (woo hoo, yay!!). She starts after Labor Day, and the other has just started, Pete Burda [sic] of the Robins firm, who is an experienced class action litigator. I will reach out to him next week and send Leigh our doc tomorrow. I already spoke to her today to congratulate her and she was super excited to hear about our request to AG".[38]

The "environmental fellows" here refers to two lawyers hired, paid for and provided to Ellison's Office by the private foundation of climate activist, major political donor, and former Mayor of New York Michael Bloomberg, through a group he established to advance the "climate" agenda.[39] These "Special Assistant Attorney Generals" or SAAGs are provided to "advanc[e] progressive clean energy, climate change, and environmental legal positions." In his application

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[38] July 11, 2019 email from Michael Noble to Lee Wasserman, Jeff Blodgett, Alexandra Klass, Judith Enck, Subject: Ellison Update. Available at https://climatelitigationwatch.org/wp-content/uploads/2021/08/Screen-Shot-2021-08-03-at-8.04.54-PM.jpg.

[39] See, e.g., Editorial, "State AGs' Climate Cover-up", Wall Street Journal, June 7, 2019, https://www.wsj.com/articles/state-ags-climate-cover- up-11559945410; Editorial, "State AGs for Rent", Wall Street Journal, Nov 6, 2018, https://www.wsj.com/articles/state-ags-for-rent-1541549567.

seeking these private lawyers, Ellison specifically cited his past efforts in pursuing Exxon Mobil, claiming that activities such as "supporting state- led efforts to investigate Exxon Mobil" were and would remain curtailed barring provision of additional resources to his Office such as those on offer from the Bloomberg group.[40]

Those two "fellows" or SAAGs placed in the Minnesota Office of the Attorney General in fact filed AG Ellison's lawsuit. Shortly thereafter, on a July 6, 2020, Zoom call after these SAAGs filed this suit, now available on YouTube, Noble boasted of personal knowledge that these two attorneys, by name, had "basically been working on this full time over the last few months."[41]

Another email and a text message obtained by Amicus under MGDPA, both from Noble to Klass, both state, *inter alia*, "When we get a meeting, our delegation will be me, you, CEO of Climate Integrity, CEO Rockefeller Family Fund and Jeff Blodgett." ("Jeff Blodgett is a political consultant" in Minnesota.

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[40] The Application released under Minnesota's Government Data Practices Act is available at https://climatelitigationwatch.org/wp-content/uploads/2019/09/MN-OAG-NYU-Application.pdf. Other AGs receiving these lawyers and the accompanying public relations support that the group also provides, include climate plaintiffs Connecticut, Delaware, District of Columbia, New York, and Massachusetts; further, two SAAGs provided to the Maryland Office of Attorney General filed an amicus brief in the United States Court of Appeals for the Fourth Circuit on behalf of one of the municipalities which CCI helped bring into the stable of plaintiffs, the Mayor & City of Baltimore.

[41] See *fn*. 36.

https://ballotpedia.org/Jeff_Blodgett (viewed August 27, 2021). Other public records obtained by Amicus under the Minnesota Government Data Practices Act ("MGDPA") show a meeting on this memorandum between Fresh Energy and OAG occurred on September 30, 2019, with Noble, Ellison, his Chief of Staff Donna Cassutt and 3 OAG attorneys including the two Bloomberg-provided SAAGs, described in the scheduling email as "AG Meet w/ Michael Noble RE Climate Change/Fossil/Fuels [sic] (Donna)".[42]

The climate plaintiffs' importation and arrangement for 'local color'/cutouts affirms that these cookie-cutter suits are part of a "nationwide" campaign, retooling failed federal claims in state courts. There is no reason to believe this case-study of the principals' method of operation is illustrative of only the several Minnesota or Maryland suits the same parties are documented as instigating and assisting. The evidence strongly suggests that the campaign of litigation that Texas businesses are facing are all of a coordinated part deriving from the same outside instigators.

[42] Text and email both released by University of Minnesota under MGDPA are available, respectively, at https://climatelitigationwatch.org/wp-content/uploads/2021/07/Klass-Noble-texts.pdf-redacted.pdf and https://climatelitigationwatch.org/wp-content/uploads/2021/08/aklass_SchillingEPA_21-258_20210617-SD-SMCK-LBK_Redacted.pdf.

All of this raises numerous legal and ethical questions for taxpayers and local courts, but it also makes plain for this Court that the suits instigated by the Appellees here against Texas businesses, like other suits instigated by the same private donor/coordinators and filed by the same attorneys, is a national affair instigated by private donors, in great part to impact national policy through government litigation against private parties and extract hundreds of billions of dollars from Texas companies.

A reasonable fact finder might inquire as to when and how these plaintiffs became aware of their claimed losses in the tens of billions of dollars, and of the magnitude of that loss. In this series of cases, the plaintiffs have generally been made aware of their spectacular claimed losses by outside activists who whisper, via influential institutions and political donors, tort lawyers and attorney general Gmail accounts and in meetings at the Rockefeller family mansion (*infra*), that such suits are the key to obtaining "new streams of revenue" and a "sustainable funding stream."

This Court must allow Texas businesses to protect themselves in their home courts in the face of an onslaught of improper suits being brought for improper purposes in out-of-state courts.

**b) This Suit and Others Like it Represent an Attempt to Extract Billions of Dollars in Settlements From a Texas Industry Through Improper Means.**

As Judge R.H. Wallace, Jr. of the District Court of Tarrant County, Texas wrote in Findings of Fact issued April 24, 2018, the wave of state court claims brought against the energy industry even as of that time appeared to have as its goal "to obtain leverage over these companies… that could eventually lead to… support for legislative and regulatory responses to global warming." Judge Wallace also found that, *e.g.*, "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties."[43] Citing to documents written by the parties' and their advisors' own hands, Judge Wallace noted that the plaintiffs in this new breed of state court action also appear driven by a desire to punish pro-energy speech.

Using public records laws, Amicus EPA has documented that the objectives are in fact several fold, but that there can be no denying the suits are instigated by a private party orchestrating a media, lobbying and legal campaign to convince allies to make these claims, instigating the use of police powers and other governmental

[43] *In re Exxon Mobil Corporation*, Cause No. 096-297222-B (Tarrant Co., Tex. Dist. Ct.), Findings of Fact and Conclusions of Law (April 24, 2018), ¶¶ 6-10. Available at https://eidclimate.org/wp-content/uploads/2018/07/Findings-Fact-Climate-Lawsuit-Conspiracy.pdf.

litigation to advance the private party's activist cause against traditional energy industries.

For example, further affirming the use of these suits as leverage in coercing Texas companies to support the national policy agenda of various activists, Amicus EPA obtained an email from Boulder, Colorado, a municipal climate plaintiff against the instant Texas company/Appellant, in which a City official admits the City's position in filing its suit, specifically that "the pressure of litigation could also lead companies…to work with lawmakers on a deal" about climate policies.[44] Former Connecticut Attorney General Richard Blumenthal is similarly quoted in the *Wall Street Journal*, saying about *American Electric Power v. Connecticut*, 564 U.S. 410, 426 (2011), which suit he brought, "My hope is that the court case will provide a powerful incentive for polluters to be reasonable and come to the table…We're trying to compel measures that will stem global warming regardless of what happens in the legislature."[45]

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[44] January 5, 2018, email from Boulder Chief Sustainability & Resilience officer Jonathan Koehn to Alex Burness of the Boulder Daily Camera, Subject: RE: Follow-up to council discussion. Available at https://climatelitigationwatch.org/boulder-official-climate-litigation-is-tool-to-make-industry-bend-a-knee/.

[45] Editorial, "The New Climate Litigation," Wall Street Journal, December 28, 2009, https://www.wsj.com/articles/SB10001424052748703478704574612150621257422.

This Court should not bar the use of the State's judicial system from examining the use of out-of-state courts to target Texas businesses in an organized effort to coerce these businesses into supporting national legislative change or into settling to escape coordinated, vexatious multi-front litigation. The federal courts have previously recognized the dangers of the latter, in the context of an energy company fighting back against such a litigation campaign. In *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 475 (S.D.N.Y. 2014), the U.S. District Court for the Southern District of New York held that the plaintiff attorney's "multi-front strategy thus [had as its object] to leverage the expense, risks, and burden to Chevron of defending itself in multiple jurisdictions to achieve a swift recovery, most likely by precipitating a settlement." Justice is not served by turning a blind eye as history repeats itself with another wave of coordinated multi-front litigation, by aligned interests again targeting some of the same defendants targeted in *Donziger*.

Then there is the further improper use of the courts to raise revenues to satisfy governmental spending ambitions but without taking responsibility for raising the taxes directly. In an email to Oregon Attorney General Ellen Rosenblum's Gmail account and obtained by Amicus EPA, the RFF extension the Center for Climate Integrity pitches these suits as a possible way to obtain "new

streams of revenue."[46] That is to say, the private activists behind this governmental litigation wave largely against Texas companies have a new pitch, through the agents discussed herein, that governments can obtain revenues they are otherwise unable to obtain or unwilling to politically risk obtaining through the typical means of raising taxes. Similarly, the plaintiff Executive Branch in one of these suits, pending in the U.S. Court of Appeals for the First Circuit, *State of Rhode Island v. Shell Oil Prods. Co., et al.*, 1st Cir. Case No. 19-1818 (EPA Amicus Brief Filed April 3, 2020), is on record confessing that the ostensibly injured State's true goal in litigation was to obtain "a sustainable funding stream" by "suing big oil in state court" because the state's own legislature "do[es]n't care on env/climate."[47]

This admission is laid out in records Amicus EPA obtained from Colorado State University's Center for a New Energy Economy ("CNEE") under the Colorado Open Records Act (CORA). CNEE is run by a former Colorado governor and served as "Sherpa" for a two-day meeting in July 2019 hosted by the Rockefeller Brothers Fund (RBF) at the Rockefeller family mansion at Pocantico,

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[46] Email available as released by the Oregon Department of Justice via https://climatelitigationwatch.org/wp-content/uploads/2021/04/Lewis-Clark-Event-Proposal-rev-14-Jan-2021.docx.

[47] See petition-stage Amicus Brief of Energy Policy Advocates in *BP P.L.C. v. Mayor and City Council of Baltimore*, available at https://www.supremecourt.gov/DocketPDF/19/19-1189/142726/20200430150640415_39742%20pdf%20Hardin.pdf, and citations contained therein.

NY. The records obtained from CSU include numerous emails, agendas and other materials. Most pertinent, they also include a set of handwritten notes and a second, corroborating set of typewritten notes. According to the public records themselves, the former was prepared by attendee Carla Frisch of the Rocky Mountain Institute (RMI), and the latter by attendee Katie McCormack of the Energy Foundation. This was a private event, styled "Accelerating State Action on Climate Change," if hosted as a forum for policy activists and a major donor to activist groups to coordinate with senior public employees, e.g., a governor's chief of staff and department secretaries and their cabinet equivalents from fifteen states. These states included First Circuit plaintiff the State of Rhode Island, represented at Pocantico by its Director of the Department of Environmental Management, Janet Coit.

These notes purport to contemporaneously record the comments of Director Coit discussing Rhode Island's entry in this litigation campaign, among peers. One passage in each set of notes, both attributed to Director Coit and recorded almost verbatim in both, is particularly striking and relevant, affirming two points that have become obvious and which should inform key decisions confronting the judiciary in this "climate nuisance" litigation campaign.

The records show RMI's Frisch recorded Director Coit speaking to that state's litigation.[48] Ms. Frisch recorded Director Coit as saying, about this suit:

> RI - Gen Assembly D but doesn't care on env/climate
> looking for sustainable funding stream
> suing big oil for RI damages in state court

The first line-item attributes to Director Coit the position that the Rhode Island legislature is not persuaded of the claims set forth by that State in its litigation. This reluctance to politically impose the revenue-raising measures (taxes) necessary for the level of "funding streams" they seek is shared among all "climate nuisance" plaintiffs. The entry appears to also reflect Director Coit's view of why the Rhode Island legislature has thereby declined to obtain from the taxpayer, and then appropriate to the State, the revenue streams that the plaintiff desires.

These notes reflect a senior official confessing that Rhode Island's climate litigation, substantially similar to that filed by numerous governmental (and so far one private) plaintiffs targeting Texas industries and businesses, is in fact a product of Rhode Island's elected representatives lacking enthusiasm for politically enacting certain policies, including revenue measures. Thus the Ocean State is "looking for [a] sustainable funding stream", and so "suing big oil." Both sets of

[48] Ms. Frisch's notes are available in full at https://climatelitigationwatch.org/wp-content/uploads/2020/03/Carla-Frisch-handwritten-notes-EPA_CORA1505.pdf.

notes reflect Ms. Coit's emphasis on using the State's own courts. This characterizes all such extant plaintiffs and suits, including those targeting Texas businesses.

Fortunately, we can be confident that Ms. Frisch did not mishear Director Coit. The Energy Foundation's Katie McCormack provided RBF and ultimately CSU with a typewritten set of her own notes transcribing the proceedings, and CSU provided them to Amicus. To this Court's further benefit, Ms. McCormack's typewritten transcription of Director Coit's commentary reads almost verbatim as Ms. Frisch's.

Ms. McCormack recorded Director Coit as saying:[49]

"* Assembly very conservative leadership - don't care about env't
* If care, put it in the budget
* Priority - sustainable funding stream
* State court against oil/gas"

These notes on their face both affirm two realities that have become inescapable in recent years about this epidemic of "climate" litigation, all channeled into state courts after the first generation of suits foundered in federal

[49] Ms. McCormack's notes can be found in full at https://climatelitigationwatch.org/wp-content/uploads/2020/03/EF-Katie-McCormack-typed-notes-EPA_CORA1542.pdf, and the email transmitting them at https://climatelitigationwatch.org/wp-content/uploads/2020/03/Katie-McCormack-notes-transmittal-email-EPA_CORA1516_Redacted.pdf.

court, and ultimately were terminated due to *American Electric Power v. Connecticut*, 131 S. Ct. 2527, 2539, 564 U.S. 410, 426 (2011). These suits seek to use the courts to stand in for policymakers on two fronts. First, these suits ask the courts to substitute their authority for that of the political branches of government on matters of policy. Second, these suits seek billions of dollars in revenues, again the province of the political branches, for distribution toward political uses and constituencies.

On that first count of policymaking through the courts, the Rockefeller-meeting notes ratify a comment made to The Nation magazine by Appellee Matt Pawa, the tort lawyer credited with inventing this wave of litigation. The magazine wrote, "At the end of his speech, Senator [Sheldon] Whitehouse [of Rhode Island] reminded his colleagues of their 'legislative responsibility to address climate change.' But it's clear that too many lawmakers have abdicated, thus the pressure to tackle the climate issue through existing regulations like the Clean Air Act, and through the courts. 'I've been hearing for twelve years or more that legislation is right around the corner that's going to solve the global-warming problem, and that litigation is too long, difficult, and arduous a path,' said Matthew Pawa, a climate

attorney. 'Legislation is going nowhere, so litigation could potentially play an important role.'"[50]

Such use of the courts is of course improper but also informs a conclusion that Texas courts should be empowered to protect the citizens and economy of Texas. Texas should protect its own businesses and citizens by empowering its state courts to protect against the improper use of other states' courts to target Texas, particularly in the face of vexatious, obviously coordinated multi-front litigation.

The second conclusion affirmed by these twice-sourced assertions by climate-plaintiff Rhode Island, which shares plaintiff's counsel with Appellee municipalities, is that this type of litigation is a grab for revenues at the expense of Texas businesses, more properly sought through but denied to the plaintiffs by the political process. Like policy, such revenue-raising measures must be enacted by the voters' elected representatives or approved directly by voters. Instead, with the desire for more "funding streams," free from political accountability to the parties who ultimately pay the extraction of monies, we have plaintiffs rebuffed by the political process now circumventing that process through this litigation campaign.

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[50] Zoe Carpenter, *The Government May Already Have the Law It Needs to Beat Big Oil*, The Nation (July 15, 2015), https://www.thenation.com/article/the-government-may-already-have-the-law-it-needs-to-beat-big-oil/ (Last viewed May 16, 2019).

That the desire for more governmental revenue was behind such litigation, to avoid adopting the necessary direct taxes for which there can be a political price, was suggested by the U.S. Chamber of Commerce in a 2019 report entitled "Mitigating Municipality Litigation: Scope and Solutions," published by the Chamber's Institute for Legal Reform. That report highlighted:

- "For instance, local government leaders may eye the prospect of significant recoveries as a means of making up for budget shortfalls."
- "Large settlements like those produced in the tobacco litigation are alluring to municipalities facing budget constraints."
- "Severe, persistent municipal budget constraints have coincided with the rise of municipal litigation against opioid manufacturers as local governments are promised large recoveries with no risk to municipal budgets by contingency fee trial lawyers.", and
- "Conclusion

  A convergence of factors is propelling municipalities to file affirmative lawsuits against corporate entities.

  There is the 'push' factor: municipalities face historic budgetary constraints and a public inundated with news reports on the opioid crisis, rising sea levels, and data breaches. And there is the 'pull' of potential multimillion-dollar settlements and low-cost, contingency fee trial lawyers. As a consequence, municipalities are pivoting to the courts by the thousands." [51]

The National Association of Manufacturers' Center for Legal Action has similarly argued that "The towns and lawyers have said that this litigation is solely about money. The towns want funding for local projects, and their lawyers are

[51] United States Chamber of Commerce, "Mitigating Municipality Litigation: Scope and Solutions," U.S. Chamber Institute for Legal Reform, March 2019, https://www.instituteforlegalreform.com/uploads/sites/1/Mitigating-Municipality-Litigation-2019-Research.pdf, at p. 1, 6, 7 and 18, respectively.

working on a contingency fee basis, which means they aren't paid if they don't win."[52]

The records Amicus EPA has obtained now provide documentary evidence to support these concerns that out-of-state courts are being exploited to balance municipal/state budgets on the backs of Texas businesses and make policy decisions that legislators in those states, and at the federal level, have declined to make. In light of the fact that these out-of-state courts are being used to extract such revenues from Texas, however, Texas courts must be empowered to level the playing field.

In light of the court below's findings of fact, and information obtained by Amicus in the intervening years, it appears these suits are little more than a Trojan Horse in a battle to shut down a Texas industry. That the First Circuit plaintiff is documented in its admission that the state seeks to sue big oil mostly out of a desire to obtain revenue through means other than taxation and without legislative approval, an approach echoed in recruiting emails by none other than the "lawyers advising Rockefeller [F]amily [F]und" behind this and similar suits, should compel

[52] Manufacturers' Accountability Project, "Beyond the Courtroom: Climate Liability Litigation in the United States," p. 2, https://mfgaccountabilityproject.org/wp-content/uploads/2019/06/MAP-Beyond-the-Courtroom-Chapter-One.pdf.

this Court to allow Texas citizens the ability to use this State's judiciary to examine these campaigns and defend themselves.

## II. DISCLOSURES WHICH UNDERMINE JUDICIAL ASSERTIONS IN RELATED LITIGATION IN FEDERAL COURT IN NEW YORK AFFIRM THE IMPORTANCE OF EXAMINING THIS CAMPAIGN.

*Exxon Mobil Corporation v. Schneiderman*, 316 F. Supp. 3d 679 (S.D.N.Y. 2018), currently on appeal before the 2nd Circuit (Case No. 18-1170), was also an effort by Appellant to defend itself by exploring the true persons behind the assault by investigation and litigation. That suit bore the same background and context to the current suit at issue here, although it presented different legal claims and issues. There, Appellant raised serious First Amendment concerns that the State of New York and Commonwealth of Massachusetts, by and through their Attorneys General and others, were using novel legal claims to prosecute an out-of-state corporation for First Amendment protected activity (apparently falling under the advocates' definition of "climate denialism", see *supra*). Although Appellant eventually was the prevailing party in the related state-court prosecution, *People v. Exxon Mobil Corporation*, New York Co. Supreme Court Case No. 452044/2018, the federal district court dismissed Appellant's action claiming the assertions of a coordinated campaign which Amicus is now able to document, in detail, were simply unsupported. Exxon and other defendants have since been under the same continuous assault for one claimed climate-related offense or another, sometimes

repackaged but seemingly always originating with the same influential backer who has confessed to orchestrating the original media and lobbying campaign, RFF, which records show coordinated with the other real parties behind the wave of litigation of which Appellees' suits are part.

Because this campaign is demonstrably and even admittedly both coordinated and "nationwide," this Court should allow the targets of the campaign to examine the record underlying and revealing the true nature of the claims and controversies between the parties. This Court should allow the targets to review the origins, recognizing that these links inescapably tie together not just the activists and AGs but also the municipal plaintiffs with whom the AGs share the same California legal counsel, and with whom the climate plaintiffs including Appellees claim to share privilege and a common legal interest on these very matters (see *infra*).

In *Exxon Mobil Corporation v. Schneiderman,* Appellant in this matter Exxon Mobil presented to the U.S. District Court for the Southern District of New York, as plaintiff, evidence that tort lawyers, climate-change activists, donors and also state attorneys general were coordinating on litigation as a means to uncover internal, private-company documents regarding climate change and to, *e.g.*, pressure fossil fuel companies like Exxon to change their stance on climate change policies. In that matter, more than three years ago, the District Court issued an

opinion stating, *inter alia*, that "Exxon attempts to provide the missing link between the activists and the AGs by pointing to a series of workshops, meetings, and communications between and among [attorney and Appellee Matt] Pawa and [Union of Concerned Scientists' Peter] Frumhoff and other climate change activists and the AGs or their staffs," *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp 679 at 709 (S.D.N.Y. 2018). That court wrote, "There are no allegations that either the [New Yok Office of the Attorney General] or the [Massachusetts Office of the Attorney General] attended the La Jolla conference" (Id. at 39). That "La Jolla Conference" was a 2012 legal strategies meeting in La Jolla, California, convened to contemplate and develop a plan to compensate for the general failure of legislative efforts to impose this "climate" agenda nationally. However, Appellee Pawa, who before this Court minimizes his actions targeting Texas interests, was also a principal in the La Jolla litigation discussion. As noted, *supra*, Pawa has been quoted suggesting that the campaign to use the courts in this way was a response to advocates having failed to impose a policy agenda through the legislative process. The written summary of the relevant part of the La Jolla 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."[53] The same report also stated, "Equally important was the nearly unanimous agreement on the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming."[54]

In the intervening period Amicus EPA and others have obtained vast quantities of information about how this effort proceeded. Among the revelations are the material involvement in that La Jolla meeting, from the planning stage, of at least one state attorney general's office — a fact not previously known because it was removed from the final, public version of the meeting's report. Specifically, then-California State Attorney General Kamala Harris's Supervising Deputy Attorney General Coordinator, Global Warming Initiatives, Janill Richards, was involved in organizing for the La Jolla event. Indeed, emails among the organizers

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[53] Climate Accountability Institute and Union of Concerned Scientists, *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).

[54] Id. at 27.

at the Union of Concerned Scientists[55] show the hosts asking Richards "to lead the discussion" of the tort litigation presentations calling for recruitment of AGs on June 14-15, 2012.

> 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.[56]

That was on May 24, 2012. Ms. Richards also was listed among La Jolla participants in the internally circulated June 4, 2012, list of Workshop Participants, and on June 11, 2012.[57]

At the time an 18-year veteran in a senior role, Ms. Richards' involvement cannot be explained away as casual participation due to proximity; her office was located in Oakland, nearly 500 miles from La Jolla. *Id*.

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[55] See, e.g., see e.g., https://climatelitigationwatch.org/emails-suggest-ucusa-union-of-concerned-scientists-is-at-the-center-of-the-climate-litigation-industry/.

[56] See https://climatelitigationwatch.org/wp-content/uploads/2020/09/Janill-Richards-CA-OAG-La-Jolla-Pawa-Chronology.pdf or the entire record production posted at https://climatelitigationwatch.org/wp-content/uploads/2019/03/Oregon-Wood-Combined-Files-Redacted.pdf, pp. 359-360; see also pp. 58-59, Workshop Participants. These records were released to the Competitive Enterprise Institute by the University of Oregon under that state's public records law.

[57] See, respectively, https://climatelitigationwatch.org/wp-content/uploads/2020/02/Janill-Richards-a-Workshop-Participant-as-of-6.4.12.png and https://climatelitigationwatch.org/wp-content/uploads/2020/08/6.11.12-email-Janill-Richards-a-Workshop-Participant-as-of-6.11.12.jpg.

The report published by co-host Union of Concerned Scientists ("UCS") chronicling the La Jolla meeting did not thank Ms. Richards. This document was written for UCS's "primary audience [of]…colleagues in the community — scholars, practitioners, and funders — who were not able to attend", according to a production of public records attributing this description to UCS's Peter Frumhoff.[58]

But Frumhoff also reflected participants' and organizers' concern that the report might nonetheless get out. As it did. Frumhoff noted in an email, "We will not be posting this report on the web, or otherwise releasing it publicly, and ask that you share the report with key colleagues with these limited distribution goals in mind. These goals notwithstanding, there's always the prospect of broader than intended circulation and readership."[59] Removing the participation of California's Attorney General's Office from the published version suggests that possibly UCS (and/or AG Harris's Office) did not wish to record an AG's involvement in this scheming should the report make its way out as Frumhoff warned it might. Regardless, this is now documented.

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[58] October 17, 2012 email from Peter Frumhoff to participants, Subject: Workshop Report on Establishing Accountability for Climate Change Damageshttps://climatelitigationwatch.org/wp-content/uploads/2020/09/Janill-Richards-CA-OAG-La-Jolla-Pawa-Chronology.pdf.

[59] Id. See also emails at https://climatelitigationwatch.org/missing-link-claim-dealt-another-blow-new-emails-show-ag-kamala-harris-office-helped-plan-la-jolla-climate-litigation-conference/.

The timing of the 2012 La Jolla meeting is also telling in that the push to enlist state attorneys general to assist anticipated climate litigation such as that pursued by Appellees came as a result of the ruling in *AEP v. Connecticut* 564 U.S. 410 (2011), in which the Supreme Court held that regulating CO2 emissions is the U.S. Environmental Protection Agency's job, and that the Clean Air Act displaces "any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants," as Justice Ruth Bader Ginsburg wrote for the unanimous Court. A new plan had to be hatched, hence the La Jolla planning session, the report chronicling which also stated:

> "Equally important was the nearly unanimous agreement on the importance of legal actions, both in wresting potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining pressure on the industry that could eventually lead to its support for legislative and regulatory responses to global warming."[60]

The litigation campaign began with two attorneys general, specifically two whose offices received briefings requesting just that from Appellee Pawa (New York and Massachusetts). Pawa lobbied the New York Attorney General to take up Pawa's cause, after which that office did investigate and prosecute Appellant Exxon Mobil, if without success. *People of the State of New York v. Exxon Mobil Corporation* (452044/2018, N.Y. Sup. Ct.). Related, emails show that one Illinois OAG aide, after speaking to a major political donor named Wendy Abrams, wrote

[60] "Establishing Accountability for Climate Change Damages," at 28.

to a colleague with whom she was corresponding about arranging a Pawa presentation on "What Exxon Knew". About Abrams, the aide wrote, "The NY AG is investigating the company and she [Abrams] wanted to know if this was something the AG may be interested in supporting or signing on to…She would like to bring in a lawyer named Matt Pawa, who has offices in Boston and DC. Wendy says he may have been the one to go to the NY AG's office about Exxon."[61] Pawa also affirmatively recruited and pitched numerous other offices of attorneys general to file similar suits.[62]

Also, for example, correspondence obtained from the Massachusetts Office of Attorney General under that state's open records law show that Mr. Pawa wrote to that Office, *inter alia*, "I have been in discussions with Brad Campbell of CLF [Conservation Law Foundation] about the Exxon issue and we are coordinating on this."[63] With and through CLF, Campbell advocates for and has developed,

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[61] February 26, 2016, email from Eva Station to Ali Khadija Courtney Levy, and Kirsten Holmes; Subject, RE: Phone call. Available at https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-147-Abrams-says-Pawa-may-have-brought-investigation-to-NYOAG-copy.pdf.

[62] Other public records show Mr. Pawa's firm gave this "What Exxon Knew—and What It Did Anyway" presentation to, e.g., California's OAG on January 14, 2016, Illinois OAG on March 21, 2016, Connecticut OAG on April 19, 2016, Maryland AG Brian Frosh on February 18, 2016, Massachusetts OAG on January 11, 2016, and to many AGs on March 29, 2016.

[63] January 4, 2016, email from Pawa to OAG's Christophe Courchesne and Melissa Hoffer, Subject: global warming, released under Massachusetts' open records law.

assisted, and encouraged attorneys general investigations of private parties for alleged offenses related to claimed catastrophic man-made climate change. Like Pawa, UCS and others who continue appearing in the record of these nationwide affairs, Campbell was an attendee at the meeting at RFF's offices that called for allies to "delegitimize" and "create scandal" involving various industry participants.[64]

The records indicate that the "this" which Pawa referred to in that email was Pawa's pitch to the attorneys general to enlist them in the tort campaign which Appellees helped launch, titled, "What Exxon Knew—And What It Did Anyway." Mr. Pawa described his slide show as being about "documents that recently came to light",[65] "a mini trial-type presentation on what Exxon knew about global warming, when it knew it and what it did anyway in the next 20 plus years."[66] This

https://climatelitigationwatch.org/wp-content/uploads/2019/10/Pawa-OAG-recruiting-emails-Records-9-10-19.pdf.

[64] See, generally, Plaintiff's Second Amended Complaint and this Court's March 29, 2018, Opinion and Order, in *Exxon v. Schneiderman*, Case No. 17-cv-02301.

[65] December 1, 2015, email from Pawa to Massachusetts OAG's Christophe Courchesne and Melissa Hoffer, Subject: global warming. See also, e.g., March 31, 2016, email from Matt Pawa to Perry Zinn-Rowthorn, Matthew Levine and Kimberly Massicotte of the Connecticut OAG, Subject: Climate Change. https://climatelitigationwatch.org/wp-content/uploads/2019/10/Pawa-OAG-recruiting-emails-Records-9-10-19.pdf.

[66] December 1, 2015, email from Pawa to Massachusetts OAG's Christophe Courchesne and Melissa Hoffer, Subject: global warming.

correspondence that specifies those "documents that recently came to light" were simply public news stories that, the public record also shows, were arranged for by Rockefeller Family Fund.[67]

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https://climatelitigationwatch.org/wp-content/uploads/2019/10/Pawa-OAG-recruiting-emails-Records-9-10-19.pdf.

[67] *See, e.g.*, Jess Delaney, *Lee Wasserman Fights Climate Change with Rockefeller Funds*, Institutional Investor (Apr. 18, 2016), https://www.institutionalinvestor.com/article/b14z9ppfj9nlv4/lee-wasserman-fights-climate-change-with-rockefeller-funds. Lee Wasserman is the Director of the Rockefeller Family Fund, where he focuses on initiatives fighting climate change. Although Mr. Wasserman at first denied RFF had singled Exxon out when it granted about $25,000 to *InsideClimate News*, he later appeared, with Valerie Rockefeller Wayne of the Rockefeller Brothers Fund, on CBS This Morning with Charlie Rose and confirmed they funded those groups with the explicit purpose of writing the original #ExxonKnew pieces. https://www.cbsnews.com/news/rockefeller-family-feud-with-exxon-mobil-fossil-fuels-global-warming-climate-change/ He then wrote in the New York Review of Books, with David Kaiser, that the groups did fund those groups with the explicit purpose of writing the original #ExxonKnew pieces. https://www.nybooks.com/articles/2016/12/08/the-rockefeller-family-fund-vs-exxon/ Both Wasserman and Kaiser then wrote in the New York Review of Books that they met with New York Attorney General Eric Schneiderman and pressured him to launch an investigation. https://www.nybooks.com/articles/2016/12/22/rockefeller-family-fund-takes-on-exxon-mobil/. Records obtained in Freedom of Information Law (FOIL) litigation in New York State show his involvement with that State's Attorney General organizing an investigation of energy companies at least nine months before NY OAG issued any subpoenas. *See* Respondent's Exemption Logs in *Energy & Env't Legal Inst. v. The Attorney General of New York*, N.Y. Sup. Ct. Index No. Index No.101678/2016 (Bannon, J.), https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=/4gV1PMC_PLUS_ri7oT5KbMKdnw==.and *Energy & Env't Legal Inst. v. The Attorney General of New York*, N.Y. Sup. Ct. Index No. 101759/2016 (Mendez, J.), https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=3s1_PLUS_ag7V3BP6D3XR8qklcA==.

Soon after Pawa's January 2016 briefing of the Massachusetts OAG, that Office did initiate such an investigation against Appellant.[68] Mr. Campbell and his organization then sued the same company the next month.[69] Public records show that the litigation AG Healey subsequently filed against Appellant at Pawa's urging was also pitched to OAG by the UCLA Emmett Institute's Cara Horowitz, author of the infamous email to a major donor about "going after climate denialism along with a bunch of state and local prosecutors nationwide", at that meeting in Cambridge, Massachusetts which was attended by five OAG attorneys.[70]

Two months after his Massachusetts in-office briefing, and moments after Pawa gave his March 29, 2016, presentation to a larger group of attorneys general including Massachusetts AG Healey in a secret, pre-press conference briefing that March,[71] Healey emerged to declare her verdict at the press conference. As the Tarrant County court below put it:

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[68] See https://www.mass.gov/lists/attorney-generals-office-exxon-investigation.

[69] See https://www.clf.org/newsroom/clf-sues-exxonmobil/.

[70] A March 17, 2016, email from OAG's Melissa Hoffer to Harvard Law School's Shaun Goho, Subject: RE: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016, listed Andy Goldberg, Glenn Kaplan, Christophe Courchesne, Richard Johnson as OAG lawyers who would attend the meeting in addition to herself. https://climatelitigationwatch.org/wp-content/uploads/2019/10/MA-AAG-Hoffer-to-HLS-on-MA-OAG-attendees.pdf.

[71] In an order transferring a case from the Northern District of Texas to the Southern District of New York, Judge Kinkeade of the Northern District Court noted "[t]he day after the closed door meeting, on March 30, 2017, Mr. Pawa emailed the Office of the New York Attorney General to ask how he should

> "[S]he disclosed that she too had begun investigating ExxonMobil and concluded, before receiving a single document from ExxonMobil," that "Fossil fuel companies that deceived investors and consumers about the dangers of climate change should be, must be, held accountable. That's why I, too, have joined in investigating the practices of ExxonMobil. We can all see today the troubling disconnect between what Exxon knew, what industry folks knew, and what the company and industry chose to share with investors and with the American public."[72]

We now also know from public records of an April 25, 2018, agreement between at least five AGs whose offices Appellee Pawa briefed in seeking to recruit them to his cause, including New York and Massachusetts (as well as California, Connecticut, and Maryland), in which the climate-plaintiff states all claimed a common legal interest in his cases — lawsuits that none of these AGs

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respond if asked by a reporter from *The Wall Street Journal* whether he attended the closed door meeting with the attorneys general. The Office of the New York Attorney General responded by instructing Mr. Pawa 'to not confirm that you attended or otherwise discuss the event.' Does this reluctance to be open suggest that the attorneys general are trying to hide something from the public?" *Exxon v. Healey*, Civil Action No. 4:16-CVK-469-K (N.D. TX, Mar. 29, 2017) at 8. See also, Sean Higgins, *NY atty. general sought to keep lawyer's role in climate change push secret*, Washington Examiner (Apr. 18, 2016), http://www.washingtonexaminer.com/ny-atty-general-sought-to-keep-lawyers-role-in-climate-change-push-secret/article/2588874; Terry Wade, *U.S. state prosecutors met with climate groups as Exxon probes expanded*, Reuters (Apr. 15, 2016), http://www.reuters.com/article/us-exxonmobil-states/u-s-state-prosecutors-met-with-climate-groups-as-exxon-probes-expanded-idUSKCN0XC2U2.

[72] *In re Exxon Mobil Corporation*, Cause No. 096-297222-B (Tarrant Co., Tex. Dist. Ct.), Findings of Fact and Conclusions of Law (April 24, 2018), ¶¶ 6-10. Available at https://eidclimate.org/wp-content/uploads/2018/07/Findings-Fact-Climate-Lawsuit-Conspiracy.pdf. See also, https://ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneysgeneral-across.

were, are or ever will be party to and have no actual common legal interest. This is yet another "tell" about the national, coordinated nature of this litigation campaign against Appellant and other Texas companies. In fact, of the three cases specifically cited in the agreement, "*City of Oakland, et al. v. BP P.L.C. et al.* (N.D. Cal. 17-cv-06011), *City and County of San Francisco, et al. v. BP P.L.C., et al.* (N.D. Cal. 17-cv-06012) and *San Mateo v. Chevron Corp.* (N.D. Cal. 17-cv-04929), and any appeals arising from those matters," two involved Appellant and were Pawa's clients at the time.[73] Nine of these AGs then filed an amicus brief in the Fourth Circuit on behalf of the Mayor & City of Baltimore in their "nuisance" case, entered into that docket by two of the Bloomberg-provided "SAAGs" (*supra*).

We are now also aware of a different, October 2020 "Common Interest Agreement Regarding the Sharing of Information Related to State Lawsuits Against Fossil Fuel Companies for Deceptive Acts and Practices and Other State

[73] "Common Interest Agreement Regarding the Sharing of Information In Anticipation Of Judicial Or Administrative Actions To Require The Federal Government (Or Private Parties) To Take Action (Or To Defend The Federal Government's Authority To Take Action) To Reduce Or Limit Emissions Of Greenhouse Gases That Cause Climate Change," signed by (ultimately) fourteen attorneys general and obtained under the open records statutes of New Mexico and Minnesota. Available at https://climatelitigationwatch.org/wp-content/uploads/2021/04/Climate-Change-Public-Nuisance-Litigation-CIA.pdf and its amended version at https://climatelitigationwatch.org/wp-content/uploads/2021/04/Climate-Change-Public-Nuisance-Litigation-CIA-Amendment.pdf.

Law Claims," among AGs for the District of Columbia, Massachusetts and Minnesota (plus recent climate plaintiffs Connecticut and Delaware[74]) all of which share legal counsel with the Appellees in this case, Sher Edling, LLP. Sher Edling has brought over a dozen similar lawsuits against the same or similar energy companies across the country aimed at curtailing fossil fuel use, and has "reportedly received at least $1.75 million in grants from Resources Legacy Fund, a San Francisco-based organization focused on curbing the production and sale of fossil fuels through advocacy." Brief of Defendants in Opposition to Plaintiff's Motion to Remand, *District of Columbia v. Exxon Mobil Corp., et al.,* D.C.D.C. 1:20-cv-01932, p. 7 (citations omitted)).

This latter agreement among climate-plaintiff AGs claims "a common interest in the successful prosecution of their respective State Litigations given the commonalities of fact, law, and purpose. The Parties would benefit from the sharing of information, including but not limited to legal and factual analyses, litigation strategies, draft briefs and other draft court filings, and other documents among the Parties." Common Interest Agreement Regarding the Sharing of Information Related to State Lawsuits Against Fossil Fuel Companies for Deceptive Acts and Practices and Other State Law Claims, at p. 1.

[74] https://climatelitigationwatch.org/wp-content/uploads/2021/07/Fossil-Fuel-Misrepresentation-CIA.pdf obtained by Amicus EPA from the Minnesota Office of the Attorney General.

This purported confidentiality pact further shows the municipalities' and now states' litigation campaign is indeed a coordinated, national effort that flowed from much "additional conduct" beyond the mere act of filing suit. Further, in the past week, Amicus has received a screen shot from the Michigan Department of the Attorney General provided it by one of the Bloomberg-provided SAAGs in the Minnesota AG office, Peter Surdo, who with another SAAG filed that state's lawsuit against, inter alia, Appellant Exxon Mobil. That screen shot[75] is of Mr. Surdo's computer network folders and reveals, under "Division Share (N:) -> 75 -> .Common Interest Agreements (confidential)," a subfolder titled "Related Agreements". Amicus states on information and belief that this suggests the existence of other agreements related to this litigation campaign.

This campaign involved launching — not merely *attempting* to launch — contemporaneous assaults by numerous "sympathetic attorneys general" to target industry parties whose behavior the coordinating parties view as actionable behavior and call "climate denialism". Simply put, whatever concern other courts may have had in 2018 that there was a "missing link" of coordination between activists and others in the wave of lawsuits against Appellant and other Texas targets, has now been put to rest. The "link" is overwhelming not just in the

[75] Available at https://climatelitigationwatch.org/wp-content/uploads/2022/02/Screen-Shot-2022-01-26-at-10.04.59-AM-copy.jpg.

conduct but in the filing, *seriatim*, of often copycat suits[76] (despite rather odd denials thereof[77]), and the serial failure of such lawsuits to bear fruit for the plaintiffs who then clumsily repackage the causes of action as purportedly entirely different causes of action, give rise to serious concerns about whether such lawsuits instead have an ulterior or improper motive to, e.g., coerce opponents of a national policy agenda "to the table", or finance state executive branch spending ambitions after lawmakers decline the opportunity.

This does not end the inquiry but justifies the Texas-company targets' desired ability to investigate further. And this Court should empower Texas courts to enable Texas industry to so defend themselves.

The efforts undertaken by those who so excitedly targeted Texas businesses to now hide what were previously admitted to be federal, environmental claims, and an effort to impose federal policy, under the guise of state court "consumer protection" lawsuits, is deliberate, vexatious, and should not be indulged further.

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[76] See, e.g., William Allison, "Four Things To Know About Washington, D.C.'s New Climate Lawsuit," Energy in Depth, June 25, 2020, https://eidclimate.org/four-things-to-know-about-washington-d-c-s-new-climate-lawsuit/.

[77] See, e.g., "O, What a Tangled Web They Weave," Climate Litigation Watch, August 11, 2021, https://climatelitigationwatch.org/o-what-a-tangled-web-they-weave/; see also, Christin Nielsen, "Evidence of coordination in climate litigation is eroding AG arguments for keeping cases in state court, watchdog says," Legal Newsline, August 27, 2021, https://legalnewsline.com/stories/606856062-evidence-of-coordination-in-climate-litigation-is-eroding-ag-arguments-for-keeping-cases-in-state-court-watchdog-says.

Regardless, Texas businesses targeted by this campaign that is surely unprecedented should be permitted to protect themselves in Texas when faced with the specter of state court bias in a matter so plainly seeking "new sources of revenue," to be channeled to other states by targeting Texas citizens.

## CONCLUSION

The wave of out-of-state litigation against Texas interests began when financiers and activists dedicated themselves and their substantial resources to orchestrating the filing of federal suits and, when federal suits were continually dismissed, then state and local tort and now "consumer protection" suits by governmental entities seeking similar relief under ostensibly state law theories, coordinated and nationwide. The instant matter represents an attempt by a Texas business to protect itself from this nationwide litigation campaign which is targeting Texas' interests. Amicus EPA has obtained volumes of information revealing the deeply troubling origins and orchestration of this campaign. Amicus respectfully requests this Court consider the information detailing this now-exposed genesis and orchestration of these suits as the information pertains to the instant matter, all of which represent improper uses of the judiciary and other public institutions instigated by deeply troubling means, and conclude that Texas courts have the power to protect Texas businesses when their rights are threatened by improper use of the courts in other states to extract revenue from Texas.

Dated: February 9, 2022

Respectfully submitted,

*/s/ Michael E. Lovins*

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## CERTIFICATE OF COMPLIANCE

I, Michael Lovins, hereby certify that pursuant to Rule 9.4 of the Texas Rules of Appellate Procedure, the enclosed *Amicus Curiae* Brief of Energy Policy Advocates is produced using 14-point Roman type, including footnotes and, per Rule 9.4(i)(2)(B), contains 13,892 words, which is less than the total words permitted by the rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: February 9, 2022

Respectfully submitted,

*/s/ Michael E. Lovins*

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*Counsel for Energy Policy Advocates*

## CERTIFICATE OF SERVICE

I, Michael Lovins, hereby certify that on February 9, 2022, the foregoing document was filed with the Texas Supreme Court via efiletexas.gov (texas.coutfiling.net), and served via e-service on all Counsel of record.

Dated: February 9, 2022

Respectfully submitted,

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