SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

UNITED STATES VIRGIN ISLANDS OFFICE OF THE ATTORNEY GENERAL, Plaintiff, v. EXXONMOBIL OIL CORP., Defendant.	Case No. 2016 CA 2469 Judge _____

Declaration of Andrew M. Grossman in Support of Nonparty Competitive Enterprise Institute's Special Motion To Dismiss Under D.C. Anti-SLAPP Act and Motion for Sanctions

Pursuant to Rule 43(e), Superior Court Rules of Civil Procedure, I, Andrew M. Grossman, declare as follows:

1. I am counsel in this matter for Nonparty Competitive Enterprise Institute ("CEI"). I submit this Declaration in Support of CEI's Special Motion to Dismiss Under D.C. Anti-SLAPP Act and Motion for Sanctions ("Motion"). I have personal knowledge of the facts stated herein, and if called as a witness, I could and would competently testify thereto.

2. Exhibit A attached to the Motion is a true and correct copy of the transcript to the March 29, 2016 "AGs United for Clean Power" press conference, as prepared and filed as an exhibit by counsel for the plaintiff in the civil action *Exxon Mobil Corp. v. Walker*, No. 017-284890-16 (Tarant Cty. Dist. Ct., Tex. filed April 13, 2016).

3. Exhibit B attached to the Motion is a true and correct copy of the subpoena served on CEI on April 7, 2016.

4. Exhibit C attached to the Motion is a true and correct copy of the D.C. Council Committee on Public Safety and the Judiciary Report on Bill 18-893 (Nov. 18, 2010).

5. Exhibit D attached to the Motion is a true and correct copy of the Internet article "Subpoenaed Into Silence on Global Warming" published by Bloomberg News and

available at http://www.bloomberg.com/view/articles/2016-04-08/subpoenaed-into-silence-on-global-warming.

6. Exhibit E attached to the Motion is a true and correct copy of the Internet article "About Climate Change: Never Mind" published by Slate and available at http://www.slate.com/articles/news_and_politics/politics/2009/06/about_climate_change_never_mind.html.

7. Exhibit F attached to the Motion is a true and correct copy of the Internet article "Exxon cuts ties to global warming skeptics" published by NBC News and available at http://www.nbcnews.com/id/16593606/ns/us_news-environment/t/exxon-cuts-ties-global-warming-skeptics/.

8. Exhibit G attached to the Motion is a true and correct copy of the press release "A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change" available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.

9. Exhibit H attached to the Motion is a true and correct copy of the subpoena ExxonMobil received on March 22, 2016.

10. Exhibit I attached to the Motion is a true and correct copy of an email from Peter Washburn, Policy Advisor, Environmental Protection Bureau, N.Y. Attorney General's Office obtained through an open records request to the Office of the Vermont Attorney General.

11. Exhibit J attached to the Motion is a true and correct copy of the Internet article "State Attorneys General Conspire To Shake Down Big Oil" published by CEI and available at https://cei.org/blog/state-attorneys-general-conspire-shake-down-big-oil.

12. Exhibit K attached to the Motion is a true and correct copy of the Internet article "CEI attorney cites chilling effect of state investigations of ExxonMobil" published by Legal

Newsline and available at http://legalnewsline.com/stories/510703834-cei-attorney-cites-chilling-effect-of-state-investigations-of-exxonmobil.

13. Exhibit L attached to the Motion is a true and correct copy of the Internet article "State Attorney General Climate Change Investigations Are Unconstitutional" published by CNS News and available at http://www.cnsnews.com/commentary/hans-bader/state-attorney-general-climate-change-investigations-are-unconstitutional.

14. Exhibit M attached to the Motion is a true and correct copy of the objections served on April 20, 2016, by CEI on counsel for U.S. Virgin Islands Attorney General Claude Walker.

15. Exhibit N attached to the Motion is a true and correct copy of the letter I sent on May 10, 2016, via email and overnight delivery, to U.S. Virgin Islands Attorney General Claude Walker and his counsel.

16. Exhibit O attached to the Motion is a true and correct copy of the letter I received on May 13, 2016, from Ms. Linda Singer, counsel to U.S. Virgin Islands Attorney General Claude Walker.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of May, 2016, in Washington, D.C.

By: _____

Andrew M. Grossman

Exhibit A

AGs United For Clean Power Press Conference*

March 29, 2016: 11:35 am – 12:32 pm

AG Schneiderman: Thank you, good morning. I'm New York's Attorney General, Eric Schneiderman. I thank you for joining us here today for what we believe and hope will mark a significant milestone in our collective efforts to deal with the problem of climate change and put our heads together and put our offices together to try and take the most coordinated approach yet undertaken by states to deal with this most pressing issue of our time. I want to thank my co-convener of the conference, Vermont Attorney General, William Sorrel, who has been helping in joining us here and been instrumental in making today's events possible, and my fellow attorneys general for making the trip to New York for this announcement. Many of them had been working for years on different aspects of this problem to try and preserve our planet and reduce the carbon emissions that threaten all of the people we represent. And I'm very proud to be here today with Attorney General George Jepsen of Connecticut, Attorney General Brian Frosh of Maryland, Attorney General Maura Healey of Massachusetts, Attorney General Mark Herring of Virginia, and Attorney General Claude Walker of the U.S. Virgin Islands.

We also have staff representing other attorneys general from across the country, including: Attorney General Kamala Harris of California, Matt Denn of Delaware, Karl Racine of the District of Columbia, Lisa Madigan of Illinois, Tom Miller of Iowa, Janet Mills of Maine, Lori Swanson of Minnesota, Hector Balderas of New Mexico, Ellen Rosenblum of Oregon, Peter Kilmartin of Rhode Island and Bob Ferguson of Washington.

And finally, I want to extend my sincere thanks to Vice President Al Gore for joining us. It has been almost ten years since he galvanized the world's attention on climate change with his documentary *An Inconvenient Truth*.

And, I think it's fair to say that no one in American public life either during or beyond their time in elective office has done more to elevate the debate of our climate change or to expand global awareness about the urgency of the need for collective action on climate change than Vice President Gore. So it's truly an honor to have you here with us today.

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* The following transcript of the AGs United For Clean Power Press Conference, held on March 29, 2016, was prepared by counsel based on a video recording of the event, which is available at http://www.ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across.

AGs United For Clean Power Press Conference

March 29, 2016: 11:35 am – 12:32 pm

So we've gathered here today for a conference – the first of its kind conference of attorneys general dedicated to coming up with creative ways to enforce laws being flouted by the fossil fuel industry and their allies in their short-sighted efforts to put profits above the interests of the American people and the integrity of our financial markets. This conference reflects our commitment to work together in what is really an unprecedented multi-state effort in the area of climate change. Now, we have worked together on many matters before and I am pleased to announce that many of the folks represented here were on the Amicus Brief we submitted to the United States Supreme Court in the *Friedrichs* v. *California Teacher Association* case. We just got the ruling that there was a four-four split so that the American labor movement survives to fight another day. And thanks, thanks to all for that effort and collaboration. It shows what we can do if we work together. And today we are here spending a day to ensure that this most important issue facing all of us, the future of our planet, is addressed by a collective of states working as creatively, collaboratively and aggressively as possible.

The group here was really formed when some of us came together to defend the EPA's Clean Power Plan, the new rules on greenhouse gases. And today also marks the day that our coalition is filing our brief in the Court of Appeals for the District of Columbia. In that important matter we were defending the EPA's rules. There is a coalition of other states on the other side trying to strike down the rules, but the group that started out in that matter together was 18 states and the District of Columbia. We call ourselves The Green 19, but now that Attorney General Walker of the Virgin Islands has joined us our rhyme scheme is blown. We can't be called The Green 19, so now we're The Green 20. We'll come up with a better name at some point.

But, ladies and gentlemen, we are here for a very simple reason. We have heard the scientists. We know what's happening to the planet. There is no dispute but there is confusion, and confusion sowed by those with an interest in profiting from the confusion and creating misperceptions in the eyes of the American public that really need to be cleared up. The U.S. Defense Department, no radical agency, recently called climate change an urgent and growing threat to our national security. We know that last month, February, was the furthest above normal for any month in history since 1880 when they started keeping meteorological records. The

facts are evident. This is not a problem ten years or twenty years in the future. [There are] people in New York who saw what happened with the additional storm surge with Super Storm Sandy. We know the water level in New York Harbor is almost a foot higher than it was. The New York State Department of Environmental Conservation, not some radical agency, predicts that if we continue at this pace, we'll have another 1.5 feet of water in New York Harbor. It'll go up by that much in 2050. So today, in the face of the gridlock in Washington, we are assembling a group of state actors to send the message that we are prepared to step into this breach. And one thing we hope all reasonable people can agree on is that every fossil fuel company has a responsibility to be honest with its investors and with the public about the financial and market risks posed by climate change. These are cornerstones of our securities and consumer protection laws.

My office reached a settlement last year based on the enforcement of New York securities laws with Peabody Energy. And they agreed to rewrite their financials because they had been misleading investors and the public about the threat to their own business plan and about the fact that they had very detailed analysis telling them how the price of coal would be going down in the face of actions taken by governments around the world. But they were hiding it from their investors. So they agreed to revise all of their filings with the SEC. And the same week we announced that, we announced that we had served a subpoena on ExxonMobil pursuing that and other theories relating to consumer and securities fraud. So we know, because of what's already out there in the public, that there are companies using the best climate science. They are using the best climate models so that when they spend shareholder dollars to raise their oil rigs, which they are doing, they know how fast the sea level is rising. Then they are drilling in places in the Arctic where they couldn't drill 20 years ago because of the ice sheets. They know how fast the ice sheets are receding. And yet they have told the public for years that there were no "competent models," was the specific term used by an Exxon executive not so long ago, no competent models to project climate patterns, including those in the Arctic. And we know that they paid millions of dollars to support organizations that put out propaganda denying that we can predict or measure the effects of fossil fuel on our climate, or even denying that climate change was happening.

There have been those who have raised the question: aren't you interfering with people's First Amendment rights? The First Amendment, ladies and gentlemen, does not give you the right to commit fraud. And we are law enforcement officers, all of us do work, every attorney general does work on fraud cases. And we are pursuing this as we would any other fraud matter. You have to tell the truth. You can't make misrepresentations of the kinds we've seen here.

And the scope of the problem we're facing, the size of the corporate entities and their alliances and trade associations and other groups is massive and it requires a multi-state effort. So I am very honored that my colleagues are here today assembling with us. We know that in Washington there are good people who want to do the right thing on climate change but everyone from President Obama on down is under a relentless assault from well-funded, highly aggressive and morally vacant forces that are trying to block every step by the federal government to take meaningful action. So today, we're sending a message that, at least some of us – actually a lot of us – in state government are prepared to step into this battle with an unprecedented level of commitment and coordination.

And now I want to turn it over to my great colleague, the co-convener of this conference, Vermont Attorney General William Sorrel.

AG Sorrel: I am pleased that the small state of Vermont joins with the big state of New York and are working together to make this gathering today a reality. Truth is that states, large and small, have critical roles to play in addressing environmental quality issues. General Schneiderman has mentioned our filing today in the D.C. Circuit on the Clean Power Plan case. Going back some time, many of the states represented here joined with the federal government suing American Electric Power Company, the company operating several coal-fired electric plants in the Midwest and largely responsible for our acid rain and other air quality issues in the eastern part of the United States, ultimately resulting in what I believe to date is the largest settlement in an environmental case in our country's history. With help from a number of these states, we successfully litigated Vermont's adoption of the so-called California standard for auto emissions in federal court in Vermont, now the standard in the country. And right down to the present day, virtually all of the

states represented today are involved in looking at the alleged actions by Volkswagen and the issues relating to emissions from tens of thousands of their diesel automobiles.

But today we're talking about climate change which I don't think there's any doubt, at least in our ranks, is the environmental issue of our time. And in order for us to effectively address this issue, it's going to take literally millions of decisions and actions by countries, by states, by communities and by individuals. And, just very briefly, Vermont is stepping up and doing its part. Our legislature has set goals of 75% reduction – looking from a 1990 base line – a 75% reduction in greenhouse gas emissions by 2050. Similarly, our electric utilities have a goal of 75% use of renewable energy sources by 2032. So, we've been doing our part. Our presence here today is to pledge to continue to do our part. I'm mindful of the fact that I'm between you and the real rock star on this issue, and so I'm going to turn it back to General Schneiderman to introduce the next speaker.

AG Schneiderman: Thank you. Thank you. I'm not really a rock star.

[Laughter]

Thank you Bill. It's always a pleasure to have someone here from a state whose U.S. senator is from Brooklyn.

[Laughter]

And doing pretty well for himself. So, Vice President Gore has a very busy schedule. He has been traveling internationally, raising the alarm but also training climate change activists. He rearranged his schedule so he could be here with us to day to meet with my colleagues and I. And there is no one who has done more for this cause, and it is a great pleasure to have him standing shoulder to shoulder with us as we embark on this new round in what we hope will be the beginning of the end of our addiction to fossil fuel and our degradation of the planet. Vice President Al Gore.

VP Gore: Thank you very much, Eric. Thank you. Thank you very much.

[Applause]

Thank you very much, Attorney General Schneiderman. It really and truly is an honor for me to join you and your colleagues here,

Bill Sorrel of Vermont, Maura Healey of Massachusetts, Brian Frosh of Maryland, Mark Herring of Virginia, George Jepsen of Connecticut and Claude Walker from the U.S. Virgin Islands, and the ten (let's see 1, 2, 3, 4, 5) how many other – ten other states . . . eleven other state attorneys general offices that were represented in the meetings that took place earlier, prior to this press conference.

I really believe that years from now this convening by Attorney General Eric Schneiderman and his colleagues here today may well be looked back upon as a real turning point in the effort to hold to account those commercial interests that have been – according to the best available evidence – deceiving the American people, communicating in a fraudulent way, both about the reality of the climate crisis and the dangers it poses to all of us. And committing fraud in their communications about the viability of renewable energy and efficiency and energy storage that together are posing this great competitive challenge to the long reliance on carbon-based fuels. So, I congratulate you, Attorney General, and all of you, and to those attorneys general who were so impressively represented in the meetings here. This is really, really important.

I am a fan of what President Obama has been doing, particularly in his second term on the climate crisis. But it's important to recognize that in the federal system, the Congress has been sharply constraining the ability of the executive branch to fully perform its obligations under [the] Constitution to protect the American people against the kind of fraud that the evidence suggests is being committed by several of the fossil fuel companies, electric utilities, burning coal, and the like. So what these attorneys general are doing is exceptionally important. I remember very well – and I'm not going to dwell on this analogy – but I remember very well from my days in the House and Senate and the White House the long struggle against the fraudulent activities of the tobacco companies trying to keep Americans addicted to the deadly habit of smoking cigarettes and committing fraud to try to constantly hook each new generation of children to replenish their stock of customers who were dying off from smoking-related diseases. And it was a combined effort of the executive branch, and I'm proud that the Clinton-Gore administration played a role in that, but it was a combined effort in which the state attorneys general played the crucial role in securing an historic victory for public health. From the time the tobacco companies were first found out, as evidenced by the historic attorney generals' report of 1964, it

took 40 years for them to be held to account under the law. We do not have 40 years to continue suffering the consequences of the fraud allegedly being committed by the fossil fuel companies where climate change is concerned.

In brief, there are only three questions left to be answered about the climate crisis. The first one is: Must we change, do we really have to change? We rely on fossil fuels for more than 80% of all the energy our world uses. In burning it we've reduced poverty and raised standards of living and built this elaborate global civilization, and it looks like it'll be hard to change. So naturally, people wonder: Do we really have to change? The scientific community has been all but unanimous for a long time now. But now mother nature and the laws of physics – harder to ignore than scientists – are making it abundantly clear that we have to change. We're putting 110 million tons of man-made heat trapping global warming pollution into the thin shell of atmosphere surrounding our planet every day, as if it's an open sewer. And the cumulative amount of that man-made global warming pollution now traps as much extra heat energy in the earth's system as would be released by 400,000 Hiroshima-class atomic bombs exploding every 24 hours on the surface of our planet.

It's a big planet, but that's a lot of energy. And it is the reason why temperatures are breaking records almost every year now. 2015 was the hottest year measured since instruments had been used to measure temperature. 2014 was the second hottest. 14 of the 15 hottest have been in the last 15 years. As the Attorney General mentioned, February continues the trend by breaking all previous records – the hottest in 1,632 months ever measured. Last December 29th, the same unnatural global warming fuel storm system that created record floods in the Midwest went on up to the Arctic and on December 29th, smack in the middle of the polar winter night at the North Pole, temperatures were driven up 50 degrees above the freezing point. So the North Pole started thawing in the middle of the winter night. Yesterday the announcement came that it's the smallest winter extent of ice ever measured in the Arctic.

Ninety-three percent of the extra heat goes into the oceans of the world, and that has consequences. When Super Storm Sandy headed across the Atlantic toward this city, it crossed areas of the Atlantic that were nine degrees Fahrenheit warmer than normal

and that's what made that storm so devastating. The sea level had already come up because of the ice melting, principally off Greenland and Antarctica. And as the Attorney General mentioned, that's a process now accelerating. But these ocean-based storms are breaking records now. I just came from the Philippines where Super Typhoon Haiyon created 4 million homeless people when it crossed much warmer waters of the Pacific. By the way, it was a long plane flight to get here and I happened to get, just before we took off, the 200-page brief that you all filed in support of the Clean Power Plan. Really excellent work. Footnotes took up a lot of those 200 pages so I'm not claiming to [have] read all 200 of them.

The same extra heat in the oceans is disrupting the water cycle. We all learned in school that the water vapor comes off the oceans and falls as rain or snow over the land and then rushes back to the ocean. That natural life-giving process is being massively disrupted because the warmer oceans put a lot more water vapor up there. And when storm conditions present themselves they, these storms will reach out thousands of kilometers to funnel all that extra humidity and water vapor into these massive record-breaking downpours. And occasionally it creates a snowpocalypse or snowmaggedon but most often, record-breaking floods. We've had seven once-in-a-thousand-year floods in the last ten years in the U.S. Just last week in Louisiana and Arkansas, two feet of rain in four days coming again with what they call the Maya Express off the oceans. And the same extra heat that's creating these record-breaking floods also pull the soil moisture out of the land and create these longer and deeper droughts all around the world on every continent.

Every night on the news now it's like a nature hike through the Book of Revelation. And we're seeing tropical diseases moving to higher latitudes – the Zika virus. Of course the transportation revolution has a lot to do with the spread of Zika and Dengue Fever and Chikungunya and diseases I've never heard of when I was growing up and maybe, probably most of you never did either. But now, they're moving and taking root in the United States. Puerto Rico is part of the United States, by the way – not a state, but part of our nation. Fifty percent of the people in Puerto Rico are estimated to get the Zika virus this year. By next year, eighty percent. When people who are part of the U.S. territory, when women are advised not to get pregnant, that's something new that

ought to capture our attention. And in large areas of Central America and South America, women are advised now not to get pregnant for two years until they try to get this brand new viral disease under control.

The list of the consequences continues, and I'm not going to go through it all, but the answer to that first question: "Do we have to change?" is clearly now to any reasonable thinking person: "yes, we have to change." Now the second question is: "Can we change?" And for quite a few years, I will confess to you that, when I answered that question yes, it was based on the projections of scientists and technologists who said, just wait. We're seeing these exponential curves just begin, solar is going to win, wind power is going to get way cheaper, batteries are going to have their day, we're going to see much better efficiency. Well now we're seeing these exponential curves really shoot up dramatically. Almost 75% of all the new investment in the U.S. in new generating capacity last year was in solar and wind – more than half worldwide. We're seeing coal companies go bankrupt on a regular basis now. Australia is the biggest coal exporter in the world. They've just, just the analysis there, they're not going to build any more coal plants because solar and wind are so cheap. And we're seeing this happen all around the world. But, there is an effort in the U.S. to slow this down and to bring it to a halt because part of the group that, again according to the best available evidence, has been committing fraud in trying to convince people that the climate crisis is not real, are now trying to convince people that renewable energy is not a viable option. And, worse than that, they're using their combined political and lobbying efforts to put taxes on solar panels and jigger with the laws to require that installers have to know the serial number of every single part that they're using to put on a rooftop of somebody's house, and a whole series of other phony requirements, unneeded requirements, that are simply for the purpose of trying to slow down this renewable revolution. In the opinion of many who have looked at this pattern of misbehavior and what certainly looks like fraud, they are violating the law. If the Congress would actually work – our democracy's been hacked, and that's another story, not the subject of this press conference – but if the Congress really would allow the executive branch of the federal government to work, then maybe this would be taken care of at the federal level. But these brave men and women, who are the attorneys general of the states represented in this historic coalition, are doing their job and – just

as many of them did in the tobacco example – they are now giving us real hope that the answer to that third question: "Will we change?" is going to be "yes." Because those who are using unfair and illegal means to try to prevent the change are likely now, finally, at long last, to be held to account. And that will remove the last barriers to allow the American people to move forward and to redeem the promise of our president and our country in the historic meeting in Paris last December where the United States led the global coalition to form the first global agreement that is truly comprehensive. If the United States were to falter and stop leading the way, then there would be no other leader for the global effort to solve this crisis. By taking the action these attorneys general are taking today, it is the best, most hopeful step I can remember in a long time – that we will make the changes that are necessary.

So, I'll conclude my part in this by, once again, saying congratulations to these public servants for the historic step they are taking today. And on behalf of many people, who I think would say it's alright for me to speak for them, I'd like to say thank you.

AG Schneiderman: Thank you very much, and now my other colleagues are going to say a few words. For whatever reason, I've gotten into the habit, since we always seem to do this, we do this in alphabetical order by state, which I learned when I first became an AG but I guess we'll stick with it. Connecticut Attorney General George Jepsen who was our partner in the *Friedrichs* case and stood with me when we announced that we were filing in that case. We've done a lot of good work together. Attorney General Jepsen.

AG Jepsen: I'd like to thank Eric and Bill for their leadership on this important issue and in convening this conference and to recognize the man who has done more to make global warming an international issue than anybody on the entire planet – Vice President Al Gore. In the backdrop, in the backdrop of a very dysfunctional Congress, state attorneys general, frequently on a bipartisan, basis have shown that we can stand up and take action where others have not. The Vice President referenced the tobacco litigation, which was before my time but hugely important in setting the tone and the structures by which we do work together. Since becoming attorney general in 2011, we've taken on the big banks and their mortgage servicing issues, a $25 billion settlement. We've taken on Wall Street's Standard & Poor's for mislabeling mortgage-backed securities – as

a 20-state coalition – mislabeling mortgage-backed securities as AAA when in fact they were junk. Working together on data privacy issues, and now it's time that we stand up once again and take on what is the most important issue of our generation. We owe it to our children, our children's children, to step up and do the right thing, to work together and I'm committed to it. Thank you.

AG Schneiderman: Thank you. And now a relatively new colleague but someone who has brought incredible energy to this fight and who we look forward to working with on this and other matters for a long time to come. Maryland Attorney General Brian Frosh.

AG Frosh: Well, first thank you again to General Schneiderman and General Sorrel for putting together this group and it's an honor to be with you, Mr. Vice President. Thank you so much for your leadership. I'm afraid we may have reached that point in the press conference where everything that needs to be said has been said, but everyone who needs to say it hasn't said it yet.

[Laughter]

So, I will try to be brief. Climate change is an existential threat to everybody on the planet. Maryland is exceptionally vulnerable to it. The Chesapeake Bay bisects our state. It defines us geographically, culturally, historically. We have as much tidal shoreline as states as large as California. We have islands in the Chesapeake Bay that are disappearing. We have our capital, Annapolis, which is also the nuisance flood capital of the United States. It's under water way, way, way too often. It's extraordinarily important that we address the problem of climate change. I'm grateful to General Sorrel and General Schneiderman for putting together this coalition of the willing. I'm proud to be a part of it in addressing and supporting the President's Clean Power Plan. What we want from ExxonMobil and Peabody and ALEC is very simple. We want them to tell the truth. We want them to tell the truth so that we can get down to the business of stopping climate change and of healing the world. I think that as attorneys general, as the Vice President said, we have a unique ability to help bring that about and I'm very glad to be part of it.

AG Schneiderman: Thank you. And, another great colleague, who has done extraordinary work before and since becoming attorney general working with our office on incredibly important civil rights issues,

financial fraud issues, Massachusetts Attorney General Maura Healey.

AG Healey: Thank you very much General Schneiderman. Thank you General Schneiderman and General Sorrel for your leadership on this issue. It's an honor for me to be able to stand here today with you, with our colleagues and certainly with the Vice President who, today, I think, put most eloquently just how important this is, this commitment that we make. Thank you for your leadership. Thank you for your continuing education. Thank you for your inspiration and your affirmation.

You know, as attorneys general, we have a lot on our plates: addressing the epidemics of opiate abuse, gun violence, protecting the economic security and well-being of families across this country; all of these issues are so important. But make no mistake about it, in my view, there's nothing we need to worry about more than climate change. It's incredibly serious when you think about the human and the economic consequences and indeed the fact that this threatens the very existence of our planet. Nothing is more important. Not only must we act, we have a moral obligation to act. That is why we are here today.

The science – we do believe in science; we're lawyers, we believe in facts, we believe in information, and as was said, this is about facts and information and transparency. We know from the science and we know from experience the very real consequences of our failure to address this issue. Climate change is and has been for many years a matter of extreme urgency, but, unfortunately, it is only recently that this problem has begun to be met with equally urgent action. Part of the problem has been one of public perception, and it appears, certainly, that certain companies, certain industries, may not have told the whole story, leading many to doubt whether climate change is real and to misunderstand and misapprehend the catastrophic nature of its impacts. 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.

We are here before you, all committed to combating climate change and to holding accountable those who have misled the public. The states represented here today have long been working hard to sound the alarm, to put smart policies in place, to speed our transition to a clean energy future, and to stop power plants from emitting millions of tons of dangerous global warming pollution into our air. I will tell you, in Massachusetts that's been a very good thing. Our economy has grown while we've reduced greenhouse gas emissions and boosted clean power and efficiency. We're home to a state with an $11 billion clean energy industry that employs nearly 100,000 people. Last year clean energy accounted for 15% of New England's power production. Our energy efficiency programs have delivered $12.5 billion in benefits since 2008 and are expected to provide another $8 billion over the next three years. For the past five years, Massachusetts has also been ranked number one in the country for energy efficiency. So we know what's possible. We know what progress looks like. But none of us can do it alone. That's why we're here today. We have much work to do, but when we act and we act together, we know we can accomplish much. By quick, aggressive action, educating the public, holding accountable those who have needed to be held accountable for far too long, I know we will do what we need to do to address climate change and to work for a better future. So, I thank AG Schneiderman for gathering us here today and for my fellow attorneys general in their continued effort in this important fight. Thank you.

AG Schneiderman: Thank you. And now another great colleague who speaks as eloquently as anyone I've heard about what's happening to his state, and a true hero of standing up in a place where maybe it's not quite as politically easy as it is to do it in Manhattan but someone who is a true aggressive progressive and a great attorney general, Mark Herring from Virginia.

AG Herring: Thank you, Eric. Good afternoon. In Virginia, climate change isn't some theoretical issue. It's real and we are already dealing with its consequences. Hampton Roads, which is a coastal region in Virginia, is our second most populated region, our second biggest economy and the country's second most vulnerable area as sea levels rise. The area has the tenth most valuable assets in the world threatened by sea level rise. In the last 85 years the relative sea level in Hampton Roads has risen 14 inches – that's well over a foot – in just the last century.

Some projections say that we can expect an additional two to five feet of relative sea level rise by the end of this century – and that would literally change the face of our state. It would cripple our economy and it could threaten our national security as Norfolk Naval, the world's largest naval base, is impacted. Nuisance flooding that has increased in frequency will become the norm. They call it blue sky flooding. Storm surges from tropical systems will threaten more homes, businesses and residents. And even away from the coast, Virginians are expected to feel the impact of climate change as severe weather becomes more dangerous and frequent. Just a few weeks ago, we had a highly unusual February outbreak of tornadoes in the Commonwealth that was very damaging and unfortunately deadly.

Farming and forestry is our number one industry in Virginia. It's a $70 billion industry in Virginia that supports around 400,000 jobs and it's going to get more difficult and expensive. And, the Commonwealth of Virginia local governments and the navy are already spending millions to build more resilient infrastructure, with millions and millions more on the horizon. To replace just one pier at Norfolk Naval is about $35 to $40 million, and there are 14 piers, so that would be around a half billion right there.

As a Commonwealth and a nation, we can't put our heads in the sand. We must act and that is what today is about. I am proud to have Virginia included in this first of its kind coalition which recognizes the reality and the pressing threat of man-made climate change and sea level rise. This group is already standing together to defend the Clean Power Plan – an ambitious and achievable plan – to enjoy the health, economic and environmental benefits of cleaner air and cleaner energy. But there may be other opportunities and that's why I have come all the way from Virginia. I am looking forward to exploring ideas and opportunities, to partner and collaborate, if there are enforcement actions we need to be taking, if there are legal cases we need to be involved in, if there are statutory or regulatory barriers to growing our clean energy sectors and, ultimately, I want to work together with my colleagues here and back in Virginia to help combat climate change and to shape a more sustainable future.

And for any folks who would say the climate change is some sort of made-up global conspiracy, that we're wasting our time, then

come to Hampton Roads. Come to Norfolk and take a look for yourselves. Mayor Fraim would love to have you.

AG Schneiderman: Thank you. And our closer, another great colleague who has traveled far but comes with tremendous energy to this cause and is an inspiration to us all, U.S. Virgin Islands Attorney General Claude Walker.

AG Walker: Thank you. Thank you, General Schneiderman, Vice President Gore. One of my heroes, I must say. Thank you. I've come far to New York to be a part of this because in the Virgin Islands and Puerto Rico, we experience the effects of global warming. We see an increase in coral bleaching, we have seaweeds, proliferation of seaweeds in the water, all due to global warming. We have tourism as our main industry, and one of the concerns that we have is that tourists will begin to see this as an issue and not visit our shores. But also, residents of the Virgin Islands are starting to make decisions about whether to live in the Virgin Islands – people who have lived there for generations, their families have lived there for generations. We have a hurricane season that starts in June and it goes until November. And it's incredibly destructive to have to go through hurricanes, tropical storms annually. So people make a decision: Do I want to put up with this, with the power lines coming down, buildings being toppled, having to rebuild annually? The strengths of the storms have increased over the years. Tropical storms now transform into hurricanes. When initially they were viewed as tropical storms but as they get close to the land, the strength increases. So we're starting to see people make decisions about whether to stay in a particular place, whether to move to higher ground – which is what some have said – as you experience flooding, as you experience these strong storms. So we have a strong stake in this, in making sure that we address this issue.

We have launched an investigation into a company that we believe must provide us with information about what they knew about climate change and when they knew it. And we'll make our decision about what action to take. But, to us, it's not an environmental issue as much as it is about survival, as Vice President Gore has stated. We try as attorneys general to build a community, a safe community for all. But what good is that if annually everything is destroyed and people begin to say: Why am I living here?

So we're here today to support this cause and we'll continue. It could be David and Goliath, the Virgin Islands against a huge corporation, but we will not stop until we get to the bottom of this and make it clear to our residents as well as the American people that we have to do something transformational. We cannot continue to rely on fossil fuel. Vice President Gore has made that clear. We have to look at renewable energy. That's the only solution. And it's troubling that as the polar caps melt, you have companies that are looking at that as an opportunity to go and drill, to go and get more oil. Why? How selfish can you be? Your product is destroying this earth and your strategy is, let's get to the polar caps first so we can get more oil to do what? To destroy the planet further? And we have documents showing that. So this is very troubling to us and we will continue our fight. Thank you.

AG Schneiderman: Thank you and Eric. And I do want to note, scripture reports David was not alone in fact, Brother Walker. Eric and Matt will take on-topic questions.

Moderator: Please just say your name and publication.

Press Person: John [inaudible] with *The New York Times*. I count two people who have actually said that they're launching new investigations. I'm wondering if we could go through the list and see who's actually in and who is not in yet.

AG Schneiderman: Well, I know that prior to today, it was, and not every investigation gets announced at the outset as you know, but it had already been announced that New York and California had begun investigations with those stories. I think Maura just indicated a Massachusetts investigation and the Virgin Islands has, and we're meeting with our colleagues to go over a variety of things. And the meeting goes on into the afternoon. So, I am not sure exactly where everyone is. Different states have – it's very important to understand – different states have different statutes, different jurisdictions. Some can proceed under consumer protection law, some securities fraud laws, there are other issues related to defending taxpayers and pension funds. So there are a variety of theories that we're talking about and collaborating and to the degree to which we can cooperate, we share a common interest, and we will. But, one problem for journalists with investigations is, part of doing an investigation is you usually don't talk a lot about what you're doing after you start it or even as you're preparing to start it.

AGs United For Clean Power Press Conference

March 29, 2016: 11:35 am – 12:32 pm

Press Person: Shawn McCoy with *Inside Sources*. A *Bloomberg Review* editorial noted that the Exxon investigation is preposterous and a dangerous affirmation of power. *The New York Times* has pointed out that Exxon has published research that lines up with mainstream climatology and therefore there's not a comparison to Big Tobacco. So is this a publicity stunt? Is the investigation a publicity stunt?

AG Schneiderman: No. It's certainly not a publicity stunt. I think the charges that have been thrown around – look, we know for many decades that there has been an effort to influence reporting in the media and public perception about this. It should come as no surprise to anyone that that effort will only accelerate and become more aggressive as public opinion shifts further in the direction of people understanding the imminent threat of climate change and other government actors, like the folks represented here step up to the challenge. The specific reaction to our particular subpoena was that the public reports that had come out, Exxon said were cherry picked documents and took things out of context. We believe they should welcome our investigation because, unlike journalists, we will get every document and we will be able to put them in context. So I'm sure that they'll be pleased that we're going to get everything out there and see what they knew, when they knew it, what they said and what they might have said.

Press Person: David [inaudible] with *The Nation.* Question for General Schneiderman. What do you hope to accomplish with your Exxon investigation? I'm thinking with reference to Peabody where really there was some disclosure requirements but it didn't do a great deal of [inaudible]. Is there a higher bar for Exxon? What are the milestones that you hope to achieve after that investigation?

AG Schneiderman: It's too early to say. We started the investigation. We received a lot of documents already. We're reviewing them. We're not pre-judging anything, but the situation with oil companies and coal companies is somewhat different because the coal companies right now are, the market is already judging the coal industry very harshly. Coal companies, including Peabody, are teetering on the brink. The evidence that we advanced and what was specifically disclosed about Peabody were pretty clear cut examples of misrepresentations made in violation with the Securities and Exchange Commission, made to investors. It's too early to say what we're going to find with Exxon but we intend to work as

aggressively as possible, but also as carefully as possible. We're very aware of the fact that everything we do here is going to be subject to attack by folks who have a huge financial interest in discrediting us. So we're going to be aggressive and creative but we are also going to be as careful and meticulous and deliberate as we can.

VP Gore: Could I respond to the last couple of questions just briefly. And in doing so, I'd like to give credit to the journalistic community and single out the Pulitzer Prize winning team at *InsideClimate News*, also the *Los Angeles Times* and the student-led project at Columbia School of Journalism under Steve Coll. And the facts that were publicly presented during, in those series of articles that I have mentioned, are extremely troubling, and where Exxon Mobil in particular is concerned. The evidence appears to indicate that, going back decades, the company had information that it used for the charting of its plan to explore and drill in the Arctic, used for other business purposes information that largely was consistent with what the mainstream scientific community had collected and analyzed. And yes, for a brief period of time, it did publish some of the science it collected, but then a change came, according to these investigations. And they began to make public statements that were directly contrary to what their own scientists were telling them. Secondly, where the analogy to the tobacco industry is concerned, they began giving grants – according to the evidence collected – to groups that specialize in climate denial, groups that put out information purposely designed to confuse the public into believing that the climate crisis was not real. And according to what I've heard from the preliminary inquiries that some of these attorneys general have made, the same may be true of information that they have put out concerning the viability of competitors in the renewable energy space. So, I do think the analogy may well hold up rather precisely to the tobacco industry. Indeed, the evidence indicates that, that I've seen and that these journalists have collected, including the distinguished historian of science at Harvard, Naomi Oreskes wrote the book *The Merchants of Doubt* with her co-author, that they hired several of the very same public relations agents that had perfected this fraudulent and deceitful craft working for the tobacco companies. And so as someone who has followed the legislative, the journalistic work very carefully, I think the analogy does hold up.

AGs United For Clean Power Press Conference

March 29, 2016: 11:35 am – 12:32 pm

Press Person: [inaudible] with *InsideClimate News*. Along the lines of talking about that analogy: from a legal framework, can you talk about a comparison, similarities and differences between this potential case and that of Big Tobacco?

AG Schneiderman: Well, again, we're at the early stages of the case. We are not pre-judging the evidence. We've seen some things that have been published by you and others, but it is our obligation to take a look at the underlying documentation and to get at all the evidence, and we do that in the context of an investigation where we will not be talking about every document we uncover. It's going to take some time, but that's another reason why working together collectively is so important. And we are here today because we are all committed to pursuing what you might call an all-levers approach. Every state has different laws, different statutes, different ways of going about this. The bottom line is simple. Climate change is real, it is a threat to all the people we represent. If there are companies, whether they are utilities or they are fossil fuel companies, committing fraud in an effort to maximize their short-term profits at the expense of the people we represent, we want to find out about it. We want to expose it, and we want to pursue them to the fullest extent of the law.

Moderator: Last one.

Press Person: Storms, floods will arise they are all going to continue to destroy property and the taxpayers . . .

Moderator: What's your name and . . .

Press Person: Oh, sorry. Matthew Horowitz from *Vice*. Taxpayers are going to have to pay for these damages from our national flood insurance claims. So if fossil fuel companies are proven to have committed fraud, will they be held financially responsible for any sorts of damages?

AG Schneiderman: Again, it's early to say but certainly financial damages are one important aspect of this but, and it is tremendously important and taxpayers – it's been discussed by my colleagues – we're already paying billions and billions of dollars to deal with the consequences of climate change and that will be one aspect of – early foreseeing, it's far too early to say. But, this is not a situation where financial damages alone can deal with the problem. We have to change conduct, and as the Vice President indicated, other

places in the world are moving more rapidly towards renewables. There is an effort to slow that process down in the United States. We have to get back on that path if we're going to save the planet and that's ultimately what we're here for.

Moderator: We're out of time, unfortunately. Thank you all for coming.

Exhibit B

SUBPOENA

Superior Court of the District of Columbia

CIVIL DIVISION

500 Indiana Avenue, N.W., Suite 5000

Washington, D.C. 20001 Telephone (202) 879-1133

United States Virgin Islands
Office of the Attorney General
3438 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, U.S. Virgin Islands 00802
Plaintiff

ExxonMobil Oil Corp.,
a New Jersey corporation,
5959 Las Colinas Blvd, Irving, TX 75039
Defendant

To:

SUBPOENA IN A CIVIL CASE

16 - 00 2469

CASE NUMBER:

TO: Competitive Enterprise Institute
1899 L Street NW
Washington, DC 20036

☐ **YOU ARE COMMANDED** to appear in this Court at the place, date, and time specified below to testify in the above case.

COURTROOM	DATE	TIME

☐ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE	TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Super. Ct. Civ. R. 30(b)(6)

☒ **YOU ARE COMMANDED** to produce and permit inspection copying of the following documents or objects at the place, date, and time specified below *(list documents or objects)*:

DOCUMENTS OR OBJECTS		
See Attachment A.		
PLACE OF PRODUCTION Linda Singer, Esq. Cohen Milstein Sellers & Toll PLLC 1100 New York Avenue NW, Suite 500, Washington, DC 20005	**DATE** April 30, 2016	**TIME** 5:00 p.m.

☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE	TIME

ISSUING PERSON'S SIGNATURE AND TITLE (indicate if attorney for plaintiff or defendant)	DATE
	4/4/16
ISSUING PERSON'S NAME, ADDRESS AND PHONE NUMBER	

Clerk of the District of Columbia
Civil Division
500 Indiana Avenue, N.W.
Room 5000
Washington, D.C. 20001

(SEE SUPERIOR COURT RULE OF CIVIL PROCEDURE 45(c)-(d) ON REVERSE)

WHITE - FOR RETURN OF SERVICE YELLO

Form CV-433/June 2012

Case: 2016 CA 002469 2
0005745259
Ord: CIVMISC

Case Number: _____ Court Date: _____

Authorization as required by D.C. Code § 14-307 and *Brown v. U.S.*, 567 A.2d 426 (D.C. 1989), is hereby given for issuance of a subpoena for medical records concerning a person who has not consented to disclosure of the records and has not waived the privilege relating to such records.

_____
Judge To Whom Case is Assigned

PROOF OF SERVICE

	DATE	TIME	PLACE
SERVED			

SERVED ON

NAME	TITLE

MANNER OF SERVICE (attach return receipt if service was made by registered or certified mail)

I served the subpoena by delivering a copy to the named person as follows:

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the District of Columbia that I am at least 18 years of age and not a party to the above entitled cause and that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ _____
DATE SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

SUPERIOR COURT RULE OF CIVIL PROCEDURE 45(c)-(d)

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this Rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the Court shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 25 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (e)(3)(B)(iii) of this Rule, such a person may in order to attend trial be commanded to travel from any such place to the place of trial, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 25 miles to attend trial, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A

UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE

IN RE INVESTIGATION OF VIOLATIONS OF THE CRIMINALLY INFLUENCED AND CORRUPT ORGANIZATIONS ACT	)))	**SUBPOENA** 16 - 00 2469

TO: Competitive Enterprise Institute
1899 L Street NW
Washington, DC 20036

ExxonMobil is suspected to have engaged in, or be engaging in, conduct constituting a civil violation of the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. § 605, by having engaged or engaging in conduct misrepresenting its knowledge of the likelihood that its products and activities have contributed and are continuing to contribute to Climate Change in order to defraud the Government of the United States Virgin Islands ("the Government") and consumers in the Virgin Islands, in violation of 14 V.I.C.§ 834 (prohibiting obtaining money by false pretenses) and 14 V.I.C. § 551 (prohibiting conspiracy to obtain money by false pretenses).

In relation to the Government's investigation of the above matter, YOU ARE HEREBY DIRECTED, by the authority granted to the Attorney General of the United States Virgin Islands ("USVI"), pursuant to the provisions of 14 V.I.C. § 612, to produce and deliver the documents responsive to the inquiries set forth herein, on or before **April 30, 2016**, directed to the attention of Attorney General Claude Earl Walker, Esq.

Failure to comply with this subpoena may result in an enforcement action being brought against you pursuant to 14 V.I.C. § 612(k).

INSTRUCTIONS

A. If any document, report, study, memorandum or other written material or information is withheld or not identified under claim of privilege, furnish a list identifying each document or requested information together with the following information (as relevant): date, author, sender, recipient, persons to whom copies were furnished or information provided together with their job titles, subject matter of the document, the basis for the privilege, and the paragraph or paragraphs of the Request(s) to which the document or information is responsive.

B. In each instance in which a document is produced in response to a Request, the current version should be produced together with all earlier versions, or predecessor documents serving the same function during the relevant time period, even though the title of earlier documents may differ from current versions.

C. Any document produced whose text is not already searchable should be processed through Optical Character Recognition ("OCR") so that it is fully searchable.

D. This Investigative Subpoena calls for all described documents in your possession, custody, or control without regard to the person or persons by whom or for whom the documents were prepared (e.g., your company employees, contractors, vendors, distributors, service providers, competitors, or others).

E. The following procedures shall apply to the production, inspection, and copying of documents:

(a) You shall produce original, complete documents. Documents shall be produced in the order that the documents are maintained in your files, in original folders,

with the folder's original file tabs. In response to this Subpoena, true copies of original documents may be submitted in lieu of originals, provided that you retain the original documents in such manner as to be able to produce them if later required.

1. Any documents produced in response to this Investigative Subpoena should be provided as a Group 4 compression single-page "TIFF" image that reflects how the source document would have appeared if printed out to a printer attached to a computer viewing the file. Extracted text should be included in the manner provided herein. **To the extent that extracted text does not exist, these images should be processed through OCR so that they are fully searchable.** Extracted text and OCR should be provided in separate document level text files. "Load files" shall be produced to accompany the images and shall facilitate the use of the litigation support database systems to review the produced images.

2. Document Unitization. Each page of a document shall be electronically converted into an image as described above. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original when creating the image file and appropriately designated in the load files. The corresponding parent/attachment relationships, to the extent possible, shall be provided in the load files furnished with each production.

3. Bates Numbering. Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically branded onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. To ensure that the Bates Numbers do not obscure portions of the documents, the images may be proportionally reduced to create a larger margin in which the Bates Number may be branded. There shall be no other legend or stamp placed on the document image, except those sections of a document that are redacted to eliminate material protected from disclosure by the attorney-client or work product privileges shall have the legend "REDACTED" placed in the location where the redaction(s) occurred or shall otherwise note the location and/or location of the information for which such protections are claimed.

4. File Naming Conventions. Each document image file shall be named with the unique Bates Number of the page of the document in the case of single-page TIFFs, followed by the extension "TIF". Each document shall be named with a unique document identifier. Attachments shall have their own unique document identifiers.

5. Production Media. The documents should be produced on CD-ROM, DVD, external hard drive (with standard Windows PC compatible interface), (the "Production Media"). Each piece of Production Media

shall identify a production number corresponding to the production "wave" the documents on the Production Media are associated with (e.g., "V001", "V002"), as well as the volume of the material in that production wave (e.g., "-001", "-002"). For example, if the first production wave comprises document images on three hard drives, you shall label each hard drive in the following manner: "V001-001", "V001-002", "V001-003". Additional information that shall be identified on the physical Production Media shall include: (1) text referencing that it was produced in response to this Investigative Subpoena, (2) your name, (3) the production date, and (4) the Bates Number range of the materials contained on the Production Media.

6. Objective Coding/Extracted Meta Data. You shall produce with each production of documents extracted metadata for each document (the "Objective Coding") included in the load file. The data file shall include the fields and type of content set forth in the **"SPECIAL INSTRUCTIONS FOR ELECTRONICALLY STORED MATERIAL"** section. Objective Coding shall be labeled and produced on Production Media in accordance with the provisions set forth above.

7. Native format for Excel and databases. To the extent that such documents exist in Excel or some other spreadsheet, produce the document in Excel. To the extent that the document constitutes a database, produce the document in Access.

(b) All attachments to responsive documents shall be produced attached to the responsive documents.

(c) No portion of any documents will be masked and the entire document shall be produced.

(d) The documents shall be produced at the location set forth or at such other locations as counsel agree.

(e) Documents shall be available on reasonable notice for inspection and copying after initial production throughout the term of the investigation or litigation. The documents shall be maintained in the order in which they were produced.

(f) You shall label each group of documents in the following manner: Response to Request No. 1; Response to Request No. 2, etc., and identify the Bates Number range for the corresponding documents that are responsive or written responses.

(g) Provide a key to all abbreviations used in the documents, providing a method of identifying all documents requiring use of the key.

(h) If you obtain information or documents responsive to any request after you have submitted your written responses or production, you should supplement your

responses and/or production with any new and or different information and/or documents that become available to you.

(i) If any document responsive to this Subpoena was lost or has been removed, destroyed, or altered prior to the service of this Subpoena, furnish the following information with respect to each such document:

- a description to the extent known, and the last time and location that the document was known to be or is believed to have existed;
- the date, sender, recipient, and other persons to whom copies were sent, subject matter, present location, and location of any copies; and
- the identity of any person authorizing or participating in any removal, destruction, or alteration; date of such removal, destruction or alteration; and the method and circumstances of such removal, destruction, or alteration.

F. This subpoena imposes a continuing duty to produce promptly any responsive information or item that comes into your knowledge, possession, custody, or control after your initial production of responses to the requests.

SPECIAL INSTRUCTIONS

Electronic documents should be produced in accordance with the following instructions:

A. Single page TIFFs at a 300 DPI resolution which are named for the Bates Number of the page. There should NOT be more than 1000 images per folder.

B. **Document level text files containing OCR or extracted text** named with the Bates Number of the first page of the document.

C. Data load file containing all of the metadata fields (both system and application – see list below) from the original Native documents – .dat for Concordance.

D. The Concordance .dat file of extracted metadata should be delimited with the Concordance default characters – ASCII 020 for the comma character and ASCII 254 for the quote character. The use of commas and quotes as delimiters is not acceptable.

E. The database field names should be included in the first line of the metadata file listed in the order they appear in the file.

F. An image load file for Concordance – such as ".opt."

G. For electronic documents created in Excel (spreadsheets) or Access (databases), provide those documents in Native format as well as a TIFF placeholder.

H. For all documents produced, provide the following:

Field #	Field Name	Format	Description
1	BEGDOCNO	Text	Image key of first page of document
2	ENDDOCNO	Text	Image key of last page of document
3	BEGATTACH	Text	For emails/attachments ONLY: Image key of the first page of the parent email. Please DO NOT populate these fields for emails with no attachments.
4	ENDATTACH	Text	For emails/attachments ONLY: Image key of the last page of the last attachment. Please DO NOT populate these fields for emails with no attachments.
5	CUSTODIAN	Text	Custodian from whom documents were collected (semi-colon delimited, if multiple entries)
6	AUTHOR	Text	Email "From" data or user/author name from electronic files

Field #	Field Name	Format	Description
7	RECIPIENT	Text	Email "To" data (semi-colon delimited, if multiple entries)
8	CC	Text	Email "CC" data (semi-colon delimited, if multiple entries)
9	BCC	Text	Email "BCC" data (semi-colon delimited, if multiple entries)
10	MAILSUBJECT	Text	Email subject. This value should be populated down to any children/attachments of the parent email.
11	MAILDATE	MM/DD/YYYY	Email date sent. This value should be populated down to any children/attachments of the parent email.
12	MAILTIME	HH:MM:SS	Email time sent, in military time. This value should be populated down to any children/attachments of the parent email.
13	ATTACHMENTS	Text	Semi-colon delimited list of the **original file names** of any attachments to an email
14	FILENAME	Text	For emails: Mail subject For attachments and e-files: File name from source media
15	HASH_VALUE	Text	Hash value generated for purposes of de-duplication if performed
16	FileExt	Text	Original file extension for the email or electronic file being produced (e.g., .eml, .pdf, .xls, .doc)

DEFINITIONS

1. "All" shall be construed to include the collective as well as the singular and shall mean "each," "any," and "every."

2. "Any" shall be construed to mean "any and all."

3. "Climate Change" refers to the general subject matter of changes in global or regional climates that persist over time, whether due to natural variability or as a result of human activity. All Documents or Communications concerning the likelihood, certainty, uncertainty, scope, causes, or impacts of Climate Change concern Climate Change. Any Documents or Communications using any of the terms "climate change," "climatology," "climate science," "climate model," "climate modeling," "global warming," "greenhouse gas," "greenhouse effect," "CO_2 greenhouse," "Kyoto Protocol," "UNFCCC," "IPCC," "climate skeptics," "climate skepticism," "global cooling," "solar variation," "arctic shrinkage," "carbon tax," "climate legislation," or "Keeling Curve" concern Climate Change, although Documents or Communications need not include any of these terms to concern Climate Change. Any Documents or Communications concerning rising sea levels, Arctic and/or Antarctic ice melt, declining sea ice, melting glaciers, declining snowfall, oceanic warming, ocean acidification, or increases in extreme weather events—or the opposites of these phenomena (e.g., dropping sea levels, oceanic cooling)—concern Climate Change, although Documents or Communications need not refer to any of these phenomena to concern Climate Change.

4. "Communications" mean any exchange of information by any means of transmissions, sending or receipt of information of any kind by or through any means including but not limited to: verbal expression; gesture; writings; documents; language (machine, foreign, or otherwise) of any kind; computer electronics; email; SMS, MMS, or other "text" messages; messages on "social networking" platforms (including but not limited to Facebook, Google+, MySpace, and Twitter); shared applications from cell phones, "smartphones," netbooks, and laptops; sound, radio, or video signals; telecommunication; telephone; teletype; facsimile;

telegram; microfilm; or by any other means. "Communications" also shall include, without limitation, all originals and copies of inquiries, discussions, conversations, correspondence, negotiations, agreements, understandings, meetings, notices, requests, responses, demands, complaints, press, publicity or trade releases and the like that are provided by you or to you by others. Any Communications produced, including emails, should include the original sender, all original recipients, the date and time, and any files originally attached to such emails in the form and filetype in which they were originally attached.

5. "Concerning" means directly or indirectly mentioning or describing, relating to, referring to, regarding, evidencing, setting forth, identifying, memorializing, created in connection with or as a result of, commenting on, embodying, evaluating, analyzing, tracking, reflecting, or constituting, in whole or in part, a stated subject matter.

6. "Documents" mean any writing or any other tangible thing, whether printed, recorded (in audio, video, electronically or by any other means), reproduced by any process, or written or produced by hand, including but not limited to: letters; memoranda; notes; opinions; books; reports; studies; agreements; statements; communications (including inter-company and intra-company communications); correspondence; telegrams; email; instant messages; chat logs; SMS, MMS or other "text" messages; posted information; messages; chat logs on "social networking" platforms (including but not limited to Facebook, Google+, MySpace and Twitter); logs; bookkeeping entries; summaries or records of personal conversations; diaries; calendars; telephone messages and logs; forecasts; photographs; images; tape recordings; models; statistical statements; graphs; laboratory and engineering reports; notebooks; charts; tabulations; maps; plans; drawings; minutes; bylaws; resolutions; records of conferences; expressions or statements of policy; lists of persons attending meetings or

conferences; lists of clients or customers or suppliers; reports or summaries of interviews; opinions or reports of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of any document and revisions of drafts of any document; and any other similar paper or record in any form or medium whatsoever. The term also includes a copy of a document where the copy is not exactly the same as the original. The term also includes emails and other documents made or stored in electronic form, whether kept on computers, computer tapes, disks, drives, Cloud storage, or other media upon which information may be recorded of any type.

7. "ExxonMobil" refers to Exxon Mobil Corporation and any present or former predecessor, successor, parent, subsidiary, division, d/b/a company, and affiliated entities, as well as all owners, officers, agents, employers, employees, or other representatives thereof, or any other person acting in whole or in part on behalf of any of the foregoing entities. This term also refers to the ExxonMobil Foundation, formerly known as the Esso Education Foundation, and/or the Exxon Education Foundation, and any affiliated entities or persons.

8. "Identify" means:

   (a) When used in connection with a Document, provide the nature of the Document, its title, its description (e.g., memorandum, letter, contract), date, author, its current location, its current custodian, and the number of pages.

   (b) When used in connection with a natural person, provide that person's name, current residential address and telephone number, job title, and current business address and telephone number. (If current information is not available, provide last-known address and telephone number.)

   (c) When used in reference to an "artificial person" or entity such as a corporation or partnership, provide (1) the organization's full name and trade name, if any; (2) the address and telephone number of its principle place of business; and (3) the names and titles of the entity's officers, directors, managing agents, or employees.

(d) When used in connection with an oral communication, provide the nature of that communication, the parties to it, the date, place, and substance of that communication, and the identification of any document concerning it.

9. "Including" means "including but not limited to." "Including" is used merely to illustrate, and should not be construed as limiting a Request in any way.

10. "Person" means any natural person or such person's legal representative; any partnership, domestic or foreign corporation, or limited liability company; any company, trust, business entity, or association; and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, or trustee.

11. "You" and "Your" refer to Competitive Enterprise Institute, any present or former predecessor, successor, parent, subsidiary, division, d/b/a company, and affiliated entities, as well as all owners, officers, agents, employers, employees, or other representatives thereof, or any other Person acting in whole or in part on behalf of any of the foregoing entities. These terms include the Cooler Heads Coalition, GlobalWarming.org, CEI Studios, and any affiliated entities or persons.

RELEVANT TIME PERIOD

The relevant time period, unless otherwise indicated in a specific request, is from January 1, 1997 to January 1, 2007. The time limits should not be construed as date limits; for example, if a policy, contract, or other document in effect during the relevant time period was created before the relevant time period, then such document must be produced.

DOCUMENTS AND INFORMATION TO BE PROVIDED

1. All Documents and Communications sent to or received from ExxonMobil, or third parties acting on behalf of ExxonMobil, concerning Climate Change, including strategies to address Climate Change or impact public views on Climate Change.

2. All Documents and Communications concerning the likelihood that or extent to which any of the products sold by or activities carried out by ExxonMobil directly or indirectly impact Climate Change.

3. All Documents and Communications reflecting or concerning studies, research, reviews, events, or publications funded by ExxonMobil (in whole or in part, directly or indirectly, including through Donors Trust or Donors Capital Fund or other third parties acting on behalf of ExxonMobil) concerning carbon dioxide or concerning the likelihood, certainty, uncertainty, scope, causes, or impacts of Climate Change.

4. All public statements You have drafted, reviewed, edited, made, or published on behalf of or in connection with efforts directed, assisted, or funded by ExxonMobil (in whole or in part, directly or indirectly, including through Donors Trust or Donors Capital Fund or other third parties acting on behalf of ExxonMobil), including but not limited to advertisements, op-eds, letters to the editor, speeches, and publications, concerning Climate Change. In Your Response to this Request include any Communications with ExxonMobil concerning any of the materials responsive to this Request.

5. All Documents and Communications concerning any potential impacts on ExxonMobil's sales, revenue, or business caused by Climate Change itself, by public policies responding to

Climate Change (including any legislation or regulation concerning Climate Change), or by public perceptions of Climate Change.

6. All Documents concerning Climate Change published by You that were directed, drafted, prepared, reviewed, edited, approved, or funded by ExxonMobil (in whole or in part, directly or indirectly, including through Donors Trust or Donors Capital Fund or other third parties acting on behalf of ExxonMobil), and all Communications about such Documents.

7. All Documents reflecting or concerning meetings with or including ExxonMobil and/or third parties acting on behalf of ExxonMobil concerning Climate Change, including but not limited to meetings discussing or presenting: strategies, plans, or activities to address Climate Change; strategies, plans, or activities to impact public views on Climate Change; the likelihood that or extent to which carbon dioxide, methane, oil and gas extraction or use, or any of the products sold or activities carried out by ExxonMobil impact Climate Change directly or indirectly; the accuracy or credibility of research or researchers examining Climate Change; or the accuracy or credibility of models or assessments of the likelihood, certainty, uncertainty, scope, causes, or impacts of Climate Change.

8. All Documents and Communications concerning or reflecting ExxonMobil's activities using, working with, or funding third parties (including Donors Trust or Donors Capital Fund), or its strategies or plans to do so, to disseminate information or opinions concerning Climate Change.

9. Documents sufficient to identify the amount and date of all payments to You from ExxonMobil (directly or indirectly, including through Donors Trust or Donors Capital Fund or other third parties acting on behalf of ExxonMobil) to support work concerning Climate

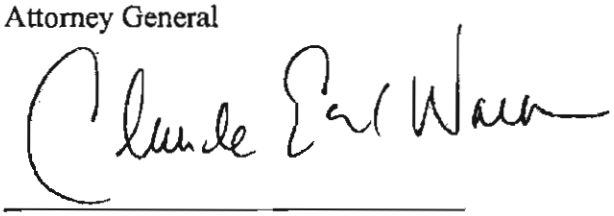
Change and the nature and dates of the work being funded by those payments. Please arrange payment records by year.

NOTE: This subpoena does not require that you travel to the United States Virgin Islands or to the Department of Justice. You may comply with this Subpoena Duces Tecum by forwarding a true and correct copy of any document or other item requested, postmarked prior to the date for which production has been designated, with a signed and notarized copy of the attached "CERTIFICATE OF CUSTODIAN OF RECORDS." Failure to appear with, or deliver the requested information, as stated above, shall be deemed a violation of 14 V.I.C. § 612 and will subject you to such sanctions and penalties as are determined by law. Failure to deliver a signed and notarized copy of the attached "CERTIFICATE OF CUSTODIAN OF RECORDS" will be considered a failure to comply with this subpoena.

WHEREFORE, I have set my hand this 29th day of March, 2016.

SUBMITTED BY:

CLAUDE EARL WALKER
Attorney General

By: 

Claude Earl Walker, Esq.
Attorney General
3438 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, U.S. Virgin Islands 00802
(340) 774-5666

CERTIFICATE OF CUSTODIAN OF RECORDS

UNITED STATES VIRGIN ISLANDS)
)
)

COMES NOW _____, first being duly sworn, deposes and says:

1. That the deponent is the _____ for Exxon Mobil Corporation and, in such capacity, is its custodian of records.

2. That on the ____ day of _____, 2016, the deponent was served with a subpoena calling for the production of records.

3. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the act, event, condition or opinion recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or the office or company in which the deponent is engaged.

5. I further certify to the best of my knowledge, information, and belief that all documents or things required to be produced pursuant to the attached subpoena issued on _____, 2016 have been produced.

DATED this ____ day of _____, 2016.

_____
CUSTODIAN OF RECORDS

SUBSCRIBED and SWORN TO before me
by _____ this
_____ day of _____, 2016.

_____
NOTARY PUBLIC

Exhibit C

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON PUBLIC SAFETY AND THE JUDICIARY
COMMITTEE REPORT
1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers

FROM: Councilmember Phil Mendelson,
Chairman, Committee on Public Safety and the Judiciary

DATE: November 18, 2010

SUBJECT: Report on Bill 18-893, "Anti-SLAPP Act of 2010"

The Committee on Public Safety and the Judiciary, to which Bill 18-893, the "Anti-SLAPP Act of 2010" was referred, reports favorably thereon with amendments, and recommends approval by the Council.

CONTENTS

I. BACKGROUND AND NEED

Bill 18-893, the Anti-SLAPP Act of 2010, incorporates substantive rights with regard to a defendant's ability to fend off lawsuits filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view. Such lawsuits, often referred to as strategic lawsuits against public participation -- or SLAPPs -- have been increasingly utilized over the past two decades as a means to muzzle speech or efforts to petition the government on issues of public interest. Such cases are often without merit, but achieve their filer's intention of punishing or preventing opposing points of view, resulting in a chilling effect on the exercise of constitutionally protected rights. Further, defendants of a SLAPP must dedicate a substantially amount of money, time, and legal resources. The impact is not limited to named defendants willingness to speak out, but prevents others from voicing concerns as well. To remedy this Bill 18-893 follows the model set forth in a number of other jurisdictions, and mirrors language found in federal law, by incorporating substantive rights that allow a defendant to more expeditiously, and more equitably, dispense of a SLAPP.

History of Strategic Lawsuits against Public Participation:

In what is considered the seminal article regarding SLAPPs, University of Denver College of Law Professor George W. Pring described what was then (1989), considered to be a growing litigation "phenomenon":

> Americans are being sued for speaking out politically. The targets are typically not extremists or experienced activists, but normal, middle-class and blue-collar Americans, many on their first venture into the world of government decision making. The cases are not isolated or localized aberrations, but are found in every state, every government level, every type of political action, and every public issue of consequence. There is no dearth of victims: in the last two decades, thousands of citizens have been sued into silence.[1]

These lawsuits, Pring noted, are typically an effort to stop a citizen from exercising their political rights, or to punish them for having already done so. To further identify the problem, and be able to draw possible solutions, Pring engaged in a nationwide study of SLAPPs with University of Denver sociology Professor Penelope Canan.

Pring and Canan's study established the base criteria of a SLAPP as: (1) a civil complaint or counterclaim (for monetary damages and/or injunction); (2) filed against non-governmental individuals and/or groups; (3) because of their communications to a government body, official or electorate; and (4) on an issue of some public interest or concern.[2] The study of 228 SLAPPs found that, despite constitutional, federal and state statute, and court decisions that expressly protect the actions of the defendants, these lawsuits have been allowed to flourish because they appear, or are camouflaged by those bringing the suit, as a typical tort case. The vast majority of the cases identified by the study were brought under legal charges of defamation (such as libel and slander), or as such business torts as interference with contract.[3]

In identifying possible solutions to litigation aimed at silencing public participation, Pring paid particular attention to a 1984 opinion of the Colorado Supreme Court establishing a new rule for trial courts to allow for dismissal motions for SLAPP suits.[4] In recognition of the

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[1] George W. Pring, *SLAPPS: Strategic Lawsuits against Public Participation*, Pace Env. L. Rev, Paper 132, 1 (1989), *available at* http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1122&context=envlaw (last visited Nov. 17, 2010).

[2] *Id.* at 7-8.

[3] *Id.* at 8-9.

[4] Protect Our Mountain Env't, Inc. v. District Court, 677 P.2d 1361 (Colo. 1984). The three-prong test develop by the court requires:

> When [ ] a plaintiff sues another for alleged misuse or abuse of the administrative or judicial processes of government, and the defendant files a motion to dismiss by reason of the constitutional right to petition, the plaintiff must make a sufficient showing to permit the court to reasonably conclude that the defendant's petitioning activities were not immunized from liability under the First Amendment because: (1) the defendant's administrative or judicial claims were devoid of reasonable factual support, or, if so supportable, lacked any cognizable basis in law for their assertion; and (2) the primary purpose of the defendant's petitioning activity was to harass the

growing problem of SLAPPs, a number of jurisdictions have, legislatively, created a similar special motion to dismiss in order to expeditiously, and more fairly deal with SLAPPs. According to the California Anti-SLAPP Project, a public interest law firm and policy organization dedicated to fighting SLAPPs in California, as of January 2010 there are approximately 28 jurisdictions in the United States that have adopted anti-SLAPP measures. Likewise, there are nine jurisdictions (not including the District of Columbia) that are currently considering legislation to address the issue. Also, one other jurisdiction has joined Colorado in addressing SLAPPs through judicial doctrine.[5]

This issue has also recently been taken up by the federal government, with the introduction of the H.R. 4363, the Citizen Participation Act of 2009. This legislation would provide certain procedural protections for any act in furtherance of the constitutional right of petition or free speech, and specifically incorporate a special motion to dismiss for SLAPPs.[6]

SLAPPs in the District of Columbia:

Like the number of jurisdictions that have sensed the need to address SLAPPs legislatively, the District of Columbia is no stranger to SLAPPs. The American Civil Liberties Union of the Nation's Capital (ACLU), in written testimony provided to the Committee (attached), described two cases in which the ACLU was directly involved, as counsel for defendants, in such suits against District residents.[7]

The actions that typically draw a SLAPP are often, as the ACLU noted, the kind of grassroots activism that should be hailed in our democracy. In one of the examples provided, the ACLU discussed the efforts of two Capitol Hill advocates that opposed the efforts of a certain developer. When the developer was unable to obtain a building permit, the developer sued the activists and the community organization alleging they "conducted meetings, prepared petition drives, wrote letters and made calls and visits to government officials, organized protests, organized the preparation and distribution of ... signs, and gave statements and interviews to various media."[8] Such activism, however, was met with years of litigation and, but for the ACLU's assistance, would have resulted in outlandish legal costs to defend. Though the actions

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plaintiff or to effectuate some other improper objective; and (3) the defendant's petitioning activity had the capacity to adversely affect a legal interest of the plaintiff.

Id. at 1369.

[5] California Anti-SLAPP Project (CASP) website, Other states: Statutes and cases, *available at* http://www.casp.net/statutes/menstate.html (last visited Nov. 11, 2010).

[6] http://www.thomas.gov/cgi-bin/bdquery/D?d111:1:./temp/~bdLBBX:@@@L&summ2=m&|/home/LegislativeData.php|

[7] *Bill 18-893, Anti-SLAPP Act of 2010: Public Hearing of the Committee on Public Safety and the Judiciary*, Sept. 17, 2010, at 2-3 (written testimony Arthur B. Spitzer, Legal Director, American Civil Liberties Union of the Nation's Capital).

[8] *Id.* at 2 (quoting from lawsuit in *Father Flanagan's Boys Home v. District of Columbia et al.*, Civil Action No. 01-1732 (D.D.C)).

of these participants should have been protected, they, and any others who wished to express opposition to the project, were met with intimidation.

What has been repeated by many who have studied this issue, from Pring on, is that the goal of the litigation is not to win the lawsuit but punish the opponent and intimidate them into silence. As Art Spitzer, Legal Director for the ACLU, noted in his testimony "[*l*]*itigation itself* is the plaintiff's weapon of choice."[9]

District Anti-SLAPP Act:

In June 2010, legislation was introduced to remedy this nationally recognized problem here in the District of Columbia. As introduced, this measure closely mirrored the federal legislation introduced the previous year. Bill 18-893 provides a defendant to a SLAPP with substantive rights to expeditiously and economically dispense of litigation aimed to prevent their engaging in constitutionally protected actions on matters of public interest.

Following the lead of other jurisdictions, which have similarly extended absolute or qualified immunity to individuals engaging in protected actions, Bill 18-893 extends substantive rights to defendants in a SLAPP, providing them with the ability to file a special motion to dismiss that must be heard expeditiously by the court. To ensure a defendant is not subject to the expensive and time consuming discovery that is often used in a SLAPP as a means to prevent or punish, the legislation tolls discovery while the special motion to dismiss is pending. Further, in recognition that SLAPP plaintiffs frequently include unspecified individuals as defendants -- in order to intimidate large numbers of people that may fear becoming named defendants if they continue to speak out -- the legislation provides an unnamed defendant the ability to quash a subpoena to protect his or her identity from disclosure if the underlying action is of the type protected by Bill 18-893. The legislation also allows for certain costs and fees to be awarded to the successful party of a special motion to dismiss or a special motion to quash.

Bill 18-893 ensures that District residents are not intimidated or prevented, because of abusive lawsuits, from engaging in political or public policy debates. To prevent the attempted muzzling of opposing points of view, and to encourage the type of civic engagement that would be further protected by this act, the Committee urges the Council to adopt Bill 18-893.

II. LEGISLATIVE CHRONOLOGY

June 29, 2010 — Bill 18-893, the "Anti-SLAPP Act of 2010," is introduced by Councilmembers Cheh and Mendelson, co-sponsored by Councilmember M. Brown, and is referred to the Committee on Public Safety and the Judiciary.

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[9] *Id.* at 3.

July 9, 2010	Notice of Intent to act on Bill 18-893 is published in the *District of Columbia Register.*
August 13, 2010	Notice of a Public Hearing is published in the *District of Columbia Register.*
September 17, 2010	The Committee on Public Safety and the Judiciary holds a public hearing on Bill 18-893.
November 18, 2010	The Committee on Public Safety and the Judiciary marks-up Bill 18-893.

III. POSITION OF THE EXECUTIVE

The Executive provided no witness to testify on Bill 18-893 at the September 17, 2010 hearing. The Office of the Attorney General provided a letter subsequent to the hearing stating the need to review the legislation further.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY

The Committee on Public Safety and the Judiciary held a public hearing on Bill 18-893 on Friday, September 17, 2010. The testimony summarized below is from that hearing. A copy of submitted testimony is attached to this report.

Robert Vinson Brannum, President, D.C. Federation of Civic Associations, Inc., testified in support of Bill 18-893.

Ellen Opper-Weiner, Public Witness, testified in support of Bill 18-893. Ms. Opper-Weiner recounted her own experience in SLAPP litigation, and suggested several amendments to strengthen the legislation.

Dorothy Brizill, Public Witness, testified in support of Bill 18-893. Ms. Brizill recounted her own experience in SLAPP litigation. She stated that the legislation is the next step in advancing free speech in the District of Columbia.

Arthur B. Spitzer, Legal Director, American Civil Liberties Union of the Nation's Capital, provided a written statement in support of the purpose and general approach of Bill 18-

893, but suggested several changes to the legislation as introduced. A copy of this statement is attached to this report.

Although no Executive witness presented testimony, Attorney General for the District of Columbia, Peter Nickles, expressed concern that certain provisions of the bill might implicate the Home Rule Act prohibition against enacting any act with respect to any provision of Title 11 of the D.C. Official Code. A copy of his letter is attached to this report.

VI. IMPACT ON EXISTING LAW

Bill 18-893 adds new provisions in the D.C. Official Code to provide an expeditious process for dealing with strategic lawsuits against public participation (SLAPPs). Specifically, the legislation provides a defendant to a SLAPP with substantive rights to have a motion to dismiss heard expeditiously, to delay burdensome discovery while the motion to dismiss is pending, and to provide an unnamed defendant the ability to quash a subpoena to protect his or her identity from disclosure if the underlying action is of the type protected by Bill 18-893. The legislation also allows for the costs of litigation to be awarded to the successful party of a special motion to dismiss created under this act.

VII. FISCAL IMPACT

The attached November 16, 2010 Fiscal Impact Statement from the Chief Financial Officer states that funds are sufficient to implement Bill 18-893. This legislation requires no additional funds or staff.

VIII. SECTION-BY-SECTION ANALYSIS

Several of the changes to the Committee Print from Bill 18-893 as introduced stem from the recommendations of the American Civil Liberties Union of the Nation's Capital (ACLU). For a more thorough explanation of these changes, see the September 17, 2010 testimony of the ACLU attached to this report.

Section 1	States the short title of Bill 18-893.
Section 2	Incorporates definitions to be used throughout the act.
Section 3	Creates the substantive right of a party subject to a claim under a SLAPP suit to file a special motion to dismiss within 45 days after service of the claim.

Subsection (a) Creates a substantive right of a defendant to pursue a special motion to dismiss for a lawsuit regarding an act in furtherance of the right of advocacy on issues of public interest.

Subsection (b) Provides that, upon a prima facie showing that the activity at issue in the litigation falls under the type of activity protected by this act, the court shall dismiss the case unless the responding party can show a likelihood of succeeding upon the merits.

Subsection (c) Tolls discovery proceedings upon the filing of a special motion to dismiss under this act. As introduced the legislation permitted an exemption to this for good cause shown. The Committee Print has tightened this language in this provision so that the court may permit specified discovery if it is assured that such discovery would not be burdensome to the defendant.

Subsection (d) Requires the court to hold an expedited hearing on a special motion to dismiss filed under this act.

As introduced, the Committee Print contained a subsection (e) that would have provided a defendant with a right of immediate appeal from a court order denying a special motion to dismiss. While the Committee agrees with and supports the purpose of this provision, a recent decision of the DC Court of Appeals states that the Council exceeds its authority in making such orders reviewable on appeal.[10] The dissenting opinion in that case provides a strong argument for why the Council should be permitted to legislate this issue. However, under the majority opinion the Council is restricted from expanding the authority of District's appellate court to hear appeals over non-final orders of the lower court. The provision that has been removed from the bill as introduced would have provided an immediate appeal over a non-final order (a special motion to dismiss).

Section 4 Creates a substantive right of a person to pursue a special motion to quash a subpoena aimed at obtaining a persons identifying information relating to a lawsuit regarding an act in furtherance of the right of advocacy on issues of public interest.

Subsection (a) Creates the special motion to quash.

Subsection (b) Provides that, upon a prima facie showing that the underlying claim is of the type of activity protected by this act, the court shall grant the special

[10] *See* Stuart v. Walker, 09-CV-900 (DC Ct of App 2010) at 4-5.

motion to quash unless the responding party can show a likelihood of succeeding upon the merits.

Section 5 — Provides for the awarding of fees and costs for prevailing on a special motion to dismiss or a special motion to quash. The court is also authorized to award reasonable attorney fees where the underlying claim is determined to be frivolous.

Section 6 — Provides exemptions to this act for certain claims.

Section 7 — Adopts the Fiscal Impact Statement.

Section 8 — Establishes the effective date by stating the standard 30-day Congressional review language.

IX. COMMITTEE ACTION

On November 18, 2010, the Committee on Public Safety and the Judiciary met to consider Bill 18-893, the "Anti-SLAPP Act of 2010." The meeting was called to order at 1:50 p.m., and Bill 18-893 was the fourth item on the agenda. After ascertaining a quorum (Chairman Mendelson and Councilmembers Alexander, Cheh, and Evans present; Councilmembers Bowser absent), Chairman Mendelson moved the print, along with a written amendment to repeal section 3(e) of the circulated draft print, with leave for staff to make technical changes. After an opportunity for discussion, the vote on the print was three aye (Chairman Mendelson and Councilmembers Evans and Cheh), and one present (Councilmember Alexander). Chairman Mendelson then moved the report, with leave for staff to make technical and editorial changes. After an opportunity for discussion, the vote on the report was three aye (Chairman Mendelson and Councilmembers Evans and Cheh), and one present (Councilmember Alexander). The meeting adjourned at 2:15 p.m.

X. ATTACHMENTS

1. Bill 18-893 as introduced.
2. Written testimony and comments.
3. Fiscal Impact Statement
4. Committee Print for Bill 18-893.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Memorandum

To: Members of the Council

From: Cynthia Brock-Smith, Secretary to the Council

Date: July 7, 2010

Subject: (Correction)
Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Legislative Meeting on Tuesday, June 29, 2010. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Anti-SLAPP Act of 2010", B18-0893

INTRODUCED BY: Councilmembers Cheh and Mendelson

CO-SPONSORED BY: Councilmember M. Brown

The Chairman is referring this legislation to the Committee on Public Safety and the Judiciary.

Attachment

cc: General Counsel
Budget Director
Legislative Services

Councilmember Phil Mendelson

Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmembers Mary M. Cheh and Phil Mendelson introduced the following bill, which was referred to the Committee on _____.

To provide a special motion for the quick and efficient dismissal of strategic lawsuits against public participation (SLAPPs), to stay proceedings until the motion is considered, to provide a motion to quash attempts to seek personally identifying information; and to award the costs of litigation to the successful party on a special motion.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Anti-SLAPP Act of 2010".

Sec. 2. Definitions.

For the purposes of this Act, the term:

(1) "Act in furtherance of the right of free speech" means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;

(ii) In a place open to the public or a public forum in connection with an issue of public interest; or

(B) Any other conduct in furtherance of the exercise of the constitutional right to petition the government or the constitutional right of free expression in connection with an issue of public interest.

(2) "Issue of public interest" means an issue related to health or safety; environmental, economic or community well-being; the District government; a public figure; or a good, product or service in the market place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(3) "Claim" includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

(4) "Government entity" means the Government of the District of Columbia and its branches, subdivisions, and departments.

Sec. 3. Special Motion to Dismiss.

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of free speech within 45 days after service of the claim.

(b) A party filing a special motion to dismiss under this section must make a prima facie showing that the claim at issue arises from an act in furtherance of the right of free speech. If the moving party makes such a showing, the responding party may demonstrate that the claim is likely to succeed on the merits.

(c) Upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until notice of entry of an order disposing of the motion, except that the court, for good cause shown, may order that specified discovery be conducted.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

(e) The defendant shall have a right of immediate appeal from a court order denying a special motion to dismiss in whole or in part.

Sec. 4. Special Motion to Quash.

(a) A person whose personally identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with an action arising from an act in furtherance of the right of free speech may make a special motion to quash the discovery order, request, or subpoena.

(b) The person bringing a special motion to quash under this section must make a prima facie showing that the underlying claim arises from an act in furtherance of the right of free speech. If the person makes such a showing, the claimant in the underlying action may demonstrate that the underlying claim is likely to succeed on the merits.

Sec. 5. Fees and costs.

(a) The court may award a person who substantially prevails on a motion brought under sections 3 or 4 of this Act the costs of litigation, including reasonable attorney fees.

(b) If the court finds that a motion brought under sections 3 or 4 of this Act is frivolous or is solely intended to cause unnecessary delay, the court may award reasonable attorney fees and costs to the responding party.

Sec. 6. Exemptions.

(a) This Act shall not apply to claims brought solely on behalf of the public or solely to enforce an important right affecting the public interest.

(b) This Act shall not apply to claims brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is a representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services, and the intended audience is an actual or potential buyer or customer.

Sec. 7. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Testimony of the
American Civil Liberties Union
of the Nation's Capital

by

Arthur B. Spitzer
Legal Director

before the

Committee on Public Safety and the Judiciary
of the
Council of the District of Columbia

on

Bill 18-893, the
"Anti-SLAPP Act of 2010"

September 17, 2010

The ACLU of the Nation's Capital appreciates this opportunity to testify on Bill 18-893. We support the purpose and the general approach of this bill, but we believe it requires some significant polishing in order to achieve its commendable goals.

Background

In a seminal study about twenty years ago, two professors at the University of Denver identified a widespread pattern of abusive lawsuits filed by one side of a political or public policy dispute—usually the side with deeper pockets and ready access to counsel—to punish or prevent the expression of opposing points of view. They dubbed these "Strategic Lawsuits Against Public Participation," or "SLAPPs." *See* George W. Pring and Penelope Canan, SLAPPS: GETTING SUED FOR SPEAKING OUT (Temple University Press 1996). They pinpointed several criteria that identify a SLAPP:

— The actions complained of "involve communicating with government officials, bodies, or the electorate, or encouraging others to do so." *Id.* at 150.

— The defendants are "involved in speaking out for or against some issue under consideration by some level of government or the voters." *Id.*

— The legal claims filed against the speakers tend to fall into predictable categories such as defamation, interference with prospective economic advantage, invasion of privacy, and conspiracy. *Id.* at 150-51.

— The lawsuit often names "John or Jane Doe defendants." *Id.* at 151. "We have found whole communities chilled by the inclusion of Does, fearing 'they will add my name to the suit.'" *Id.*

The authors "conservatively estimate[d] that ... tens of thousands of Americans have been SLAPPed, and still more have been muted or silenced by the threat." *Id.* at xi. Finding that "the legal system is not effective in controlling SLAPPs," *id.*, they proposed the adoption of anti-SLAPP statutes to address the problem. *Id.* at 201.

Responding to the continuing use of SLAPPs by those seeking to silence opposition to their activities, twenty-six states and the Territory of Guam have now enacted anti-SLAPP statutes.[1]

The ACLU of the Nation's Capital has been directly involved, as counsel for defendants, in two SLAPPs involving District of Columbia residents.

In the first case, a developer that had been frustrated by its inability promptly to obtain a building permit sued a community organization (Southeast Citizens for Smart Development) and two Capitol Hill activists (Wilbert Hill and Ellen Opper-Weiner) who had opposed its efforts. The lawsuit claimed that the defendants had violated the developer's rights when they "conducted meetings, prepared petition drives, wrote letters and made calls and visits to government officials, organized protests, organized the preparation and distribution of ... signs, and gave statements and interviews to various media," and when they created a web site that urged people to "call, write or e-mail the mayor" to ask him to stop the project. The defendants' activities exemplified the kind of grassroots activism that should be hailed in a democracy, and the lawsuit was a classic SLAPP. The case was eventually dismissed, and the dismissal affirmed on appeal.[2] But the litigation took several years, and during all that time the defendants and their neighbors were worried about whether they might face liability. Because the ACLU represented the citizens and their organization at no charge, they were not financially harmed. But had they been required to retain paid counsel, the cost would have been substantial, and intimidating.

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[1] Links to these statutes can be found at http://www.casp.net/menstate.html.

[2] *Father Flanagan's Boys Home v. District of Columbia, et al.*, Civil Action No. 01-1732 (D.D.C.), *aff'd*, 2003 WL 1907987 (No. 02-7157, D.C. Cir. 2003).

In the second case we represented Dorothy Brizill, who needs no introduction to this Committee. She was sued in Guam for defamation, invasion of privacy, and "interference with prospective business advantage," based on statements she made in a radio interview broadcast there about the activities of the gambling entrepreneur who backed the proposed 2004 initiative to legalize slot machines in the District of Columbia. This lawsuit was also a classic SLAPP, filed against her in the midst of the same entrepreneur's efforts to legalize slot machines on Guam, in an effort to silence her. And to intimidate his opponents, twenty "John Does" were also named as defendants. With the help of Guam's strong anti-SLAPP statute, the case was dismissed, and the dismissal was affirmed by the Supreme Court of Guam.[3] But once again, the litigation lasted more than two years, and had Ms. Brizill been required to retain paid counsel to defend herself, it would have cost her hundreds of thousands of dollars.

As professors Pring and Canan demonstrated, a SLAPP plaintiff's real goal is not to win the lawsuit but to punish his opponents and intimidate them and others into silence. *Litigation itself* is the plaintiff's weapon of choice; a long and costly lawsuit is a victory for the plaintiff even if it ends in a formal victory for the defendant. That is why anti-SLAPP legislation is needed: to enable a defendant to bring a SLAPP to an end quickly and economically.

Bill 18-893

Bill 18-893 would help end SLAPPs quickly and economically by making available to the defendant a "special motion to dismiss" that has four noteworthy features:

- The motion must be heard and decided expeditiously.
- Discovery is generally stayed while the motion is pending.
- If the motion is denied the defendant can take an immediate appeal.
- Most important, the motion is to be granted if the defendant shows that he or she was engaged in protected speech or activity, unless the plaintiff can show that he or she is nevertheless likely to succeed on the merits.

Speaking generally, this is sensible path to the desired goal, and speaking generally, the ACLU endorses it. If a lawsuit looks like a SLAPP, swims like a SLAPP, and quacks like a SLAPP, then it probably is a SLAPP, and it is fair and reasonable to put the burden on the plaintiff to show that it isn't a SLAPP.

We do, nevertheless, have a number of suggestions for improvement, including a substantive change in the definition of the conduct that is to be protected by the proposed law.

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[3] *Guam Greyhound, Inc. v. Brizill,* 2008 Guam 13, 2008 WL 4206682.

Section 2(1). The bill begins by defining the term "Act in furtherance of the right of free speech," which is used to signify the conduct that can be protected by a special motion to dismiss. In our view, it would be better to use a different term, because the "right of free speech" is already a term in very common use, with a broader meaning than the meaning given in this bill, and it will be impossible, or nearly so, for litigants, lawyers and even judges (and especially the news media) to avoid confusion between the common meaning of the "right of free speech" and the special, narrower meaning given to it in this bill. It would be akin to defining the term "fruit" to mean "a curved yellow edible food with a thick, easily-peeled skin." This specially-defined term deserves a special name that will not require a struggle to use correctly. We suggest "Act in furtherance of the right of advocacy on issues of public interest."

Section 2(1)(A). Because there is no conjunction at the end of section 2(1)(A)(i), the bill is ambiguous as to whether sections 2(1)(A)(i) and (ii) are conjunctive or disjunctive. That is, in order to be covered, must a statement be made "In connection with an ... official proceeding" *and* "In a place open to the public or a public forum in connection with an issue of public interest," or is a statement covered if it is made *either* "In connection with an ... official proceeding," *or* "In a place open to the public or a public forum in connection with an issue of public interest"?

We urge the insertion of the word "or" at the end of section 2(1)(A)(i) to make it clear that statements are covered in either case. A statement made "In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law" certainly deserves anti-SLAPP protection whether it is made in a public place or in a private place. For example, a statement made to a group gathered by invitation in a person's living room, or made to a Councilmember during a non-public meeting, should be protected. Likewise, a statement made "In a place open to the public or a public forum in connection with an issue of public interest" deserves anti-SLAPP protection whether of not it is also connected to an "official proceeding." For example, statements by residents addressing a "Stop the Slaughterhouse" rally should be protected even if no official proceeding regarding the construction of a slaughterhouse has yet begun.[4]

[4] It appears that these definitions, along with much of Bill 18-893, were modeled on the Citizen Participation Act of 2009, H.R. 4364 (111th Cong., 1st Sess.), introduced by Rep. Steve Cohen of Tennessee (*available at* http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4364.IH:). In that bill it is clear that speech or activity that falls under any one of these definitions is covered.

Section 2(1)(B). Section 2(1)(B) expands the definition of protected activity to include "any other conduct in furtherance of the exercise of the constitutional right to petition the government or the constitutional right of free expression in connection with an issue of public interest." We fully agree with the intent of this provision, but we think it fails as a definition because it is backwards—it requires a court *first* to determine whether given conduct is protected by the Constitution *before* it can determine whether that conduct is covered by the Anti-SLAPP Act. But if the conduct is protected by the Constitution, then there is no need for the court to determine whether it is covered by the Anti-SLAPP Act: a claim arising from that conduct must be dismissed because the conduct is protected by the Constitution. And yet the task of determining whether given conduct is protected by the Constitution is often quite difficult, and can require exactly the kinds of lengthy, expensive legal proceedings (including discovery) that the bill is intended to avoid.

This very problem arose in the *Brizill* case, where the Guam anti-SLAPP statute protected "acts in furtherance of the Constitutional rights to petition," and Mr. Baldwin argued that the statute therefore provided no broader protection for speech than the Constitution itself provided. *See* 2008 Guam 13 ¶ 28. He argued, for example, that Ms. Brizill's speech was not protected by the statute because it was defamatory, and defamation is not protected by the Constitution. As a result, the defendant had to litigate the constitutional law of defamation on the way to litigating the SLAPP issues. This should not be necessary, as the purpose of an anti-SLAPP law is to provide broader protection than existing law already provides. Bill 18-893 should be amended to avoid creating the same problem here.[5]

We therefore suggest amending Section 2(1)(B) to say: "Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest."

Section 2(4). Section 2(4) defines the term "government entity." But that term is never used in the bill. It should therefore be deleted.[6]

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[5] The Supreme Court of Guam ultimately rejected the argument that "Constitutional rights" meant "constitutionally protected rights," *see id.* at ¶ 32, but that was hardly a foregone conclusion, and the D.C. Court of Appeals might not reach the same conclusion under Section 2(1)(B).

[6] The same term is defined in H.R. 4364, but it is then used in a section providing that "A government entity may not recover fees pursuant to this section."

Section 3(b). We agree with what we understand to be the intent of this provision, setting out the standards for a special motion to dismiss. But the text of this section fails to accomplish its purpose because it never actually spells out what a court is supposed to do. We suggest revising Section 3(b) as follows:

> (b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

Section 3(c). We agree that discovery should be stayed on a claim as to which a special motion to dismiss has been filed. This is an important protection, for discovery is often burdensome and expensive. Because expression on issues of public interest deserves special protection, a plaintiff who brings a claim based on a defendant's expression on an issue of public interest ought to be required to show a likelihood of success on that claim without the need for discovery.

A case may exist in which a plaintiff could prevail on such a claim after discovery but cannot show a likelihood of success without discovery, but in our view the dismissal of such a hypothetical case is a small price to pay for the public interest that will be served by preventing the all-but-automatic discovery that otherwise occurs in civil litigation over the sorts of claims that are asserted in SLAPPs.

As an exception to the usual stay of discovery, Section 3(c) permits a court to allow "specified discovery" after the filing of a special motion to dismiss "for good cause shown." We agree that a provision allowing some discovery ought to be included for the exceptional case. But while the "good cause" standard has the advantage of being flexible, it has the disadvantage of being completely subjective, so that a judge who simply feels that it's unfair to dismiss a claim without discovery can, in effect, set the Anti-SLAPP Act aside and allow a case to proceed in the usual way. In our view, it would be better if the statute spelled out more precisely the circumstances under which discovery might be allowed, and also included a provision allowing the court to assure that such discovery would not be burdensome to the defendant. For example: "...except that the court may order that specified discovery be conducted when it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery."

Finally, we note that this section provides that discovery shall be stayed "until notice of entry of an order disposing of the motion." That language tracks H.R. 4364, but "notice of entry" of court orders is not part of D.C. Superior Court procedure. We suggest that the bill be amended to provide that "... discovery proceedings on the claim shall be stayed until the motion has been disposed of, including any appeal taken under section 3(e), ..."

Sections 3(d) and (e). We agree that a special motion to dismiss should be expedited and that its denial should be subject to an interlocutory appeal. The Committee may wish to consider whether the Court of Appeals should also be directed to expedite its consideration of such an appeal. The D.C. Court of Appeals often takes years to rule on appeals.

Section 4. Section 4 is focused on the fact that SLAPPs frequently include unspecified individuals (John and Jane Does) as defendants. As observed by professors Pring and Canan, this is one of the tactics employed by SLAPP plaintiffs to intimidate large numbers of people, who fear that they may become named defendants if they continue to speak out on the relevant public issue.

There can be very legitimate purposes for naming John and Jane Does as defendants in civil litigation. The ACLU sometimes names John and Jane Does as defendants when it does not yet know their true identities—for example, when unknown police officers are alleged to have acted unlawfully.[7] It is therefore necessary to balance the right of a plaintiff to proceed against an as-yet-unidentified person who has violated his rights, and to use the court system to discover that person's identity, against the right of an individual not to be made a defendant in an abusive SLAPP that was filed for the purpose of retaliating against, or chilling, legitimate civic activity.

We believe that Section 4 strikes an appropriate balance by making available to a John or Jane Doe a "special motion to quash," protecting his or her identity from disclosure if he or she was acting in a manner that is protected by the Anti-SLAPP Act, and if the plaintiff cannot make the same showing of likely success on the merits that is required to defeat a special motion to dismiss.

Like Section 3(b), however, Section 4(b) never actually spells out what a court is supposed to do. We therefore suggest revising Section 4(b) in the same manner we suggested revising Section 3(b):

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[7] *See, e.g., YoungBey v. District of Columbia, et al.*, No. 09-cv-596 (D.D.C.) (suing the District of Columbia, five named MPD officers, and 27 "John Doe" officers in connection with an unlawful pre-dawn SWAT raid of a District resident's home).

(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personally identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

Section 6(a). Section 6(a) provides that "This Act shall not apply to claims brought solely on behalf of the public or solely to enforce an important right affecting the public interest." This language is vague and tremendously broad. Almost any plaintiff can and will assert that he is bringing his claims "to enforce an important right affecting the public interest," and neither this bill nor any other source we know gives a court any guidance regarding what "an important right affecting the public interest" might be. The plaintiffs in the two SLAPP suits described above, in which the ACLU of the Nation's Capital represented the defendants, vigorously argued that they were seeking to enforce an important right affecting the public interest: the developer argued that it was seeking to provide housing for disadvantaged youth; the gambling entrepreneur argued that he was seeking to prevent vicious lies from affecting the result of an election.

Thus, this provision will almost certainly add an entire additional phase to the litigation of every SLAPP suit, with the plaintiff arguing that the anti-SLAPP statute does not even apply to his case because he is acting in the public interest. To the extent that courts accept such arguments, this provision is a poison pill with the potential to turn the anti-SLAPP statute into a virtually dead letter. At a minimum, it will subject the rights of SLAPP defendants to the subjective opinions of more than 75 different Superior Court judges regarding what is or is not "an important right affecting the public interest."

Moreover, we think the exclusion created by Section 6(a) is constitutionally problematic because it incorporates a viewpoint-based judgment about what is or is not in the public interest—after all, what is in the public interest necessarily depends upon one's viewpoint.

—Assume, for example, that D.C. Right To Life (RTL) makes public statements that having an abortion causes breast cancer. Assume Planned Parenthood sues RTL, alleging that those statements impede its work and cause psychological harm to its members. RTL files a special motion to dismiss under the Anti-SLAPP Act, showing that it was communicating views to members of the public in connection with an issue of public interest. But Planned Parenthood responds that its lawsuit is not subject to the Anti-SLAPP Act because it was

"brought ... solely to enforce an important right affecting the public interest," to wit, the right to reproductive choice.

—Now assume that Planned Parenthood makes public statements that having an abortion under medical supervision is virtually risk-free. RTL sues Planned Parenthood, alleging that those statements impede its work and cause psychological harm to its members. Planned Parenthood files a special motion to dismiss under the Anti-SLAPP Act, showing that it was communicating views to members of the public in connection with an issue of public interest. But RTL responds that its lawsuit is not subject to the Anti-SLAPP Act because it was "brought ... solely to enforce an important right affecting the public interest," to wit, the right to life.

Are both lawsuits exempt from the Anti-SLAPP Act? Neither? One but not the other? We fear that the result is likely to depend on the viewpoint of the judge regarding which asserted right is "an important right affecting the public interest." But the First Amendment requires the government to provide evenhanded treatment to speech on all sides of public issues. We see no good reason for the inclusion of Section 6(a), and many pitfalls. Accordingly, we urge that it be deleted.[8]

Thank you for your consideration of our comments.

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[8] Section 10 of H.R. 4364, on which Section 6(a) of Bill 18-893 is modeled, begins with the catchline "Public Enforcement." It therefore appears that Section 10 was intended to exempt only enforcement actions brought by the government.

Even if that is true, we see no good reason to exempt the government, as a litigant, from a statute intended to protect the rights of citizens to speak freely on issues of public interest. To the contrary, the government should be held to the strictest standards when it comes to respecting those rights. *See, e.g., White v. Lee*, 227 F.3d 1214 (9th Cir. 2000) (holding that the advocacy activities of neighbors who opposed the conversion of a motel into a multi-family housing unit for homeless persons were protected by the First Amendment, and that an intrusive eight-month investigation into their activities and beliefs by the regional Fair Housing and Equal Opportunity Office violated their First Amendment rights).

We therefore urge the complete deletion of Section 6(a), as noted above. However, if the Committee does not delete Section 6(a) entirely, its coverage should be limited to lawsuits brought by the government.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

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[redacted]

ATTORNEY GENERAL

September 17, 2010

The Honorable Phil Mendelson
Chairperson
Committee on Public Safety & the Judiciary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Ste. 402
Washington, D.C. 20004

Re: Bill 18-893, the "Anti-SLAPP Act of 2010"

Dear Chairperson Mendelson:

I have not yet had the opportunity to study in depth Bill 18-893, the "Anti-SLAPP Act of 2010" ("bill"), which will be the subject of a hearing before your committee today, but I do want to register a preliminary concern about the legislation.

To the extent that sections 3 (special motion to dismiss) and 4 (special motion to quash) of the bill would impact SLAPPs filed in the Superior Court of the District of Columbia, the legislation may run afoul of section 602(a)(4) of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 813 (D.C. Official Code § 1-206.02(a)(4) (2006 Repl.)), which prohibits the Council from enacting any act "with respect to any provision of Title 11 [of the D.C. Code]." In particular, D.C. Official Code § 11-946 (2001) provides, for example, that the Superior Court "shall conduct its business according to the Federal Rules of Civil Procedure...unless it prescribes or adopts rules which modify those Rules [subject to the approval of the Court of Appeals]." As you know, the Superior Court subsequently adopted rules of procedure for civil actions, including Rules 12(c) (Motion for judgment on the pleadings), 26-37 (Depositions and Discovery), and 56 (Summary judgment), which appear to afford the parties to civil actions rights and opportunities that sections 3 and 4 of the bill can be construed to abrogate. Thus, the bill may conflict with the Superior Court's rules of civil procedure and, consequently, violate section 602(a)(4) of the Home Rule Act insofar as that section preserves the D.C. Courts' authority to adopt rules of procedure free from interference by the Council. Accordingly, I suggest that – if you have not already done so – you solicit comments concerning the legislation from the D.C. Courts.

Sincerely,

Peter J. Nickles
Attorney General for the District of Columbia

cc: Vincent Gray, Chairman, Council of the District of Columbia
Yvette Alexander, Council of the District of Columbia

Government of the District of Columbia
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Vincent C. Gray** **Chairman, Council of the District of Columbia**
FROM:	**Natwar M. Gandhi** **Chief Financial Officer**
DATE:	**November 16, 2010**
SUBJECT:	**Fiscal Impact Statement – "Anti-SLAPP Act of 2010"**
REFERENCE:	**Bill Number 18-893, Draft Committee Print Shared with the OCFO on November 15, 2010**

Conclusion

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation.

Background

The proposed legislation would provide a special motion for the quick dismissal of claims "arising from an act in furtherance of the right of advocacy on issues of public interest,"[1] which are commonly referred to as strategic lawsuits against public participation (SLAPPs). SLAPPs are generally defined as retaliatory lawsuits intended to silence, intimidate, or punish those who have used public forums to speak, petition, or otherwise move for government action on an issue. Often the goal of SLAPPs is not to win, but rather to engage the defendant in a costly and long legal battle. This legislation would provide a way to end SLAPPs quickly and economically by allowing for this special motion and requiring the court to hold an expedited hearing on it.

In addition, the proposed legislation would provide a special motion to quash attempts arising from SLAPPs to seek personally identifying information, and would allow the courts to award the costs of litigation to the successful party on a special motion.

[1] Defined in the proposed legislation as (A) Any written or oral statement made: (i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (ii) In a place open to the public or a public forum in connection with an issue of public interest; or (B) Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

Lastly, the proposed legislation would exempt certain claims from the special motions.

Financial Plan Impact

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the provisions of the proposed legislation. Enactment of the proposed legislation would not have an impact on the District's budget and financial plan as it involves private parties and not the District government (the Courts are federally-funded). If effective, the proposed legislation could have a beneficial impact on current and potential SLAPP defendants.

COMMITTEE PRINT

Committee on Public Safety & the Judiciary

November 18, 2010

A BILL

18-893

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide a special motion for the quick and efficient dismissal of strategic lawsuits against public participation, to stay proceedings until the motion is considered, to provide a motion to quash attempts to seek personally identifying information; and to award the costs of litigation to the successful party on a special motion.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Anti-SLAPP Act of 2010".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Act in furtherance of the right of advocacy on issues of public interest" means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or

(ii) In a place open to the public or a public forum in connection with an issue of public interest.

(B) Any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

(2) "Issue of public interest" means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(3) "Claim" includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

Sec. 3. Special Motion to Dismiss.

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c)(1) Except as provided in paragraph (2), upon the filing of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specialized discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

Sec. 4. Special Motion to Quash.

(a) A person whose personally identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with a claim arising from an act in furtherance of the right of advocacy on issues of public interest may make a special motion to quash the discovery order, request, or subpoena.

(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personally identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

Sec. 5. Fees and costs.

(a) The court may award a person who substantially prevails on a motion brought under sections 3 or 4 of this Act the costs of litigation, including reasonable attorney fees.

(b) If the court finds that a motion brought under sections 3 or 4 of this Act is frivolous or is solely intended to cause unnecessary delay, the court may award reasonable attorney fees and costs to the responding party.

Sec. 6. Exemptions.

This Act shall not apply to claims brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is a representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services, and the intended audience is an actual or potential buyer or customer.

Sec. 7. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Exhibit D

LAW

Subpoenaed Into Silence on Global Warming

2505 APRIL 8, 2016 4:47 PM EDT

By Megan McArdle

The Competitive Enterprise Institute is getting subpoenaed by the attorney general of the U.S. Virgin Islands to cough up its communications regarding climate change. The scope of the subpoena is quite broad, covering the period from 1997 to 2007, and includes, according to CEI, "a decade's worth of communications, emails, statements, drafts, and other documents regarding CEI's work on climate change and energy policy, including private donor information."

My first reaction to this news was "Um, wut?" CEI has long denied humans' role in global warming, and I have fairly substantial disagreements with CEI on the issue. However, when last I checked, it was not a criminal matter to disagree with me. It's a pity, I grant you, but there it is; the law's the law.

(I pause to note, in the interests of full disclosure, that before we met, my husband briefly worked for CEI as a junior employee. We now return to our regularly scheduled programming.)

Speaking of the law, why on earth is CEI getting subpoenaed? The attorney general, Claude Earl Walker, explains: "We are committed to ensuring a fair and transparent market where consumers can make informed choices about what they buy and from whom. If ExxonMobil has tried to cloud their judgment, we are determined to hold the company accountable."

That wasn't much of an explanation. It doesn't mention any law that ExxonMobil may have broken. It is also borderline delusional, if Walker believes that ExxonMobil's statements or non-statements about climate change during the

period 1997 to 2007 appreciably affected consumer propensity to stop at a Mobil station, rather than tootling down the road to Shell or Chevron, or giving up their car in favor of walking to work.

State attorneys general including Walker held a press conference last week to talk about the investigation of ExxonMobil and explain their theory of the case. And yet, there sort of wasn't a theory of the case. They spent a lot of time talking about global warming, and how bad it was, and how much they disliked fossil fuel companies. They threw the word "fraud" around a lot. But the more they talked about it, the more it became clear that what they meant by "fraud" was "advocating for policies that the attorneys general disagreed with."

New York Attorney General Eric Schneiderman gave the game away when he explained that they would be pursuing completely different theories in different jurisdictions -- some under pension laws, some consumer protection, some securities fraud. It is traditional, when a crime has actually been committed, to first establish that a crime has occurred, and then identify a perpetrator. When prosecutors start running that process backwards, it's a pretty good sign that you're looking at prosecutorial power run amok.

And that approaches certainty when attorneys general start sending subpoenas to think tanks that ExxonMobil might have supported. What exactly would the subpoena prove? That ExxonMobil supported opinions about climate change? That the opinions tended to be congruent with its own interests? That this opinion might have been wrong, and if so, might have encouraged wrong beliefs in others? This is a description of, roughly, every person or organization in the history of the world, not excluding attorneys general. It's also not illegal. Especially since, as the New York Times points out, "the company published extensive research over decades that largely lined up with mainstream climatology." This isn't preventing consumers from buying into a Ponzi scheme; it's an attempt to criminalize advocacy.

I support action on climate change for the same reason I buy homeowner's, life and disability insurance: because the potential for catastrophe is large. But that

doesn't mean I'm entitled to drive people who disagree with me from the public square. Climate activists have an unfortunate tendency to try to do just that, trying to brand dissenters as the equivalent of Holocaust deniers.

It's an understandable impulse. It seems easier to shut down dissenters than to persuade people to stop consuming lots and lots of energy-intensive goods and services.

But history has had lots and lots of existentially important debates. If you thought that only the One True Church could save everyone from Hell, the Reformation was the most existentially important debate in human history. If you thought that Communist fifth columnists were plotting to turn the U.S. into Soviet Russia, that was also pretty existentially important. We eventually realized that it was much better to have arguments like these with words, rather than try to suppress one side of them by force of law.

Unfortunately those who wield the law forget that lesson, and we get cases like the CEI subpoena, intended to silence debate by hounding one side. The attorney general doesn't even need to have the law on his side; the process itself can be the punishment, as victims are forced to spend immense amounts on legal fees, and immense time and money on complying with investigations. (And if the law were on the attorney general's side in a case like this, then that's a terrible law, and it should be overturned.)

Prosecutors know the damage they can do even when they don't have a leg to stand on. The threat of investigation can coerce settlements even in weak cases.

The enemies of the Competitive Enterprise Institute and ExxonMobil should hold their applause. In a liberal democracy, every guerrilla tactic your side invents will eventually be used against you. Imagine a coalition of Republican attorneys general announcing an investigation of companies that have threatened state boycotts over gay-rights issues, and you may get a sense of why this is not such a good precedent to set.

The rule of law, and our norms about free speech, represent a sort of truce between

both sides. We all agree to let other people talk, because we don't want to live in a world where we ourselves are not free to speak. Because we do not want to be silenced by an ambitious prosecutor, we should all be vigilant when ambitious prosecutors try to silence anyone else.

This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.

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Exhibit E

JUNE 12 2009 5:24 PM

About Climate Change: Never Mind

How one think tank adapted when the debate moved on from its favorite issue.

By Lydia DePillis

It was a gathering of the anti-Washington elite. On Thursday evening, in a vast hotel ballroom just steps from the Capitol, the **Competitive Enterprise Institute** celebrated 25 years of existence. The Cato Institute, *Reason* magazine, and Americans for Prosperity all sent contingents. Master of ceremonies Tucker Carlson cracked jokes about Al Sharpton and Al Gore. The crowd of 500 dined on sea bass and toasted liberty.

But on its signature issue—climate change—at the still-young age of 25, CEI is already going senile.

Fred L. Smith, once a bureaucrat with the Environmental Protection Agency, started the institute in 1984, and it soon became one of the first conservative think tanks to go on the offensive on the environment. It attacked the Endangered Species Act and wilderness protection laws for trampling private property rights. By the mid-1990s, it refocused on global warming, assembling the **contrarian arguments** that conservatives would deploy for the next decade. (Take a trip through the **Wayback Machine**!) **Myron Ebell**, CEI's director of energy and global-warming policy, still heads the **Cooler Heads Coalition**, a clearinghouse for ammunition in the fight

against global warming "alarmists." "Ebell and his ilk were basically successful in delaying action by 10 years," says **Michael Mann**, director of the Earth System Science Center at Penn State.

But more recently, the ground has shifted beneath CEI's feet. Starting in 2006 and continuing through a presidential race in which both candidates were light years away from CEI's position on global warming, the group's salvos frequently missed their mark. A **major report** from the U.N.'s Intergovernmental Panel on Climate Change won over many doubters, while CEI itself—constantly criticized by environmental groups **cautioning against climate skeptics**—was put on the defensive against charges it peddled industry-funded junk science.

Perhaps most important, the longstanding mainstream media practice of quoting climate skeptics to keep up an impression of "balance"—through which CEI got most of its mentions in the press—has gone out of style. "One of the things that has collapsed is this approach that journalists felt they needed to take, with lots of scientific subjects, that every story must have two sides," says Marianne Lavelle, a longtime Washington-based business reporter now with the **Center for Public Integrity**. "CEI could always reliably give you that other side, especially on deadline."

The media also usually identified CEI's major underwriter: ExxonMobil, which **contributed** more than $2 million between 1998 and 2005. In 2006, however, the giant oil company yanked its funding from CEI and a number of other climate-skeptic groups, remaking itself with a green patina for lawmakers and the public. That was also the year that CEI put out an **ad** with the punch line "Carbon Dioxide: They call it pollution. We call it life."

CEI was becoming a parody of itself and a liability for Exxon—or a "distraction," as a company executive **put it**. In some ways, the divorce may have been good for both parties; CEI was suffering as much from being disregarded as an industry front group as Exxon was from being associated with the skeptics.

In truth, CEI's attack dogs are too ideological to be corporate shills and disdain corporations that abandon pure free-market principles, as all corporations do. (Just look at this list of **those seeking to benefit** from a cap-and-trade system.) Besides, as

Ebell says, CEI hasn't budged. "We have never given up on the scientific debate," he says. "That's what the public is really interested in. If the public thinks the science is a problem, then the debate changes dramatically."

But with a climate bill on the floor, the debate is no longer about whether global warming is happening. It's about politics. Said an aide for Rep. Jim Sensenbrenner of Wisconsin, the ranking Republican on the **House Select Committee on Energy Independence and Global Warming**: "His main focus is not really to raise arguments over the science. It's focused exclusively on how this is going to hit people in their pocketbooks."

Even some natural allies of CEI have abandoned its position. Jonathan Adler, who left CEI in 2000 for academia, has **come out** for a carbon tax—as long as some other tax gets cut to keep it revenue neutral. Douglas Holtz-Eakin, John McCain's policy guru on the campaign trail last fall, says CEI missed the boat on climate change. "They're important, I admire their efforts through the years, but I don't think they're at the center anymore," he said.

But while CEI may not have given up on the climate debate, it has taken up the debate on a lot of other topics. CEI scholars still produce papers, are still available for TV interviews, and still churn out op-ed columns on subjects like broadband regulation, ethanol subsidies, smoking bans, and genetically modified crops (in order: bad, bad, bad, good). And CEI's fundraising is healthier than ever. In 2007, after Exxon cut off its funding, the group reported a near-record $3.54 million in revenue. Coca-Cola, Monsanto, Google, and Microsoft topped the list at Thursday's gala.

In the keynote speech, BB&T Bank Chairman John Allison delivered a half-hour account of how the financial collapse was caused by excessive government regulation. Like CEI's position on climate change, the argument is one that **runs counter to mainstream analysis**. Unlike CEI's position on climate change, it's an argument that CEI's audience supports. Allison's speech brought the crowd to its feet.

BROW BEAT SLATE'S CULTURE BLOG

MAY 14 2016 5:45 PM

Exhibit F

Exxon cuts ties to global warming skeptics

Below: Text Discuss Related

Oil giant also in talks to look at curbing greenhouse gases

msnbc.com staff and news service reports
updated 1/12/2007 1:42:25 PM ET

NEW YORK — Oil major Exxon Mobil Corp. is engaging in industry talks on possible U.S. greenhouse gas emissions regulations and has stopped funding groups skeptical of global warming claims — moves that some say could indicate a change in stance from the long-time foe of limits on heat-trapping gases.

Exxon, along with representatives from about 20 other companies, is participating in talks sponsored by Resources for the Future, a Washington, D.C., nonprofit. The think tank said it expected the talks would generate a report in the fall with recommendations to legislators on how to regulate greenhouse emissions.

Mark Boudreaux, a spokesman for Exxon, the world's biggest publicly traded company, said its position on climate change has been "widely misunderstood and as a result of that, we have been clarifying and talking more about what our position is."

Boudreux said Exxon in 2006 stopped funding the Competitive Enterprise Institute, a nonprofit advocating limited government regulation, and other groups that have downplayed the risks of greenhouse emissions.

Video: Warming war CEI acknowledged the change. "I would make an argument that we're a useful ally, but it's up to them whether that's in the priority system that they have, right or wrong," director Fred Smith said on CNBC's "On the Money."

Last year, CEI ran advertisements, featuring a little girl playing with a dandelion, that downplayed the risks of carbon dioxide emissions.

Since Democrats won control of Congress in November, heavy industries have been nervously watching which route the United States may take on future regulations of carbon dioxide and other heat-trapping gases scientists link to global warming. Several lawmakers on Friday introduced a bill to curb emissions.

President Bush has opposed mandatory emissions cuts such as those required by the international Kyoto Protocol. He withdrew the United States, the world's top carbon emitter, from the Kyoto pact early in his first term.

Sen. Harry Reid of Nevada, the new Senate majority leader, has said he wants new legislation this spring to regulate heat-trapping emissions. Other legislators also are planning hearings on emissions.

Scenarios studied

The industry talks center on the range of greenhouse gas policy options such as cap-and-trade systems and carbon taxes, said Roy Kopp, head of the climate program at RFF. There also will be debates on whether rules should focus on companies producing oil, gas and coal, which release CO_2 when burned, or consumers who use the fuels.

To spur open industry discussion, RFF said the talks, which began in December, exclude nongovernmental organizations.

Some see Exxon's participation in the talks, coupled with its pledge to stop funding CEI, as early signs of a possible policy change.

"The fact that Exxon is trying to debate solutions, instead of whether climate change even exists, represents an important shift," said Andrew Logan, a climate expert at Ceres, a coalition of investors and environmentalists that works with companies to cut climate change risks.

Exxon's funding action was confirmed this week by its vice president for public affairs. Kenneth Cohen told the Wall Street Journal that Exxon decided in late 2005 that its 2006 nonprofit funding would not include CEI and "five or six" similar groups.

Cohen declined to identify the other groups, but their names could become public this spring when Exxon releases its annual list of donations to nonprofit groups.

Scoring oil

In a report last year on how oil majors are addressing global warming emissions, Ceres gave Exxon a 35 — the worst of any company. Oil majors BP

and Royal Dutch Shell got 90 and 79, respectively.

“Given how large and influential Exxon is and that they are basically the last big industry climate skeptic standing, even small moves can have a very big impact,” said Logan.

But he said it was too early to tell the substance of the change. “The devil is in the details,” he said.

Cohen told the Wall Street Journal that while questions remain about the degree to which fossil fuels are contributing to warming, the computer modelling on what the future may hold “has gotten better.”

And, he said, “we know enough now — or, society knows enough now — that the risk is serious and action should be taken.”

Peter Fusaro, a carbon markets expert, noted that Exxon already must comply with Kyoto regulations in other countries, and said the company may want to simplify compliance standards throughout its international operations.

“Multinational companies are under the gun to comply with Kyoto,” he said. “It’s starting to crystallize that companies can’t have dual environmental standards.”

Philip Sharp, president of Resources for the Future, told the Wall Street Journal that he was impressed by Exxon. “They are taking this debate very seriously,” said Sharp, a former Democratic congressman. “My personal opinion of them has changed by watching them operate.”

Reuters contributed to this report.

Exhibit G

A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change

Unprecedented Coalition Vows To Defend Climate Change Progress Made Under President Obama And To Push The Next President For Even More Aggressive Action

Attorneys General From California, Connecticut, District Of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Rhode Island, Virginia, Vermont, Washington State And The US Virgin Islands Agree To Coordinate Efforts

Schneiderman: Climate Change Is The Most Consequential Issue Of Our Time. This Unprecedented State-To-State Coordination Will Use All The Tools At Our Disposal To Fight For Climate Progress

A.G. Schneiderman, Al Gore And Coalition Of A...

NEW YORK – Attorney General Eric T. Schneiderman today joined Attorneys General from across the nation to announce an unprecedented coalition of top law enforcement officials committed to aggressively protecting and building upon the recent progress the United States has made in combatting climate change.

Attorneys General Schneiderman, William Sorrell of Vermont, George Jepsen of Connecticut, Brian E. Frosh of Maryland, Maura Healey of Massachusetts, Mark Herring of Virginia, and Claude Walker of the US Virgin Islands were joined by former Vice President Al Gore for the announcement in New York City. Today's announcement took place during a one-day Attorneys General climate change conference, co-sponsored by Schneiderman and Sorrell.

The participating states are exploring working together on key climate change-related initiatives, such as ongoing and potential investigations into whether fossil fuel companies misled investors and the public on the impact of climate change on their businesses. In 2015, New York State reached a historic settlement with Peabody Energy – the world's largest publicly traded coal company – concerning the company's misleading financial statements and disclosures. New York is also investigating ExxonMobil for similar alleged conduct.

Many of the states in the coalition have worked together on previous multi-state environmental efforts, including pressing the EPA to limit climate change pollution from fossil-fueled electric

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A.G. Schneiderman Announces 20 Felony Charges And Civil Suit Against Major New York City Landlord Steven Croman

A.G. Schneiderman Annou...

A.G. Schneiderman-Led State & Federal Working Group Announces $5 Billion Settlement With Goldman Sachs

A.G. Schneiderman Annou...

A.G. Schneiderman, Former Vice President Al Gore And A Coalition Of Attorneys General From Across The Country Announce Historic State-Based Effort To Combat Climate Change

A.G. Schneiderman, Al Go...

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power plants, defending federal rules controlling climate change emissions from large industrial facilities, and pushing for federal controls on emissions of the potent greenhouse gas methane emissions from the oil and natural gas industry.

All of the members of the new coalition are part a coalition of 25 states, cities and counties led by Attorney General Schneiderman that intervened to defend the federal Environmental Protection Agency's "Clean Power Plan" against legal challenge. Today, the interveners filed a brief with the DC Circuit Court defending President Obama's Clean Power Plan rule, which establishes a nationwide framework to achieve meaningful and cost effective reductions of carbon-dioxide emissions from power plants—the largest single source of greenhouse gas emissions in the nation—and provides states and power plants flexibility to decide how best to achieve these reductions.

"With gridlock and dysfunction gripping Washington, it is up to the states to lead on the generation-defining issue of climate change. We stand ready to defend the next president's climate change agenda, and vow to fight any efforts to roll-back the meaningful progress we've made over the past eight years," said **Attorney General Schneiderman**. "Our offices are seriously examining the potential of working together on high-impact, state-level initiatives, such as investigations into whether fossil fuel companies have misled investors about how climate change impacts their investments and business decisions."

"We cannot continue to allow the fossil fuel industry or any industry to treat our atmosphere like an open sewer or mislead the public about the impact they have on the health of our people and the health of our planet. Attorneys General and law enforcement officials around the country have long held a vital role in ensuring that the progress we have made to solve the climate crisis is not only protected, but advanced. The first-of-its-kind coalition announced today is another key step on the path to a sustainable, clean-energy future," said **Vice President Al Gore**.

Vermont Attorney General William Sorrell said**,** "We are happy to have worked closely with New York to organize this meeting. As we all know, global warming, if not reversed, will be catastrophic for our planet. We, the states, have a role to play in this endeavor and intend to do our part."

"The states represented here today have long been working to sound the alarm, to put smart policies in place to speed our transition to a clean energy future, and to stop power plants from emitting millions of tons of dangerous global warming pollution into our air," said **Massachusetts Attorney General Maura Healey**. "In Massachusetts, we're a leader in clean energy and together we're taking a thoughtful, aggressive approach to ensuring our planet's health for generations to come."

Connecticut Attorney General George Jepsen, said "I am delighted to meet with so many thoughtful leaders to strategize on ways we can protect our citizens from the greatest threat we collectively face, climate change. I am proud to have worked with them and others in defending the Obama Administration's action to combat global warming, and look forward to discussing how we can best further that important work. I also appreciate the opportunity to discuss potential future efforts, including the merits of possible joint investigations in this important area."

U.S. Virgin Islands Attorney General Claude Earl Walker said, "The Virgin Islands, which is especially vulnerable to environmental threats, has a particular interest in making sure that companies are honest about what they know about climate change. We are committed to ensuring a fair and transparent market where consumers can make informed choices about what they buy and from whom. If ExxonMobil has tried to cloud their judgment, we are determined to hold the company accountable."

Maryland Attorney General Brian E. Frosh said, "Climate changes poses an existential threat to Maryland and to the nation. I am proud to join with my colleagues across the country in this important collaboration, and am willing to use every tool at our collective disposal to protect our air, our water and our natural resources. The pledge we are making today can help insure a cleaner and safer future."

Virginia Attorney General Mark Herring said, "As a Commonwealth and as a nation, we can't just put our heads in the sand because we are already confronting the realities of climate change. Hampton Roads is our Commonwealth's second most populated region, it's our second biggest economy, and it is the second most vulnerable area in the entire country as climate change drives continued sea-level rise. State government, local governments, and the military are spending millions to prepare for this challenge, and even more significant investment and resiliency measures will be required. I'm proud to have Virginia included in this first-of-its-kind coalition, which recognizes the reality and the pressing threat of manmade climate change and

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sea level rise. I'm looking forward to working with my colleagues to explore opportunities to address climate change, encourage the growth of our clean energy sectors, and build a cleaner, more sustainable future."

"Taking additional steps to reduce carbon pollution will keep us moving toward cleaner air, a healthier environment, and more affordable energy," said **Illinois Attorney General Lisa Madigan**. "I look forward to continuing to work with other states to advance the Clean Power Plan, as well as to advocate for a comprehensive portfolio of renewable energy sources and enhancements to energy efficiency programs."

"Climate change has real and lasting impacts on our environment, public health, and the economy," said **California Attorney General Kamala D. Harris**. "California has been a national leader in fighting to reduce greenhouse gas emissions, and I am proud to join this effort to preserve and protect our natural resources for future generations to come."

Maine Attorney General Janet Mills said, "Our natural resources are the lifeblood of our state's economy and our quality of life. Global climate change demands immediate action and I am committed to using the authority of my office to address the problem in a meaningful way by defending important EPA regulations against attacks led by the coal industry and exploring litigation options that will hold the worst polluters accountable for their actions."

"Washington is mired by political gridlock. We cannot sit back and watch the dysfunction while nothing gets done, or worse, Washington rolls back the progress we have made in the recent past to address the issue of climate change. If Washington is not going to step up and recognize the crisis and find meaningful solutions, then it will be up to the states to do so," said **Rhode Island Attorney General Peter F. Kilmartin**. "As a state that will incur significant negative impacts from global climate change, including sea-level rise and increased flooding, Rhode Island is committed to continuing the fight for common-sense regulation of greenhouse gas emissions from power plants and other large emitters."

"Washington State has long made protecting our environment a top priority," **Washington State Attorney General Bob Ferguson** said. "A problem like climate change is bigger than any one state. I look forward to working with the coalition on innovative solutions to combat and reverse the harmful effects of climate change."

"Our office has a mandate to protect the public interest, and this includes ensuring that our community is not negatively affected by preventable climate change. We welcome this crucial state-to-state cooperation to ensure that we do everything we can to fight the causes of climate change regardless of whether the federal government continues to partner with us in these efforts or not," said **District of Columbia Attorney General Karl Racine.**

"We have been impacted by climate change, and we see its drastic effects in New Mexico---extreme drought, increased risk of severe forest fires, and the ruin of our wildlife and natural habitats," Attorney General Balderas said. "Our efforts will ensure that progress is made on climate change and that the public is fully aware of the effects on the health and well-being of New Mexico families," said **New Mexico Attorney General Hector Balderas**.

Español

Exhibit H

DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

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March 15, 2016

Exxon Mobil Corporation
5959 Las Colinas Boulevard
Irving, Texas 75039-2298

To Whom It May Concern:

Attached please find a subpoena issued today by this Office. We appreciate your prompt attention to its requests.

Your responses to the subpoena should be directed to me and should be produced in the format described in the instructions. Please copy our national counsel, Linda Singer, of Cohen Milstein Sellers & Toll PLLC, on all productions and correspondence relating to this subpoena at the address below.

Linda Singer
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, NW, Suite 500
Washington, DC 20005
(202) 408-4600
lsinger@cohenmilstein.com

Please feel free to direct any questions regarding our requests or your production to either me or to Ms. Singer. Thank you for your prompt attention to this matter.

Sincerely,

for Claude Earl Walker, Esq.
Attorney General

UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE

IN RE INVESTIGATION OF VIOLATIONS OF THE CRIMINALLY INFLUENCED AND CORRUPT ORGANIZATIONS ACT	))))	**SUBPOENA**

TO: Exxon Mobil Corporation
5959 Las Colinas Boulevard
Irving, Texas 75039-2298

You are suspected to have engaged in, or be engaging in, conduct constituting a civil violation of the Criminally Influenced and Corrupt Organizations Act, 14 V.I.C. § 605, by having engaged or engaging in conduct misrepresenting Your knowledge of the likelihood that Your products and activities have contributed and are continuing to contribute to Climate Change in order to defraud the Government of the United States Virgin Islands ("the Government") and consumers in the Virgin Islands, in violation of 14 V.I.C.§ 834 (prohibiting obtaining money by false pretenses) and 14 V.I.C. § 551 (prohibiting conspiracy to obtain money by false pretenses).

Therefore, YOU ARE HEREBY DIRECTED, by the authority granted to the Attorney General of the United States Virgin Islands ("USVI"), pursuant to the provisions of 14 V.I.C. § 612, to produce and deliver the documents responsive to the inquiries set forth herein, on or before **April 15, 2016**, directed to the attention of Attorney General Claude Earl Walker, Esq.

Failure to comply with this subpoena may result in an enforcement action being brought against you pursuant to 14 V.I.C. § 612(k).

INSTRUCTIONS

A. If any document, report, study, memorandum or other written material or information is withheld or not identified under claim of privilege, furnish a list identifying each document or requested information together with the following information (as relevant): date, author, sender, recipient, persons to whom copies were furnished or information provided together with their job titles, subject matter of the document, the basis for the privilege, and the paragraph or paragraphs of the Request(s) to which the document or information is responsive.

B. In each instance in which a document is produced in response to a Request, the current version should be produced together with all earlier versions, or predecessor documents serving the same function during the relevant time period, even though the title of earlier documents may differ from current versions.

C. Any document produced whose text is not already searchable should be processed through Optical Character Recognition ("OCR") so that it is fully searchable.

D. This Investigative Subpoena calls for all described documents in your possession, custody, or control without regard to the person or persons by whom or for whom the documents were prepared (e.g., your company employees, contractors, vendors, distributors, service providers, competitors, or others).

E. The following procedures shall apply to the production, inspection, and copying of documents:

(a) You shall produce original, complete documents. Documents shall be produced in the order that the documents are maintained in your files, in original folders, with the folder's original file tabs. In response to this Subpoena, true copies of original

documents may be submitted in lieu of originals, provided that you retain the original documents in such manner as to be able to produce them if later required.

1. Any documents produced in response to this Investigative Subpoena should be provided as a Group 4 compression single-page "TIFF" image that reflects how the source document would have appeared if printed out to a printer attached to a computer viewing the file. Extracted text should be included in the manner provided herein. **To the extent that extracted text does not exist, these images should be processed through OCR so that they are fully searchable.** Extracted text and OCR should be provided in separate document level text files. "Load files" shall be produced to accompany the images and shall facilitate the use of the litigation support database systems to review the produced images.

2. Document Unitization. Each page of a document shall be electronically converted into an image as described above. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original when creating the image file and appropriately designated in the load files. The corresponding parent/attachment relationships, to the extent possible, shall be provided in the load files furnished with each production.

3. Bates Numbering. Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically branded onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. To ensure that the Bates Numbers do not obscure portions of the documents, the images may be proportionally reduced to create a larger margin in which the Bates Number may be branded. There shall be no other legend or stamp placed on the document image, except those sections of a document that are redacted to eliminate material protected from disclosure by the attorney-client or work product privileges shall have the legend "REDACTED" placed in the location where the redaction(s) occurred or shall otherwise note the location and/or location of the information for which such protections are claimed.

4. File Naming Conventions. Each document image file shall be named with the unique Bates Number of the page of the document in the case of single-page TIFFs, followed by the extension "TIF". Each document shall be named with a unique document identifier. Attachments shall have their own unique document identifiers.

5. Production Media. The documents should be produced on CD-ROM, DVD, external hard drive (with standard Windows PC compatible interface), (the "Production Media"). Each piece of Production Media shall identify a production number corresponding to the production "wave" the documents on the Production Media are associated with (e.g., "V001", "V002"), as well as the volume of the material in that production wave (e.g., "-001", "-002").

For example, if the first production wave comprises document images on three hard drives, you shall label each hard drive in the following manner: "V001-001", "V001-002", "V001-003". Additional information that shall be identified on the physical Production Media shall include: (1) text referencing that it was produced in response to this Investigative Subpoena, (2) your name, (3) the production date, and (4) the Bates Number range of the materials contained on the Production Media.

6. Objective Coding/Extracted Meta Data. You shall produce with each production of documents extracted metadata for each document (the "Objective Coding") included in the load file. The data file shall include the fields and type of content set forth in the **"SPECIAL INSTRUCTIONS FOR ELECTRONICALLY STORED MATERIAL"** section. Objective Coding shall be labeled and produced on Production Media in accordance with the provisions set forth above.

7. Native format for Excel and databases. To the extent that such documents exist in Excel or some other spreadsheet, produce the document in Excel. To the extent that the document constitutes a database, produce the document in Access.

(b) All attachments to responsive documents shall be produced attached to the responsive documents.

(c) No portion of any documents will be masked and the entire document shall be produced.

(d) The documents shall be produced at the location set forth or at such other locations as counsel agree.

(e) Documents shall be available on reasonable notice for inspection and copying after initial production throughout the term of the investigation or litigation. The documents shall be maintained in the order in which they were produced.

(f) You shall label each group of documents in the following manner: Response to Request No. 1; Response to Request No. 2, etc., and identify the Bates Number range for the corresponding documents that are responsive or written responses.

(g) Provide a key to all abbreviations used in the documents, providing a method of identifying all documents requiring use of the key.

(h) If you obtain information or documents responsive to any request after you have submitted your written responses or production, you should supplement your responses and/or production with any new and or different information and/or documents that become available to you.

(i) If any document responsive to this Subpoena was lost or has been removed, destroyed, or altered prior to the service of this Subpoena, furnish the following information with respect to each such document:

- a description to the extent known, and the last time and location that the document was known to be or is believed to have existed;
- the date, sender, recipient, and other persons to whom copies were sent, subject matter, present location, and location of any copies; and
- the identity of any person authorizing or participating in any removal, destruction, or alteration; date of such removal, destruction or alteration; and the method and circumstances of such removal, destruction, or alteration.

F. This subpoena imposes a continuing duty to produce promptly any responsive information or item that comes into your knowledge, possession, custody, or control after your initial production of responses to the requests.

SPECIAL INSTRUCTIONS

Electronic documents should be produced in accordance with the following instructions:

A. Single page TIFFs at a 300 DPI resolution which are named for the Bates Number of the page. There should NOT be more than 1000 images per folder.

B. **Document level text files containing OCR or extracted text named with the** Bates Number of the first page of the document.

C. Data load file containing all of the metadata fields (both system and application – see list below) from the original Native documents – .dat for Concordance.

D. The Concordance .dat file of extracted metadata should be delimited with the Concordance default characters – ASCII 020 for the comma character and ASCII 254 for the quote character. The use of commas and quotes as delimiters is <u>not</u> acceptable.

E. The database field names should be included in the first line of the metadata file listed in the order they appear in the file.

F. An image load file for Concordance – such as ".opt."

G. For electronic documents created in Excel (spreadsheets) or Access (databases), provide those documents in Native format as well as a TIFF placeholder.

H. For all documents produced, provide the following:

Field #	Field Name	Format	Description
1	BEGDOCNO	Text	Image key of first page of document
2	ENDDOCNO	Text	Image key of last page of document
3	BEGATTACH	Text	For emails/attachments ONLY: Image key of the first page of the parent email. Please DO NOT populate these fields for emails with no attachments.
4	ENDATTACH	Text	For emails/attachments ONLY: Image key of the last page of the last attachment. Please DO NOT populate these fields for emails with no attachments.
5	CUSTODIAN	Text	Custodian from whom documents were collected (semi-colon delimited, if multiple entries)
6	AUTHOR	Text	Email "From" data or user/author name from electronic files
7	RECIPIENT	Text	Email "To" data (semi-colon delimited, if multiple entries)
8	CC	Text	Email "CC" data (semi-colon delimited, if multiple entries)
9	BCC	Text	Email "BCC" data (semi-colon delimited, if multiple entries)

Field #	Field Name	Format	Description
10	MAILSUBJECT	Text	Email subject. This value should be populated down to any children/attachments of the parent email.
11	MAILDATE	MM/DD/YYYY	Email date sent. This value should be populated down to any children/attachments of the parent email.
12	MAILTIME	HH:MM:SS	Email time sent, in military time. This value should be populated down to any children/attachments of the parent email.
13	ATTACHMENTS	Text	Semi-colon delimited list of the original file names of any attachments to an email
14	FILENAME	Text	For emails: Mail subject For attachments and e-files: File name from source media
15	HASH_VALUE	Text	Hash value generated for purposes of de-duplication if performed
16	FileExt	Text	Original file extension for the email or electronic file being produced (e.g., .eml, .pdf, .xls, .doc)

DEFINITIONS

1. "All" shall be construed to include the collective as well as the singular and shall mean "each," "any," and "every."

2. "Any" shall be construed to mean "any and all."

3. "Climate Change" refers to the general subject matter of changes in global or regional climates that persist over time, whether due to natural variability or as a result of human activity. Any documents or communications using any of the terms "climate change," "climatology," "climate science," "climate model," "climate modeling," "global warming," "greenhouse gas," "greenhouse effect," "CO_2 greenhouse," "climate skeptics," "climate skepticism," "global

cooling," "solar variation," "arctic shrinkage," "carbon tax," "climate legislation," or "Keeling Curve" concern climate change, although documents or communications need not include any of these terms to concern climate change. Any documents or communications concerning rising sea levels, Arctic and/or Antarctic ice melt, declining sea ice, melting glaciers, declining snowfall, oceanic warming, ocean acidification, or increases in extreme weather events—or the opposites of these phenomena (e.g., dropping sea levels, oceanic cooling)—concern climate change, although documents or communications need not refer to any of these phenomena to concern climate change.

4. "Communications" mean any exchange of information by any means of transmissions, sending or receipt of information of any kind by or through any means including but not limited to: verbal expression; gesture; writings; documents; language (machine, foreign, or otherwise) of any kind; computer electronics; email; SMS, MMS, or other "text" messages; messages on "social networking" platforms (including but not limited to Facebook, Google+, MySpace, and Twitter); shared applications from cell phones, "smartphones," netbooks, and laptops; sound, radio, or video signals; telecommunication; telephone; teletype; facsimile; telegram; microfilm; or by any other means. "Communications" also shall include, without limitation, all originals and copies of inquiries, discussions, conversations, correspondence, negotiations, agreements, understandings, meetings, notices, requests, responses, demands, complaints, press, publicity or trade releases and the like that are provided by you or to you by others. Any Communications produced, including emails, should include the original sender, all original recipients, the date and time, and any files originally attached to such emails in the form and filetype in which they were originally attached.

5. "Concerning" means directly or indirectly mentioning or describing, relating to, referring to, regarding, evidencing, setting forth, identifying, memorializing, created in connection with or as a result of, commenting on, embodying, evaluating, analyzing, tracking, reflecting, or constituting, in whole or in part, a stated subject matter.

6. "Documents" mean any writing or any other tangible thing, whether printed, recorded (in audio, video, electronically or by any other means), reproduced by any process, or written or produced by hand, including but not limited to: letters; memoranda; notes; opinions; books; reports; studies; agreements; statements; communications (including inter-company and intra-company communications); correspondence; telegrams; email; instant messages; chat logs; SMS, MMS or other "text" messages; posted information; messages; chat logs on "social networking" platforms (including but not limited to Facebook, Google+, MySpace and Twitter); logs; bookkeeping entries; summaries or records of personal conversations; diaries; calendars; telephone messages and logs; forecasts; photographs; images; tape recordings; models; statistical statements; graphs; laboratory and engineering reports; notebooks; charts; tabulations; maps; plans; drawings; minutes; bylaws; resolutions; records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; lists of clients or customers or suppliers; reports or summaries of interviews; opinions or reports of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of any document and revisions of drafts of any document; and any other similar paper or record in any form or medium whatsoever. The term also includes a copy of a document where the copy is not exactly the same as the original. The term also includes emails and other documents made or stored in electronic form, whether kept on computers, computer tapes,

disks, drives, Cloud storage, or other media upon which information may be recorded of any type.

7. "Identify" means:

   (a) When used in connection with a Document, provide the nature of the Document, its title, its description (e.g., memorandum, letter, contract), date, author, its current location, its current custodian, and the number of pages.

   (b) When used in connection with a person, provide that person's name, current residential address and telephone number, job title, and current business address and telephone number. (If current information is not available, provide last-known address and telephone number.)

   (c) When used in reference to an "artificial person" or entity such as a corporation or partnership, provide (1) the organization's full name and trade name, if any; (2) the address and telephone number of its principle place of business; and (3) the names and titles of the entity's officers, directors, managing agents, or employees.

   (d) When used in connection with an oral communication, provide the nature of that communication, the parties to it, the date, place, and substance of that communication, and the identification of any document concerning it.

8. "Including" is used merely to emphasize that a request for certain types of documents or information should not be construed as limiting the request in any way.

9. "Person" means any natural person or such person's legal representative; any partnership, domestic or foreign corporation, or limited liability company; any company, trust, business entity, or association; and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, or trustee.

10. "You" or "Your" refers to Exxon Mobil Corporation, any present or former predecessor, successor, parent, subsidiary, division, d/b/a company, and affiliated entities, as well as all owners, officers, agents, employers, employees, or other representatives thereof, or any other person acting in whole or in part on behalf of any of the foregoing entities. These terms also

refer to the ExxonMobil Foundation, formerly known as the Esso Education Foundation, and/or the Exxon Education Foundation.

RELEVANT TIME PERIOD

The relevant time period, unless otherwise indicated in a specific request, is from January 1, 1977 to the present. The time limits should not be construed as date limits; for example, if a policy, contract, or other document in effect during the relevant time period was created before the relevant time period, then such document must be produced.

DOCUMENTS AND INFORMATION TO BE PROVIDED

1. All Documents or Communications reflecting or concerning studies, research, or other reviews You conducted or funded (in whole or in part) regarding the certainty, uncertainty, causes, or impacts of Climate Change and models to assess or predict Climate Change or its impacts, as well as all Documents or Communications reflecting or concerning steps You took to address the potential impact of Climate Change on Your operations.

2. All Documents or Communications reflecting or concerning studies, research or other reviews You conducted or funded (in whole or in part) regarding whether and how Your products or activities impact Climate Change at a regional or global level.

3. All public statements You made, including but not limited to advertisements, op-eds, letters to the editor, speeches, and corporate publications, concerning Climate Change, including all drafts of such statements and internal Communications regarding such statements.

4. All minutes of meetings of Your Board and any Board committees reflecting discussions concerning Climate Change and any memoranda to the Board or from Board members concerning Climate Change.

5. All Documents or Communications concerning any potential impacts on Your sales, revenue, or business caused by Climate Change itself, by public policies responding to Climate Change (including any legislation or regulation concerning Climate Change), or by public perceptions of Climate Change.

6. All Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews, or public opinions regarding Climate Change sent to or received from: Global Climate Coalition; Global Climate Science Communications Team (GCSCT, also known as the Global Climate Science Team); Science & Environmental Policy Project (SEPP); National Center for Public Policy Research (NCPPR); Committee for a Constructive Tomorrow (CFACT); Environmental Literacy Council (ELI); Independent Commission on Environmental Education; Environmental Issues Council (EIC); Science and Public Policy Institute (SPPI); Adv ancement of Sound Science Coalition (or Advancement of Sound Science Center); Heartland Institute; Center for the Study of Carbon Dioxide and Global Change; Tech Central Science Foundation; Beacon Hill Institute at Suffolk University; American Petroleum Institute (AEI); Competitive Enterprise Institute (CEI); American Legislative Exchange Council (ALEC); U.S. Oil & Gas Association; International Petroleum Industry Environmental Conservation Association; American Council for Capital Formation and its Center for Policy Research; Frontiers of Freedom, or its Center for Free Market Environmentalism and Conservation, or its Center for Science and Public Policy; Annapolis Center for Science-Based Public Policy; Atlas Economic Research Foundation; National Black Chamber of Commerce;

U.S. Chamber of Commerce Foundation; George C. Marshall Institute; Heritage Foundation; Manhattan Institute; National Taxpayers Union Foundation; Heartland Institute; Pacific Research Institute for Public Policy; National Center for Policy Analysis; Communications Institute; Washington Legal Foundation; Center for American and International Law (formerly Southwestern Legal Foundation); Foundation for Research on Economics and the Environment (FREE); George Mason University Law and Economics Center; National Center for Public Policy Research; Smithsonian Astrophysical Observatory; International Policy Network; FreedomWorks; Citizens for a Sound Economy; Citizens for a Sound Economy Foundation; Americans for Prosperity; Mercatus Center at George Mason University; Acton Institute for the Study of Religious Liberty; Media Research Center (formerly Cybercast News Service and Conservative News); Institute for Energy Research; Congress of Racial Equality; Reason Foundation; Reason Public Policy Institute; Hoover Institution; Pacific Legal Foundation; Capital Research Center; Center for Defense of Free Enterprise; Federalist Society for Law and Public Policy Studies; National Association of Neighborhoods; National Legal Center for the Public Interest; Center for a New Europe-USA; American Council on Science and Health; Chemical Education Foundation; Property and Environment Research Center (PERC, formerly Political Economy Research Center); Cato Institute; Federal Focus; Fraser Institute; Media Institute; American Spectator Foundation; International Republican Institute; American Conservative Union Foundation; Landmark Legal Foundation; Independent Institute; Free Enterprise Education Institute; Texas Public Policy Foundation; Institute for Study of Earth and Man; Independent Women's Forum; Consumer Alert; Mountain States Legal Foundation; Free Enterprise Action Institute; Regulatory Checkbook; Lindenwood University in St. Charles, Missouri; Institute for Senior Studies; Science and Environmental Policy Project;

Lexington Institute; Institute for Policy Innovation; Africa Fighting Malaria; American Friends of the Institute of Economic Affairs; Atlantic Legal Foundation; Weidenbaum Center at Washington University (formerly Center for the Study of American Business); Mackinac Center for Public Policy; Arizona State University Office of Climatology; DCI Group; and any other organizations engaged in research or advocacy concerning Climate Change or public policies, including legislation, relating to Climate Change. In Your Response to this Request, include all Communications concerning the role of each of these organizations in conducting research, studies, or reviews of Climate Change or in attempting to affect public opinions regarding Climate Change. In Your Response to this Request, include all records of payments to entities covered by this Request.

7. All Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews, or public opinions regarding Climate Change sent to, received from, or about: Wallace Broecker; Taro Takahashi; Mike MacCracken; Martin Hoffert; John Christy; Richard Lindzen; Will Ollison; Joe Walker; Sallie Baliunas; Robert C. Balling, Jr.; Ross McKitrick; Wei-Hock "Willie" Soon; Patrick J. Michaels; S. Fred Singer; Roger Bate; Sherwood B. Idso; Frederick Seitz; Myron Ebell; Robert Ferguson; David R. Legates; Hugh Ellsaesser; George Taylor; Tom Synhorst; Doug Goodyear; Timothy N. Hyde; Michelle Ross; Susan Moya; A. John Adams; Alan Caudill; Candace Crandall; David Rothbard; Jeffrey Salmon; Lee Garrigan; Lynn Bouchey; Myron Ebell; Peter Cleary; Robert Gehri; Sharon Kneiss; Steven J. Milloy; Paul Driessen; and any other persons conducting research or advocacy concerning Climate Change. In Your Response to this Request, include all Communications regarding the role of each of these individuals in conducting research, studies or reviews of Climate Change or in attempting

to affect public opinions regarding Climate Change. In Your Response to this Request, include all records of payments to individuals covered by this Request.

8. All Documents or Communications concerning research, advocacy, strategy, reports, studies, reviews, or public opinions regarding Climate Change sent to or received from: James F. Black; Andrew Callegari; Roger Cohen; Edward E. David, Jr.; Brian Flannery; Edward Garvey; David Slade; Henry Shaw; N. Richard Werthamer; Harold N. Weinberg; Ed K. Wiley; Robert E. Barnum; Mike P. Margolis; Haroon Kheshgi; Randy Randol; and any other current or former employees or contractors conducting research or advocacy concerning Climate Change. In Your Response to this Request, include all Communications regarding the role of each of these individuals in conducting research, studies or reviews of Climate Change or in attempting to affect public opinions regarding Climate Change. In Your Response to this Request, include all records of payments to individuals covered by this Request.

9. All Documents or Communications concerning Your efforts to employ, fund, associate with, collaborate with, or work with any organizations, entities, associations, individuals, or groups of persons to influence public views regarding the likelihood that or extent to which carbon dioxide, methane, oil and gas extraction or use, or any of Exxon Mobil Corporation's products or activities directly or indirectly impact Climate Change. Include Documents or Communications evidencing such employment, funding, association, collaboration, or work.

10. All Documents concerning the "CO_2 Greenhouse" research project or any other project researching the greenhouse effects of carbon dioxide or other greenhouse gases.

11. All Documents (including drafts) sent to or received by, and all Communications with or about, public relations firms regarding Your statements concerning or strategies for addressing

Climate Change. Include in your response a list, or Documents sufficient to Identify, all public relations firms that have been retained or consulted by You or made proposals to You concerning Climate Change.

12. All Documents and Communications concerning your strategies for publicly discussing Climate Change, including but not limited to Communications to employees and spokespersons about how to discuss Climate Change.

13. All Documents and Communications concerning the following articles, their authors, their content, or their impact:

    (a) All articles in the series "Exxon: The Road Not Taken," published by *InsideClimate News* since September 1, 2015.

    (b) Articles published in the *Los Angeles Times* since September 1, 2015 concerning You and Climate Change

14. All Documents and Communications concerning investigations of your statements regarding Climate Change by any state attorney general, other enforcement agency, or environmental or other organization.

15. All Communications since June 1, 2015 with or about the Royal Society of the United Kingdom.

16. All Documents concerning Your budget, spending, or plans for public relations, advertising, or other advocacy relating to Climate Change.

NOTE: This subpoena does not require that you travel to the United States Virgin Islands or to the Department of Justice. You may comply with this Subpoena Duces Tecum by forwarding a true and correct copy of any document or other item requested, postmarked prior to the date for which production has been designated, with a signed and notarized copy of the attached

"CERTIFICATE OF CUSTODIAN OF RECORDS." Failure to appear with, or deliver the requested information, as stated above, shall be deemed a violation of 14 V.I.C. § 612 and will subject you to such sanctions and penalties as are determined by law. Failure to deliver a signed and notarized copy of the attached "CERTIFICATE OF CUSTODIAN OF RECORDS" will be considered a failure to comply with this subpoena.

WHEREFORE, I have set my hand this 15 day of March, 2016.

SUBMITTED BY:

CLAUDE EARL WALKER
Attorney General

By: for Claude Earl Walker, Esq.
Attorney General
3438 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, U.S. Virgin Islands 00802
(340) 774-5666

CERTIFICATE OF CUSTODIAN OF RECORDS

UNITED STATES VIRGIN ISLANDS)
)
)

COMES NOW _____, first being duly sworn, deposes and says:

1. That the deponent is the _____ for Exxon Mobil Corporation and, in such capacity, is its custodian of records.

2. That on the ____ day of _____, 2016, the deponent was served with a subpoena calling for the production of records.

3. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the act, event, condition or opinion recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or the office or company in which the deponent is engaged.

5. I further certify to the best of my knowledge, information, and belief that all documents or things required to be produced pursuant to the attached subpoena issued on _____, 2016 have been produced.

DATED this ____ day of _____, 2016.

_____
CUSTODIAN OF RECORDS

SUBSCRIBED and SWORN TO before me
by _____ this
_____ day of _____, 2016.

_____
NOTARY PUBLIC

Exhibit I

Kline, Scot

From: Peter Washburn <Peter.Washburn@ag.ny.gov>
Sent: Friday, March 25, 2016 11:49 AM
To: Lemuel Srolovic; Kline, Scot; Morgan, Wendy
Cc: Michael Meade
Subject: Afternoon Discussion: State Responses
Attachments: Question Responses.docx

Wendy, Scot, Lem –

For this afternoon's discussion. See attached responses received from participating states re: what they are looking to add to/get out of the afternoon discussion.

As an overall summary, the responses demonstrate a strong desire among the states to learn what each other are up to -- a validation of the value of this meeting – as well as to support and sustain coordination on individual and collective efforts into the future – a validation of the value of a coalition.

Attorneys General Climate Change Coalition

Questionnaire Responses

(1) What do you hope to get or learn during the afternoon? We want to make sure we cover what we can of your particular interests.

CT (Matthew Levine) – I hope to learn more about the substance of the disclosure investigation and the legal theories to support taking any action. It would also be helpful to understand the magnitude of such an action and the resources available to undertake it.

DC (Elizabeth Wilkins) – I am interested in hearing generally what other states are doing on climate change-related efforts and, in particular, in how they've staffed these efforts if they do not have a section dedicated to environmental issues.

IL (James Gignac) – Nothing more specific than what the agenda items are designed to draw out (discussion of coordination, possible new initiatives, etc.).

MA (Melissa Hoffer) – We'd like to learn the status of other states' investigations/plans and potential avenues for information sharing and coordination.

ME (Jerry Reid) – I am interested in learning more about potentially unfair and deceptive trade practices of Exxon as they relate to global warming, and the level of interest among our states in pursuing these claims.

OR (Paul Garrahan) – We look forward to learning about NY's oil company investigation, primarily. And to hear any other ideas you and other states may have. And to build our working relationship.

RI (Greg Schultz) – I am most interested in personally meeting the various state AAGs that I have worked with since 2009 on Clean Air Act and Climate Change issues. I would also be interested in looking ahead to our challenges for this year and beyond, such as possible other EPA-related actions and rulemaking, etc.

USVI (Claude Earl Walker) – We are eager to hear what other attorneys general are doing and find concrete ways to work together on litigation to increase our leverage.

VA (Daniel Rhodes) – We are mostly interested in hearing about efforts ongoing in the other jurisdictions present and how Virginia may complement those efforts and move forward here.

WA (Laura Watson) – We are interested in the discussion about utility efforts to barrier renewables. I am told that this has not been a problem in our state, or at least not a problem that we currently have the tools to address. I am interested in hearing what types of issues other states are seeing and what tools they are using to address those.

We are also interested in finding out whether other states are taking action on ocean acidification or whether this is largely a West Coast issue at this point.

We are also wondering whether other states are looking at the insurance side of things. Are states running into issues with insurance companies limiting coverage for climate-related claims?

(2) Please provide a very brief description of the office activities you will describe at the 1:45 segment of the agenda. We'd like to group related activities together. You will have 2-3 minutes to describe your activities.

CT (Matthew Levine) – I can briefly describe the various legal actions that Connecticut has participated in (many of which we have joined with New York and the extended coalition of States). I can also discuss Connecticut's extensive efforts to combat climate change through actions by our agency and shifting to renewable sources of energy. We have been successful in defending several legal challenges to the State's commitment to increase renewables sources of energy.

DC (Elizabeth Wilkins) – DC has not previously taken many affirmative steps to combat climate change. To the degree that we have had any involvement, it has been because we represent our Department of Energy and Environment in front of our Public Service Commission on matters related to creating incentives for more widespread use of sustainable energy.

IL (James Gignac) – Climate and energy-related activities of the Illinois Attorney General's Office include:

- Participation in federal multi-state cases involving air quality and carbon emissions;
- Enforcement actions and state regulatory matters involving coal-burning power plant emissions and coal ash;
- FERC and MISO issues involving capacity payments to coal plants;
- Financial challenges of coal industry (both mining and power sectors);
- Involvement in state level policy and regulations on energy efficiency, renewables, and utility business models

MA (Melissa Hoffer) – Advancing clean energy and making smart energy infrastructure investments (addresses our positions on new gas pipelines, LTKs for cleaner energy); promoting utility customer choice (solar incentives, grid mod); readiness and resilience (storm response, grid mod).

ME (Jerry Reid) – Maine has long participated with New York, Massachusetts and other like-minded states in litigation to bring about meaningful federal regulation of greenhouse gas emissions. Today this is primarily in the form of litigation supporting EPA in challenges to the Clean Power Plan.

OR (Paul Garrahan) – I assume this item is asking what work out offices are doing on climate change issues? Other than our CAA litigation with other states, we are also defending Oregon's Clean Fuels Program (low carbon fuel standards) at the 9th Circuit (after successfully getting the challenge dismissed by the district court) and at the Oregon Court of Appeals (rule making challenge). We also continue to defend the state in a public trust doctrine case asserting that the state has not taken sufficient steps to cut GHG emissions. That case is also currently at the Oregon Court of Appeals (for a second time).

RI (Greg Schultz) – I'm not sure exactly what you are looking for here. Perhaps I could discuss the challenges of working in a small state with limited environmental staff. For instance, as part of a 3-person Environmental and Land Use Unit within the RIAG's office, I prosecute a wide variety of civil environmental enforcement actions in state court; defend state agencies on environmental and related matters; litigate state's rights in land, including public rights-of-way, beaches and parks; counsel state agencies on environmental matters, including rulemaking; represent the State in multi-state environmental litigation, etc.

USVI (Claude Earl Walker) –We just finished litigation against Hess Oil over an enforcement matter relating to Hess's decision to close its oil refinery in St. Croix, Virgin Islands, after receiving billions of dollars in tax breaks. As part of our $800 million settlement, we were able to create an environmental response trust that will deal with clean-up of the site and help convert part of it to solar development, we hope. We also have issued a subpoena to ExxonMobil and are preparing third party subpoenas on the common issue of its potential misrepresentations regarding its knowledge of climate change.

VA (Daniel Rhodes) – No response.

WA (Laura Watson) – As you know, Washington State is one of the parties to the multi-state litigation defending the Clean Power Plan. We have also intervened in a lawsuit in defense of Oregon's low carbon fuel standard. We are looking at possible causes of action based on fossil fuel company disclosures and have just started looking at possible common law causes of action (e.g., nuisance suits). Other than that, the bulk of our climate work consists of providing legal support to our clients in the Governor's Office and the Department of Ecology. Specifically, we are supporting a regulatory effort to cap carbon emissions from transportation fuels, natural gas, and stationary sources. We are also providing legal support related to the development of environmental impact statements for two large coal export facilities proposed in Washington and three proposed oil terminals.

(3) Specific items you would like to discuss in the discussion of expanding the coalition's work beyond the federal/EPA advocacy and litigation.

CT (Matthew Levine) – None.

DC (Elizabeth Wilkins) – Nothing to add – DC will most likely be primarily in listening mode as this work is new for us.

IL (James Gignac) – Consider how to increase our office's coordination on matters involving DOE, FERC, and ISOs/RTOs. How we can be better link the consumer and environmental interests of our offices in these venues? Similarly, regarding state energy and climate policies, can we strengthen or bolster our office's sharing of knowledge, materials, experts, etc. on things like energy efficiency, renewable portfolio standards, demand response, net metering, and utility rate design? Finally, I would be interested in talking with any other states (time permitting) dealing with coal mine or power plant closures and issues of jobs, property taxes, decommissioning or clean-up, and site re-use.

MA (Melissa Hoffer) – See above.

ME (Jerry Reid) – None.

OR (Paul Garrahan) – We don't have any particular ideas, other than our interest in the possible oil company litigation, but we are open to other possibilities.

RI (Greg Schultz) – I am open for any discussion. I would like to hear from the NHAG and other states on their MTBE litigation.

USVI (Claude Earl Walker) – We are interested in identifying other potential litigation targets.

VA (Daniel Rhodes) –Not sure we have specific items for the afternoon discussion at this time but likely will be prompted by the discussions. We would be very interested in any discussion and thoughts about resource sharing through collaborative thinking in the formation of coalition building.

WA (Laura Watson) – I think I probably covered this in response to the first question. The only thing I'd add is that we're interested in the legal theories under section 115 of the federal Clean Air Act, although it looks like the focus in the agenda is on non-federal actions.

(4) Will any consumer protection or securities staff be participating? Fossil fuel company disclosure investigations raise consumer protection and securities issues as well as climate change. If enough folks from that part of your offices are participating, we could plan a break out session for them.

CT (Matthew Levine) – We will not have someone from our Consumer protection division but I work closely with that group and am getting familiar with the consumer protection and securities issues related to climate change and we would likely be the group (environment) that works on these issues.

DC (Elizabeth Wilkins) – I will be the only person from DC participating.

IL (James Gignac) – Not in the meeting itself, but we have do have consumer protection staff interested in learning more about the issues. We do not have securities staff.

MA (Melissa Hoffer) – No.

ME (Jerry Reid) – No.

OR (Paul Garrahan) – Yes, Sr AAG Tim Nord will attend from our consumer protection unit.

RI (Greg Schultz) – No.

USVI (Claude Earl Walker) – Yes, we will have our outside counsel/Special Assistant Attorney General, who has specialized in consumer protection work.

VA (Daniel Rhodes) – No response.

WA (Laura Watson) – Our CP folks will not be attending but I have been in contact with them and intend to report back to them after the meeting. I've reviewed our office's internal analysis on the various causes of action available in Washington State and can contribute at least generally to the discussion.

(5) Any other thoughts about the afternoon's working session?

CT (Matthew Levine) – None.

DC (Elizabeth Wilkins) – None.

IL (James Gignac) – None.

MA (Melissa Hoffer) – None.

ME (Jerry Reid) – None.

OR (Paul Garrahan) – We look forward to the discussion.

RI (Greg Schultz) – I would be interested in discussing the possibility of setting up additional AG meetings with NESCAUM (Northeast States for Coordinated Air Use Management) on regional air issues (NESCAUM works closely with state air agencies on a variety of air issues). I work closely with my state air agency, but never seem to sit down with them to discuss their specific issues and concerns.

USVI (Claude Earl Walker) – None.

VA (Daniel Rhodes) – None.

WA (Laura Watson) – None.

Exhibit J

COMPETITIVE ENTERPRISE INSTITUTE

State Attorneys General Conspire To Shake Down Big Oil

Myron Ebell • April 1, 2016

PRINT E-MAIL

New York Attorney General Eric Schneiderman, former Vice President Al Gore, and attorneys general from Massachusetts, Virginia, Connecticut, Maryland, Vermont, and the U. S. Virgin Islands held a press conference in New York City on 30th March to announce "an unprecedented coalition of top law enforcement officials committed to aggressively protecting and building upon the recent progress the United States has made in combatting climate change." Schneiderman also spoke about his ongoing investigation of Exxon Mobil for fraudulently concealing from investors and the public the harmful effects of their products on the global climate.

Massachusetts AG Maura Healey and Virgin Islands AG Claude Walker announced that they have also launched investigations of Exxon. Other state AGs at the podium indicated that they support and will co-operate in the investigation of Exxon. California AG Kamala Harris is also investigating Exxon.

Schneiderman launched his investigation under the state's Martin Act last fall. A broad subpoena of Exxon documents was issued in November. Schneiderman made it clear that they have already decided that Exxon committed fraud and are now investigating the nature and extent of the fraud. Other oil, gas, and coal companies "and their allies" are also likely to become targets of investigation in the near future.

Schneiderman said: "The First Amendment, ladies and gentlemen, does not give you the right to commit fraud. Every attorney general does work on fraud cases, and we are pursuing this as we would any other fraud matter. You have to tell the truth, you can't make misrepresentations of the kinds we've seen here. The scope of the problem we are facing, the size of the corporate entities and their alliances, the trade associations and other groups, is massive and it requires a multistate effort."

Gore for the umpteenth time compared the conduct of the big oil companies to the big tobacco companies in the 1990s. "I do think the analogy may hold up rather precisely," he said. Suits filed by a coalition of 46 state attorneys general forced the largest tobacco companies to agree in 1998 to pay $10 billion per year to the states indefinitely.

Gore is right on one major point. It is unlikely that Schneiderman's investigation will result in filing a case, let alone getting a conviction. But it could very possibly turn into a massive shakedown of Exxon and other big fossil fuel companies along the same lines as the tobacco settlement. But Big Oil is much bigger than big tobacco, so I expect that Schneiderman and his fellow AGs are setting their sights at much more than $10 billion a year.

The press conference was part of a one-day conference of 18 Democratic state attorneys general who have formed a coalition to support President Obama's climate agenda, especially the EPA's greenhouse gas rules for power plants. Other AGs at the conference were from California, Illinois, Maine, Rhode Island, Washington, the District of Columbia, New Mexico, Minnesota, Delaware, Oregon, and Iowa.

For critical commentary on Schneiderman's shakedown, see this editorial in Investor's Business Daily and my CEI colleague Marlo Lewis's article in Public Utilities Fortnightly on Schneiderman's earlier investigation and settlement with Peabody Energy.

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Exhibit K

FEATURED

CEI attorney cites chilling effect of state investigations of ExxonMobil (/stories/510703834-cei-attorney-cites-chilling-effect-of-state-investigations-of-exxonmobil)

Alan Goforth (/author/alan-goforth) Mar. 29, 2016, 8:28am

NEW YORK (Legal Newsline) - New York Attorney General Eric Schneiderman, who is investigating ExxonMobil for possibly suppressing climate change research from the public and investors, is overstepping his bounds, a senior attorney for the Competitive Enterprise Institute contends.

Schneiderman has said he is not pleased that ExxonMobil questions the impact of global warming and that it donates to think tanks that occasionally challenge conventional wisdom.

“If you can intimidate people who take issue with the most alarming and maximal projections of global warming,” said Hans Bader, senior attorney for CEI in Washington, D.C., “you will end up with a skewed estimate of global warming that may also skew public policy and result in misallocation of resources.”

Schneiderman specifically disagreed with comments by Exxon that “switching over to renewables by the end of this century would raise energy costs” substantially, and that “ExxonMobil essentially ruled out the possibility that governments would adopt climate policies stringent enough to force it to leave its reserves in the ground," saying that rising population and global energy demand would prevent that. “Meeting these needs will require all economic energy sources, especially oil and natural gas,” it added.

Bader believes that the objective of the attorney general's investigation is not to uncover wrongdoing but rather to harass Exxon by subjecting it to bad publicity and the costs of producing thousands of pages of documents.

"I suspect that what is meant by 'promulgating misleading information,' is that oil companies declined to predict massive increases in temperature over the last 20 years that did not come true, and did not in fact occur," he said. "Failure to embrace exaggerated claims of global warming does not constitute '`deliberate deception,' when scientists have come up with widely varying estimates of how the climate will change, some conservative, and some exaggerated.

"Since climate-change predictions are not an exact science, the fact that one scientist comes up with a maximal, upper-bound projection of climate change does not obligate an oil company to believe it, much less trumpet it to the public. Nor does the fact that an oil company, which hedges against risk (including the risk of relatively improbable events, such as maximal, upper-bound projections of global temperature increases), takes such an estimate into account for contingency-planning mean that it accepts that estimate as being likely to come true, and thus render it deceitful for failure to publicly trumpet that projection of warming as if it were likely to come true."

Bader believes Schneiderman's investigation is part of a pattern of targeting individuals and groups with differing opinions about climate change.

"They are apparently aimed at people who are in the mainstream of climatology, who simply have a somewhat lower projection of global temperature increases than liberal state attorneys general find politically convenient," he said.

"For example, University of Alabama climate scientist John Christy was the target of liberal Congressional investigators, even though Christy doesn’t say global warming isn’t happening; and the brief he co-submitted to the Supreme Court says it is happening, but at less than half the rate projected by many other climate scientists."

Freedom of speech is the core issue for Bader.

"The First Amendment has long been interpreted as protecting corporate lobbying and donations, even to groups that allegedly deceive the public about important issues," he said. "So even if being a 'climate denier' were a crime (rather than constitutionally protected speech, as it in fact is), a donation to a non-profit that employs such a person would not be."

But Bader expects other states to take similar action.

"Maryland is and its attorney general has already prejudged matters by claiming that oil companies have contributed to the problem by intentionally promulgating misleading information, testimony and advertising," he said.

The ultimate victim, Bader argues, is freedom of expression.

"These investigations are a threat to mainstream climatologists who do not make exaggerated claims of global warming," he said, "and a threat to oil companies' ability to engage in prudent contingency planning that takes into account maximal projections of global warming, without having to publicly tout those projections, which often turn out to be inaccurate years later."

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Exhibit L

State Attorney General Climate Change Investigations Are Unconstitutional

By Hans Bader (/author/hans-bader) | January 28, 2016 | 4:24 PM EST

New York State Attorney General Eric Schneiderman (AP Photo/Seth Wenig)

Should government officials be able to cut off donations to groups because they employ people disparaged as "climate change deniers," even if the group in question is a think tank that studies a wide range of topics, only a few of which relate to climate change at all, and the "denial" in question includes telling politically inconvenient truths about the cost of proposed climate change legislation? Only a single-issue zealot with ideological blinders and a contempt for the First Amendment would think so.

But that hasn't stopped New York Attorney General Eric Schneiderman (http://www.pbs.org/newshour/bb/exxon-mobil-mislead-public-climate-change-research/) and California Attorney General Kamala Harris (http://dailysignal.com/2016/01/21/california-joins-the-effort-to-persecute-suppress-scientific-dissent-on-climate-change/) investigating Exxon, partly for making donations to think tanks like the American Enterprise Institute (http://www.huffingtonpost.com/elliott-negin/did-exxonmobil-just-admit_b_8625514.html) and groups like the American Legislative Exchange Council because these large organizations include a few people deemed "climate change deniers," even though climate change has no relation to most of their activities. (I have been to many speeches and luncheons at AEI, and not a single one related to climate change or even energy or environmental policy.)

The First Amendment has long been interpreted as protecting corporate lobbying and donations, even to groups that allegedly deceive the public about important issues. For example, in *In re School Asbestos Litigation* (http://openjurist.org/46/f3d/1284/asbestos-school-litigation-pfizer-inc-v-t-giles-45), 46 F.3d 1284 (3d Cir. 1994), a federal appeals court ruled that the maker of an asbestos product could not be held liable for joining and financially supporting a trade association for makers of asbestos products, even though the trade association allegedly "disseminated misleading information about the danger of asbestos in schools directly to" the plaintiffs, where "at least some" of the trade association's "activities were constitutionally protected."

So even if being a "climate denier" were a crime (rather than constitutionally protected speech, as it in fact is), a donation to a non-profit that employs such a person would not be (especially given that a think tank like AEI also contains scholars whose positions on subjects like tax policy, labor law, property rights, and lawsuit abuse would be congenial to a corporation like Exxon).

In any event, judging from Schneiderman's own remarks, Exxon did not engage in any deception about the health risks of its products when used (the way asbestos makers were accused of doing, and the way the big tobacco (http://www.leagle.com/decision/In%20FDCO%2020121127J01/U.S.%20v.%20PHILIP%20MORRIS%20USA,%20INC.) companies in fact (http://www.tobaccocontrollaws.org/files/live/litigation/596/US_United%20States%20v.%20Philip%20Morris.pdf) long (http://www.leagle.com/decision/In%20CACO%2020110817014/BULLOCK%20v.%20PHILIP%20MORRIS%20USA,%20INC.) did (http://caselaw.findlaw.com/us-10th-circuit/1026732.html)), much less speech unprotected by the First Amendment. What angers Schneiderman most appears to be political opposition to certain controversial environmental legislation, not deception or views at odds with sound science: He is upset that Exxon had the temerity to note that policies advocated by climate change activists have real world costs, and may not be politically viable.

Schneiderman complains (http://www.pbs.org/newshour/bb/exxon-mobil-mislead-public-climate-change-research/) that Exxon noted that "switching over to renewables by the end of this century would raise energy costs" substantially, and that (http://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html?_r=0) "Exxon Mobil essentially ruled out the possibility that governments would adopt climate policies stringent enough to force it to leave its reserves in the ground, saying that rising population and global energy demand would prevent that. 'Meeting these needs will require all economic energy sources, especially oil and natural gas,' it said." (For a discussion of Exxon's non-misleading positions about climate science, and why Schneiderman's own complaint about it is at odds with actual climate data over the last 30 years, see this commentary (https://www.washingtonpost.com/opinions/even-exxonmobil-says-climate-change-is-real-so-why-wont-the-gop/2015/12/06/913e4b12-9aa6-11e5-b499-76cbec161973_story.html) by the liberal editor of *The Washington Post*, and this commentary (http://www.globalwarming.org/2015/11/12/ny-attorney-general-schneiderman-targets-exxon-mobil-climate-thuggery-part-1/) at GlobalWarming.org.)

As Bloomberg put it (http://www.bloombergview.com/articles/2015-11-10/schneiderman-s-dangerous-crusade-against-exxon-mobil), "On the face of it, the company's research on climate change and its previous public positions on climate policy not only fail to amount to fraud, they aren't even necessarily at odds. You might accept the reality of man-made global warming and still argue against strict new rules on emissions – if, for example, you believe that such restrictions would do more harm than good. … that position isn't indefensible, and certainly shouldn't be illegal."

So when I first read about state attorneys general investigating Exxon over its donations, and for allegedly minimizing the likelihood or ramifications of climate-change legislation, I wondered what was the point of such investigations, because any sanctions imposed on Exxon for such contributions would obviously run afoul of the First Amendment (as lawyers and newspapers like *The Washington Post (https://www.washingtonpost.com/opinions/exxon-deserves-criticism-but-it-didnt-commit-a-crime/2015/11/14/08dd471e-87fa-11e5-be8b-1ae2e4f50f76_story.html)* and *USA Today (http://www.usatoday.com/story/opinion/2015/11/22/schneiderman-exxon-mobil-fraud-investigation-environmental-groups-editorials-debates/75900032/)* have noted). As the Post's Bob Samuelson noted earlier (https://www.washingtonpost.com/opinions/exxon-deserves-criticism-but-it-didnt-commit-a-crime/2015/11/14/08dd471e-87fa-11e5-be8b-1ae2e4f50f76_story.html), ExxonMobil is being vilified for "expressing its opinions," and exercising its constitutional right of free speech.

In so doing, I overlooked the likelihood that these investigations are designed not to uncover any wrongdoing, but simply to harass Exxon, by subjecting it to bad publicity and the costs of producing thousands of pages of documents in response to endless demands from partisan investigators. The process is the punishment.

Sadly, government officials can usually get away with this sort of abuse when they investigate *conduct*. But *speech* is a different matter. A prolonged investigation in response to someone's speech can violate the First Amendment even when it never leads to a fine. For example, a federal appeals court ruled in *White v. Lee* (https://scholar.google.com/scholar_case?case=11684187750948717352&hl=en&as_sdt=6&as_vis=1&oi=scholarr), 227 F.3d 1214 (9th Cir. 2000) that lengthy, speech-chilling civil rights investigations by government officials can violate the First Amendment even when they are eventually dropped without imposing any fine or disciplinary action. It found this principle was so plain and obvious that it denied individual civil rights officials qualified immunity for investigating citizens for speaking out against a housing project for people protected by the Fair Housing Act.

Similarly, in *In re School Asbestos Litigation* (http://openjurist.org/46/f3d/1284/asbestos-school-litigation-pfizer-inc-v-t-giles-45), 46 F.3d 1284 (3d Cir. 1994), a federal appeals court found that the mere pendency of a lawsuit against a company for belonging to, and contributing to, a trade association, violated the First Amendment even if it would never ultimately be found liable based on that associational activity. Accordingly, it took the extraordinary step of granting a mandamus petition to order the lawsuit dismissed, even though the trial judge had refused to dismiss the lawsuit on summary judgment, and the denial of summary judgment is not ordinarily appealable at all.

As the appeals court explained, the mere existence of the lawsuit unconstitutionally chilled the company's First Amendment rights: "while the district court's ruling did not directly prohibit Pfizer from associating with the SBA during the remainder of the district court proceedings, there can be little question that in reality the district court ruling will powerfully inhibit Pfizer

from doing so. Under the court's reasoning, any further participation by Pfizer in SBA activities—any contributions, any attendance at meetings, etc.—would appear to constitute evidence of Pfizer's participation in an ongoing conspiracy or concert of action and thus be admissible at trial to prove such claims."

These state attorney general investigations similarly violate the First Amendment. The mere existence of Schneiderman's protracted investigation of Exxon discourages it from contributing to groups like the American Enterprise Institute (AEI) and the American Legislative Exchange Council (ALEC), and chills its speech about climate-related legislation and its costs, in violation of the First Amendment.

Schneiderman has pressured Exxon (http://www.pbs.org/newshour/bb/exxon-mobil-mislead-public-climate-change-research/) not to fund groups like AEI and ALEC, complaining that "we know" Exxon has "been funding organizations that are even more aggressive climate change deniers. … like the American Enterprise Institute, ALEC, the American Legislative Exchange Council."

These groups themselves can sue Schneiderman under the First Amendment, if Schneiderman's pressure causes them to lose donations they would otherwise receive. Government officials cannot pressure a private party to take adverse action against a speaker. For example, the federal appeals court in New York ruled that a city official's letter urging a billboard company to stop displaying a church's anti-homosexuality billboard potentially violated the First Amendment, since the letter cited his "official authority as 'Borough President of Staten Island' and thus could constitute an "implicit" threat, even though the official lacked direct regulatory authority over the billboard company and did not explicitly threaten any reprisals. *See Okwedy v. Molinari*, 333 F.3d 339 (2d Cir. 2003). Similarly, it revived a free speech lawsuit by a businessman over a village official's letter to Chamber of Commerce criticizing it for publishing the businessman's ad critical of village policies in the Chamber's publication. *Rattner v. Netburn,* 930 F.2d 204 (2d Cir. 1991). For other, similar rulings, *see Dossett v. First State Bank*, 399 F.3d 940 (8th Cir. 2005), and *Reuber v. U.S.*, 750 F.2d 1039 (D.C. Cir. 1985).

Schneiderman would probably argue that the federal courts lack jurisdiction over a lawsuit against him under the First Amendment. But a court ruled against a somewhat similar argument made by Mississippi Attorney General Jim Hood in *Google v. Hood*, 96 F.Supp.3d 584, 594-96 (N.D. Miss. 2015). Schneiderman's argument would be substantially weaker than Hood's.

Government retaliation for speech does not necessarily need to include explicit threats or pressure to violate the First Amendment. For example, if the government merely reprimands a public employee for his speech, or censures a private citizen for his speech, some courts find that to be a violation of the First Amendment. *See, e.g., Columbus Education Association v. Columbus Board of Education,* 623 F.2d 1155 (6th Cir. 1980) (government employee reprimand violated First Amendment).

Hans Bader practices law in Washington, D.C. After studying economics and history at the University of Virginia and law at Harvard, he practiced civil-rights, international-trade, and constitutional law.

Hans Bader

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Exhibit M

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

IN RE INVESTIGATIONS OF VIOLATIONS OF THE CRIMINALLY INFLUENCED AND CORRUPT ORGANIZATIONS ACT	No. 16-2469 (Before the United States Virgin Islands Department of Justice)

Objections of Competitive Enterprise Institute to Subpoena Issued by United States Virgin Islands Office of Attorney General

Pursuant to D.C. Superior Court Rule of Civil Procedure 45(c), the Competitive Enterprise Institute ("CEI") hereby objects to the Subpoena to Produce Documents that was served on CEI on April 7, 2016, for the following reasons:

1. The subpoena is defective on its face. The Uniform Interstate Depositions and Discovery Act ("UIDDA"), D.C. Code §§ 13-441–48, permits only the domestication of subpoenas "issued under authority of a court of record," *id.* at § 13-442(5), and the subpoena here was issued by an Attorney General, not "a court of record." *See also* 14 V.I.C. § 612(d) (distinguishing subpoenas issued by the Attorney General of the Virgin Islands from ones "issued by a court in this Territory"). This is a fatal jurisdictional defect. As the Drafters' Comments to the Model UIDDA note, "[t]he term 'Court of Record' was chosen to exclude non-court of record proceedings from the ambit of the Act." Model UIDDA § 3 Comment; *see also Chase Plaza Condo. Ass'n v. JPMorgan Chase Bank, N.A.*, 98 A.3d 166, 175 (D.C. 2014) (stating that "the official comments by the drafters of…uniform acts provide important guidance in construing our provision").

2. The subpoena is also defective because "the UIDDA applies only to 'discovery' in pending judicial actions," and we know of no pending judicial action between the Attorney General and ExxonMobil. *Colorado ex rel. Suthers v. Tulips Invs., LLC*, 343 P.3d 977, 982–83 (Co. Ct. App. 2012), *aff'd*, 340 P.3d 1126 (Co. 2015); *see also In re Foreign Court Subpoena*, 2012 WL 2126960, at *2 (Tenn. Ct. App. June 12, 2012) ("Defendants followed the appropriate protocol and filed a foreign court subpoena, *which had been issued by the Santa Clara County California Superior Court*, in the Circuit Court of Williamson County, pursuant

to the Uniform Depositions and Discovery Act.") (emphasis added). The UIDDA itself instructs that "[i]n applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it," making these decisions from other UIDDA jurisdictions highly persuasive. D.C. Code § 13-447; *see also Wilson v. Holt Graphic Arts, Inc.*, 981 A.2d 616, 618–19 (D.C. 2009) (looking to other states' interpretations of Uniform Enforcement of Foreign Judgments Act to inform interpretation of D.C.'s version of that Act).

3. The subpoena demands materials in violation of CEI's First Amendment privilege. "[C]ompelled disclosure of political affiliations and activities can impose just as substantial a burden on First Amendment rights as can direct regulation." *AFL-CIO v. FEC*, 333 F.3d 168, 175 (D.C. Cir. 2003) (citing *Buckley v. Valeo*, 424 U.S. 1, 64–68 (1976) (disclosure of campaign contributions); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462–63 (1958) (disclosure of membership lists)). CEI's allies and supporters, internal communications, internal work product in support of its expressive and petitioning activities, expressive associations, and communications with allies and supporters are shielded from compelled disclosure by its First Amendment privilege. *See AFL-CIO*, 333 F.3d at 176–78; *Perry v. Schwarzenegger*, 591 F.3d 1126, 1162–63, 1165 & n.12 (9th Cir. 2009); *Wyoming v. USDA*, 208 F.R.D. 449, 454 (D.D.C. 2002) (citing cases).

4. The subpoena violates the First Amendment because it constitutes an attempt to silence and intimidate, as well as retaliate against, speech espousing a particular viewpoint with which the Attorney General disagrees, certain speech content, and certain expressive association, and is therefore invalid. *See, e.g.*, *Lacey v. Maricopa Cty.*, 693 F.3d 896, 917 (9th Cir. 2012) (finding "invalid" under First Amendment "subpoenas demanding that [a] paper…disclose its reporters' notes[] and reveal information about anyone who visited the *New Times*'s [sic] website" because subpoenas would "chill speech"); *Pebble Ltd. P'ship v. EPA*, 310 F.R.D. 575, 582 (D. Alaska 2015) (holding third-party subpoenas invalid because

they had "the tendency to chill the free exercise of political speech and association which is protected by the First Amendment").

5. The subpoena is invalid because the underlying investigation is pretextual, is being undertaken in bad faith, is intended as a fishing expedition, and is in support of an investigation of charges that have no likelihood of success. *See, e.g.*, *Cooper v. United States*, 353 A.2d 696 (D.C. 1975) (noting that court will quash subpoena if application is not "made in good faith" or is "intended as a fishing expedition") (quotation marks omitted); *Turner v. United States*, 443 A.2d 542, 548 (D.C. 1982) (affirming trial court's quashing subpoena because it "was intended as a 'fishing expedition'"). Among other things, the statute of limitations for the Criminally Influenced and Corrupt Organizations Act ("CICO"), 14 V.I.C. §§ 600 *et seq.*, is *five years*. 14 V.I.C. § 604(j)(2)(B). It is public knowledge, and the Attorney General has actual knowledge, that ExxonMobil discontinued association with the Competitive Enterprise Institute in 2006 and stopped funding groups skeptical of anthropogenic climate change in 2008. *See, e.g.*, *Exxon Cuts Ties to Global Warming Skeptics*, NBCNews.com, Jan. 12, 2007, *available at* http://www.nbcnews.com/id/16593606/ns/us_news-environment/t/exxon-cuts-ties-global-warming-skeptics/ (reporting that spokesman for Exxon "said Exxon in 2006 stopped funding the Competitive Enterprise Institute"); Michael Erman, *Exxon Again Cuts Funds for Climate Change Skeptics*, Reuters, May 23, 2008, *available at* http://www.reuters.com/article/us-exxon-funding-idUSN2328446120080523 (reporting ExxonMobil cutting funding to groups whose "position on climate change could divert attention from the important discussion…[of] secur[ing] the energy required for economic growth in an environmentally responsible manner") (quotation marks omitted). In addition, even a for-profit corporation's speech and associational activities are protected by the First Amendment. *Pfizer Inc. v. Giles (In re School Asbestos Litigation),* 46 F.3d 1284 (3d Cir. 1994)). As such, the Attorney General has no good-faith basis under CICO for investigating

ExxonMobil, much less a good faith basis to inquire into the company's relationship with CEI.

6. The subpoena is invalid because it constitutes an abuse of process under common law. Seeing as the statutes of limitations have long run on the alleged CICO offenses, the Attorney General has committed an abuse of process by: (i) issuing and mailing the subpoena without reasonable suspicion in what amounts to a fishing expedition; (ii) having an ulterior motive for issuing and mailing the subpoena, namely an intent to prevent CEI from exercising its rights to express views disfavored by the Attorney General; and (iii) causing injury to CEI's reputation and ability to exercise its First Amendment rights.

7. The subpoena is invalid because it violates CEI's Fifth and Fourteenth Amendment due process rights by delegating investigative and prosecutorial authority to private parties. The subpoena is in furtherance of an investigation that could result in penalties available only to government prosecutors. The Attorney General's delegation of investigative and prosecutorial authority to a private attorney, Ms. Linda Singer, and private law firm, Cohen Milstein Sellers & Toll PLLC, that are most likely being compensated on a contingency-fee basis, violates due process of law.

8. The subpoena is unduly burdensome, in that it appears to demand all documents and communications relating to climate change or ExxonMobil over a ten-year period. Where the requesting party's need for production is outweighed by the burden imposed on the producing party, courts will not enforce the request. *See, e.g.*, *N.C. Right to Life, Inc. v. Leake*, 231 F.R.D. 49, 51 (D.D.C. 2005) (listing factors and quashing subpoena). For CEI to attempt to search for, identify, collate, and transmit the scope of documents requested would require approximately 30 person-weeks of labor. Weighed against the substantial burden on CEI, the Attorney General has no cognizable need for CEI to produce the information demanded, in light of the nullity of the Attorney General's underlying legal

theory, the pretextual nature of the investigation, statute-of-limitations concerns, and the ability to obtain the information demanded from other parties.

9. The subpoena is unduly burdensome because it demands documents—including "public statements" and "published" communications—that are public records and thus already available to the Attorney General.

10. The subpoena is unduly burdensome because it demands that CEI review ten years of electronic and hard-copy documents from myriad platforms, including "writings," "documents," "email; SMS, MMS, or other 'text' messages; messages on 'social networking' platforms (including but not limited to Facebook, Google+, MySpace, and Twitter); shared applications from cell phones, 'smartphones,' netbooks, and laptops, sound, radio, or video signals; telecommunications; telephone; teletype; facsimile; telegram; microfilm," and "press, publicity or trade releases."

11. The subpoena is unduly burdensome because it orders CEI to extract and provide metadata, as well as OCR the documents.

12. The subpoena is unduly burdensome because it provides CEI less than four weeks to comply with its massive demands.

13. The subpoena is overbroad because it demands documents between at least January 1, 1997 and January 1, 2007 (and additionally demands production of any "document in effect during the relevant time period [that] was created before the relevant time period"), and the statutes of limitations ran in 2011 for the offenses ExxonMobil allegedly committed. *See* 14 V.I.C. § 604(j)(2)(B).

14. The subpoena is overbroad and unduly burdensome because it appears to demand any and all documents that refer, even obliquely, to the "climate." Given the extent of CEI's interest in, research on, and advocacy about the issue of climate change, this demand potentially encompasses substantially every document and communication CEI has ever produced or received.

15. The subpoena is vague and ambiguous because it inadequately defines "climate change" as "changes in global or regional climates that persist over time, whether due to natural variability or as a result of human activity." It is not clear what "regional climate[]" or "over time" mean. This definition could, for example, encompass five-day weather forecasts for the Washington, D.C. region.

16. The subpoena is vague and ambiguous because it does not define what it means for a person to "act[] in whole or in part on behalf of" ExxonMobil.

17. The subpoena demands information predicated on facts that CEI does not possess, such as the identities of any "third parties" acting on behalf of ExxonMobil.

18. The subpoena demands materials that are protected pursuant to the attorney-client privilege, and materials that are subject to attorney work-product protections. *See Kreuzer v. George Washington Univ.*, 896 A.2d 238, 249 (D.C. 2006) (affirming assertion of "the attorney-client privilege to shield communications" from discovery request).

19. The subpoena is invalid because it was not issued with proper judicial oversight.

20. The subpoena is invalid because the accompanying "Certificate of Custodian of Records" that the subpoena states CEI's custodian must sign and notarize requires that the deponent represents "Exxon Mobil Corporation," rendering CEI's compliance with the subpoena impossible.

21. The subpoena violates the Bill of Rights of the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1561, which guarantees "the freedom of speech [and] of the press" in the Virgin Islands. *See also Gov't of Virgin Islands v. Brodhurst*, 285 F. Supp. 831, 836 (D.V.I. 1968) (noting that the Bill of Rights in the Revised Organic Act of the Virgin Islands provides "the same safeguards as are embodied in the First and Fourteenth Amendments").

22. The persons responsible for this subpoena are subject to sanctions for violating Superior Court Rule of Civil Procedure 45(c). That Rule obligates the Attorney General, Ms. Linda Singer, and the Cohen Milstein law firm to "take reasonable steps to

avoid imposing undue burden or expense" on CEI. The subpoena plainly violates that duty, given its facial invalidity, astonishing overbreadth, and evident purpose of imposing unwarranted and illegitimate burdens on CEI and CEI's exercise of its constitutional rights. In light of this violation, the Attorney General, Ms. Linda Singer, and the Cohen Milstein law firm are subject to sanctions, "which may include lost earnings and reasonable attorney's fees."

23. The Attorney General, Ms. Linda Singer, and the Cohen Milstein law firm have violated their ethical obligations in issuing the subpoena. District of Columbia Bar Rule 4.4(a) prohibits an attorney from "knowingly us[ing] methods of obtaining evidence that violate the legal rights of" a third party. (Substantially the same prohibition is contained in Virgin Islands Rule of Professional Conduct 211.4.4(a).) The subpoena plainly violates that prohibition, given its evident purpose of retaliating against and chilling CEI's exercise of its rights. Having knowingly used a subpoena to violate CEI's rights, the Attorney General, Ms. Linda Singer, and the Cohen Milstein law firm have violated their ethical obligations.

In light of the foregoing, I request that you immediately withdraw the subpoena and notify me that you have done so. CEI reserves the right to reassert or amend its Objections at any time.

DATED: April 20, 2016

By: 

ANDREW M. GROSSMAN
BAKER & HOSTETLER LLP
1050 Connecticut Ave. NW, Suite 1100
Washington, D.C. 20036
(202) 861-1697
agrossman@bakerlaw.com

Counsel to the Competitive Enterprise Institute

Certificate of Service

I hereby certify that, on April 20, 2016, I caused a true and correct copy of the foregoing Objections to be served by first-class mail, postage prepaid, and by hand on:

Linda Singer
Cohen Milstein Sellers and Toll, PLLC
1100 New York Ave., N.W., Suite 500
Washington, D.C. 20005

Subpoena Designee

I further hereby certify that, on April 20, 2016, I caused a true and correct courtesy copy of the foregoing Objections to be sent by first-class mail, postage prepaid, signed receipt required on:

Claude Earl Walker, Esq.
Attorney General
3438 Kronprindsens Gade
GERS Complex, 2nd Floor
St. Thomas, U.S. Virgin Islands 00802

By sending this courtesy copy to Attorney General Walker, my client does not consent to personal jurisdiction in the Virgin Islands, does not waive any of the objections proffered in the herein attached document, and reserves all rights it may otherwise have.

By: 
Andrew M. Grossman

Exhibit N

BakerHostetler

Baker&Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5304

T 202.861.1500
F 202.861.1783
www.bakerlaw.com

Andrew M. Grossman
direct dial: 202.861.1697
agrossman@bakerlaw.com

May 10, 2016

VIA OVERNIGHT DELIVERY AND
EMAIL (LSINGER@COHENMILSTEIN.COM)

Linda Singer, Esq.
Cohen Milstein Sellers & Toll, PLLC
1100 New York Ave.; Suite 500
Washington, DC 20005

Dear Ms. Singer:

I represent the Competitive Enterprise Institute in the matter of the subpoena that you served on it on behalf of your client, the U.S. Virgin Islands Attorney General. I write today to ask three questions of you relating to that subpoena:

First, has the subpoena been withdrawn? CEI's April 20 objections requested that you notify me that the subpoena has been withdrawn. Your lack of response indicates that the subpoena remains in force, but, as a courtesy, I wish to confirm as much with you.

Second, if the subpoena has not been withdrawn, do you consent to revocation of its issuance by the D.C. Superior Court and termination of the Superior Court action through which you issued it? Again, your silence in response to CEI's objections indicates that you intend the subpoena to retain legal force and therefore do not consent to that relief. But, as a courtesy, I seek to confirm as much with you.

Third and finally, do you and/or your client consent to compensating CEI's costs and attorney's fees incurred in responding to the subpoena?

Please email me your response to these inquiries as soon as possible and, in any event, no later than the close of business on Friday, May 13. Thank you for consideration.

Sincerely,

Andrew M. Grossman

Counsel to the Competitive Enterprise Institute

cc: Claude Earl Walker, Esq. *(via overnight delivery), Attorney General, 3438 Kronprindsens Gade, GERS Complex, 2nd Floor, St. Thomas, U.S. Virgin Island 00802*

Exhibit O

COHEN MILSTEIN

Linda Singer
(202) 408-3651
lsinger@cohenmilstein.com

May 13, 2016

Via Email Only

Andrew M. Grossman, Esq.
Baker & Hostetler LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036
agrossman@bakerlaw.com

Dear Mr. Grossman:

The Virgin Islands Department of Justice ("VIDOJ") has received your letter of May 10th and directed that I to respond to your questions on behalf of the Competitive Enterprise Institute ("CEI").

VIDOJ has received your client's objections, and has not made a decision on whether to move to compel or to withdraw or amend its subpoena to CEI. We will let you know when a decision has been made. In the meantime, OAG does not consider your client to be delinquent, out of compliance, or under an obligation to take any further action to preserve its rights.

The Government of the Virgin Islands will not compensate your client for its fees and costs. CEI has not produced any documents in response to the subpoena, which was issued pursuant to the Government's statutory authority in the course of a law enforcement investigation.

While you have communicated your belief that the subpoena is unduly burdensome, the appropriate vehicle for addressing your objection is to meet and confer to discuss the scope and timing of your client's response. By the attached letter, sent promptly after CEI's statement to the media regarding its intent not to comply with the subpoena, the Attorney General invited CEI to discuss its concerns, but received no response.

You also have contended that the subpoena violates CEI's First Amendment rights. VIDOJ strongly disagrees. This subpoena is part of an investigation into potential fraud, and it is well established that "the First Amendment does not shield fraud." *Illinois, ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003) (citing *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (the government's power "to protect people against fraud" has "always been recognized in this country and is firmly established")). "Spreading false information in and of itself carries no First Amendment privileges." *Herbert v. Lando*, 441 U.S. 153, 171 (1979). Furthermore, this subpoena neither restricts CEI's speech nor compels speech – it simply seeks the production of documents related to an investigation that is not targeting CEI, as the Attorney General previously explained. The First Amendment does not bar defamation plaintiffs from seeking documents about the press's editorial process, so it similarly does not bar law enforcement from seeking documents from a third party like CEI. *See Herbert*, 441 U.S. at 172–74.

Your client also has asked VIDOJ to revoke the issuance of the subpoena by the District of Columbia Superior Court and terminate the Superior Court action. Those are steps that OAG agrees to take within the next 5 court days, with the understanding that VIDOJ will reissue the subpoena, after notice to your client (through you, unless you instruct us otherwise), if OAG intends to move to compel your client's compliance with the subpoena in its current form.

If you have further questions, please do not hesitate to contact me or Renée Gumbs Carty at the VIDOJ, (340) 774-5666.

Sincerely,

Linda Singer

Enclosure
cc: Renée Gumbs Carty, VIDOJ