UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

City of New York, *et al*.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:21-cv-4807-VEC
	)	
Exxon Mobil, *et al*.,	)	
	)	
Defendants.	)	

PROPOSED *AMICUS CURIAE* BRIEF OF
ENERGY POLICY ADVOCATES
IN SUPPORT OF DEFENDANTS' OPPOSITION
TO PLAINTIFF'S RENEWED MOTION TO REMAND

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INTRODUCTION

NOW COMES Energy Policy Advocates, and submits this brief as an Amicus Curiae in support of Defendants and in opposition to remand.

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 reveal the genesis and anatomy of a multi-front campaign of lawfare of which the instant matter is a part, and was previously granted leave to participate as an amicus curiae. ECF No. 50. Others have subsequently built on EPA's findings relevant to this matter. Public records now prove, in the principals' own telling and beyond any doubt, that these actions filed by governmental plaintiffs and partners in law enforcement were lobbied into existence by influential political and financial interests expressly—in communications among themselves—seeking to use the courts improperly.

Specifically, actions such as this case were filed in order to obtain national policy which has eluded the plaintiffs and others like them through the proper means. Exemplar acknowledgements include that the suits aim to coerce defendants "to the table" to obtain their acquiescence on policy issues, so as to use law enforcement to obtain discovery in hopes to "hasten greater regulatory changes to restrict the extraction of fossil fuels" and, possibly most odious, as means of prospecting for "sustainable revenue streams" or "new streams of revenue". Such cases, therefore, are classic candidates for a resolution in the nation's federal courts. Additionally, as EPA previously detailed in its August 30, 2021 Amicus Brief in support of Defendants and in opposition to remand—ECF No. 48.1, accepted for filing at ECF No. 50—

EPA's findings uniquely position it to address the impact on the instant case of this Court's previous, relevant holding in *Exxon Mobil Corporation v. Schneiderman*, 316 F.Supp. 3d 679 (S.D.N.Y. 2018).[1]

EPA wishes to bring to this Court's attention to additional newly released records, withheld for seven years until finally being released earlier this year, which dispel beyond doubt any notion of a "missing link" between outside financial, ideological, and political lobbies and th campaign of lawfare that is exemplified in this suit.[2] Indeed, recently revealed public records vindicate the current Defendants' claims in the aforementioned *Schneiderman* matter that state action in the name of "climate" was the result of coordination between tort lawyers, climate-change activists, donors and also state attorneys general engineered as a means to uncover internal and private company documents regarding climate change and to pressure fossil fuel companies to change their stance on climate change policies. These newly-revealed documents make this clear in the principals' own writings.

SUMMARY OF ARGUMENT

If public records revealed that the origin of governmental litigation against a high-profile private individual was lobbying or otherwise outside pressure — by an ideological advocacy

[1] In that matter, the Defendant raised arguments relating to the constitutionality of state action using the Martin Act to obtain discovery and go through the company's records seemingly at the behest of an outside collaboration of activists, donors, and state actors. This Court ruled that allegations of coordination were speculative, such that there was a "missing link" between the activists and the those bringing the various "climate" suits. ""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 Matt] Pawa and 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).

[2] Energy Policy Advocates filed a Motion for leave to file a proposed amicus brief in support of Defendants and in opposition to remand previously in this case. See ECF Document 48-1 Filed August 30, 2021. EPA seeks leave at this point on the renewed motion for remand by Plaintiff in order to supplement the record before this Court with subsequently obtained information.

group and/or representatives of a political party, even with the assistance of national media outlets — this surely would prove the basis for a media attention, and cries of political and legal scandal. Yet documents prove that this is indeed how a massive national litigation campaign, of which the instant matter is a part, came into being. And the sordid and abusive background to these "climate" lawsuits is highly material here, including to the question of what forum is most appropriate for the claims to be heard.

According to public records, the objective underpinning these "climate" prosecutions of varied sorts is to obtain changes to national policy, changes which have eluded the proponents of the litigation through the proper means. This now is only arguable if one believes that, somehow and for some reason, so many principals behind this and the companion lawsuits have misled each other, regularly and over the course of years, in otherwise seemingly candid email discussions. Federal courts are courts of limited jurisdiction, and these stark confessions of purpose on the part of governmental plaintiffs also raise the question of the courts' proper role, and what are proper and improper uses of the judicial system in policy, political and ideological feuds. Also, for reasons stated below and in EPA's prior amicus brief, this case is properly suited for resolution in the nation's federal courts.

Regardless of how this Court ultimately rules on the issue of remand, it is critical that the courts pondering these questions have before them the information presented in EPA's prior amicus brief and now this brief. Details of how this and similar actions were born have mounted significantly since this Court last ruled in the instant matter. These details now show that major financial backers, and parties arranging for behind-the-scenes networks of lawyers, advocates and academics, are quietly arranging for elected officials — including but not limited to state attorneys general and municipalities — to file suit against energy companies and parties in

affiliated industries claiming hundreds of billions of dollars in "climate" damages. It is a sprawling enterprise, which might even be characterized as a climate litigation industry, spanning a breadth of non-profit groups as well as political officials, law enforcement and private tort law firms. Its several objectives include silencing dissenting voices on key issues of national policy; compelling regulation that has eluded advocates through the legislative and rulemaking processes; and obtaining from the targeted parties financial settlements contemplated to be in the hundreds of billions of dollars,[3] which settlements would be used in part to further underwrite the advocates' and their partners' efforts and also to underwrite governmental spending ambitions.[4]

As Energy Policy Advocates previously detailed in its August 30, 2021 amicus brief in support of Defendants and in opposition to remand, the Rockefeller Family Fund ("RFF") has been revealed by public records to be behind the creation and sustenance of this industry and the media coverage and campaigns driving it. RFF at first denied, but later in stages acknowledged, having been behind the original spate of media articles which state attorneys general then cited as the pretext for launching their "investigations" into the Defendant and others, in 2015 and 2016. ECF No. 48-1, at pp. 34-35. Records show that RFF also lobbied the New York Attorney General's Office directly to pursue the group's ideological opponent and "lawfare"[5] target,

[3] Gabe Friedman, *Could $200 Billion Tobacco-Type Settlement Be Coming over 'Climate Change'?*, Big Law Business, June 14, 2016, https://biglawbusiness.com/could-200-billion-tobacco-type-settlement-be-coming-over-climate-change/. The tobacco MSA involved a payout by tobacco companies of $206 billion over the first 25 years of the agreement, which seems likely where the targeted figure comes from, as opposed to any rational, calculated basis.
[4] See, e.g., https://nypost.com/2017/03/30/partisan-prosecutions-how-state-attorneys-general-dove-into-politics/ See also *infra*.
[5] See, e.g., https://en.wikipedia.org/wiki/Lawfare. See also fn. 23, *infra*.

ultimately with success. *Id.* at pp. 4-6, 12-18. After being outed,[6] RFF began using a group called the Center for Climate Integrity ("CCI") as its intermediary, *Id.* at pp. 9-22, which group RFF underwrites, tours the country raising other money for, and engages CCI to provide behind the scenes development of these lawsuits for this class of "climate plaintiff" governmental entities. Emails show the Rockefeller Family Fund went so far as to provide intermediary groups with sample pleadings to work from and to present to public institutions to facilitate filings in their jurisdictions, before turning the job over to CCI. Examples, as previously set forth in ECF No. 48-1, include, e.g., ghost-writing the memorandum laying out the similar case RFF wanted brought against the instant Defendant and others in Minnesota, going so far to hide its role as to arrange for the memo to appear on University of Minnesota Law School stationery. ECF No. 48-1 at 5, 13-14. The Rockefeller-arranged product then served as the basis for Minnesota Attorney General Keith Ellison to file his suit against the instant Defendant and others—but only after "running all the docs by" RFF. *Id*. at 5.

Recent years have seen a series of remarkable revelations about this coordination, which have continued to emerge in public records released from various custodians as recently as last month. Not all custodians are forthcoming with public records (let alone in a timely fashion), a trait for which the Plaintiff City of New York also is notorious.[7] In fact, one party has filed suit

[6] 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.

[7] *See, e.g.,* Errol Louis, *On Foil, Don't Be Fooled Again: New York City Government is Failing in its Obligation to Provide Information to the Public*, New York Daily News (March 12, 2019), accessible at https://www.nydailynews.com/opinion/ny-oped-on-foil-dont-be-fooled-again-20190311-story.html ("In a letter to Council Speaker Corey Johnson, a cluster of news organizations has complained that "City agencies' extensive delays — sometimes of a year or more — in responding to FOIL often render the information useless, effectively shutting the door on accountability.").

against the New York City Mayor's Office of the Mayor having been stonewalled with one delay after another *for over five years* for records pertaining to the specifics of this suit's origins, similar to those obtained from many of New York's compatriot "climate" plaintiffs filing similar suits.[8] For that reason, Energy Policy Advocates' earlier amicus brief, relied in great part on records of those compatriot-plaintiffs to illustrate what is transpiring in this case. Yet recent developments and records releases led to the discovery of new information supporting the same thesis EPA laid bare in its prior briefing, in the form of records recently obtained from the Office of the Attorney General of New York.

Now, as detailed, *infra*, newly obtained records provide the public and this Court more specifics of RFF's instrumental role as the catalyst behind the first attorney general subpoenas (New York's) preceding the spate of civil litigation of which this suit is a part. Specifically, these records illustrate that before the Rockefeller Family Fund began using CCI and local environmental advocacy groups as its 'cutouts,' RFF officials directly provided memos to what ultimately became "climate" prosecutors and plaintiffs, lobbying political offices to overcome their own, internally expressed misgivings about RFF's theories

This new information also reveals for the first time that RFF launched this effort alongside representatives of a political party. These same parties have convinced multiple governmental entities to file suits claiming claim billions of dollars of losses at these parties' hands, in a multi-front campaign which the main actors admit among themselves is engineered to hopefully effect changes in national policy. As such, this suit belongs in federal court.

[8] *Government Accountability & Oversight v. Office of the Mayor*, Index No. to be assigned, filed in the New York County Supreme Court on 11/21/2023.

ARGUMENT

Public records reveal that this suit belongs in federal court because it was filed in an effort to secure a change in national policy under the guise of state civil law. As such, the federal courts must hear and decide this case to ensure the federal government's role in shaping federal energy policy is secured.

I. PUBLIC RECORDS AFFIRM THIS CASE BELONGS IN FEDERAL COURT.

Although wrapped in state-law garb, this case is actually an effort to influence or obtain national policy goals. Public records reveal the national coordinartion of the campaign of litigation of which this case is but a small part. As such, this case and those like it ought to be adjudicated in federal court.

a) Plaintiff's use of this suit and suits like it are improper use of the courts.

The Plaintiffs' team in the political/litigation industry of which the instant suit is a part regularly admit that their campaign seeks to use the courts as substitute policymaker for an agenda that keeps failing through the democratic process. This is the chosen path to "bring down

the fossil fuel companies,"[9] and coerce defendants[10] "to the table"[11] (a popular phrase[12]). That is, the idea is to substitute verdicts[13] or settlements for the failure to convince the public and their representatives to enact policy, specifically to "hasten greater regulatory changes to restrict the extraction of fossil fuels." As part of this, governmental plaintiffs also hope to use any settlement to impress the defendants into service as lobbyists for desired climate policies.

As detailed, *infra*, this effort began in earnest in January 2015 in New York City. While the newly obtained record of that orchestration of law enforcement at the request of political opponents (and again in order to try and force national legislative and regulatory change) is disturbing to read, some of the more lurid proclamations of purpose were penned the next year. In April 2016 a Cara Horowitz, Executive Director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law and board member of the activist group Climate Resolve, emailed Dan Emmett, the principal private financial backer of her Emmett Institute on Climate Change and the Environment (and the backer of a similar center at Harvard Law

[9] Geoff Dembicki, "Meet the Lawyer Trying to Make Big Oil Pay for Climate Change," Vice News, December 22, 2017, https://www.vice.com/en_us/article/43qw3j/meet-the-lawyer-trying-to-make-big-oil-pay-for-climate-change.

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

[11] https://www.sfchronicle.com/environment/article/Biden-could-help-San-Francisco-win-billions-from-15768123.php

[12] Editorial, "The New Climate Litigation," Wall Street Journal, December 28, 2009.

[13] 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/.

School), in which she described this campaign as "going after climate denialism - along with a bunch of state and local prosecutors nationwide."[14]

This lawfare, which led to recruiting prosecutors to pursue ideological opponents for disagreeing over a political campaign, has been operating, since its inception, with no guardrails. The formal means toward that end are somewhat meandering, in part as a response to failures in of the initially chosen path (filing suit in federal court). Records produced in litigation with a state attorney general reveal it was Cara Horowitz who, at that very meeting from which she wrote her donor and in describing the gathering to him, presented the case for "Consumer protection claims,"[15] which are at play in the instant matter and its companion suits.[16] Further, emails affirm this recruiting session was not for attorneys general and "prospective funders" only, but also that prospective municipal plaintiffs were in attendance at that meeting, including

[14] Emmett Institute faculty have been on the legal team of counsel to the State of Minnesota and Plaintiff in this matter, Sher Edling, LLP, apparently from around the moment of the firm's founding in 2016. https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf. See also, Thomas Catenacci, "Dark money group wired millions to law firm suing Big Oil with Dem states," FoxNews.com, November 16, 2023, https://www.foxnews.com/politics/dark-money-group-wired-millions-law-firm-suing-big-oil-dem-states.

[15] "Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives." Obtained in *Energy & Environment Legal Institute v. Attorney General*, Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017. https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-55-Harvard-AGs-briefing-UCS-fundraiser-agenda-copy.pdf. 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.

[16] 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.

from as far away as Los Angeles.[17] The coast to coast participation belies the national nature of the instant campaign of litigation.

Beginning in 2016 and continuing through October 2023, emails and attachments extracted by open records requests and litigation have revealed the roadmap and documented the *modus operandi* of outside private parties engineering a nationwide campaign of governmental suits against private parties' lawfare targets. Emails describe CCI's "Judith [Enck] and Alyssa [Johl]," who ghost-wrote the "University of Minnesota Law School" memo prompting Minnesota Attorney General Ellison's suit against Defendant, as "the lawyers advising Rockefeller family fund." ECF No. 48-1 at 9. The same author called the Ellison suit, in another email to Lee Wasserman (of RFF), CCI, a law professor, and an environmental activist, "our joint project."[18] He wrote to the nominal University of Minnesota Law School author that "I want to assemble my documents as a package today to send to Lee and Rick at RFF," apparently referring to Rick Reed, a consultant for RFF. This remarkably occured prior to signing off on the relevant presentation to the state attorney general, to which the professor confessed that she was running the purported University scholarship past these outside lawyers first: "Judith and Alyssa…seem to want to run it by their people first so check with them before going forward." The local environmentalist group head who RFF engaged for the job[19] replied, "Yes I am

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[17] See, e.g., April 7, 2016 email, Subject: April 25th Convening at HLS, https://climatelitigationwatch.org/wp-content/uploads/2021/01/City-of-Los-Angeles-Mail-April-25th-Convening-at-HLS.pdf See also https://climatelitigationwatch.org/wp-content/uploads/2021/01/LA-City-Atty-Jessica-Brown-says-anything-to-Pawa-Law-is-privileged-WHY.jpg, Jessica Brown LA City attorney asserting that subsequent correspondence with "climate tort" lawyer Matt Pawa, is privileged.

[18] 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.

[19] "In 2013, Wasserman met with Steve Coll, the dean of Columbia University's School of Journalism, who had published a book called *Private Empire: ExxonMobil and American*

running all the docs by the same people they are running them by."[20] *Id*. He also arranged for a local law professor, the nominal author of the CCI memo to Ellison, to work with those "lawyers advising Rockefeller family fund [*sic*]," and learn, from "the folks at Rockefeller,"[21] "what is needed"[22] in any memo to Minnesota's AG urging him to file his lawsuit very similar to the instant matter. *Id*. at 13-15. The same representative wrote to the academic, "When we get a meeting, our delegation will be me, you, CEO of Climate Integrity, CEO Rockefeller Family Fund and Jeff Blodgett."[23] *Id*. at 17-19.

CCI also appear in public records working through other local entities, such as the Chesapeake Climate Action Network in recruiting Annapolis and Anne Arundel County, Maryland to file similar lawsuits.[24] There simply is no reason to believe this model of RFF being

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Power. As they discussed the fund's possible endowment of a reporting project on climate change, Coll said one topic from his book that had gone uninvestigated was the suggestion that what Exxon knew about climate change internally did not fit with its public proclamations…. The Family Fund gave Columbia $550,000 to look into the topic. Around the same time, InsideClimate News, a website that covers the environment and receives significant funding from the Brothers Fund, began a similar investigation." Reeves Wiedman, "The Rockefellers vs. the Company That Made Them Rockefellers," New York Magazine, January 7, 2018, https://nymag.com/intelligencer/2018/01/the-rockefellers-vs-exxon.html.

[20] 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.

[21] "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.

[22] "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-content/uploads/2021/05/aklass_4366_20200325_export0001-SD-red_Redacted.pdf.

[23] "Jeff Blodgett is a political consultant" in Minnesota. See https://ballotpedia.org/Jeff_Blodgett (last visited November 20, 2023).

[24] Records pertaining to CCI and the Annapolis and Anne Arundel suits obtained by Prospective Amicus under the Maryland Public Information Act are available at https://climatelitigationwatch.org/wp-content/uploads/2021/04/CCAN-CCI-Anne-Arundel-lobbying.pdf and https://climatelitigationwatch.org/wp-content/uploads/2021/04/Problematic-

the originator of the wave of "climate" litigation against the instant defendant, particularly but also other energy interests, excluded New York City, the organization's very home. This is particularly apparent when considering the newly released emails confirming that the RFF lobbied the very first action in this campaign of litigation: the New York Attorney General's investigation, at RFF's request, of the instant Defendant under the Martin Act.

Thanks to EPA's tenacious use of public-records laws, and further extraordinary revelations by other requesters, it is clear that the litigation campaign of which the instant matter is the latest entry has a very troubling origin. This suit (like others of its ilk) cloaks what it truly is, and indeed what previously was admitted to be: a federal claim. It is of no moment that this federal claim attempts to hide itself behind an ill-fitting state-law cause of action. Evidence continues to grow to support what EPA put before the Court in its prior amicus brief: the documentation that this campaign of remarkably similar lawsuits was funded and conceived and is now being executed by the same organizers and financiers, which suits were quietly midwifed by outside attorneys working with and funded by the same sources.

Equally troubling, it is now apparent that this litigation 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, "climate" plaintiffs have claimed to courts across the country that they have suffered billions of dollars in damages at the hands of scheming producers and transporters of energy products who, the plaintiffs understand, might provide them with "new sources of revenue,"

Annapolis-withholdings.pdf, and https://eidclimate.org/annapolis-leaders-admit-activist-group-convinced-city-file-climate-lawsuit/.

which are "sustainable" (a term apparently used in the sense that they expect the money will keep flowing).

At least one state court judge has 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." As discussed below, numerous public records and public statements also reveal the motivation of lawsuit-as-negotiating-leverage for clearing out opposition to the plaintiffs' desired national policies, along the lines of 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. ECF No. 48-1 at 21.

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)), suits seeking national policy changes belong in federal court. Such coordinated campaigns cannot be rewarded once their reality is exposed as a coordinated attempt to impact national policy. Further, public 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 courts, seeking the most favorable forum to obtain political ends by judicial means. When removed, these suits must remain in federal court, lest national energy policy become subject to the whim of state court judges in carefully-selected jurisdictions from coast to coast.

b) Recently Obtained Records Implicate New York in the Nationally Coordinated Lawfare of which this Litigation is a Part.

As Texas Appellate Court Judge Elizabeth Kerr wrote in the very same context of these public-private partnerships of "climate" lawsuits like the one at issue, "Lawfare is an ugly tool by which to seek the environmental policy changes the… Parties desire, enlisting the judiciary to do the work that the other two branches of government cannot or will not do to persuade their constituents that anthropogenic climate change (a) has been conclusively proved and (b) must be remedied by crippling the energy industry."[25]

Unfortunately, that is precisely what this suit represents, and this Court should consider what the public have learned about the behind-the-scenes machinations to learn how these governmental institutions have come to be used, with whom and, perhaps most telling, at whose request.

EPA notes for the Court a particular, newly released email between the Office of the Attorney General of New York and an outside activist, specifically a February 19, 2015 email sent to Lem Srolovic and Steven Glassman by Lee Wasserman, Director of the Rockefeller Family Fund from his @rffund.org address. The email was time-stamped at 9:43 AM and had as its subject the word "meeting."

Messrs. Srolovic and Glassman are employees of the Office of Attorney General. Srolovic is the Bureau Chief of the AG's Environmental Protection Bureau; Glassman is Senior Enforcement Counsel. Mr. Wasserman, as Director of the Rockefeller Family Fund, recruited the

[25] *County of Santa Cruz, et al. v. Exxon Mobil Corp*., Texas Court of Appeals, No. 02-18-00106-CV, Second Appellate District, on appeal from the 96th District Court, Tarrant County, Texas, Trial Court No. 096-297222-18, June 18, 2020, Memorandum Opinion by Justice Kerr, at 48-49.

Office of the Attorney General to use the Martin Act to seek discovery against a political target of both Mr. Wasserman and his employer—the Defendant here, ExxonMobil—and directed his employer's efforts with other outside activists to personally discredit "individual scientists" particularly a private scientific researcher then working out of the Harvard-Smithsonian Center for Astrophysics in Cambridge, Massachusetts, Wei-Hock "Willie" Soon.

The Office lost that lawsuit against ExxonMobil, which is now long concluded. *People of the State of New York v. ExxonMobil Corporation*, Index No. 452044/2018 (Sup. Ct. N.Y. Cnty.), filed June 19, 2019, decided December 10, 2019.

This erratically redacted email from an outside party seeking use of and providing a recommended "road map" to use the Martin Act against political opponents in hopes of reversing the fortunes of a frustrated federal legislative and regulatory agenda states, in relevant part:

> If the companies admitted what they know about climate science, it would almost certainly hasten greater regulatory changes to restrict the extraction of fossil fuels. In our opinion, [
> **REDACTED**].

This confession of the special-interest's purpose for enlisting law enforcement to initiate what became a nationwide litigation campaign by governmental subdivisions came in the middle of a courtship that appears from public records to have begun with a January 30, 2015 meeting invitation for February 3, 2015 meeting between Bill Lipton, the co-founder of the Working Families Party ("WFP").[26] Subsequent emails from Wasserman to the Office attached two

[26] In October 2015 the New York Post reported had "shifted its focus toward global warming," seeking at the State level what had and has been rebuffed at the federal level, which failures these lawsuits sought to remedy. "The left-leaning Working Families Party, which has long championed bread-and-butter labor issues, has shifted focus and is now pressuring New York lawmakers to tackle global warming and support a campaign against Big Oil, The Post has learned. In a questionnaire to candidates, the WFP prods legislators to fight Exxon Mobil in

separate versions of how and why it was RFF's opinion the Office should use the Martin Act to obtain discovery against ExxonMobil as part of — indeed, launching — the now exploding litigation campaign to use the courts to obtain otherwise unattainable national policy changes.

The early-days chronology revealed in these New York OAG records is as follows, and all of the cited records are also attached as Exhibit A (**emphases**, outside of the Martin Act memo excerpts, are added). The correspondence clearly shows that the investigation, like the civil lawsuits that followed of which the instant matter is one, and the media coverage that both litigation ventures site to as their impetus, all began as ideas of and were brought to fruition by the Rockefeller Family Fund, whose Director and consultants successfully lobbied law enforcement to pursue RFF's target, despite law enforcement's evident skepticism and outright disagreement with the legal theory presented to it. Unless otherwise noted, all quoted statements are from the described emails in the attached Exhibit A:

After the February 3, 2015 meeting between RFF, Working Families Party representatives and NY OAG took place, Wasserman emailed Environmental Protection Bureau Chief Srolovic seeking a follow-up meeting, "with folks who probably know more about company X's past efforts to obfuscate than just about anyone. They have a trove of material to share that speaks to many of the issues touched upon today." Wasserman/Srolovic correspondence continued, revealing that Wasserman's colleagues are John Passacantando and Kert Davies. On

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exchange for its endorsement, pointing to a probe underway by state Attorney General Eric Schneiderman's office….The party also asks, "Will you support legislative hearings to further investigate Exxon?" WFP state director Bill Lipton defended the questionnaire." Carl Campanille, "Working Families Party shifts focus toward global warming," New York Post, October 10, 2023, https://nypost.com/2016/10/10/working-families-party-shifts-focus-toward-global-warming/.

February 11, 2015, Srolovic confirmed "our conversation just now" with Wasserman—whom Srolovic "Thanks for arranging this conversation" — and informs Wasserman that Tuesday February 23, 2015 "is good for everyone."

Srolovic then internally circulated an email to calendar the meeting, stating when asked, that "[i]t relates to big oil arctic exploration issue," and suggesting the topic was one angle RFF was having pursued in the media stories it later admitted to being behind.[27] This was among the "reporting in the last eight months added impetus to the investigation," according to "people with knowledge of the investigation."[28] A February 11, 2015 Wasserman email to Srolovic confirms about the meeting on the 23rd, "The other folks' [sic] coming are: John Passacantando & Kert Davies."

On February 17, 2015, Wasserman writes Srolovic:

> Lem, we're looking forward to our meeting on Monday at 1 pm. We believe the information presented **will squarely address Steve's question at our last meeting**. I hope Steve will be able to join us to hear about the details. I also hope **the investigator who was at the first meeting** can be there (afraid I didn't get his name).
> **Thanks for your assistance with this**.

Srolovic forwarded this and emailed Bragg and others in NYOAG stating, "Lee requested this follow-on meeting for 2/23 at 1:00. I presume that we'll host in EPB, but haven't worked out logistical details. Wanted to make sure you have date and time." Following on this email, Srolovic emailed Bragg, with the entirety of his email being [**REDACTED].** Bragg responds

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[27] On October 9, 2015, a party Wasserman has now acknowledged he engaged for the purpose, Steve Coll at Columbia School of Journalism, had arranged for a piece in *The Los Angeles Times* about ExxonMobil subsidiary Imperial Oil's arctic ocean climate research (https://graphics.latimes.com/exxon-arctic/).

[28] Justin Gillis and Clifford Krauss, "Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General," New York Times, November 5, 2015, https://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html.

stating, "I think it is fine to keep the invite list where you have it," suggesting Srolovic's [**REDACTED]** message raised the issue of expanding roster of attendees for a February 23, 2015 follow-up with Wasserman, *et al*.

That same day, Srolovic, responding to Glassman's inquiry about subject of a follow-up meeting, wrote that it was his belief "that it's info re ExxonMobil's activity re climate denial. I'll try to get further clarification." On February 17, 2015, Glassman responded to Srolovic's reply about the subject of this follow-up meeting, the entirety of which is [**REDACTED].** Srolovic then asked Wasserman of RFF, "Is there a way I could get a bit of heads up on the kind of information planned to be presented at this meeting so we can come prepared?" Srolovic then reported back to Glassman: "I've asked for a heads up on the type of information they plan to present." Wasserman responded: "Yes I'll be able to put together some top lines for you so you'll get a sense of what we're planning to share. Should be in a day or two."

Two days later, Wasserman wrote Srolovic and Glassman:

> Lem & Steve,
>
> The guys you'll meet, John Passacantando & Kert Davies, have spent well over a decade tracking deceptive or misleading statements by major oil and coal companies and certain utilities. Based on a combination of public and private information, they have identified the creation of grasstops corporate coalitions created for the soul purpose of minimizing the risks associated with climate change. They also are aware of money flows from corporate actors to these coalitions and individual scientists who have made it their career to cast doubt on climate science.
>
> While most of the documents and coalitions formed happened a number of years ago, the material they have demonstrate a long-term and collaborative pattern. Moreover, John & Kert are about to break news- watch your paper in the next couple of days- about one scientist, Willie Soon, who has taken taking money for the past several years from one of these companies to sow confusion on the science.
>
> As noted in a Martin Act case I know you're familiar with, *Caddplaz Sponsors*, 69 Misc. 2d at 419, the AG has the authority to go after "all deceitful practices contrary to the plain rules of common honesty" or "acts tending to deceive or mislead the public."

> As I understand the law, if the AG were to solely pursue a concealment or a failure to disclose case, then he would have to prove materiality. We believe, however, that there has been a general pattern of deception, which does not require a materiality finding (although I think the AG could readily prove that finding as well).
>
> The energy companies failed to disclose their scientific analyses on climate, certainly, but the other point is that they are actively misleading the capital markets by pumping out misinformation about the reality and consequences of climate change. If the companies admitted what they know about climate science, it would almost certainly hasten greater regulatory changes to restrict the extraction of fossil fuels. In our opinion, **[REDACTED]**.
>
> Even if greater regulations were not to occur, climate change will have meaningful financial consequences, both positive and negative, e.g., negative, inundation of infrastructure and opening of the Arctic and other previously inaccessible places for drilling.
>
> Lee
>
> PS for the security guards, please note that Kert Davies' actual name is Roland Davies- Kert is a nickname.

Although NY OAG redacted Wasserman's assessment following, "In our opinion," and does release the two memos setting forth Wasserman's team's opinion, Wasserman is an outside third-party with no relationship to NY OAG. This decision to redact a third party's opinion about New York's prospects in litigation is telling.

Within 40 minutes of that exchange, Srolovic wrote back, "Lee, thanks much. This is helpful." A mere two minutes later, Srolovic circulated Wasserman's email to Bragg, Glassman, Myers, Oleske, stating, "Here's the preview to Monday's fossil fuel and climate change meeting."

On February 21, 2015, Wasserman emailed NYOAG's Srolovic and Steven Glassman a *New York Times* story assailing Harvard-Smithsonian's Dr. Soon and the current Defendant, which is the article he indicated two days prior they should watch for. Wasserman stated, in pertinent part, "Kert and John, who you'll see on Monday, were responsible for the research that led to this story." The next day, February 22, 2015, Wasserman shared "another worthwhile

article" on Willie Soon, this one from *Nature*. Srolovic then circulated both *New York Times* stories with Wasserman's email, adding, "Latest development (NY Times story link at bottom) in climate change project of researchers coming in at 1 this afternoon from this group, http://www. climateinvestigations.org." Later that day, February 23, 2015, Wasserman sent his "final attendee list," which included Matt Kasper, Larry Shapiro, John Passacantando, Roland Davies, and Lee Wasserman. Srolovic circulated among OAG attendees. NYOAG's Alan Belensz informed Srolovic that he "plan[ned] on sitting in on this call." Emails obtained about what participants called the "secret meeting at Harvard" (ECF No. 48-1 at 9-10) show that Belensz soon took a lead role in the Office's pursuit of Defendant.

Subsequent to this February 23, 2015 meeting with Wasserman, his green-group activists/ "investigators," and NYOAG, on March 13, 2015, RFF Director Lee Wasserman circulated a document titled "Legal memo DB 3-8-15.docx"[29] to the New York Office of the Attorney General's (OAG) Micah Lasher, a longtime Albany policy/political hand, which he referred to as the "Memo we discussed."[30]

This short memo, which was captioned "Bases for a Martin Act Investigation of Energy Companies" included, *inter alia*:

> "Summary: The Office of the New York Attorney General ("NYAG") should investigate … leading energy companies…[u]nder the Martin Act… The NYAG should use the extraordinary provisions of the Martin Act to conduct a rifle-shot inquiry that will validate whether or not the scheme exists and is actionable.
>
> Our presentation to you constitutes an actionable complaint, and clearly it is in the public interest for the NYAG to look into this matter…
>
> The Martin Act gives the NYAG subpoena power (Section 352.2), but it also allows the NYAG to issue interrogatories and demands for specific data…

[29] Subsequent emails indicate DB is for David Brown (*infra*).
[30] On the same date Lasher then circulates this memo to Alvin Bragg and other senior OAG officials, with a message, the entirety of which is **REDACTED**.

Companies being investigated by the NYAG have no choice but to comply. As long as the NYAG's Martin Act discovery requests relate to the investigation (defined by the NYAG), have some factual basis and precede the filing of a complaint, motions to quash are futile…

Martin Act investigations can also be completely confidential, so if a case fails to materialize the inquiry can be abandoned without publicity…

The facts that are public today come from FOIA requests and investigative journalists. Focused discovery of the type outlined below will probably reveal the true scope of the scheme, showing internal knowledge of the reality of climate change, pressure to keep this knowledge out of the valuation of reserves because of the impact that would have on share price, and a consciously false public relations campaign…

Streamlined Discovery

The NYAG is in a position to use unique Martin Act discovery tools to quickly determine whether it has a case or not, without getting buried in energy company documents. Using interrogatories, the NYAG could ask for:

• Identities of all outside spokespeople retained to address climate change
• A list of all payments to outside entities for studies of climate change or advocacy on climate change
• An explanation of how stranding risk is incorporated in the valuation of "proven reserves"
• Descriptions of all capital or operational expenditures that are based on projected changes in sea levels, polar ice coverage, or global temperatures In addition to the foregoing, a subpoena for (1) copies of all internal studies of climate change (including sea level rise, changes to ice caps and extreme weather events), (2) any memoranda on climate change supplied to Board members, and (3) organizational charts or other information sufficient to show who at the company analyzes or projects climate change would round out the picture without being burdensome.

The responses to this discovery would be enough to let the NYAG know whether it has a likely case or not, and would help focus subsequent email discovery."

The next day, March 14, 2015, political aide Lasher responded to Wasserman:

This is helpful.

After our call **I gathered our team and pressed them a bit on their views. I think there's a mix of legitimate skepticism and insufficient exploration. I asked everyone to go back to the drawing board first thing Monday so we can have a more fully informed call at the end of the week.**

> **Please do know that I want to find a way on this as much as you do**. What you may have heard from me today was a bit of vexed struggle as I balance needing all the help from **thought partners** as we can get with protecting the prerogatives of our office and the judgment of our attorneys.
>
> Talk next week.

That same day, Wasserman replies to Lasher:

> **Thanks for having the team lean into this**.
>
> Too important not to get this right before proceeding, as you rightly made clear. Mike Gerrard is abroad next week; perhaps we can talk soon thereafter?

On March 18, 2015, Lasher asked Wasserman, "What firm is David Brown at? I think there might be some value in our lawyers connecting directly with him." Wasserman replied:

> Great idea to connect David with folks there. He is actually working for a not-for-profit in Boston. Here's his email and phone…

Lasher forwarded this thread to Glassman, Bragg, Srolovic and Janet Sabel, stating:

> Steve – see below.
>
> I think it would be helpful if you could open a direct line of communication with Brown (outside of some more formal, one-time conference call). Maybe he has an angle on this that we're not thinking of, or **maybe he can come to see that he's wrong**. Either way, it will help us reach resolution on this.

That same day, Glassman replied: "Will do. Thanks." The next day, Srolovic informed Gershon that Steve Glassman would call him about David Brown.

On March 20, 2015, David Brown emailed Glassman, with the email bearing the subject line "It was great talking!" This same email discussed the plaintiffs' firm's expert "consultant" Naomi Oreskes's "Merchants of Doubt" (see also ECF No. 48-1 at 10, FN 14).

The same day, Wasserman's memo-writer Brown wrote Glassman, forwarding a WSJ news article, stating: "Just saw this -- as you probably know, **you guys used the Martin Act to go after shale drillers -- similar theory to what we were discussing** (overstating value of gas

wells).” Lasher then emailed Brown, Wasserman, and Glassman, inquiring: “Think it would be helpful for the four of us to talk and get on the same page. Tasha, can you help us find a time?”

On March 23, 2015, Lasher, Brown, Wasserman and Glassman had a call held at 2 pm.

A month later, on April 22, 2015, Wasserman forwarded to Lasher a “Privileged and Confidential Draft” of an April 17, 2015 “Martin Act Discovery Requests to Fossil Fuel Companies.” Lasher then forwarded this to Bragg, *et al*. Notable points of the email and attached “Privileged and Confidential Draft” “Martin Act Discovery Requests to Fossil Fuel Companies”” memo include:

> Dear Micah,
>
> Thanks for your consideration of the issues we’ve been discussing. I had hoped to have sent the attached memo to the AG earlier. We hope you will the opportunity to review the memo and share with him

This 6-page memo includes the above-cited excerpts from the March draft, as well as *inter alia*:

> The following memorandum sets out why the Office of the New York Attorney General (“NYAG”) should investigate whether oil and coal (“fossil fuel”) companies have engaged in a Martin Act scheme by spreading misinformation about climate change. The key conclusion is that the NYAG has a robust basis for doing so, based on the public record, and that the chance of Martin Act subpoenas being quashed is minimal…
>
> **Three Possible Martin Act Theories**
> While there is no need for the NYAG to settle on a particular theory of Martin Act liability before launching discovery, the undisputed and public facts set out above give at least three possible bases for an eventual enforcement action:…
>
> **Martin Act Discovery**…
>
> **Motions to Quash**
> Your staff is concerned that the fossil fuel companies might succeed in motions to quash subpoenas aimed at their spreading misinformation about climate change. This fear is misplaced.
>
> Motions to quash Martin Act subpoenas are rare and have never succeeded…

> Your staff has cited the 2014 Airbnb decision as an example of a successful motion to quash. See Airbnb, Inc. v. Eric T. Schneiderman, Attorney General of the State of New York (Sup. Ct. Albany County, May 13, 2014). https://www.nycourts.gov/press/PDFs/AirbnbDecision.pdf...
>
> Your office can reduce the chance of motions to quash ever being filed by sending out initial discovery requests without alerting the press. Martin Act investigations can be completely confidential, so if a case fails to materialize the inquiry can be abandoned without publicity…
>
> Initial confidentiality will put the fossil fuel companies in the position of breaking the story themselves if they choose to fight discovery. As public companies, they may well opt not to be the ones to publicize the inquiry.
>
> * * *
>
> Your staff has also raised concerns about (1) what showing of materiality would be required in an enforcement action, and (2) what relief the NYAG would seek in such an action. We address each of these below….

After months of correspondence and lobbying by RFF, OAG's Micah Lasher wrote to Bragg, *et al.,* on April 23, 2015, stating "I've reviewed this latest incarnation of the fossil fuel company climate change subpoena suggestion, and can give you my reaction whenever you're interested."

Senior NY OAG staff then continued communications with Wasserman, who continued plying OAG with the planted media advocacy to support litigation against RFF's targets, culminating in that November 2015 Martin Act subpoena, which then launched the rest of the litigation that followed. Those memos are attached along with the other records the OAG has released to date reflecting this recruitment, and Wasserman's team convincing NYOAG to set aside its doubts and get on board with the project, as Exhibit A.

For the next eight months, media reports which RFF first denied orchestrating, only to later acknowledge, laid the foundation for the OAG to do what RFF asked of it. Then in November 2015, the same *New York Times* that assisted in the RFF team's campaign broke the

story that had issued subpoenas and was investigating ExxonMobil "for possible climate change lies." With an insouciant nod to its role in the RFF campaign, the *Times* wrote:

> Mr. Schneiderman's decision to scrutinize the fossil fuel companies may well open a sweeping new legal front in the battle over climate change. The Martin Act, a New York state law, confers on the attorney general broad powers to investigate financial fraud… News reporting in the last eight months added impetus to the investigation, [people with knowledge of the investigation] said. In February, several news organizations, including *The New York Times*, reported that a Smithsonian researcher who had published papers questioning established climate science, Wei-Hock Soon, had received extensive funds from fossil fuel companies, including Exxon Mobil, without disclosing them. That struck some experts as similar to the activities of tobacco companies.[31]

The *Times* went on to cite those stories that RFF first denied being behind then later admitted to arranging. This coordination and the weaponization of law enforcement that it reveals is outrageous; shielding this and other public records is even more so. A private citizen of New York, like others, has sought this email in unredacted format. NY OAG is refusing now to provide that record in unredacted form but without even providing a basis for doing so—or even a response. As such, that requester has also been forced to file suit seeking what is obviously an important public record shedding further light on the litigation campaign of which this suit is part.[32]

In the same vein as Wasserman's daughter crediting him with "the AG's subpoenas," and Wasserman's and RFF's denials, ECF No. 48-1 at 34-35, subsequently reversed, of having

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[31] "Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General," *New York Times*, November 5, 2015. Wasserman's daughter Rebecca credited her father "for helping make this happen" in a tweet posted the next day. https://climatelitigationwatch.org/wp-content/uploads/2021/04/Rebecca-Wasserman-boasts-her-dad-was-behind-NY-OAG-subpoena.png. That Tweet, previously at https://twitter.com/becky_wasserman/status/662592563409502208, has since been deleted but is available at https://climatelitigationwatch.org/wp-content/uploads/2021/04/Rebecca-Wasserman-boasts-her-dad-was-behind-NY-OAG-subpoena.png.

[32] *Menton v. Office of the Attorney General*, New York County Supreme Court, Index No. 161338/2023.

arranged for the stories, on November 6, 2015, Columbia University and the *Los Angeles Times* quietly updated their webpages to disclose the Rockefeller funding after failing to be transparent.[33]

RFF has denied, obscured, sought to erase and otherwise hidden its involvement in instigating law enforcement and now civil litigation against its political targets for the obvious reason that its behavior all along has been at best questionable and possibly actionable, but also because it belies the impropriety of all litigation filed as a result of RFF's lobbying.

EPA refers this Court to ECF No. 48-1 for the extensive history it previously set forth, that public records document that this scheming extends well beyond being a "link" between the activists and the attorneys general and municipal plaintiffs who have brought suit as part of this "nationwide" litigation campaign. See, e.g., ECF No. 48-1 at pages 28-40. Indeed, these records document extraordinary levels of coordination in drafting and bringing these suits as well as laboring to manufacture state jurisdiction. More importantly, these records reveal the true instigation of the suits, including the instant matter, and raise substantial questions about the sincerity and legitimacy of the claims made by the governmental plaintiffs following such lobbying.

This wave of litigation began as public nuisance-focused and later shifted, after experiences in other 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. Plaintiffs' complaint is a repackaged version of these earlier failed federal claims.

[33] http://www.cjr.org/analysis/exxon_columbia_spat_highlights_emerging_gray_area_in_nonprofit_journalism.php.

All of this raises numerous legal and ethical questions for taxpayers and local courts, but it also makes plain for this Court that this case, like other suits instigated by the private donor/coordinators, is a national affair instigated by private donors, in great part to impact national policy through government litigation against private parties, and is best heard in federal court.

Records placed before this Court in *Exxon Mobil Corporation v. Schneiderman, 316 F.Supp. 3d 679* (S.D.N.Y. 2018) support these claims. However, when a party comes into court seeking billions of dollars in damages, a reasonable fact finder might also inquire as to when that party became aware of their claimed loss in the tens of billions and its magnitude. In this series of cases, the plaintiffs have generally been made aware of their spectacular claimed losses by outside activists who whisper, via AG Gmail accounts and in meetings at the Rockefeller family mansion at Pocantico, that such suits are the key to obtaining "new streams of revenue" and a "sustainable funding stream." EPA refers this Court to ECF No. 48-1 at pages 20-28 for the details previously obtained, in the principals' own words, of the true purposes behind the litigation industry of which the instant suit is a part. The newly obtained records' confession, ab initio, that the entire edifice of weaponizing law enforcement and promoting governmental litigation is indeed for the purpose of "hasten[ing] hasten greater regulatory changes to restrict the extraction of fossil fuels." This suit and the entire campaign of sister suits belong in federal court.

CONCLUSION

This suit and dozens of others began when financiers and activists dedicated themselves and their substantial resources to orchestrating the filing of state and local tort suits by governmental entities seeking similar relief under ostensibly state law theories nationwide. This

interest was spawned when federal suits were continually dismissed, and the instant suit follows on the heels of an unsuccessful attempt to prosecute the same defendants in both state and federal court. The instant suit is a repackaged version of that failed federal litigation. Amicus EPA respectfully requests this Court consider the information detailing the now-exposed genesis and orchestration of these suits as they inform assessment of the instant matter, all of which represent improper uses of the judiciary and other public institutions instigated by deeply troubling means, and conclude that this suit, like all such suits, belongs in federal court. Only the federal court system will be able to properly adjudicate the merits of this matter in an unbiased fashion, without prejudice against "unpopular federal laws" or "unpopular federal officials."

Dated: November 21, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Matthew D. Hardin, hereby certify that on November 21, 2023, the foregoing document was filed and served on all counsel of record through the CM/ECF system.

Respectfully submitted,
/s/ Matthew D. Hardin
Matthew D. Hardin