

Law Enforcement for Rent

*How Special Interests Fund
Climate Policy through State
Attorneys General*

BY CHRISTOPHER C. HORNER

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Author's Note

This paper is based on documents obtained over two and a half years from open records requests and, in some cases, subsequent litigation. Due to the volume of records, not all cited records are included in the body of this paper. Key documents are provided in the paper's appendix, which can be accessed at www.cei.org/AGclimatescheme. The complete collection of documents cited in this paper is available at ClimateLitigationWatch.org, a project of the nonprofit public interest law firm Government Accountability & Oversight.

Executive Summary

THIS PAPER DETAILS AN EXTENSIVE and elaborate campaign using elective law enforcement offices, in coordination with major donors and activist pressure groups, to attain a policy agenda that failed through the democratic process. The plan is revealed in emails and other public records obtained during two and a half years of requests under state open records laws. Most are being released now for the first time. Many were obtained only by court order in the face of a determined and coordinated resistance that one deputy attorney general foresaw, expressing early concerns over “an affirmative obligation to always litigate” requests looking into the effort. The paper details how donor-financed governance has expanded into dangerous and likely unconstitutional territory: state attorney general (AG) offices.

The plan traces back to 2012 when activists agreed to seek “a single sympathetic attorney general” to assist their cause. AGs began subpoenaing private parties’ records in service of a campaign of litigation against opponents of their climate policy agenda. The public records date to a July 2015 email in which Peter Frumhoff of the Union of Concerned Scientists confided the group’s involvement with AGs.

Those public records reveal the following: (a) donors introduced plaintiffs’ lawyers to AG offices (OAGs), (b) a slideshow tour by plaintiffs’ lawyers recruiting OAGs to the effort, and (c) senior attorneys from OAGs flying in—some at

taxpayer expense and others on the donors’ tab, which had been run through a pressure group—for a briefing with “prospective funders” about “potential state causes of action against major carbon producers.” One presenter described this briefing as a “secret meeting.” It was secret enough that one AG litigated to withhold the agenda—under implausible claims of privilege—for a year and a half before being compelled by a court to release the lineup for what turned out to have been an AG-assisted fundraiser.

Those public records reveal the anatomy of what began as an “informal coalition” of AGs to use the legal system in pursuit of an overtly political agenda in coordination with activists and plaintiffs’ lawyers. That coalition disbanded under open records and media scrutiny, but it has now reconstituted through a program by which donors fund, privately hire, and place investigators and prosecutors in AG offices. It uses a nonprofit organization to pass the funding through and to provide the OAGs with a network of “pro bono” attorneys and public relations services. In return, OAGs provide office space to the privately hired prosecutors; agree they are there to “advanc[e] progressive clean energy, climate change, and environmental legal positions”; and provide regular reports about their work.

Led and funded by former New York Mayor Michael Bloomberg, this scheme hires “Research Fellows,” which it then places as

activist “Special Assistant Attorneys General.” All of the participating OAGs had to promise that this work would not get done *but for this private funding*. All OAGs also certified they are not violating the law by accepting privately funded prosecutors. At best, as several OAGs tacitly admit, this unprecedented arrangement operates in a gray area with neither prohibition nor authority. One state where the scheme is arguably illegal is New York, where disgraced former Attorney General Eric Schneiderman had a leading and organizing role at every stage of the campaign this paper describes.

The New York OAG openly boasted to a donor that its “need” for privately funded prosecutors was driven in part by the “significant strain on staff resources” that had been caused by its “non-litigation advocacy”—that described as its having “led” the resistance to the Trump administration. Importantly, the NYOAG also cited its campaign “building models for two different types of common law cases to seek compensation” from industries for supposedly having caused global warming; moreover, it “needs additional attorney resources to assist with this project.” On these bases and with a claim to having statutory authority to enter the unprecedented arrangement—a claim which on its face appears to be an invention—the NYOAG was awarded not one but two privately underwritten prosecutors.

This is the most dangerous example of a modus operandi we have found: it uses nonprofit organizations as pass-through entities by which donors can support elected officials to, in turn, use their offices to advance a specific set of policies favored by said donors. It also uses resources that legislatures will not provide and that donors cannot legally provide directly. The budget for climate policy work alone is in the tens of millions of dollars per year.

Across various levels of government—including mayors and governors—the bulk

of this money is budgeted for pass-through nongovernmental organizations (NGOs) and off-the-books consultants, report writers, and public relations (PR) firms that are hired through an NGO. The NGO takes a percentage as its fee (up to 24 percent in some cases). Another component involves privately hiring and then placing in-house, non-official personnel as advisors when they are actually employed by a donor’s group.

The extension of this billion-dollar per year climate industry to privately fund AG investigations sets a dangerous precedent. It represents private interests commandeering the state’s police powers to target opponents of their policy agenda and to hijack the justice system as a way to overturn the democratic process’s rejection of a political agenda.

As a subsequent report will affirm, this model of using nonprofit groups as cutouts for donors to finance elected officials’ activism is, in fact, widely adopted generally by the axis of donors, elected officials, and NGOs and by the climate litigation industry specifically. The *de facto* law enforcement for hire by private interests raises concerns beyond mere political opportunism, obvious appearances of impropriety, or even compliant 501(c)3s that seemingly rent out their tax-exempt status on behalf of activist donors.

The use of this approach by AGs carries legal, ethical, and constitutional implications, as well as for the integrity of law enforcement and the constitutional policy process. The public-private partnership of law enforcement for hire revealed in this report, in which the partnership uses public office to expend resources not appropriated or approved by their legislatures, raises significant constitutional and other legal issues—as well as ethics concerns—and should be the subject of prompt and serious legislative oversight.

Introduction

BEFORE YOU GASP, PLEASE NOTE that foundations are currently spending over \$1 billion a year on climate work.¹ So wrote Dan Carol, a senior aide to California Governor Jerry Brown (D), on October 3, 2017, to his colleagues and staff members for New York Governor Andrew Cuomo (D) and Washington Governor Jay Inslee (D) regarding charitable foundation spending that promotes their climate policy agenda (see Figure 1). This figure dwarfs spending in opposition to that agenda—efforts to portray matters otherwise notwithstanding.² Carol offered this sum to make his case that \$50 million per year is reasonable to ask so donors can privately underwrite an off-the-books network of “support functions” for a handful of governors’ climate policy advocacy.

In further support of his position, Carol attached a “draft agenda, presentation slides, and budget worksheet.” Those items are among a large cache of public records that were obtained by the Competitive Enterprise Institute (CEI), along with other public policy groups, and that detail and propose the exploitation of a “plethora of funder interest” in secretly bankrolling the public office holders’ use of their positions to take a more aggressive role concerning climate politics and policy.

This years-long campaign by substantial, left-leaning donors revealed in Carol’s email correspondence and in other emails produced under state open records laws has now expanded into dangerous and likely unconstitutional territory. Led and funded by former New York

1. October 3, 2017, email from Dan Carol to aides to Govs. Jerry Brown, Andrew Cuomo, and Jay Inslee; Subject: Draft agenda, presentation, slides, and budget worksheet.

2. Edouard Morena, “Climate Philanthropy: The Tyranny of the 2 Percent,” *Philanthropy News Digest*, November 1, 2017, <https://philanthropynewsdigest.org/columns/alliance-pnd/climate-philanthropy-the-tyranny-of-the-2-percent>. Marc Gunther, “The Failure of Climate Philanthropy,” *NonProfitChronicles.com*, March 1, 2018, <https://nonprofitchronicles.com/2018/03/01/the-failure-of-climate-philanthropy/>. “Climate action has been repeatedly drowned by a devastating surge and flood of money from the fossil fuel industry—nearly \$2 billion in lobbying since 2000 alone.” Joe Romm, “Fossil fuel industry spent nearly \$2 billion to kill U.S. climate action, new study finds,” *Center for American Progress*, July 19, 2018, <https://thinkprogress.org/fossil-fuel-industry-outspends-environment-groups-on-climate-new-study-231325b4a7e6/>. Claims that conservative groups spend \$1 billion per year on opposition to the climate agenda have improperly attributed all conservative spending as being in opposition to the climate agenda. “Without even addressing the mathematical fact that \$900 million is \$100 million short of the \$1 billion claimed by Goldenberg, Brulle’s paper merely tabulates the total money raised by the 91 conservative think tanks for their total operations regarding all issues they address and does not break down how much of each think tank’s resources are devoted to issues such as economic policy, health care policy, foreign policy, climate policy, etc.” James Taylor, “‘Dark Money’ Funds to Promote Global Warming Alarmism Dwarf Warming ‘Denier’ Research,” *Forbes.com*, January 2, 2014, <https://www.forbes.com/sites/jamestaylor/2014/01/02/dark-money-funds-to-promote-global-warming-alarmism-dwarf-warming-denier-research/#24cf23b6545f>.

Figure 1

From: Dan Carol [<mailto:dan.carol@wdc.ca.gov>]
Sent: Tuesday, October 3, 2017 9:30 AM
To: Aimee Barnes <Aimee.Barnes@GOV.CA.GOV>; michelle.marchello@exec.ny.gov;
John O'Leary <John.O'leary@exec.ny.gov>; Davis, Chris (GOV)
<chris.davis@gov.wa.gov>; Schuler, Reed (GOV) <reed.schuler@gov.wa.gov>
Cc: Jamie Callahan <Jamie.Callahan@GOV.CA.GOV>; Alexander Cochran
<Alexander.Cochran@exec.ny.gov>
Subject: draft agenda, presentation slides and budget worksheet

Draft and Deliberative

Here is a cut at an agenda for October 16 as promised on the call today

Plus a set of vision/story-telling slides for what I personally think USCA needs to become – big and durable

Plus a budget discussion worksheet to get us thinking about how to frame this for funders for what it needs to be to achieve our goals – a bellwether for a serious shift to state-led deployment. Before you gasp, please note that foundations are currently spending over \$1 billion a year on climate work. But if we add up the number of groups in the deployment business, that number is probably about \$50 million.

Mayor Michael Bloomberg, this scheme centers on paying to place activist attorneys—dubbed State Assistant Attorneys General (SAAGs)—in offices of the attorney general (OAGs) to play an agreed, predetermined, and activist role.

The intent is for those attorneys to advance the donors' and large environmental advocacy groups' "progressive clean energy, climate change, and environmental" policy agenda³ and—according to at least one OAG application—expressly to assist in pursuing the same agenda's political opponents. In practice, this is a case of law enforcement for hire.

The roadmap for this campaign was laid out by activists and donors in 2012.⁴ Then in 2016, several state attorneys general (AGs) joined the

campaign, which accelerated after that year's elections. Public record requests looking into how such sensitive offices came to be used this way revealed that, since at least mid-2015, this use of law enforcement underwritten by private donors had secretly involved activist pressure groups, which are working in close coordination with donors and serving as the state AGs' backroom strategists and partners.

After collapse of an early "informal coalition" of AGs—formed in the spring of 2016 to make desired climate policies become "reality"—in late 2017, another major donor, Bloomberg, announced his plan to use AG offices by privately funding the special AGs program. This expansion extends the model of off-the-books governance

3. August 25, 2017, email from NYU's David Hayes to attorney general (AG) office employees in multiple states; Subject: State Energy & Environmental Impact Center.

4. "Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control. Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies," Climate Accountability Institute, Union of Concerned Scientists, October 2012, <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>.

detailed by Carol and company from executive offices (such as mayors and governors) to AGs with law enforcement powers.

This approach represents an elaborate, deliberate plan to politicize state law enforcement offices in the service of an ideological, left-wing, climate policy agenda that has been frustrated by the democratic process. Under this scheme and deviating from standard government contracting procedures, private parties with an express policy advocacy agenda can pay to place activist investigators

and lawyers in state AG offices to pursue that agenda.

Finally, as if to leave no doubt about the extent of this capture of law enforcement by activist donors, some of those chief law enforcement offices sent attorneys—some at taxpayer expense and others accepting payment of their travel expenses from a green advocacy group—to participate in a briefing on “Potential State Causes of Action against Major Carbon Producers” for prospective funders of the same environmentalist group.

Privately Funded Government and Investigations, an Overview

THE MODUS OPERANDI THAT WE have found entails using nonprofit organizations as pass-through entities by which donors support elected officials to use their offices to advance a specific set of policies favored by said donors, with resources that legislatures will not provide and which donors cannot legally provide directly. This model is being employed by activist elected prosecutors as part of this billion dollar-plus annual climate activism industry.

Across various levels of government—including mayors and governors—the bulk of the money apparently goes to pass-through nongovernmental organizations (NGOs) and off-the-books consultants, report writers, and public relations firms hired through an NGO, which takes a percentage as its fee (up to 24 percent in some cases).⁵ Another component involves privately hiring and then placing in-house, non-official personnel as advisors when they are actually employed by a donor’s group—again as a cutout.

Extending this scheme to law enforcement seeds sympathetic state AG offices with additional lawyers to pursue “progressive clean energy, climate change, and environmental legal positions”—in other words, to use their offices to compensate for a political agenda’s failure through the political process.⁶ Even more troubling, this effort

involves investigating opponents, of the climate policy agenda while using law enforcement to intimidate political opponents, seeking to silence the opposition.

The New York AG office’s successful application to the donors’ pass-through for two privately funded attorneys also shows that one objective is to provide personnel to its effort to extract financial settlements from those opponents. Recent practice suggests that the settlements will be distributed in part among political constituencies.

For its part, the group of donors offered inducements to entice AG offices to allow them to place attorneys and investigators in the law enforcement operation, including these:

- Supplemental donor-funded lawyers housed at the pass-through, a 501(c)3 nonprofit organization;
- An outside “pro bono” network of privately funded lawyers; and
- A public relations aide to serve those AGs; emails suggest that this approach also involves providing a media firm based in California to promote the AGs’ efforts.

This model of donors using non-profit groups as pass-throughs to make specific hires and to perform specific jobs, which now

5. To be detailed in a forthcoming report, “Government for Rent.”

6. August 25, 2017, email from David Hayes to state AG offices.

extends to the *de facto* contracting out of law enforcement to private interests, raises concerns beyond mere political opportunism, obvious appearances of impropriety, or even compliant 501(c)3s seemingly renting out their tax-exempt status on behalf of activist donors.⁷ The use of

this approach by AGs carries legal, ethical, and constitutional implications for the integrity of law enforcement and the constitutional policy process. The scheme that gives rise to such concerns is the subject of this paper.

7. 501(c)3 organizations are required to state in response to donations that no goods or services were received for the contribution—“if that is the case.” <https://www.irs.gov/charities-non-profits/charitable-organizations/charitable-contributions-written-acknowledgments>. It would be interesting to see if the parties involved in the model described in this report and in a forthcoming report on other governmental subdivisions’ employment of the same model did, in fact, so state. (See chapter: “Activist Government without Limits and Donor-Funded Law Enforcement.”)

The Central Role of Eric Schneiderman

DISGRACED FORMER NEW YORK Attorney General Eric Schneiderman played a central—indeed the leading—role among AGs in developing the schemes laid out in this paper. In fact, Schneiderman led the precursor “informal coalition”⁸ of state AGs who presented, along with former Vice President Al Gore, at a March 2016 press conference to publicly launch what proved to be the first attempt at using AG offices to assist the climate litigation industry in going after “Exxon specifically, and the fossil fuel industry generally.”⁹ That effort also resulted in a subsequently withdrawn subpoena to CEI for 10 years’ worth of records going back 20 years.

Key facts and events in the development of the scheme follow:

- Emails obtained in open records litigation show the environmental pressure group Union of Concerned Scientists (UCS) admitting, in July 2015, that it was working on OAG investigations of opponents of the
- climate agenda well before the AGs went public with their efforts in November of that year.
- In November 2015, months after this first admission of the collaboration, Schneiderman issued his first subpoena in pursuit of that agenda.
- Privilege logs filed by Schneiderman’s office in two Freedom of Information Law (FOIL) suits admit to withholding, as “law enforcement” materials, extensive correspondence regarding—in the AG office’s description—“company specific climate change information” with the office of environmentalist mega-donor Tom Steyer and Rockefeller Family Fund Director Lee Wasserman. This correspondence dated back at least nine months prior to Schneiderman’s issuing the first subpoena.¹⁰
- In March 2016, Schneiderman recruited a coalition of 16 Democratic state AGs to investigate opponents of their climate political agenda, under the name “Attorneys General United for Clean Power.”¹¹ The

8. March 7, 2016, letter from AGs Schneiderman and William Sorrell (Vermont) to numerous Democrat AGs.

9. April 15, 2016, email from New York OAG’s John Oleske to staff members from numerous “informal coalition” OAGs; Subject: RE: AG Climate Change Coalition—XOM/Fossil Fuels Working Group.

10. See the two privilege logs making these claims at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=3s1_PLUS_ag7V3BP6D3XR8qklcA== and https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=4gV1PMC_PLUS_ri7oT5KbMKdnw==.

11. The coalition included the AGs of California, Connecticut, District of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Rhode Island, Virginia, Vermont, and Washington, as well as the U.S. Virgin Islands Office of the New York Attorney General, “A. G. Schneiderman, Former Vice President Al

coalition quickly dispersed a few months later when confronted with open records law requests and negative media attention.

- Schneiderman arranged for plaintiffs’ lawyer Matt Pawa and the Union of Concerned Scientists’ Peter Frumhoff to brief the AGs and Gore before their AGs United 2016 press conference—where the AGs announced their plans to pursue the investigations sought by UCS, plaintiffs’ lawyers, their partners, and their donors. Both Frumhoff and Pawa were involved early on in the campaign to find “a single sympathetic attorney general” to assist their cause by subpoenaing private parties’ records.
- Wendy Abrams, a major Democratic party and environmentalist group donor and recent member of UCS’ board of directors, provided Pawa entrée to at least one other law enforcement office. When arranging an April 2016 meeting for her and Pawa, as well as other attorneys who would figure prominently in the climate change litigation, to brief the office of Illinois AG Lisa Madigan, Abrams informed the office that she believed Pawa had brought the idea of the climate investigation to Schneiderman.¹²
- Schneiderman’s office provided UCS an invitation list of OAG contacts to participate in a briefing of outside parties on this collaborative climate litigation strategy,

but specifically “Potential State Causes of Action” (discussing investigations and litigation the AGs might bring). The briefing included senior attorneys from AG offices in the Schneiderman-led coalition, UCS, plaintiffs’ lawyers, and their academic and activist partners.

- One presenter at the briefing described it to at least two correspondents as a “secret meeting.”
- There may be a good explanation for the secrecy. Recently obtained emails show that this “secret” briefing on litigation strategy, which Schneiderman’s office co-organized to ensure OAG attorneys flew in from around the country—some at taxpayer expense, others accepting UCS’s offer to pay their travel expenses—was, in fact, for “prospective funders.”

Several of the AG offices involved in this campaign have responded to requests for release of those public records by stonewalling, often forcing costly litigation. This litigation penalty has been paid for by nonprofit groups that the AGs have forced to sue to obtain public records. With two OAGs having been ordered to pay substantial costs and fees, this means an even greater price price has been paid by the taxpayers—not the climate activists’ “prospective funders.”

Gore, and a Coalition of Attorneys General from across the Country Announce Historic State-Based Effort to Combat Climate Change,” news release, March 29, 2016, <https://ag.ny.gov/press-release/ag-schneiderman-former-vice-president-al-gore-and-coalition-attorneys-general-across>.

12. Others included Sharon Eubanks of Bordas & Bordas and Steve Berman of Hagens Berman, neither of whom attended in the end. Abrams also suggested Mark Templeton might attend. Templeton is director of the University of Chicago’s Abrams Environmental Law Clinic.

Activist Government without Limits and Donor-Funded Law Enforcement

PUBLIC RECORDS CONFIRM THAT state AGs have willingly agreed to—and following very specific instructions have pleaded for—privately funded investigators and attorneys to use AG offices in pursuit of the “progressive clean energy, climate change, and environment” policy agenda.

This personnel benefit and other inducements were offered to the AGs through a program set up by former New York Mayor Michael Bloomberg, a billionaire donor who has ramped up his funding of climate policy activism in recent years. Bloomberg’s ideological campaign to impose specific policies includes openly vowing to run politically disfavored energy sources out of existence.¹³

Frustrated by failure through the democratic process, this campaign now includes the use of law enforcement for political ends. To attain his goals, Bloomberg established the State Energy and Environmental Impact Center at the New York University (NYU) School of Law,

announcing that creation on August 15, 2017.¹⁴ The name itself is telling of his intent—to obtain his desired policy effects at the state level, after activists lost certain levers of power at the federal level.

Under the unusual arrangement offered by Bloomberg’s Center:

- A state attorney general’s office “hires” the NYU Impact Center as its attorney.
- The client pays nothing. Its consideration to NYU is in receiving the NYU Impact Center’s prosecutors (see Figure 2), who promise they will work on specified issues expressly of NYU’s interest and report back to NYU according to a specified schedule.¹⁵
- NYU also affords the AG’s office a “pro bono” network of lawyers and a communications staffer who is dedicated to the work that the office agrees to perform.
- The contract is for an attorney–client (NYU–OAG) relationship.

13. “‘Ending coal power production is the right thing to do,’ Mr. Bloomberg said.” Editorial, “Washington’s ‘Beyond Coal’ Blackout: Michael Bloomberg’s campaign left little spare electric capacity,” *Wall Street Journal*, April 10, 2015, <https://www.wsj.com/articles/washingtons-beyond-coal-blackout-1428706365>.

14. Juliet Eilperin, “NYU Law Launches New Center to Help State AGs Fight Environmental Rollbacks,” *Washington Post*, August 16, 2017, https://www.washingtonpost.com/politics/nyu-law-launches-new-center-to-help-state-ags-fight-environmental-rollbacks/2017/08/16/e4df8494-82ac-11e7-902a-2a9f2d808496_story.html?utm_term=.fd5d7fd9a8b8.

15. The secondment agreement states: “The [AG OFFICE] will provide periodic reports to the State Impact Center regarding the work of the Legal Fellow. These reports will include a narrative summary, subject to confidentiality restrictions, of the work of the legal fellow and the contribution that the legal fellow has made to the clean energy, climate change, and environmental initiatives of the [AG OFFICE]. These reports will be provided pursuant to the following schedule.” “Employee Secondment Agreement between the [AG OFFICE] State Energy & Environment Impact Center at NYU School of Law,” as obtained from New York Office of the Attorney General and from others.

Figure 2



State Energy &
Environmental Impact Center
NYU School of Law

June 8, 2018

Steve Novick
7315 SW 36th Ave
Portland, OR 97219

Dear Steve:

I am pleased to extend an offer of employment to you as a Research Scholar, in the State Energy & Environmental Impact Center at New York University.

Secondment Arrangement

During your employment, you will be seconded to the Oregon Department of Justice ("DOJ") as a Special Assistant Attorney General. Pursuant to an agreement between the State Energy and Environmental Impact Center and the DOJ, during your employment, you will be under the direction and control of, and owe a duty of loyalty to, the DOJ, and will be subject to DOJ's policies regarding employee conduct. The DOJ will provide additional details to you directly about the applicable policies.

Salary

Your annual base salary will be \$146,196 annually, paid over twelve months in equal installments on the first and the fifteenth of the month, and is subject to appropriate tax withholdings. This salary is inclusive of any future teaching assignments, if applicable.

Start Date

Your employment in this position shall commence on June 18th, 2018 and is anticipated to end on June 18th, 2020. This appointment may be extended upon mutual agreement.

Benefits

You will receive an email from the Benefits Office with a link to NYU's Benefits Overview Guide. The guide for Professional Research Staff contains instructions on how and when to enroll, comprehensive information on all benefit plans, dependent eligibility, employee contributions and more.

The Benefits Overview for full-time Professional Research Staff employees can be found by visiting the following web site: <http://www.nyu.edu/employees/benefit/full-time/Professional-Research-Staff-Code-103.html>.

If you plan to add dependent(s) to one of the NYU medical and/or dental plans, you are required to furnish proof of relationship, no later than the 31st day of employment, in order for coverage to remain in effect for your family member(s). Examples of acceptable documentation are: birth certificate, adoption papers, court order of guardianship/custody, marriage certificate, or your approved NYU Domestic Partner Registration form. Proof of relationship documents may be scanned and sent via e-mail to askpeoplelink@nyu.edu or may be mailed to NYU PeopleLink, 105 E. 17th Street, 1st floor, New York, NY 10003 or faxed to (212) 995-4333.

Policy Training

Attached to this letter are the University's Non-Discrimination and Anti-Harassment Policy and Complaint Procedures for Employees. All employees are expected to participate in a harassment prevention program. "OEO101: Preventing Harassment on Campus" is an instructor led course that is offered each month for

Figure 3



- NYU and the OAG sign a secondment agreement to place NYU's attorneys in the OAG to work on specified matters ("progressive clean energy, climate change, and environmental legal positions").¹⁶ OAG appoints the lawyer as e.g. "Pro bono Deputy Counsel" (see Figure 3).
- NYU pays the lawyer; so far those payments range between around \$75,000 and \$149,483 annually.

The first recruiting letter we have found, dated August 25, 2017, was sent by David Hayes, a former aide in the Clinton and Obama administrations and a green pressure group

lawyer who now carries numerous affiliations. Hayes's emails to the AG offices indicate that both he and NYU's Center are affiliated at some level with the green group Resources for the Future, out of whose Washington, DC, office he indicated he runs this Bloomberg operation.¹⁷ However, neither group lists such a relationship on its website (last viewed July 29, 2018).

Hayes sent this pitch, to place privately hired and funded "Pro Bono Special Assistant Attorneys General," to former campaign managers and other such political aides in politically sympathetic Democratic AG offices.

16. August 25, 2017, email from David Hayes to state AG offices.

17. Hayes actually signs the SAAG correspondence and contracts on behalf of NYU, "David J. Hayes, Executive Director State Energy & Environmental Impact Center, NYU School of Law, c/o Resources for the Future, 1616 P Street, NW, Washington, DC 20036; Office phone: 202-328-5052 ... Email: david.hayes@nyu.edu...."

In that August 2017 letter, Hayes suggested that back-channel recruiting efforts were already well under way before the announcement: “We set a short deadline [September 15, 2017] at the request of several AGs who are anxious to get the process for placing NYU Fellows into AG offices as soon as possible.”¹⁸ Hayes expressed urgency to engage “the offices of certain state attorneys general” when he stated, “It’s in everyone’s interest that we work with the relevant AGs and hire these lawyers as soon as practicable.”¹⁹

The goals of the crowd seeking to capture this next level of authority for donor-advised governance are starkly illustrated in some surprisingly candid public comments. For instance, in an August 2017 *Washington Post* interview announcing the operation, Hayes let the most troubling aspect about this scheme out of the bag when he told the *Washington Post*: “[A]lthough ‘there’s never enough’ funding to support this sort of advocacy, the grant from Bloomberg Philanthropies could support not only litigation against the federal government but also enforcement activities on the state level.”²⁰ [Emphases added.]

Elsewhere, Hayes boasted:

Those guys are the law enforcement folks.

When it comes to climate change and clean energy, they are enforcing the law in the way

that I think all of us in this room want them to—at least the progressive AGs.²¹

Likely Democratic nominee for Attorney General of Florida Sean Shaw seems to reflect the mentality underlying this campaign when he describes the office to which he aspires:

It’s so free from interference. You can just sue and go after people. You don’t have to run it up any flagpole or get a committee or do anything.... You just do it.²²

There are, inarguably, ethical and constitutional issues attendant to this element of that “\$1 billion per year on climate work” beyond the obvious appearance of impropriety. The arrangement offers real potential for tainting all related investigations and litigation in the event that those problems become the subject of successful challenge. The workaround of running the funding of this activism through a nonprofit cutout may or may not prove enough to save the work from being thrown out as hopelessly tainted by bias.

The following is an analysis of the scheme and discussion of some of those legal and ethical concerns, with necessary background and citing source documents.

18. August 25, 2017, email from David Hayes to state AG offices.

19. Ibid.

20. Eilperin, “NYU Law Launches New Center to Help State AGs Fight Environmental Rollbacks,” *Washington Post*.

21. Western Wire, “Outsourcing Government: How Deep-Pocketed Philanthropies Are Pushing Climate Policy in State Governments,” Michael Sandoval, March 9, 2017, <http://westernwire.net/outsourcing-government-how-deep-pocketed-philanthropies-are-pushing-climate-policy-in-state-governments/>.

22. David Catanese, “Democrats Seek Blue Wave of Attorneys General,” *U.S. News & World Report*, July 20, 2018, <https://www.usnews.com/news/the-report/articles/2018-07-20/democrats-seek-blue-wave-of-attorneys-general>.

Background to the Bloomberg–AG Scheme and the “Climate–RICO” Gang

TO BEST UNDERSTAND WHAT COULD lead not only donors and lawyers but also elected AGs to consider engaging in such a scheme, it helps to first recall what the persistent use of state freedom of information laws in 2016–2017 helped expose. Also important is the meeting at which the AGs’ first campaign to assist the climate litigation industry was hatched several years prior.

The state AGs’ rationale for pursuing energy companies for “climate” settlements—and even for subpoenaing think tank records—has been something of a shape-shifter.²³ Nonetheless, it arises from a 2012 conference in La Jolla, California,²⁴ which was organized by a coalition of Rockefeller Foundation–supported

groups.²⁵ That conference produced a document that would serve as a blueprint for what has unfolded publicly over the past two and a half years.²⁶ The blueprint notes: “State attorneys general can also subpoena documents, raising the possibility that a single sympathetic state attorney general might have substantial success in bringing key internal documents” out for the groups’ use.²⁷

The activists were fortunate to find not one but several state AGs willing to join the campaign—at least until (apparently unanticipated) scrutiny and negative coverage began, which was prompted by open records requests into just how law enforcement offices came to be used in this way.²⁸ In fact, the

23. See Schneiderman *New York Times* interview, in which he acknowledges his shift of focus from originally claiming to investigate what ExxonMobil “knew” to investigating what it “predicts.” John Schwartz, “Exxon Mobil Fraud Inquiry Said to Focus More on Future than Past,” *New York Times*, August 9, 2016, <https://www.nytimes.com/2016/08/20/science/exxon-mobil-fraud-inquiry-said-to-focus-more-on-future-than-past.html>. Compare that to Justin Gillis and Clifford Krauss, “Exxon Mobil Investigated for Possible Climate Change Lies by New York Attorney General,” *New York Times*, November 5, 2015, <http://nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html>. Those investigations, while ensnaring others such as CEI, are plainly aimed at obtaining a leading players’ agreement toward making it irresistible for settlement down the line with others.

24. John Schwartz, “Public Campaign against Exxon Has Roots in a 2012 Meeting,” May 23, 2016, *New York Times*, https://www.nytimes.com/2016/05/24/science/public-campaign-against-exxon-has-roots-in-a-2012-meeting.html?_r=0.

25. Katie Brown, PhD, “As Always, It All Goes Back to La Jolla,” *Energy in Depth*, July 21, 2016, <https://energyindepth.org/national/as-always-it-all-goes-back-to-la-jolla/>.

26. “Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control; Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies,” Climate Accountability Institute, Union of Concerned Scientists.

27. *Ibid.*

28. “Greetings all. Our AG has determined that Delaware will not be involved in this worthy effort, and thus will not be signing the common interest agreement,” Delaware Deputy AG Ralph Durstein wrote in a May 9, 2016, email to more than

coordination exposed between green activists and a network of state AGs—in using the threat of racketeering and other investigations of the climate agenda’s political opponents—became a major topic of news coverage during 2016.

The AGs’ involvement began some time prior to July 2015 when the AGs’ collaboration with activists makes its first appearance in emails obtained through public records litigation. In January 2016, various activists and these same plaintiffs’ attorneys met at the offices of the Rockefeller Family Fund in New York to discuss the “[g]oals of an Exxon campaign,” which included to “delegitimize [it] as a political actor” and to “force officials to disassociate themselves from Exxon.” Critically, the agenda confessed to the goal of “getting discovery.” Also on the agenda: “Do we know which offices may already be considering action and how we can best engage to convince them to proceed?”²⁹

Then, in March 2016, since-disgraced and now-former New York AG Eric Schneiderman and Vermont’s then-AG Bill Sorrell sought and briefly succeeded in forming (or in their word “renew[ing]”) an “informal coalition of Attorneys General” whose work on a broad spectrum of policy advocacy “has been an important part of the national effort to ensure adoption of stronger federal climate and energy policies.”³⁰

This time the agenda entailed the political objectives of “ensuring that the promises made in Paris become reality”—referring to the December 2015 climate treaty—and to “expand the availability and usage of renewable energy.”³¹

It seems likely that the AGs’ initial foray into the activists’ requested involvement fell apart in some measure because of the (also apparently unexpected) aggressive pushback from one target of an AG subpoena—CEI.

With the benefit of hindsight, the AGs’ scattering under scrutiny and facing challenge is not surprising. Correspondence shows state government officials actively trying to hide their coordination through a purported “Common Interest Agreement” from April 2016. As the name indicates, these instruments are used to protect as privileged the discussions among parties having common interests in a legal proceeding. Those agreements are common—where there is actual or reasonably expected litigation—as is required for the use of said instrument.

In the AGs’ case, there was no relevant extant or reasonably anticipated joint or common legal proceeding. Nor has there been one since. The purpose of their pact, specifically its paragraph 6, requiring consultation among AGs about responding to public record requests, was to shield from public scrutiny the otherwise public record of their efforts to defend President Obama’s global warming policy agenda and their own investigations of political opponents for alleged racketeering or financial fraud deriving from their opposition to the climate policy agenda. After an extended delay brought on by litigation, which was itself forced by stonewalling, courts have held that this arrangement offers the AGs no such shield.³² Numerous other AGs have effectively agreed with this finding, choosing not to fight that

a dozen OAG aides from other states. Subject: Common Interest Agreement. Chris White, “Delaware Dem Is the Latest AG to Pull Out of RICO Case against Exxon,” *Daily Caller*, September 24, 2016, <http://dailycaller.com/2016/09/24/delaware-dem-is-the-latest-ag-to-pull-out-of-rico-case-against-exxon/>. This email, to which the Delaware AG’s office responded, was a notification to all participants in the “informal coalition” led by Schneiderman, pursuant to this purported Common Interest Agreement, about an open records request received by the Vermont OAG. After Delaware begged off, all other participating AGs, with the exception of Massachusetts’s Maura Healey, also quietly ceased active collaboration, including Vermont.

29. Meeting invitation and agenda, <http://eidclimate.org/wp-content/uploads/2017/10/Rockefeller-ExxonKnew-Strategy-Meeting-Memo-Jan-2016.pdf>. Amy Harder, “Exxon Fires Back at Climate-Change Probe,” *Wall Street Journal*, April 13, 2016, <https://www.wsj.com/articles/exxon-fires-back-at-climate-change-probe-1460574535>.

30. March 7, 2016, letter from AGs Schneiderman and Sorrell to numerous Democratic state AGs.

31. *Ibid.*

32. Decision, *The State’s Motion for Summary Judgment*, Superior Court of the State of Vermont, 558-9-16 Wnc, July 27, 2017; J. Teachout, “The Same Court Ordered the Release of Many More Records Purportedly Shielded,” in 349-16-9. Decision, *The State’s Motion for Summary Judgment*, Superior Court of the State of Vermont, December 6, 2017.

battle but instead to release the correspondence that was purportedly shielded and in many cases withheld by their partners.

Those state-level open records productions, which revealed close orchestration with plaintiffs' lawyers and environmental activists, proved costly to that coalition and scared off participants while discrediting said investigations. This approach, in turn, likely prompted Schneiderman and company to consider how to pursue such a political coalition while keeping the public records from the public. Critically—and as one email from NYU's Elizabeth Klein to the Illinois OAG discussed later suggests—Bloomberg's program aims not only to provide the activist AGs a home to get the band back together, but also to supply another bite at claiming attorney-client and "work product" privileges to shield their work going forward.

The 2016 "informal coalition" in practice sought to extract three things from its targets: (a) a vow of silence, (b) a vow not to financially support other opponents of the agenda (like the subpoenaed CEI),³³ and (c) a settlement fund in the hundreds of billions of dollars modeled on the tobacco master settlement agreement (MSA).

As in the tobacco MSA, this settlement, in large part, would fund more activist government and would be distributed among political constituencies.³⁴ The same is true of any settlement obtained in the staggered series of lawsuits filed against major energy producers by coastal municipalities such as Marin County, Oakland, and San Francisco in the summer and

fall of 2017; New York City in January 2018; inland liberal enclaves such as Boulder, Colorado, in April 2018; and the state of Rhode Island—home of Schneiderman coalition partner Peter Kilmartin and Sen. Sheldon Whitehouse, a major proponent of using the Racketeer Influenced and Corrupt Organizations Act (RICO) against political opponents—in July 2018.

The first record production on the 2016 campaign, from the Vermont OAG, included responses to a questionnaire sent to the state AGs by Schneiderman's office. U.S. Virgin Islands AG Claude Walker reveals his interest, having "just finished litigation against Hess Oil ... [obtaining an] \$800 million settlement." Walker goes on to express interest in "identifying other potential litigation targets" and in seeking ways to "increase our leverage."³⁵

After the first production of these damning public records, the Vermont OAG sealed up tight, and other OAGs facing record requests followed suit. Speaking at least in part regarding the ongoing campaign of stonewalling state FOI requests (after reciting some highlights of what was known at the time about this collaboration with plaintiffs' lawyers and activists), one federal court noted that these AGs ought to drop the fight and release the requested public records in the name of dispelling speculation on what these revelations indicated was going on:

[New York] Attorney General Schneiderman and [Massachusetts] Attorney General Healey, despite these media appearances by both, are not willing to share the information related to

33. After CEI criticized the AGs' intimidation campaign, U.S. Virgin Islands AG Claude Earl Walker, one of the AGs working with Schneiderman, subpoenaed 10 years of the nonprofit organization's records relating to climate change. CEI.org, Received April 7, 2016, <https://cei.org/sites/default/files/CEI%20Subpoena%20from%20USVI%20AG%20Claude%20Walker%20April%207%202016%20%281%29.pdf>

34. Walter Olson, "Partisan Prosecutions: How State Attorneys General Dove into Politics," *New York Post*, March 30, 2017, <https://nypost.com/2017/03/30/partisan-prosecutions-how-state-attorneys-general-dove-into-politics/>. Lachlan Markay, "Leader of Climate RICO Push Foresees Big Checks for Groups Like His," *Washington Free Beacon*, May 17, 2016, <http://freebeacon.com/issues/maibach-foresees-big-checks-from-climate-rico/>.

35. "Attorneys General Climate Change Coalition Questionnaire Responses," circulated among Vermont AG staff members by the New York AG office on March 25, 2016. Walker wrote that some (unspecified) part of the Hess settlement went to creating an "environmental response trust," which would convert part of the Hess site "to solar development, we hope." His office was also "preparing third party subpoenas," which proved to include the subpoena of CEI for 10 years of records, going back 20 years.

the events at the March 29, 2016, meeting at the AGs United for Clean Power press conference. Should not the attorneys general want to share all information related to the AGs United for Clean Power press conference to ensure the public that the events surrounding the press conference lacked political motivation and were in fact about the pursuit of justice? The attorneys general should want to remove any suspicion of the event being politically charged since it was attended by (1) former Vice President Al Gore, a known climate change policy advocate in the political arena; (2) Mr. Peter Frumhoff, a well-known climate change activist; and (3) Mr. Matthew Pawa, a prominent global warming litigation attorney who attended a meeting two months prior to the press conference at the Rockefeller Family Fund to discuss an “Exxon campaign” seeking to delegitimize Exxon as a political actor. Any request for information about the events surrounding the AGs United for Clean Power press conference should be welcomed by the attorneys general.³⁶

The judge noted that efforts to keep public records from the public, as was suggested in their “common interest agreement,” “causes the Court to further question if the attorneys general are trying to hide something.”

The settlement fund sought by this campaign is enormous. The figure publicly bandied about is \$200 billion—perhaps because that was the approximate value of the 1998 tobacco MSA providing the plaintiffs’ lawyers’ and consultants’ settlement template.³⁷ Hydrocarbon energy, however, is a much bigger industry than tobacco.

At least one prominent academic, Edward Maibach, director of the Center for Climate Change Communication at George Mason University (GMU), has admitted to an expected payout from this campaign for his type of work. Maibach’s background is in public relations, in which business he served as worldwide director of social marketing for the PR firm Porter Novelli and where he worked on distribution of the tobacco master settlement funds. He told *Grist* magazine in an interview about his new work promoting the climate campaign, which we learned also entailed recruiting academics to call for RICO investigation of that campaign’s opponents:

If the White House took up Sen. [Sheldon] Whitehouse’s suggestion to wage a full investigation into the fossil fuel industry for all of their collusion and stonewalling to confuse the public about the harm of fossil fuels, and if a RICO suit were successful, and if there was a settlement between the government and the fossil fuel industry—there is no question in my mind that a good portion of that money should be spent on a national campaign to educate people on the risks of climate change, and [to] build their resolve to work towards solutions. If this were treated as a public health problem, that is exactly what would be done.³⁸

CEI and this author filed a Virginia FOIA suit, *Horner et al. v. George Mason University*,³⁹ after some GMU faculty members led by Maibach worked with Sen. Whitehouse in calling on

36. Order transferring action to the S.D.N.Y, Kinkeade, J, N.D. TX, 4:16-CV-469-K, March 29, 2017.

37. Gabe Friedman, “Could \$200 Billion Tobacco-Type Settlement Be Coming over ‘Climate Change?’” *Big Law Business*, June 14, 2016, <https://biglawbusiness.com/could-200-billion-tobacco-type-settlement-be-coming-over-climate-change/>. The tobacco MSA involved a payout by tobacco companies of \$206 billion over the first 25 years of the agreement, which seems likely where the targeted figure comes from, as opposed to any rational and calculated basis.

38. Heather Smith, “How Do You Make Conservatives Care about Climate Change? An Expert Shares Tips,” *Grist*, October 16, 2015, <https://grist.org/climate-energy/how-do-you-make-conservatives-care-about-climate-change-an-expert-shares-tips>. See also Lachlan Markay, “Leader of Climate RICO Push Foresees Big Checks for Groups Like His,” *Washington Free Beacon*, May 17, 2016; see also emails laying out this campaign at <https://wattsupwiththat.com/2016/06/02/more-rico20-gmu-emails-released/>.

39. Records are available at climatelitigationwatch.org.

then-U.S. AG Loretta Lynch to go after their agenda's opponents under an antiracketeering law. In a deposition in the matter in which this author participated, Maibach testified thus in response to my question:

Q. As director of the Center for Climate Change Communication, what do you do?

A: ... As director, I suppose my chief job is raising the money we need to do the research, actually overseeing the research so that it is done of sufficient quality, mentoring my post docs, my students, my faculty, keeping the ship moving forward.⁴⁰

He was then asked if he recalled that *Grist* interview. He did, and soon he modified his previous answer about priorities:

Q. You testified that your earlier job in that position is raising funds?

A. Part of.

Q. You said your chief job was the quote. We can go back. Your chief job is raising money to keep it going. Is that still accurate?

A. That is probably a little too glib. ...⁴¹

When Maibach asked Peter Frumhoff of the Union of Concerned Scientists to enlist UCS in publicly calling for RICO investigations of their opponents, Frumhoff let on to the brewing

state AGs' campaign, months before it became public. In a July 31, 2015, email, Frumhoff first dismissed Maibach's call for a federal RICO investigation:

As you know, deception/disinformation isn't itself a basis for criminal prosecution under RICO. We don't think that Sen. Whitehouse's call gives enough of a basis for scientists to sign on to this as a solid approach at this point.⁴²

Then, Frumhoff assured Maibach, "[W]e're also in the process of exploring other state-based approaches to holding fossil fuel companies legally accountable ... [via] state (e.g., AG) action."⁴³

So far, two courts in Texas have issued scathing rulings noting these revelations: one the aforementioned federal district court for the Northern District of Texas⁴⁴ and more recently a state court in Tarrant County.⁴⁵ The federal district court focused on an email in which Schneiderman's office asks activist lawyer Matt Pawa to mislead a reporter about his role in briefing the AGs and Al Gore in the back room just before the March 29, 2016, Manhattan press conference announcing a whatever-means-necessary campaign against opponents.⁴⁶

This email references Pawa and Frumhoff, who both participated in the January Rockefeller/"delegitimize" meeting and the 2012 La Jolla conference; they had been invited to

40. Transcript pp. 4–5 at <http://climatelitigationwatch.org/horner-cei-v-gmu-rico-va-foia-maibach-deposition/>.

41. Transcript at p. 60.

42. July 31, 2016, email from UCS's Frumhoff to Maibach, copying UCS's Nancy Cole and Alden Meyer and their outside PR advisor Aaron Huertas; Subject: FW: Senator Whitehouse's call for a RICO investigation of the fossil fuel industry.

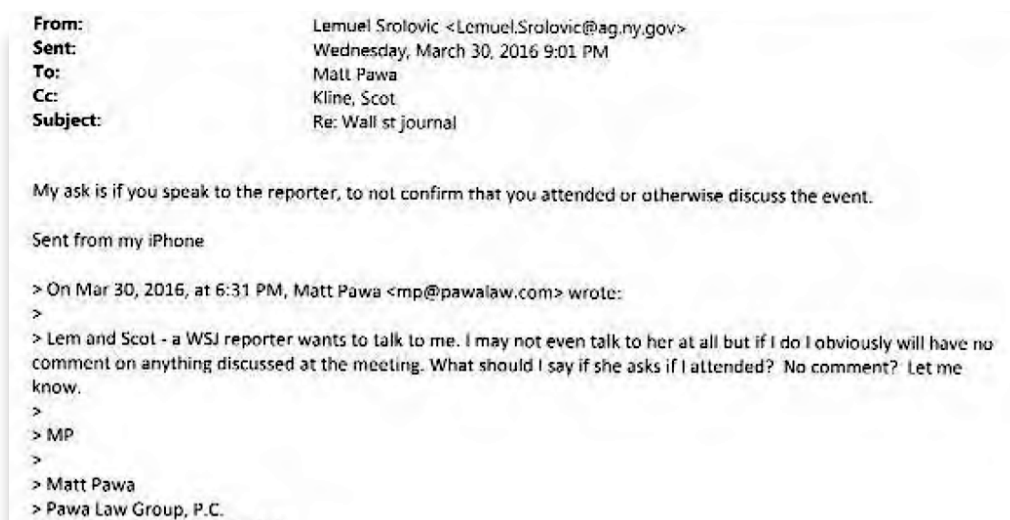
43. Ibid.

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

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

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

Figure 4



secretly brief the state AGs. At that briefing, held immediately before the AGs’ press conference, they each received 45 minutes to provide arguments on “climate change litigation” and “the imperative of taking action now,” according to the agenda prepared by Schneiderman’s office and circulated to participating OAGs.⁴⁷

The day following the press conference, March 30, 2016, Pawa wrote to Lem Srolovic of Schneiderman’s office and Vermont Deputy AG Scot Kline seeking help. A *Wall Street Journal* reporter wanted to talk to Pawa, and he asked the two officials: “What should I say if she asks if I attended?”

Srolovic replied: “My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event” (see Figure 4).

Two more parts of the email thread between Pawa and the New York and Vermont state AG offices—which New York released but Vermont did not—reveal Pawa agreeing that this “makes

good sense” and Vermont’s AG office thanking him for this willingness to stay mum (see Figure 5). In fact, stonewalling by the Vermont OAG was so egregious that, after ordering it to release certain documents central to this paper in December 2017, the court awarded requesters every dollar requested, for every hour requested, at the rate requested—which is almost unheard of in open records cases.⁴⁸

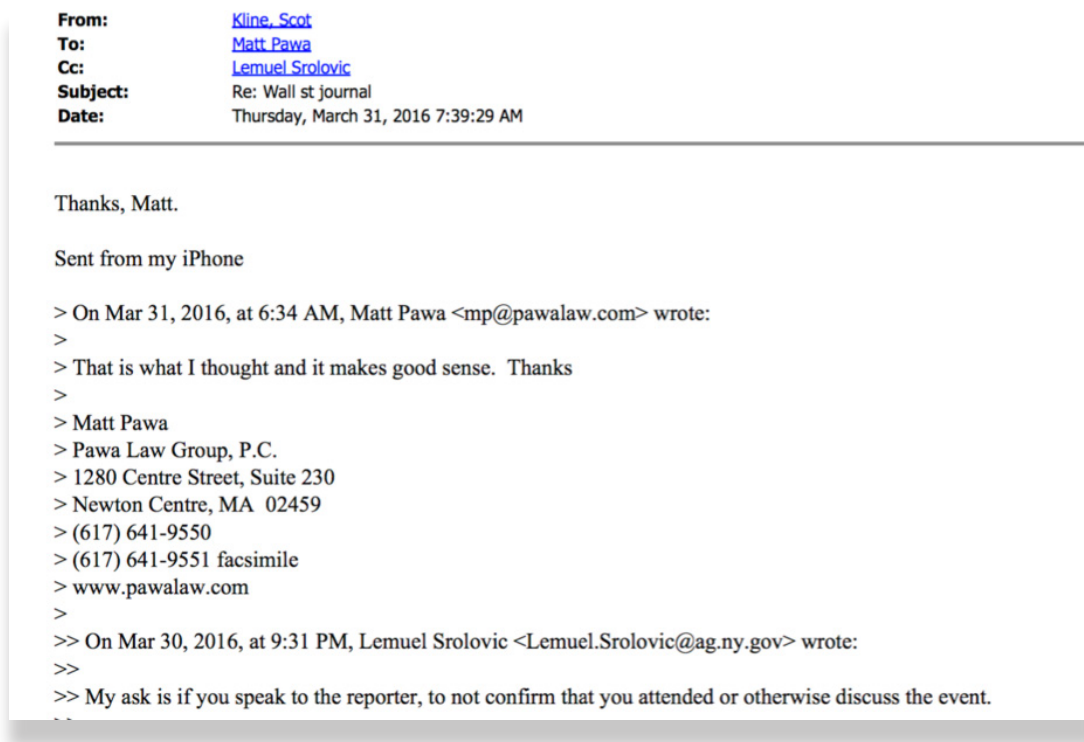
In 2017, the Texas federal court also noted, “Does this reluctance to be open [about collaborating with plaintiffs’ attorneys and activists with a litigation agenda] suggest that the attorneys general are trying to hide something from the public?”⁴⁹ The same court took notice of Frumhoff’s advisory role—or rather, what was known thanks to open records productions at the time. Then, in late April 2018, over two years after we began extracting the records from increasingly reluctant participating OAGs, the District Court of Tarrant County, Texas, ruling

47. Records available at climatelitigationwatch.org.

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

49. Order transferring action to the S.D.N.Y, Kinkeade, J, N.D. TX, 4:16-CV-469-K, March 29, 2017.

Figure 5



that the court could order Pawa to face pre-suit discovery (and likely deposition) cited certain revelations about the scheme uncovered thanks to FOIA:

State Attorneys General Conceal Ties to Pawa

16. At a closed-door meeting held before the March 2016 press conference, Mr. Pawa and Dr. Frumhoff conducted briefings for assembled members of the attorneys general's offices. Mr. Pawa, whose briefing was on "climate change litigation," has subsequently admitted to attending the meeting, but only after he and the attorneys general attempted and failed to conceal it.

17. The New York Attorney General's Office attempted to keep Mr. Pawa's involvement in this meeting secret. When a reporter contacted Mr. Pawa shortly after this meeting and inquired about the press conference, the Chief

of the Environmental Protection Bureau at the New York Attorney General's Office told Mr. Pawa, "My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event."

18. Similarly, the Vermont Attorney General's Office—another member of the "Green 20" coalition—admitted at a court hearing that when it receives a public records request to share information concerning the coalition's activities, it researches the party who requested the records, and upon learning of the requester's affiliation with "coal or Exxon or whatever," the office "give[s] this some thought ... before [it] share[s] information with this entity."⁵⁰

In preparing for a briefing by and with AG lawyers at a different "secret meeting" discussed below, Frumhoff also laid out an argument in

50. The 96th Judicial Circuit, Judge R. H. Wallace, Findings of Fact and Conclusions of Law, April 24, 2018, <http://eidclimate.org/wp-content/uploads/2018/04/Tarrant-County-Facts-and-Conclusions.pdf>.

an April 2016 email to Oregon State Professor Mote that “I’ve made in previous talk [sic] to AG staff.”⁵¹

Possible reasons for keeping both advisors’ role quiet have continued to emerge with more recent record productions.

These new records also provide more than an alleged “missing link between the [lawyers and] activists and the AGs,” claimed by a later federal judge who was far more dismissive of the evidence known earlier in 2018, before the Tarrant County Court also ruled.⁵²

51. April 20, 2016, email from Peter Frumhoff to Phil Mote, Subject: RE: 1 PM EDT/10 AM PDT: Panel Prep: Attributing Impacts to Climate Change and Carbon Producers.

52. Opinion and Order: ExxonMobil v. Schneiderman et. Al., SDNY Case 1:17-CV-230 (VEC), March 29, 2018, p. 40 (Caproni, J.).

The Seeds of Privately Funded “Climate” Law Enforcement

STATE ATTORNEYS GENERAL, GREEN GROUPS, “PROSPECTIVE FUNDERS,” AND THE “SECRET MEETING”

Strongly negative media attention followed the initial 2016 OAG open record productions that detailed the collaboration between green-group activists, plaintiffs’ lawyers, and AG offices. U.S. Virgin Islands AG Claude Walker, who issued the subpoena against CEI, retreated when CEI filed litigation against him for the move. Amid all of this came seemingly coordinated OAG stonewalling of further requests.

This stonewalling was presaged in the Common Interest Agreement noted earlier. Its sixth paragraph calls for consultation among the OAGs about public records requests prior to releasing such records to the public.⁵³ Vermont Deputy AG Scot Kline accurately characterized the agreement as suggesting “an affirmative obligation to always litigate those issues.”⁵⁴ As noted, Vermont’s OAG eventually was ordered

by a court to pay \$66,000 in legal fees and court costs over its resulting stonewalling.

Over a year and a half after those first requests, in December 2017 that same Vermont court ordered an important document production to be pried from the Vermont AG’s litigious grasp.

This production included an agenda for a briefing at Harvard University Law School, which was co-hosted by the Union of Concerned Scientists and involved senior attorneys from the activist OAGs. The subject was “Potential State Causes of Action against Major Carbon Producers”—that is, climate-related suits that the AGs might file against energy companies. Leaving no doubt, one panel addressed “The case for state-based investigation and litigation.”⁵⁵ It included much of the cast from the 2012 La Jolla meeting. References to “the

53. Common Interest Agreement, ¶ 6, reads in pertinent part: “If any Shared Information is demanded under a freedom of information or public records law or is subject to any form of compulsory process the Party receiving the Request shall: (i) immediately notify all other Parties (or their designees) in writing, (ii) cooperate with any Party in the course of responding to the Request, and (iii) refuse to disclose any Shared Information unless required by law.”

54. March 28, 2016, email from Scot Kline to various parties in the New York OAG; Subject: Climate Change Conf. Common Interest Agreement.vt.edits.docx.

55. Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives. Its purpose was to (a) Create a “space” for a frank exchange of approaches, ideas, strategies, and questions regarding potential state causes of action against major carbon producers and the cultural context in which such cases might be brought; (b) Share legal and scientific information having an important bearing on potential investigations and lawsuits; (c) Surface and consider key concerns, obstacles, or information gaps that may need to be addressed for investigations and lawsuits to proceed; and (d) Establish trusted and productive networks to support ongoing development of these ideas.

Harvard event” appear throughout OAG correspondence produced in 2016.⁵⁶ Emails later obtained described it as follows:

- An event designed “to inform thinking that is already under way in state AG offices around the country regarding legal accountability for harm arising from greenhouse gas emissions” (recall the July 2015 email from Frumhoff to Edward Maibach describing that “legal thinking already under way”);⁵⁷
- “[A] private event for staff from state attorney general offices.”⁵⁸
- The “carbon producer accountability convening;”⁵⁹ and
- A “climate science and legal theory meeting.”⁶⁰

Emails from Harvard to senior OAG attorneys make clear that Schneiderman’s office was involved in organizing participants:

Alan Belenz, Chief Scientist in the New York Attorney General’s office, suggested that I reach out to you ...”⁶¹

[Assistant Attorney General] Michael Myers from the [New York] AG’s office suggested that I reach out to you.⁶²

Harvard Law clinical instructor Shaun A. Goho, who previously worked for the green litigation group Earth Justice, led the effort to organize the April 2016 briefing. He noted: “[W]e know that there will be people from at least ... California, Connecticut, Illinois, Maryland, Massachusetts, and New York.”⁶³

Interestingly, given follow-on lawsuits filed by cities and counties, emails suggest the April 2016 “secret meeting” among law enforcement, plaintiffs’ lawyers, and activists also included municipalities.⁶⁴ Other April 2016 emails show the involvement of Steven Berman, the municipalities’ lawyer in their 2017 climate lawsuits, in the effort to recruit AGs to investigate opponents of the climate agenda.

Thanks to the court-ordered Vermont production in December 2017, we know that the meeting at Harvard also included other parties critical to the success of this briefing on a climate litigation strategy, in which AG offices

56. April 15, 2016, email from NY OAG’s John Oleske to various OAG coalition attorneys; Subject: AG Climate Change Coalition—XOM/Fossil Fuels Working Group. “All—I overlooked the conflict on 4/25 with the Harvard event — let’s use 4/27 at 3 or 4 pm as the option for that week instead, if need be.” “Shaun: I received your voice message about the conference later this month on climate change. Peter Frumhoff also mentioned it last week. I have been traveling lately. Can you send me the materials on the conference? It also would be helpful to know the list of attendees, including any states. Thanks. Scot Kline.” April 5, 2016, email from VT Deputy AG Scot Kline to Harvard Clinical instructor Shaun Goho, Subject: Voice message.

57. February 22, 2016, emails from Goho to Connecticut OAG’s Matthew Levine and Illinois OAG’s James Gignac; Subject: Invitation to event at Harvard Law School.

58. *Ibid.*

59. April 7, 2016, email from Goho to bcc: list; Subject: Logistics for April 25 Convening at HLS.

60. March 17, 2016, email from Shaun Goho to bcc: list; Subject: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016, obtained from Illinois OAG.

61. See e.g., February 22, 2016, emails from Shaun Goho to Connecticut OAG’s Matthew Levine and Illinois OAG’s James Gignac, Subject: Invitation to event at Harvard Law School.

62. February 25, 2016, email from Shaun Goho to Roberta James, Maryland Office of Attorney General; Subject: Invitation to event at Harvard Law School.

63. April 6, 2016, email from Vermont Deputy AG Scot Kline to Harvard Clinical instructor Shaun Goho; Subject: Voice message. Subsequent developments in the climate litigation industry include the addition of municipalities initiating suits against energy companies consistent with the agenda laid out in La Jolla, beginning in summer 2017 with numerous California municipalities and followed later by inland Boulder, Colorado. The lawyer in these early suits was Steven Berman, who, emails show, was in fact involved as early as April 2016.

64. “Regarding other attendees from California or municipalities there, [it] is my understanding that Massachusetts, at least, [i]ntends to send a consumer protection attorney.” March 18, 2016, email from Shaun Goho to Connecticut OAG’s Matthew Levine; Subject: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016. Emails produced give no indication to which discussion this was responding.

participated. Although listed nowhere on the agenda, emails state that participants included donors, whose funding makes possible the collaborative, public-private partnership that is the climate litigation industry.

The Vermont OAG had withheld the Harvard agenda on implausible claims of attorney-client privilege and attorney work product. The document was drafted by a law school clinical instructor and widely shared among academics, activists, and—apparently—their financial supporters. The meeting agenda’s title, “Potential State Causes of Action against Major Carbon Producers,” reaffirmed that the purpose was to develop “*state* causes of action”—AG investigations and lawsuits. Whom the attorney and the client might be among these parties is not at all clear. It took a year and a half of Vermont dragging this out in litigation, but the courts agreed:

Document 143-Bates 834-835

This document shall be produced. It is a draft agenda for a meeting of attorneys and others evidently on general subject areas and interests “co-organized” by Harvard Law School and the Union of Concerned Scientists. Any claim of privilege is too remote and no apparent prejudice will result from production. That segments of the meeting have delved into confidential matters is insufficient to show that the draft agenda also is.⁶⁵

Given further revelations from record productions received in 2018, the claims of phantom privilege suggest apprehension over the prospect of this document’s seeing the light of day. Details were going to emerge; the only real question was when. What to do?

The host groups decided to belatedly blog about the event as if it were routine, responding to charges not made by anyone, what with the briefing being “secret,” and therefore not (yet) public knowledge. UCS’s Frumhoff, after appealing to his longtime involvement with the issue, closed his May 11, 2016, blog post with “Harvard Law School routinely hosts meetings that provide policy makers with opportunities to confer with scholars and practitioners. State attorneys general and their staff routinely confer privately with experts in the course of their deliberations about matters before them.”⁶⁶ For its part, Harvard stated in an undated May 2016 post: “It is the normal business of Attorneys General staff to keep informed and to have access to the latest thinking about issues important to their work.”⁶⁷

Neither post mentioned that participating plaintiffs’ attorneys had been introduced to AGs by at least one major donor to make their pitch. Neither hinted that UCS paid AG lawyers’ way. Neither noted that this meeting, for which OAG attorneys flew in to assist with possible AG investigations and lawsuits, was in fact a green-group fundraiser.

These may be reasons why one participant described it as “a secret meeting at Harvard.” In late March 2018, Oregon State University released certain records in response to a CEI records request prompted by the Harvard agenda. Those records included correspondence of Oregon State Professor Philip Mote, who presented at Harvard to OAG attorneys and donors about the climate litigation strategy, apparently in his capacity as an OSU instructor (see Figures 6 and 7). The emails show Philip Mote boasting to (apparently) two parties whose identities the school has redacted, “I will be showing this Monday at a secret meeting at Harvard that I’ll tell you about next time we

65. J. Teachout, Decision, The State’s Motion for Summary Judgment, Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017.

66. “Scientists, Legal Scholars Brief State Prosecutors on Fossil Fuel Companies’ Climate Accountability,” May 11, 2016, <https://blog.ucsusa.org/peter-frumhoff/scientists-state-prosecutors-fossil-fuel-companies-climate-accountability>.

67. “Environmental Law [and] Policy Clinic Hosts State Discussion of Legal Theories for Climate Change Responsibility,” <http://environment.law.harvard.edu/2016/05/environmental-law-policy-clinic-hosts-state-discussion-of-legal-theories-for-climate-change-responsibility/>.

Figure 6

From: [Phil Mote](#)
To: [REDACTED]
Subject: [REDACTED]
Date: Friday, April 22, 2016 5:04:43 PM

[REDACTED]

I will be showing this Monday at a secret meeting at Harvard that I'll tell you about next time we chat. very exciting!

thanks

Phil

On Apr 21, 2016, at 10:33 AM, [REDACTED] wrote:

> Hi Phil,

>

> [REDACTED]

>

> I can get to this tomorrow or Saturday. And thank you for the suggested caption. Very helpful!

>

> Best,

> [REDACTED]

>

Figure 7

> On Wed, Apr 20, 2016 at 11:08 AM, Phil Mote <pmote@coas.oregonstate.edu> wrote:

>

> [REDACTED]

>

> I'm actually also planning to show this in a secret meeting next Monday - will tell you sometime

>

> Maybe I can help a little bit by writing a caption. use/lose/modify as you see fit.

>

> [REDACTED]

>

> On Apr 18, 2016, at 11:00 PM, [REDACTED] wrote:

chat. [V]ery exciting!”⁶⁸ Also, “I’m actually also planning to show this in a secret meeting next Monday—will tell you sometime.”⁶⁹

Unfortunately, Mote permanently deleted the presentation, although he forwarded it to his confidants and some green-group activists and presented it to AG staff members, the Union of Concerned Scientists, and their prospective funders. The school assured CEI that this was simply normal practice because the files were large, while also redacting (a) the emails’ subject lines, (b) the identities of Mote’s correspondents, and (c) much of what they discussed.⁷⁰

In his email invitation to Oregon State’s Mote, UCS’s Frumhoff describes the event as “an off-the-record meeting of senior staff from attorney’s [sic] general offices from several states to discuss with them the state of climate science (including extreme event attribution) and legal scholarship relevant to their interests.” In the same email, Frumhoff then tells Mote: “We will have as small number of climate science colleagues, *as well as prospective funders*, at the meeting.”⁷¹ [Emphasis added]

Mote replied, “[T]hat would be an amazing experience.”

The Harvard “secret meeting” agenda and correspondence indicates this session was to strategize about the private litigants’ cases but leaves no doubt that the focus was to discuss how to ensure that AGs would pursue their own investigations and litigation. The panic about releasing this agenda became more understandable after CEI received the production from Oregon State.

These AGs, led by New York’s Eric Schneiderman and Massachusetts’s Maura Healy had, just weeks before the “secret meeting,” vowed at a press conference to use any means necessary to go after opponents of the political agenda, immediately following a briefing from some of the same presenters, whom the OAGs also asked to deny their role in briefing the AGs and Gore.

CEI has obtained one other relevant document from the office of California’s AG, which instigated its involvement in this campaign during the tenure of Kamala Harris, who is now a U.S. Senator. This three-page “Bios” PDF was circulated among California Department of Justice attorneys on April 27, 2016. It apparently pertains to the Harvard strategy session, but it was not withheld as privileged. The bios are of seven academic and other activist parties listed on the Harvard/UCS/OAGs agenda. The document is headed at the top of page one: “Technical Advisors and Experts.” It is a “white paper” with no information provided regarding authorship or whom these experts advise.

This was foretold in an April 2016 email, to a bcc: list of recipients from UCS’ Erin Burrows, further affirming Mote’s characterization of the “secret meeting”: “As part of the materials to be distributed at the convening on 4/25, we would like to include names (w title/organization) and bios of technical experts. No contact information will be provided nor will the bios handout include any specifics about the event itself.”⁷²

68. April 22, 2016, Philip Mote email to unknown party, Subject: [REDACTED].

69. Ibid.

70. April 13, 2018, from Jessica Brubaker, Assistant General Counsel, Oregon State University, to Chris Horner; Subject: Horner, Chris: Public Records Request. “Oregon State University is no longer in possession of the attachment, which was a copy of Dr. Mote’s draft presentation for the April 25, 2016, meeting. This attachment was not removed in response to your public records request. The removal happened prior to your request (sometime prior to January 2017) as part of Dr. Mote’s regular practice of sorting his sent-email folder by size and deleting attachments for any messages larger than 1 MB in order to address storage issues on his computer. The text indicating that the attachment has been removed ([The attachment EEA-Apr.25.pdf has been manually removed]) was automatically generated at the time the attachment was removed.”

71. March 14, 2016, email from Frumhoff to Mote; Subject: [I]nvitation to Harvard Law School—UCS convening.

72. April 19, 2016, email from Erin Burrows to unknown list of recipients; Subject: Technical Expert Bios as part of 4/25 materials.

Birth of a New Home for the “Sympathetic Attorneys General”

WITH THE PASSAGE OF TIME, WE now see where all of this was headed. As the FOIA litigation ground slowly through the state courts, a new scheme was ultimately arrived upon that gives the troubling appearance of a donor buying a seat at the law enforcement table. This is the Bloomberg “legal fellow” program described earlier and that involves having private activists funding and placing activist lawyers in law enforcement offices to “advance progressive clean energy, climate change, and environmental legal and policy positions.”⁷³ It offered the express inducements of a PR team and “pro bono” legal network as part of a package deal for AGs who will accept one or more privately funded “Special Assistant Attorneys General” to pursue an agreed-upon agenda.

Under Bloomberg’s arrangement with NYU, state AGs must abandon their model of the client—the AG or other state agency for whom the SAAG is engaged—paying counsel. Instead:

- The OAG applies to NYU for a “Special Assistant Attorney General” to be provided to it by NYU’s Center and expressly to perform work that it otherwise would not or could not do in the field of “advancing progressive clean energy, climate change, and

environmental legal positions” unless the donor provided the resources.

- Once approved, the OAG agrees to “hire” NYU, not for payment but for providing office space to the NYU employee.
- NYU agrees to pay and hires a lawyer as a “Research Fellow” to act as its employee in the OAG.
- NYU seconds the attorney to OAG.
- The AG appoints the activist lawyer as a “Pro [B]ono Special Deputy Attorney General.”
- OAGs regularly report to NYU on their work to “advance progressive clean energy, climate change, and environmental legal and policy positions.”

Most troubling about this arrangement is that any promised enforcement actions and investigations would target a readily identifiable, finite universe of parties. “I think that problem would be apparent to anybody if you’re talking about a conservative donor paying for a special attorney general to investigate and prosecute Planned Parenthood on any possible ground that might be out there,” said Andrew Grossman, a BakerHostetler law partner and Cato Institute adjunct scholar who has participated in cases on related issues.⁷⁴ “These arrangements were being made with a clear end in mind to

73. August 25, 2017, email from David Hayes to state AG offices.

74. Brief of *Amici Curiae*, Chamber of Commerce of the United States, Judicial Education Project, and Resolute Forest Products Inc., in *Association of American Railroads v. Department of Transportation, et al. Resolute v. USDA*, No. 1:14-cv-

target particular industries and particular companies.”⁷⁵

STRANGE BEDFELLOWS

This process began in August 2017 with the email from David Hayes described earlier to nearly two dozen state AG offices, notifying them of the program and of a September 15, 2017, application deadline.⁷⁶

First, our Center will have three full-time attorneys who will be available to provide direct legal assistance to interested AGs....

We look forward to developing a working relationship with your offices and serving as a source of ideas, materials, and contacts on these matters. In that regard, we will maintain a set of on-going relationships with advocates working in the area, and we also are identifying pro bono services that may be available to your offices on individual matters.

Second, our Center will have a full-time communications expert in the clean energy, climate, and environmental field to work with, and help leverage, the communications resources in your offices.

It’s in everyone’s interest that we work with the relevant AGs and hire these lawyers as soon as practicable.⁷⁷

Note the suggestion that further outside “pro bono” counsel may be made available to buttress OAG work of interest to Bloomberg’s

NYU group—compounding the concerns raised by the placement of private ‘Special AGs.’”

Hayes added:

Finally, please note that the State Energy & Environmental Impact Center’s attorneys and communications staff will be located in Washington, D.C. Our offices are at 1616 P Street NW, near DuPont Circle. (The 10 Special Assistant AGs, of course, will be located in the host AGs offices.)

I am heading up the Center, and Liz Klein is the Deputy Director. You can reach us at David.Hayes@nyu.edu and Elizabeth.Kline@nyu.edu. We are in the process of hiring an additional attorney and our full-time communications staff.⁷⁸

That address is that of the aforementioned Resources for the Future, which lists no affiliation with Hayes or NYU. Perhaps the group is merely a landlord to this operation. Other emails obtained by CEI show that Hayes personally discussed the idea with various attorneys general he sought to recruit prior to their offices’ participation. For example, Hayes wrote to Virginia’s Donald Anderson, Senior Assistant Attorney General and Chief of the Virginia OAG’s Environmental Section, seeking a meeting with Virginia AG Mark Herring, “Liz and I would appreciate the chance to come down to Richmond and visit with AG Herring and the team to discuss how we can work together. I’ve had similar meetings with the other AGs that are bringing on Special Assistant AGs, and other AG who we are working with.”⁷⁹

02103-JEB (D.D.C.).

75. Michael Bastasch, “‘Law Enforcement for Hire?’ Mike Bloomberg Is Paying for ‘Legal Fellows’ to Help Democratic State Attorneys Resist Trump,” Daily Caller, June 28, 2018, <http://dailycaller.com/2018/06/27/bloomberg-legal-fellows-attorneys-general-offices/>.

76. Ibid.

77. CEI received four “no records” responses to requests for records we proved did exist related to the AGs’ collective pursuit, from Illinois, Iowa, Mississippi, and New Mexico AG offices. Two of these offices then produced records, relating to the NYU venture, after being presented with copies.

78. Both Hayes and Klein also have @nyu.edu email accounts using their names, as well as accounts using initials and numbers for this correspondence, plus Hayes provides a Gmail account.

79. January 24, 2018, email from Hayes to Anderson, copying Klein; Subject: Meeting in Richmond. See also January

Hayes suggested that the insertion of Bloomberg/NYU into those offices extends beyond the SAAG program, which has only “funding to recruit and hire 10 NYU fellows who will serve as Special Assistant AGs, working as part of the state OAG’s staff.”⁸⁰ Other emails show that members of the Bloomberg/NYU Team⁸¹ were included on more general “multistate AG coordinating calls,” as the sole visibly copied outside party in presumably privileged discussions of litigation strategy.⁸²

MODEL BEHAVIOR?

NYU provided state AG offices with a model job description, then worked with the OAGs to tailor it to their individual formats.

This description is quite open about the NYU Center’s objectives, which include the following:

The opportunity to potentially hire an NYU Fellow is open to all state attorneys general who demonstrate a need and *commitment to defending environmental values and advancing progressive clean energy, climate change, and environmental legal positions ...*

Candidates who are approved by the attorneys general and the State Impact Center will receive offers to serve as SAAGs (or the equivalent appropriate title within the office) from the attorneys general, based on an understanding that they will devote their

time to clean energy, climate change and environmental matters. [Emphases added.]

NYU’s model job description states that SAAGs will do the following:

Coordinate with relevant parties on legal, regulatory, and communications efforts regarding clean and affordable energy and other related environmental issues....

Advance clean energy and environmental legal and policy positions.

Defend environmental values.

Prepare periodic reports of activities and progress.⁸³

INDUCEMENTS

The latter is, by contract, what the AG’s office will communicate to NYU in regularly scheduled updates, as the OAG’s consideration to the donor for receiving (a) the attorneys, (b) a “pro bono” legal network for issues that particularly interest the Bloomberg operation, (c) in-house NYU legal staff, and (d) a communications aide (“legal and communications resources [through NYU] ... as well as through our connections with *pro bono* counsel and other resources”).

That is, the agreements state clearly that the relationships between the NYU Impact Center and the AG offices extend far beyond placing an attorney in a state AG office. In effect, each SAAG is part of a package deal. The larger package of inducements might

5, 2018, emails from David Hayes to Virginia’s Donald Anderson (different subjects) and December 6, 2017, email from Hayes to Oregon’s AG Ellen Rosenblum; Subject: Special Assistant Attorney General.

80. August 25, 2017, email from NYU’s David Hayes to AGO employees in multiple states; Subject: State Energy & Environmental Impact Center.

81. New York University School of Law, State Energy and Environmental Impact Center, “Director and Staff,” accessed July 26, 2018, www.law.nyu.edu/centers/state-impact/faculty-directors.

82. November 3, 2017; November 14, 2017; December 11, 2017; December 19, 2017; January 12, 2018; and January 23, 2018, emails from NY OAG’s Michael Myers to numerous state OAGs and to Hayes and Klein; Subject: Multistate AG Coordination Call.

83. As adopted by New Mexico Office of the Attorney General, Job Posting for “Special Assistant Attorney General Full Time/Term,” https://www.nmag.gov/uploads/files/HR/JobPostings/Special%20Assistant%20Attorney%20General_Full%20Time-Term_Job%20Reference_NYU-FELLOWS.pdf, accessed July 30, 2018.

have helped AGs move beyond any discomfort over potential impropriety or simply the terrible optics of signing an agreement to “[c]oordinate with the [NYU/Bloomberg] State Impact Center and interested allies on legal, regulatory, and communications efforts regarding clean energy, climate change, and environmental issues” and “[p]repare periodic reports of activities and progress to the State Impact Center” in return.

AG, the joke goes, stands for Aspiring Governor. For the same reasons, one of the most attractive aspects of this package was likely the communications function.

NYU wrote to Oregon’s OAG after tying the knot but still months away from consummating:

We noted that one of the State Impact Center’s most important tasks, from our perspective, is to deploy effective communications strategies that will draw attention to key state AGs’ initiatives in the clean energy, climate, and environmental arena.

Our Communications Director, Chris Moyer, is our point on this. We are eager to have Chris stay in close touch with Kristina and help draw attention to the important clean energy, climate, and environmental work that your office is engaged in. Most recently, we helped AGs Frosh, Herring, and Racine develop an op-ed that they published in last Sunday’s *Washington Post* on threats to Chesapeake Bay restoration activities.⁸⁴

A December 6, 2017, email from the Pennsylvania Chief Deputy Attorney General Steven J. Santarsiero to NYU’s Elizabeth Klein suggests that the communications services

are not limited to the NYU-based aide. In the email with the subject line “NYU Law Fellow Program,” Santarsiero tells Klein: “As we discussed, I am copying our Communications Director, Joe Grace, on this email so that you can connect him with the communications folks in CA.”

There are no other indicators of who such a vendor might be. However, California-based Resource Media, which promoted the municipalities’ climate litigation, is the “agency of record” for the Skoll Foundation, an activist philanthropy.⁸⁵ Skoll also founded Participant Media, which produced former Vice President Al Gore’s “Inconvenient Truth” films.⁸⁶

Like the other inducements, this one raises questions under various state laws: Is this provision of outside consultants on a donor’s tab a gift? Does it violate gift limits? Are the gifts properly reported? Is it an improper benefit? Is this sort of private provision of government services unlawful in that jurisdiction, as it would be at the federal level under the Antideficiency Act—a law enacted to prevent a variety of abuses, including the bestowing of private benefits and avoiding officials incurring obligation to private parties?⁸⁷ Then there are 14th Amendment and other constitutional and ethical issues are raised and described herein.

The bigger-picture questions remain: Is Michael Bloomberg (a) going to such lengths to avoid directly placing chosen lawyers in AG offices or (b) giving the money to do so directly to the offices, because he is barred from doing so? Or is the effort creating middlemen all merely due to appearances? Is this project an attempt to manufacture a “safe harbor” of attorney–client privilege in coordinating pursuit of political opponents?

84. February 14, 2018, email from David Hayes to two attorneys at the Oregon AG’s office and three NYU colleagues; Subject: Comms follow-up.

85. <http://www.resource-media.org/portfolio-items/skoll-foundation/>.

86. Spencer Walrath, “Santa Cruz Joins Controversial Climate Liability Campaign,” *Energy in Depth*, December 21, 2017, <http://eidclimate.org/santa-cruz-joins-controversial-climate-liability-campaign/>. <http://eidclimate.org/santa-cruz-joins-controversial-climate-liability-campaign/>.

87. Federal Antideficiency Act (ADA), Pub.L. 97–258, 96 Stat. 923, codified at 31 U.S.C. § 1341.

And the biggest issue of all is, as Baker Hostetler’s and Cato’s Andrew Grossman suggests, “What you’re talking about is law enforcement for hire. ... Really, what’s being done is circumventing our normal mode of government.”⁸⁸

The office of Maryland AG Brian Frosh redacted the following descriptions of the NYU-provided work from this office’s contract before releasing it. The parts that Maryland viewed as somehow privileged—which portions were released in Oregon’s unredacted production—are in italics:

The Attorney General of the State of Maryland (“OAG” or “Client”) and New York University on behalf of the lawyers at the State Energy & Environmental Impact Center at NYU School of Law (“Counsel”) agree to the following arrangement regarding Counsel *advising Client from time to time on administrative, judicial, or statutory matters involving clean energy, climate change, and environmental protection (the “Subject Matters”), including advice on the Subject Matters as may be sought in connection with potential litigation brought by or involving OAG. ...*

SCOPE AND NATURE OF ENGAGEMENT

1. *Counsel has agreed to advise OAG on the Subject Matters, including in connection*

with potential litigation to the Subject Matters to be brought by or involving OAG. Counsel’s engagement is limited to advising the OAG on the Subject Matters only and does not include any commitment or undertaking to appear or represent or to advise the OAG in any proceeding or litigation or to advise the OAG in any other matter, proceeding or litigation.

The same office redacted all mention of the scope of work from the secondment agreement, including (redactions in italics):

B. Nature of the Fellowship Position at OAG

2. OAG will assign the Legal Fellows substantive work and responsibility matching that of other attorneys in the agency with similar experience and background. *The Legal Fellow’s substantive work will be primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance. ...*

4. *In addition to the formal reporting requirements, OAG and the Legal Fellow will collaborate with the State Impact Center on clean energy, climate change, and environmental matters in which the Legal Fellow is engaged, including coordination on related public announcements.* [Emphases added.]

88. Michael Bastasch, “‘Law Enforcement for Hire?’ Mike Bloomberg Is Paying for ‘Legal Fellows’ to Help Democratic State Attorneys Resist Trump,” Daily Caller, June 27, 2018, <http://dailycaller.com/2018/06/27/bloomberg-legal-fellows-attorneys-general-offices/>.

OAGs Applying Themselves

INTERESTED OFFICES WERE TO follow specific instructions from the NYU Center when applying, including stating what the OAGs would do about the desired areas of investigation and enforcement if a donor were to provide the resources to pursue them.

The objectives are inherently and expressly ideological.⁸⁹ First, applicant OAGs must “demonstrate a need and commitment to defending environmental values and advancing progressive clean energy, climate change, and environmental legal positions.”⁹⁰ Other specifics include these:

Application Requirements

To be considered for the NYU Fellows/SAAG program, an application must contain the following:

1. Program Eligibility and Narrative

State attorneys general should describe the particular scope of needs within their offices related to the advancement and

defense of progressive clean energy, climate change, and environmental matters. ...

Priority consideration will be given to state attorneys general who demonstrate a commitment to and an acute need for additional support on clean energy, climate change, and environmental issues of regional or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.

Each application, therefore, affirms that those OAGs are not merely doing what they otherwise would have done but are expressly stating that, but for the inducements, they would not do the particular work. Some were quite explicit.

After OAGs applied, NYU wrote in mid-October 2017 to let applicant offices know they had “reviewed applications received from 11 and have selected 7 jurisdictions to receive

89. The NYU contract opens:

“This AGREEMENT (‘Agreement’) is entered into as of January 2018, by and between NEW YORK UNIVERSITY (‘NYU’), a New York not-for-profit education corporation, on behalf of the NYU School of Law’s State Energy and Environmental Impact Center (the ‘State Impact Center’) and the Office of the Attorney General for the State of Illinois (‘AGO’).

WHEREAS, [t]he State Impact Center seeks to provide a supplemental, in-house resource to state attorneys general and their senior staffs on clean energy, climate change, and environmental matters of regional and national importance; and WHEREAS, [a]s part of its activities, the State Impact Center conducts a legal fellowship program (‘Legal Fellowship Program’), which seeks to provide attorneys to act as fellows in the offices of certain state attorneys general (‘Legal Fellows’).”

90. August 25, 2017, email from David Hayes to OAGs.

the initial tranche of Law Fellows.”⁹¹ Beginning three weeks after the application deadline, NYU notified successful applicants:

We are very much looking forward to supporting your important work in the clean energy, climate, and environmental arena through the SAAG program and the State Impact Center.⁹²

Successful applicants were asked for further meetings with senior AG office attorneys to address “how we might best help support your work, particularly with regard to regional and national issues that AGs are getting engaged in in the climate, clean energy, and environmental arena.”⁹³ Later NYU followed up with OAG staff members about meeting to nail down the agenda: “We are excited to partner with your office!”⁹⁴

NYU informed offices that were not selected:

As the hiring of our initial group of Law Fellows proceeds, we expect to confirm the availability of funding for additional Law Fellows, and [we] may be back in touch with you, in the hope that we might be able to reactivate your application.

In the meantime, *the State Impact Center looks forward to helping support your work on clean energy, climate, and environmental matters through the legal and communications resources that we have at the Center, as well as through our connections with pro bono counsel and other resources.* In that regard, we will be following up with you to discuss how best to facilitate an effective working relationship.⁹⁵ [Emphasis added]

When it came time to formalizing its stable of law enforcement offices engaged to pursue its climate agenda, NYU’s Bloomberg-funded Center laid out its role and involvement in three key documents: the Position Description, Employee Secondment Agreement, and Retainer Agreement. Excerpts include:

NYU Law Fellow Position Description ...

SAAGs will be hired for a term appointment to *provide a supplemental, in-house resource to state AGs and their senior staffs on clean energy, climate change, and environmental matters* of regional and national importance. As allowed under state law, *NYU School of Law will pay the salaries of the SAAGs, and the State Impact Center will provide on-going support to the SAAGs and their offices.* Once hired, the SAAGs’ duty of loyalty shall be to the attorney general who hired them....

Responsibilities include but are not limited to the following:

- Defend environmental values, and *advance progressive clean energy, climate change, and environmental legal and policy positions.*
- Subject to the specific scope of assigned duties by the relevant state AG, perform highly advanced legal work, which might include (a) conducting in-depth analysis and preparation of legal memoranda; (b) interpreting laws and regulations; (c) providing legal advice; and (d) assisting in preparing legal notices, briefs, comment letters, and other associated litigation and regulatory documents.
- *Coordinate with the State Impact Center and interested allies on legal, regulatory, and communications efforts regarding clean*

91. October 3, 2017, email from Hayes to Oregon’s Paul Garrahan, Virginia’s Anderson.

92. See e.g., December 6, 2017, email from Hayes to Oregon AG Ellen Rosenblum; Subject: Special Assistant [Atty.] General.

93. See e.g., January 5, 2018, email from Hayes to VA OAG’s Anderson; Subject: Meeting in Richmond. Also the January 12, 2018, email from Hayes to PA OAG’s Steven Santarsiero; Subject: Meeting in Philadelphia/Harrisburg.

94. See e.g., February 14, 2018, email from NYU’s Elizabeth Klein to two OR AGO attorneys and one NYU colleague; Subject: Fellowship program follow-up.

95. See e.g., October 3, 2017, email from Hayes to Oregon’s Paul Garrahan and the October 13, 2017, Hayes email to Virginia’s Anderson; Subjects: NYU Law Fellow Program.

energy, climate change, and environmental issues.

- *Prepare periodic reports of activities and progress to the State Impact Center....*

Requirements and qualifications:

...

- Ability to work with partner organizations and to help build coalitions.

[Emphases added.]

This description reads like a typical environmentalist pressure group's notice of a position opening. NYU then fleshed out the mechanics of the unusual arrangement. Draft secondment and retainer agreements offered to the AGs read in pertinent part:

Employee Secondment Agreement ...

WHEREAS, [t]he [AG OFFICE] has been selected by the State Impact Center to participate in Legal Fellowship Program; and

WHEREAS, [t]he [AG OFFICE] has the authority consistent with applicable law and regulations to accept a Legal Fellow whose salary and benefits are provided by an outside funding source....

A. Terms of Service ...

[T]he term of the fellowship will be for one year with the expectation that a second one-year term will follow after mutual agreement among the parties....

[S]alary and benefits will be provided to the Legal Fellow by the NYU School of Law... *The [AG OFFICE] will aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions....* [There follows some boilerplate language designed to insulate the 501(c)3 from allegations that the placed attorney does not constitute a gift and is not engaged in propaganda, by declaring that is not the case.]

D. Communications and Reporting

The State Impact Center will not have a proprietary interest in the work product generated by the Legal Fellow during the fellowship. *The State Impact Center will not be authorized to obtain confidential work product from the Legal Fellow unless the Legal Fellow has obtained prior authorization from the Legal Fellow's supervisor at the [AG OFFICE].*

2. *Notwithstanding the above, the [AG OFFICE] will provide periodic reports to the State Impact Center regarding the work of the Legal Fellow. These reports will include a narrative summary, subject to confidentiality restrictions, of the work of the legal fellow and the contribution that the legal fellow has made to the clean energy, climate change, and environmental initiatives of the [AG OFFICE]. These reports will be provided pursuant to the following schedule:*

- a. Activity for the period from the beginning of the Fellowship Period until April 30, 2018, will be provided no later than May 1, 2018.
- b. Activity for the period from May 1, 2018, through July 31, 2018, will be provided no later than August 1, 2018.
- c. Activity for the period from August 1, 2018, through January 31, 2019, will be provided no later than February 1, 2019.
- d. A final report for activity from the beginning of the Fellowship Period until the end of the Fellowship Period will be provided within five (5) business days of the end of the Fellowship Period....

4. In addition to the formal reporting requirements, the [AG OFFICE] and the Legal Fellow will collaborate with the State Impact Center about clean energy, climate change, and environmental matters in which the Legal Fellow is engaged, including coordination on related public announcements.

Retainer Agreement

The Attorney General of the State of [INSERT STATE] (“OAG” or “Client”) and New York University on behalf of *the lawyers at the State Energy & Environmental Impact Center at NYU School of Law* (“Counsel”) agree to the following arrangement ...

SCOPE AND NATURE OF ENGAGEMENT

1. Counsel has agreed to advise OAG on the Subject Matters, including in connection with potential litigation to the Subject Matters to be brought by or involving OAG....

2. The relationship of Counsel to OAG arising out of this agreement is that of attorney and client....

DUTIES OF DISCLOSURE & CONFIDENTIALITY

7. Counsel and Client each agree to ensure that all confidential and/or privileged/ attorney work product information provided to each other is kept confidential.

8. Counsel shall not enter into a common interest agreement related to Subject Matters covered under this Agreement, or presume that a common interest exists with, a third

party without prior authorization from the Client. *It is expected that common interest agreements involving cooperation with other state Attorneys General offices pursuing collective action will be routinely granted by Client....*

COUNSEL’S ACKNOWLEDGMENTS ...

15. Counsel acknowledges that Counsel personnel working on the Subject Matters are not considered state employees and will not be entitled to protections afforded state employees under [INSERT APPLICABLE STATE LAW].

CLIENT’S ACKNOWLEDGMENTS ...

24. Client acknowledges that New York University is a not-for-profit education corporation and that the furnishing of legal services by Counsel is incidental to New York University’s purposes. Client consents to the compensation of Counsel by New York University.

[NB: This latter portion is for the protection of the NYU’s tax-exempt status].

[Emphases added]

Responding to Funders and Legislative Failures—Legal and Ethical Flags

PUBLIC RECORDS INDICATE THAT AT least six state AG offices (including the District of Columbia) have brought on board a Special Assistant AG to advance climate policy—paid mid-high five to six figures by a private donor—each with additional sweeteners of in-house NYU lawyers and PR staff and

an outside PR and legal network.⁹⁶ Those six jurisdictions having brought one or more SAAGs into their fold—Maryland, Massachusetts, New York, Oregon, Washington, and the District of Columbia—are all charter members of the collapsed Schneiderman-led “Climate-RICO” coalition.⁹⁷

96. Outside entities’ clinical operations, typically law schools, place “fellow”-type help in AG offices, but a law school placing clinical students is in the business of educating students. NYU claims an educational mission for its charitable exemption, but is placing experienced, licensed attorneys as prosecutors who are the equivalent of the Attorney General by state statute. NYU’s “State Impact Center” expressly seeks to make (“progressive”) policy impacts at the state level through law enforcement offices. It adopts an avowedly activist and policy-driven agenda. The Center’s public stance is less forthcoming than that and obscures the details confessed in its less-public statements, conveyed in what became public records, “to enable interested state attorneys general to expand their capacity to take on important clean energy, climate, and environmental matters” and to advance the “progressive clean energy, climate change, and environment” agenda as set forth in its more private recruiting materials and contracts. New York University, “NYU Law Launches New Center to Support State Attorneys General in Environmental Litigation,” <https://www.nyu.edu/about/news-publications/news/2017/august/nyu-law-launches-new-center-to-support-state-attorneys-general-i.html>.

97. Four state AG offices that applied and were approved for NY-funded prosecutors—Illinois, New Mexico, Virginia, Pennsylvania—have produced “no records” responses when asked specifically for copies of any engagement or assignment letters. We know that Illinois OAG executed the Retainer Agreement and Secondment Agreement.

Substituting Law Enforcement for a Failed Political Agenda

THERE SHOULD BE LITTLE ARGUMENT over whether substituting litigation for a failed policy campaign undermines democratic governance and representative government. Similarly, it seems beyond dispute that this is not a proper use of law enforcement. It seems fairly well understood even that government should not be rallying political forces to go after opponents in court. *The Washington Post* in a 1999 editorial condemned the Clinton administration’s Housing and Urban Development Secretary Andrew Cuomo (now New York Governor) and his effort to use his position to sue gun manufacturers. The *Post* confronted the practice thus:

[I]t nonetheless seems wrong for an agency of the federal government to organize other plaintiffs to put pressure on an industry—even a distasteful industry—to achieve policy results the administration has not been able to achieve through normal legislation or regulation. It is an abuse of a valuable system, one that could make it less valuable as people come to view the legal system as nothing more than an arm of policymakers.⁹⁸

This aptly describes what is transpiring here, as state AGs use their offices to advance a failed political agenda. Before his role in the larger scheme was exposed, one of the plan’s key protagonists, plaintiffs’ lawyer Matt Pawa, admitted the campaign’s political nature in an interview with *The Nation*:

I’ve been hearing for twelve years or more that legislation is right around the corner that’s going to solve the global-warming problem, and that litigation is too long, difficult, and arduous a path. ... Legislation is going nowhere, so litigation could potentially play an important role.⁹⁹

Notably, a U.S. District Court dismissed a previous suit against ExxonMobil brought by Pawa on the grounds that regulating greenhouse gas emissions is “a political rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts.”¹⁰⁰

Possibly realizing the problem, Pawa subsequently denied the sentiment when emails showing his involvement emerged, telling the *Washington Times* that it is “inaccurate in

98. Editorial, “The HUD Gun Suit,” *Washington Post*, December 17, 1999, https://www.washingtonpost.com/archive/opinions/1999/12/17/the-hud-gun-suit/48ee0a45-18da-4e8d-9b86-b9512172ae09/?utm_term=.904e2ea81587.

99. Zoe Carpenter, “The Government May Already Have the Law It Needs to Beat Big Oil,” *The Nation*, July 15, 2015, <https://www.thenation.com/article/the-government-may-already-have-the-law-it-needs-to-beat-big-oil/>.

100. *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 871–77 (N.D. Cal. 2009), *aff’d*, 696 F.3d 849 (9th Cir. 2012).

attributing to me the idea that lawsuits should be used to achieve political outcomes.”¹⁰¹

Disgraced former New York Attorney General Eric Schneiderman expressly linked his campaign to the stalled political agenda at the press conference with Al Gore, citing “gridlock in Washington” for his move “to step into this breach.”¹⁰²

PROBLEMATIC OPTICS— OR WORSE?

By contract, the Bloomberg project at NYU is styled as the AGs’ attorney—paid by the donor, not the client. Some offices viewed by NYU or its benefactors as particularly important in the plan, including New Mexico and New York, were awarded two privately funded SAAGs. The AG offices, by contract, must provide regular updates to the entity paying for the SAAG, their health insurance and other benefits, and supplying the support network. By contract, the AG offices agree to provide office space and to share information with the NYU team. Nonetheless, loyalty is assured, by the same contract, to rest not with NYU but with the AG’s office.

Assurances aside, as a January 11, 2018, *Wall Street Journal* editorial noted about a similar scheme that we found placing privately hired and paid climate advisors in activist governors’ offices:

“Senior Policy Advisor, Climate & Sustainability” for Gov. Jay Inslee of Washington, Reed Schuler, who actually works, by donor arrangement, for a 501(c)3

called World Resources Institute: “This setup creates real concerns about accountability and interest-peddling. Mr. Schuler knows who pays him, and it’s not Washington taxpayers.”¹⁰³

As Andrew Grossman notes, hiring Bloomberg-funded attorneys may run afoul of the 14th Amendment’s due process clause, given that the appearance that legal fellows brought on board with an OAG to pursue their private employer’s interests could have a financial interest in pursuing cases.¹⁰⁴ The same applies to NYU providing the SAAG, a “pro bono” network of lawyers, and public relations advocacy. NYU surely would see an increase in support if its attorneys placed with AG offices achieved results in advancing “progressive clean energy, climate change, and environmental legal positions.” Similarly, this arrangement to pursue a funder’s policy priorities could create perverse incentives for AGs to investigate or file particular actions against certain industries or parties to keep the funding spigot flowing.

For instance, the New York OAG’s application demonstrated it warranted not one but two Bloomberg-funded lawyers by attaching a “Exhibit A (Select List of Actions)” of matters it was pursuing but for which—in order to continue, along with its other cited “investigations and non-litigation advocacy” activities—“NYOAG has an acute need for environmental litigators.”¹⁰⁵ Exhibit A covers 16 of what NYOAG says are 380 active cases handled by its Environmental Protection Bureau, and it prioritizes the sort of cases NYU’s Center cited

101. Valerie Richardson, “Democratic AGs, Climate Change Groups Colluded on Prosecuting Dissenters, emails Show,” *Washington Times*, April 17, 2016, www.washingtontimes.com/news/2016/apr/17/democratic-ags-climate-change-groups-colluded-on-p/.

102. March 29, 2016, news conference transcript, p. 3, <https://www.mass.gov/files/documents/2016/12/pw/xom-opp-to-ny-mq-appendix.pdf>

103. “Climate of Unaccountability,” January 11, 2018, *Wall Street Journal*, <https://www.wsj.com/articles/climate-of-unaccountability-1515717585>.

104. Bastasch, “‘Law Enforcement for Hire?’ Mike Bloomberg Is Paying for ‘Legal Fellows’ to Help Democratic State Attorneys Resist Trump.” *Daily Caller*, June 27, 2018, <http://dailycaller.com/2018/06/27/bloomberg-legal-fellows-attorneys-general-offices/>

105. Office of New York State AG Eric T. Schneiderman, Application to NYU State Energy & Environmental Impact Center, Special Assistant Attorneys General Fellowship Program, September 15, 2017, p. 5. Produced as June 1, 2018, [New York] OAG record production FOIL Request G000103-020718.

as intending to support. The pursuit of energy companies for what NYOAG aspires to become actionable climate change offenses, and a litany of “non-litigation advocacy” or OAG Resistance activities against the Trump administration, are particularly telling.

NYOAG has an acute need for additional environmental litigators. First, the initial phase of fighting federal environmental rollbacks necessarily focused on ... non-litigation advocacy. Opposing the Scott Pruitt nomination as EPA administrator, advocating the United States to remain in the Paris Climate Accord.

These “were all non-litigation areas led by NYOAG but with significant strain on staff resources.”¹⁰⁶ The New York AG’s office also boasted of its leadership of the campaign against private parties that, as public records show, functions as a public–private tag team to extract massive settlements for the state, and for certain distribution to select political constituencies *a la* their tobacco-settlement template. Specifically, it boasted of its leadership “building models for two different types of common law cases to seek compensation and other relief for harm caused by fossil fuel emissions”—that is, the Schneiderman-led campaign with donors, activists, and plaintiffs lawyers launched in 2015 and described earlier.¹⁰⁷

Those activities also presumably were persuasive to NYU, which places an emphasis on such climate activism. Two NYU Center emails to an aide to Pennsylvania AG Josh Shapiro suggest the Center is busy developing litigation theories for demanding compensation for climate change purportedly ruining the Great Lakes, causing Asian carp to swim amok, and making Superfund sites ever more hazardous.¹⁰⁸

Andrew Grossman also cites potential state law, First Amendment, and separation of power concerns, given that this scheme enables AGs to use private funds to pursue activities not rationally in the AGs’ remit and that lawmakers did not authorize.¹⁰⁹ “There are so many hurdles to doing this in a lawful manner that it’s unthinkable that this could ever stand up to a serious challenge.”¹¹⁰

The NYU State Impact Center seemingly nods to the problematic nature of the unusual deal in which it is not the client who pays for the Special Assistant AGs but a donor. Hayes’s initial recruiting pitch noted:

Applications also should identify any state-specific limitations or requirements governing the appointment of an employee paid by an outside funding source, and include a written confirmation that the attorney general has the authority to hire an NYU Fellow as a SAAG (or equivalent title).

106. Ibid.

107. Ibid., p. 6.

108. February 1, 2018, email from David Hayes, NYU, to Michael Fischer in the Pennsylvania AG Office and copying NYU’s Elizabeth Klein. It discusses possible action grounded in an Inside Climate News story on oil pipeline integrity and “the threat posed by Asian carp to the Great Lakes”; Subject: Great Lakes—Oil Pipeline Integrity Issue. See also February 6, 2018, email from Hayes to Fischer and others in PA OAG, copying Klein; Subject: Superfund Sites + Flooding/Climate Change. “I would appreciate your forwarding these stories to Josh [Stein, the AG], per the brief conversation we had last week regarding the connection between Superfund and climate change-related flood risks.... The increased risks that climate-related extreme weather events can have on human health and the environment via the flooding of Superfund sites is now in the news, as described [herein]. Given EPA Administrator Pruitt’s frequent mention of the Superfund program as one of the programs that he believes in, there is an opportunity to question how EPA is prioritizing its Superfund cleanups and how the (climate skeptic) EPA is addressing the increased contamination risks associated with climate-induced severe flooding events.”

109. Ibid.

110. Bastasch, “‘Law Enforcement for Hire?’ Mike Bloomberg Is Paying for ‘Legal Fellows’ to Help Democratic State Attorneys Resist Trump.”

NYU seeks similar assertions from its partners in the secondment agreement, asking for agreement that “WHEREAS, [t]he AGO has the authority consistent with applicable law and regulations to accept a Legal Fellow whose salary and benefits are provided by an outside funding source.”¹¹¹

Most applicants then offered boilerplate consistent with that found in the contract that NYU provided them. For example, the NYU contract executed by Illinois’s OAG states this verbatim.¹¹²

We do not know the content of the NYU/Illinois OAG discussions about the propriety of the arrangement because the Illinois AG office did not produce its NYU application, and heavily redacted those email conversations with NYU about those emails that it did produce. The withheld discussions likely are related to the following, cryptic orchestration, sent by NYU’s Elizabeth Klein:

Hello all,

It was great to chat this afternoon. As promised, attached are some items for your review ...

First is the draft retainer agreement that we discussed, which could be executed between the Center and your office to help facilitate confidential discussions about particular substantive matters. [Ellipses in original.]¹¹³

Illinois also did not provide CEI that draft or other retainer agreement, but only the secondment agreement (“secondment” is a term used to mean temporary assignment), meaning Illinois’ AG claimed its efforts to arrange for privilege with Bloomberg’s NYU Center were themselves privileged.

The Center suggested language to its partners to certify that their entering this unprecedented deal did not violate their laws, as in the secondment agreements: “The AGO has the authority consistent with applicable law and regulations to accept a Legal Fellow whose salary and benefits are provided by an outside funding source.”¹¹⁴

We know from those OAGs that have not slow-walked or stonewalled CEI’s open records requests that some merely adopted NYU’s language, while others used similarly non-specific boilerplate to the same effect.¹¹⁵ While Illinois’ OAG adopted NYU’s certification language verbatim,¹¹⁶ Virginia’s OAG declared, “Although the arrangement with the State Impact Program and NYU would be somewhat different, there are no Virginia-specific limitations or requirements that would apply to the OAG’s employment [sic] of a NYU fellow as a Special Assistant Attorney General.”¹¹⁷ Pennsylvania’s chief law enforcement office declared that “The PA OAG *is unaware of* any state-specific limitations or requirements of the

111. Language contained in NYU-provided Secondment Agreement, DRAFT October 18, 2017, as obtained from New York’s OAG and as executed by Illinois OAG on January 16, 2018.

112. Illinois OAG Employee Secondment Agreement between the Illinois Attorney General’s Office and the State Energy & Environmental Impact Center at NYU School of Law (executed by IL OAG January 16, 2018, but not yet fulfilled per Illinois OAG as of April 30, 2018).

113. October 6, 2017, Elizabeth Klein email to IL OAG James Gignac, Matthew Dunn, and Thor Inouye; Subject: NYU Law Fellow Program—Follow-Up.

114. Language contained in NYU-provided Secondment Agreement, DRAFT 10/18/17 as obtained from New York’s OAG and as executed by Illinois OAG on January 16, 2018.

115. Offices selected for a Bloomberg SAAG that have slow-walked or outright ignored requests for NYU-related records include California, the District of Columbia, and Massachusetts. Some of these offices are delinquent by months; D.C. has refused to provide anything further than an auto-acknowledgement email despite receiving six separate related requests for records over more than six months.

116. Illinois OAG Employee Secondment Agreement between the Illinois Attorney General’s Office and the State Energy & Environmental Impact Center at NYU School of Law (executed by IL OAG January 16, 2018, but not yet fulfilled per Illinois OAG as of April 30, 2018).

117. Virginia Office of the Attorney General NYU Law Fellows Program Application, September 15, 2017, signed by Donald D. Anderson, Senior Assistant Attorney General/Chief.

appointment of an employee paid by an outside source.” [Emphasis added]¹¹⁸ The New Mexico OAG certified that “The Office has no limitations or requirements governing the appointment of an employee paid by an outside funding source (unless stipulated by the funding source itself as a matter of maintaining compliance with said funding source).”¹¹⁹

New York’s OAG made a similar “no controlling legal authority” claim—“There are no state specific limitations governing NYU fellows’ receipt of payment from NYU.” It then followed this general certification with a more specific claim, that New York Executive Law Section 62 allows the attorney general to appoint “attorneys as he may deem necessary and fix their compensation *within the amounts appropriated therefor*” [Emphasis added].¹²⁰ NYOAG followed this with the conclusory, “This power to hire assistant attorneys general includes

the power to hire volunteer assistant attorneys general.” This initiated a theme of NYOAG calling these well- and privately compensated lawyers “volunteers;”¹²¹ the questionable nature of such a claim was apparently clear to Oregon’s AG Ellen Rosenblum, who forbade it (see *infra*). Indeed, the Bloomberg SAAGs most clearly are not volunteers, they are paid \$228,322 per year—\$78,839 (Matthew Eisenson) and \$149,483 (Gavin McCabe).

These are curious assertions. Searching for some claim to permission, the New York OAG invokes a statutory provision, Executive Law Section 62, which on its face is the generic provision all state AGs possess to appoint assistant and deputy AGs, “and fix their compensation,” so long as it remains within what the legislature appropriates for the function.¹²² Nowhere does this supposed authority to allow donors to underwrite prosecutors on pet issues

118. “Application of the Pennsylvania Office of Attorney General for the NYU Fellows/SAAG Program,” p. 4. The OAG also cited to “broad authority” to appoint and set compensation for staff as authorizing private funding of such officers.

119. New Mexico Office of the Attorney General NYU Law Fellows Program Application, September 15, 2017, signed by Tania Maestas, Deputy Attorney General. The Bloomberg program approved the New Mexico state AG office for not one but two SAAGs. However, that office claims it stopped short and did not follow through. As of August 7, 2018, one job posting for NYU Legal Fellow remained on line as unfilled. <https://www.nmag.gov/human-resources.aspx> Similarly, the Pennsylvania OAG, which applied by the September 2017 deadline, was approved for a Bloomberg-funded Special Attorney General on December 6, 2017, and it appears to have held a follow-up meeting with NYU in Philadelphia on January 29, 2018. However, at least to date something has prompted them to not follow through.

120. New York Attorney General Application to NYU State Energy & Environmental Impact Center, p. 5, quoting Executive Law Section 62. NYOAG further continued, “NYOAG has an existing program for volunteer assistant attorneys general that includes several volunteers each year, some of whom receive funding for their work from a third party. There are no state specific limitations governing NYU fellows’ receipt of payment from NYU because ... (3) NYOAG will implement internal controls to minimize any conflict that might exist by screening the NYU fellows from participation in or knowledge of any NYOAG matter involving NYU.” *Ibid.* To explore this interpretation (and application) of the law, on June 13, 2018, the Competitive Enterprise Institute submitted an open records request seeking the records pertaining to the NYOAG’s other pro bono SAAG appointments, to which it had alluded in making this claim to NYU. It also sought correspondence among Schneiderman or his top two, relevant staffers about these third-party funded SAAGs, a practice which the NYOAG claimed to NYU that it engages in with some regularity. Finally, CEI requested any discussions of the promised “implement[ed] internal controls.” To date, the NYOAG has not responded to any of these requests but says it hopes to by September 28, 2018.

121. Immediately after declaring these attorneys to be “volunteers,” NYOAG cites to an Advisory Opinion pertaining to (actual, unpaid) volunteers’ legal status as employees, State of New York Commission on Public Integrity Advisory Opinion No. 10-02 (2010). This Opinion notes, in the context of an agency claiming that actual, unpaid volunteers should be permitted to avoid certain ethical restrictions because “it is difficult to hire attorneys during the State’s current fiscal crisis,” “fiscal limitations or individuals’ beneficence cannot be permitted to trump governmental integrity.” *Ibid.*, p. 5. It also offers the reminder, somewhat unhelpfully for NYOAG’s position, that “It is black-letter law that words and phrases used in a statute are to be given the meaning intended by the Legislature. “It is fundamental that words used should be given the meaning intended by the lawmakers, and words will not be expanded so as to enlarge their meaning to something which the Legislature could easily have expressed but did not” (Citations omitted). *Ibid.*, p. 3.

122. Then-Judge and future Associate Justice of the U.S. Supreme Court Benjamin Cardozo addressed this language in *People ex rel. Rand v. Craig* (the language NYOAG cited to NYU from present § 62 was at the time contained

actually authorize the practice. NY OAG simply equates its authority to “fix” an attorney’s salary, within limits of what the legislature allows him, with the authority to arrange for private parties to pay that salary.

Consistent with this plain reading of § 62, N.Y. State Fin. Law § 200(1) prescribes that “The salaries of all officers of the state, and the wages of all employees thereof shall be due from and payable by the state,” and the frequency. Based on the OAG’s claims made in its application, and the Advisory Opinion it cites, this would appear to apply to the SAAGs.¹²³

In short, this approach lies entirely outside of what section 62 envisions on its face. There is no doubt that New York’s OAG “fixed” the compensation of its two Bloomberg-funded SAAGs.¹²⁴ There also is no doubt that the compensation is paid by funds from outside of those appropriated for OAG work. The entire point of the Bloomberg program, of NYOAG’s 13-page application, and of NYU’s requested attestation of OAG authority, was that these special prosecutors are not paid from the amounts authorized or appropriated by the legislature.

If the authority exists in New York to allow privately funded prosecutors, NYOAG has yet to reveal it, and ought to do so now.

New York was not alone among OAGs citing to a provision as supposed authority for entering this unprecedented arrangement that upon review appears to, if anything, prohibit it. Oregon Attorney General Ellen Rosenblum raised the same question when emailing the Oregon Department of Justice’s Frederick Boss about their bringing on a privately funded special prosecutor, specifically rejecting as absurd any effort to style the NYU prosecutors, paid by a third party, as “volunteers”:

From: Rosenblum Ellen F
Sent: Sunday, June 17, 2018 10:51 PM
To: Boss Frederick
Subject: Re: NYU Fellow Appointment

Are we sure it is correct to refer to him as a “volunteer.” And not an employee. Can you be an unpaid employee of the State? As a SAAG doesn’t that make one an employee? I find it strange to call someone who is working under our supervision with the title of SAAG and who is getting paid (by a third party) the same as he would if he were working for DOJ as a regular AAG—a volunteer. ...

From: Rosenblum Ellen F
Sent: Monday, June 18, 2018 8:57 AM

in Executive Law § 61). In the context of fiscal responsibility he wrote, of relevance, “Emancipation from all restraint should rest upon clear words, and not upon uncertain inferences. ... The AG has no power ... except as he gets it by this section ...,” 231 N.Y. 216, 220 (1921)(Cardozo, J.).

123. New York Consolidated Laws, State Finance Law - STF § 200. Payment of salaries, which reads in pertinent part, “1. The salaries of all officers of the state, and the wages of all employees thereof shall be due from and payable by the state by-weekly [sic], commencing with the fiscal year of the state beginning April first, nineteen hundred fifty-six.” The Advisory Opinion No. 10-02 (2010) that the NYOAG refers to in its NYU application makes clear that even actual, unpaid “volunteers” serving as lawyers are nonetheless “employees” for purposes of applicable laws. Barring some new rationale that NYOAG failed to assert to NYU when claiming authority to enter this arrangement, that claim is unsupported.

124. “Good News!! The hire slip for Matthew Eisenson been [sic] signed by the Attorney General” [Emphases in original]. January 25, 2018, email from “Legal Recruitment” (Bureau) to ten NYOAG staff; Subject: Approval to Extend Offer - VAAG/NYU Fellow - EPB NYC (Matthew Eisenson). See also, “I’m writing to confirm that we’re clear to make an offer for a fellowship/SAAG position to Matthew Eisenson (JD ’15) at the salary of \$75,813 + \$3,026 NYC location pay for a total of \$78,839. Also to confirm that we’re clear to make an offer for a fellowship/SAAG position to Gavin McCabe (JD 87’) at the salary of \$146,457 + \$3,026 NYC location pay for a total of \$149,483.” January 18, 2018, email from Lem Srolovic to Elizabeth Klein; Subject: NYU Fellow/SAAGS. “During the Fellowship Period, salary and benefits will be provided to the Legal Fellow by the NYU School of Law.” Employee Secondment Agreement between the Attorney General of the State of New York and the State Energy & Environmental Impact Center at NYU School of Law, p. 2 of 6, signed by David Hayes and Lem Srolovic, Bureau Chief, Environmental Protection Division, December 22, 2017.

To: Boss Frederick
Subject: Re: NYU Fellow Appointment
Do not use volunteer!

Ellen Rosenblum
Oregon Attorney General

Staff then assured the AG that, although NYU “Research Scholar” Steve Novick will not be entered into the state’s personnel system so he will not technically be an employee of the state,¹²⁵ they also would heed her demand and not call the NYU-hired SAAG a “volunteer.”¹²⁶

Regardless, like New York, Oregon’s Department of Justice certified to NYU that the “Oregon Attorney General has broad authority to hire special legal assistants as she deems appropriate under Oregon Revised Statute 180.140 (5).”¹²⁷

Yet that provision, which the Oregon DOJ did not quote in any way, in fact requires that the “cost of such special assistants or counsel shall be charged to the appropriate officer or agency.” Provision 180.140 (4) requires, “Each assistant shall receive the salary fixed by the Attorney General, payable as other state salaries are paid.” These privately funded prosecutors are most certainly not being paid as other state salaries are paid, but by a third party, and the cost of Oregon’s Special Assistant Attorney General Steven Novick is not being paid by any officer or agency—as Oregon OAG sought to make particularly clear, apparently because AG Rosenblum remained troubled by the unique arrangement:

From: Rosenblum Ellen F
Date: June 13, 2018 at 6:28:27 PM PDT

To: Boss Frederick
Cc: Edmunson Kristina
Subject: Steve Novick

I did not realize that we had Steve starting on Monday! (Last I heard we were reviewing his political activity issues.) would like to see his contract and the NYU program description. We need to be sure we are prepared to explain his position to the media, who, no doubt, will be interested. (Because he is being paid by an outside entity—which is quite unusual I think)
Thanks. Ellen

Ellen Rosenblum
Oregon Attorney General

AG Rosenblum overestimated media curiosity. However, Oregon left no doubt that it was abandoning policy and practice in striking this deal for a privately funded prosecutor. In response to our request for other SAAG contracts signed or amended since November 2017, Oregon produced 14 such agreements, none of which relate to Bloomberg/NYU. All of Oregon’s contracts state that the client (state agency/OAG) pays the attorney (SAAG/firm):

Article III
Payment

3.1 Payment. The Benefiting Agency shall pay the Firm according to the rate schedule in section 3.2 for Services rendered ...

Under the Bloomberg arrangement, the client/benefiting agency (OAG) pays no one. Instead, a donor pays for the lawyer and gives it to the client via a third party, similar to the arrangement by which the World Resources Institute placed a donor-funded energy advisor

125. June 18, 2018, email from Frederick Boss to Ellen Rosenblum; Subject: NYU Fellow Appointment.

126. “Ok.” June 18, 2018, email from Frederick Boss to Ellen Rosenblum; Subject: Re: NYU Fellow Appointment; “Here is the agreement. I cannot find the term volunteer in this draft.” June 21, 2018, email from Frederick Boss to Ellen Rosenblum; Subject: Re: NYU Fellow Appointment; “We ran a search and this agreement does not use the term ‘volunteer.’” June 18, 2018, email from Frederick Boss to Ellen Rosenblum; Subject: Re: NYU Fellow Appointment.

127. “Oregon Department of Justice Application for Placement of NYU Law Fellow,” September 15, 2017, signed by Paul Garrahan, Attorney-in-Charge, Natural Resources Section, Oregon Department of Justice.

in Washington Governor Inslee’s office—which, emails suggest, other offices received as well.¹²⁸

Oregon also went so far as to draft its own appointment document reaffirming that the Office was neither hiring nor paying its NYU fellow, Novick, “in case we decide to go with an agreement like other SAAG agreements,” which “repeats things that you and DOJ have already committed to in each of our agreements with NYU.”¹²⁹ This (apparent) contingency draft read, in pertinent part:

APPOINTMENT OF ENERGY AND ENVIRONMENTAL LEGAL FELLOW

Article III

No DOJ Compensation; Office Space and Support Services

3.1 Fellowship Position. DOJ will not pay the Legal Fellow any compensation under this Appointment. The Legal Fellow shall be solely compensated by NYU. DOJ will provide the Legal Fellow with an office and administrative support equivalent to such services that are provided by DOJ to Assistant Attorneys General.¹³⁰

All of which is to say that like New York’s supposed authority, Oregon’s not only doesn’t authorize the move, but seems to prohibit it because the only statutorily-authorized method of bringing on assistant AGs is by hiring them, using appropriated money and paying them as other state salaries are paid. This turns the statute on its head, self-servingly declaring authority while somehow overlooking what Oregon’s AG

herself brought up repeatedly—these special prosecutors are not paid by agencies or out of amounts authorized or appropriated by the legislature, and not paid as other state salaries are paid, which their law clearly requires on its face.¹³¹

After the decision to abandon practice, and inventively read applicable law to claim it was permitted to enter this arrangement, Oregon’s Attorney General continued to express concern about possible negative blowback from the arrangement, as reflected in the following email thread with senior staff:

From: Wolf, Steven
Date: June 18, 2018, at 8:36:17 AM PDT
To: General Counsel
Cc: Executive Staff
Subject: New NRS SAAG—Steve Novick

Colleagues, I am pleased to announce that Steve Novick joins Natural Resources Section as a Special Assistant Attorney General, courtesy of New York University. NYU’s State Energy & Environmental Impact Center sponsors a two-year fellowship under which it has hired Steve and deputed him to us. Oregon joins New York, Massachusetts, Maryland, Washington, and the District of Columbia (so far) as beneficiaries of this fellowship program. The purpose of the fellowship is to provide additional resources to state AGs’s offices in defending and promoting clean energy, climate, and environmental laws and policies.

From: Rosenblum, Ellen F.

128. “Jonathan is potentially still interested in funding additional people directly to work for governors.” August 18, 2017, email from Reed Schuler to CA and WA governor office colleagues; Subject: State capacity / Hewlett.

129. June 15, 2018, email from Paul Garrahan to Steve Novick; Subject: draft agreement.

130. JUSTICE-#9011048-v2-NYU_Fellow_Appointment, attachment to June 18, 2018, email from Frederick Boss to Ellen Rosenblum; Subject Re: NYU Fellow Appointment. It is not clear from Oregon OAG’s record productions whether they ultimately required this additional letter supplementing NYU’s standard suite of agreements.

131. Possibly it was NYU’s persistence to place a prosecutor in the Office that led to this lapse in judgment. On May 11, 2018, OAG’s Paul Garrahan, “attorney-in-charge” of the natural resources division, wrote to the Attorney General, in pertinent part, “I know the Center is still eager for us to hire a fellow—I spoke with Elizabeth Klein two weeks ago in response to her inquiry about where we were in the process.” May 11, 2018, email from Paul Garrahan to Ellen Rosenblum; Subject: AAG position.

Sent: Monday, June 18, 2018, 8:56 AM
To: Boss, Frederick
Cc: Edmunson, Kristina
Subject: Fwd: New NRS SAAG—Steve Novick

Please monitor ALL announcements so we can be on same page. Did Steve run this by you, Fred? Are you meeting with Paul this morning? Thx.

Ellen Rosenblum
Oregon Attorney General

From: Rosenblum, Ellen F.
Sent: Monday, June 18, 2018, 9:06 AM
To: Boss, Frederick

Subject: Re: New NRS SAAG—Steve Novick

Please talk to him about the sensitivities of this appointment and that he must communicate with you and Paul.

Ellen Rosenblum
Oregon Attorney General

On Jun 18, 2018, at 8:57 AM, Boss Frederick wrote:

No, Steve did not run this by me! Paul, Kristina and I have a call this morning at 10:30.

Back-Scratching: The Donor/Plaintiffs Lawyer/AG Axis

AS NOTED, CEI AND THIS AUTHOR had previously obtained an email from George Mason University showing UCS's Peter Frumhoff admitting in July 2015 that the group was already developing the AGs's pursuit of opponents—months before any subpoena issued.

In April 2018, we obtained emails from the Illinois Office of Attorney General relating a conversation by the OAG staff with Wendy Abrams, a major green advocacy group donor who had just served on UCS's board of directors.¹³² In late February 2016, Abrams sought a meeting

with Illinois AG Lisa Madigan “re: Exxon [sic] Investigation.”¹³³ Subsequent emails showed this was to advocate an investigation by that office. Those emails are revelatory about the role of donors serving as matchmaker for the plaintiffs' lawyers and the donors' political allies in law enforcement.¹³⁴

Abrams sought to pair up the AG and plaintiffs' lawyers: the Boston-based Pawa and California-based Steve Berman, who in 2017 initiated a spate of litigation by cities against the same opponents, the next in a staggered series of suits by different levels of government.¹³⁵

132. A May 2007 *Chicago Magazine* profile, which is titled “The Wendy City,” opens: “If you don't know her already, you will soon. Wendy Abrams eco-advocate, political insider, philanthropist...” Debra Pickett, “The Wendy City,” *Chicago Magazine*, May 29, 2007, <http://www.chicagomag.com/Chicago-Magazine/June-2007/The-Wendy-City/>. Abrams's bio, featured, for whatever reason, on a United Nations website, states: “Wendy Abrams, an environmental activist, is founder and [p]resident of Cool Globes, a [nonprofit] organization formed to execute the ‘Cool Globes: Hot Ideas for a Cooler Planet’ exhibit and events in Chicago. She is a member of the National Council of Environmental Defense, the National Advisory Board of the Union of Concerned Scientists, and the National Resources Defense Council C4 Action Fund.” UN Chronicle, “Wendy Abrams,” accessed July 26, 2018, <https://unchronicle.un.org/authors/wendy-abrams>.

133. February 26, 2016, email from Eva Station to Khadija Ali, Courtney Levy, and Kirsten Holmes; Subject, RE: Phone call.

134. Notice also the University of Chicago Law School professor Abrams stated she might also bring in, coincidentally, is the director of the Abrams Environmental Law Clinic. His background includes a stint administering the BP spill funds. <https://www.law.uchicago.edu/faculty/templeton>. By chance, the activists' principal objective here is a tobacco-style settlement fund turning the pariah energy producers into golden geese or rather into virtuous contributors to the public purse and underwriters of preferred political constituency groups (see, e.g., Walter Olson, “Partisan Prosecutions: How State Attorneys General Dove into Politics,” *New York Post*, March 30, 2017, <https://nypost.com/2017/03/30/partisan-prosecutions-how-state-attorneys-general-dove-into-politics/>).

135. Berman made a fortune in the tobacco settlement in 1998, as well, and has continued a litigation career apparently designed to obtain large settlements from deep-pocketed industry defendants. (Berman's firm made claims in one product liability case against drug manufacturers that U.S. District Judge Paul Diamond memorably declared in 2014 gave “new meaning to ‘frivolous.’” Damian Garde, “Meet the lawyer trying to pry drug pricing secrets out of Big Pharma,” *Stat*, April 20, 2017, <https://www.statnews.com/2017/04/20/steve-berman-drug-prices/>, citing to <http://www.abajournal.com/files/HagensBermanSanction.pdf>. Pawa has since joined Berman's firm.

Specifically, in February 2016, Abrams contacted Madigan’s scheduler, while seeking an audience for Pawa, Berman, and former tobacco-suit lawyer Sharon Eubanks. Eubanks also appeared in the emails arranging the March 2016 AGs/Gore press conference.¹³⁶ She also appears on the agenda for a January 8, 2016, meeting hosted by the Rockefeller Family Fund in New York City. That meeting, which also included representatives from the Rockefeller Foundation and its funded groups, was to strategize on a collaborative effort to delegitimize and encourage divestment from the energy industry. Its agenda cited AGs as the first among “the main avenues for legal actions & related campaigns.”¹³⁷

After making contact, Abrams forwarded “a letter from Matt Pawa outlining the issues” (though it refers to Pawa in the third person):

I would like to bring to this meeting Attorney Matt Pawa of Pawa Law Group, P.C.; Sharon Eubanks of Bordas & Bordas; and an attorney from Hagens Berman Sobol Shapiro LLP. Attorney Pawa has represented several states in environmental cases and has been a pioneer on global warming legal theories for [15 years]. Ms. Eubanks, who formerly led the U.S. Department of Justice litigation against tobacco companies under the federal RICO statute, [is] now in private practice. Steve Berman of Hagens Berman represented 13 states in the tobacco litigation. These lawyers are focused on assisting states in investigating whether Exxon has violated consumer fraud statutes and in particular on the possibility of obtaining injunctive relief similar to the federal RICO injunction, e.g., requiring Exxon to disclose

all of its documents on this matter, [thereby] prohibiting further deceptive statements and requiring the issuance of corrective statements.

These law firms have undertaken a preliminary review of the Illinois Consumer Fraud and Deceptive Business Practices Act by ExxonMobil Corp. and believe that this matter warrants your consideration. We request an opportunity to meet with you and your staff in order to provide you with a presentation on Exxon’s early knowledge of climate change and its subsequent campaign of deception and denial.¹³⁸

Document productions not only from Illinois but also from the California (at the time, Kamala Harris) and Connecticut (George Jepsen) OAGs confirm Pawa also presented an April 2016 PowerPoint slide show to those offices. The Connecticut assistant AG for environment’s calendar shows Pawa presented to AG Jepsen on April 19, 2016, in a show titled “What Exxon Knew—And What It Did Anyway.”¹³⁹

The California presentation came after a January 13, 2016, email from Pawa to California OAG staff members announcing a “Global Warming Presentation,” to which he attached “the global warming presentation on Exxon,” through a password-protected Dropbox folder. Later the same day, one of Pawa’s recipients, Supervising Deputy AG for Environment David Zonana sent an internal message, stating:

Attached is the first of two emails I’ll be sending with materials to review before tomorrow’s call with Matt Pawa and Ben Krass. This email attaches a memo from Matt.

136. March 24, 2016, email thread among New York OAGs’ Lemuel Srolovic, Vermont OAG’s Scot Kline, Wendy Morgan, and Pawa. Kline: “We are fine with having Sharon Eubanks with Matt. Thanks.” Srolovic: “Thanks, Scot. We are too.”

137. Alana Goodman, “Memo Shows Secret Coordination Effort against ExxonMobil by Climate Activists, Rockefeller Fund,” *Washington Free Beacon*, April 14, 2016, <https://freebeacon.com/issues/memo-shows-secret-coordination-effort-exxonmobil-climate-activists-rockefeller-fund/>.

138. February 26, 2016, email from Abrams to Khadija Ali; Subject: Background information.

139. Pawa gave his presentation, which was titled “What Exxon Knew—and What It Did Anyway,” to Connecticut AG George Jepsen on April 19, 2016, according to that date’s calendar entry for Matthew Levine, produced under Connecticut’s Freedom of Information Act.

My next email will provide a [D]ropbox link to a two[-]part video (total about 30 minutes) that Matt has provided....¹⁴⁰

California’s OAG titled its emails (with attachments withheld in full, claiming privilege), “Matt Pawa Meeting in California—Exxon Climate Change Preliminary Investigation.”¹⁴¹ It withheld in full, as privileged, “Notes of Pawa Presentation re Exxon,” which had been circulated among the staff.¹⁴² Another email asked, “Could you resend your email identifying the documents fro[m] PAWA’S presentation?”¹⁴³

Arranging Pawa’s Illinois presentation, on February 26, 2016, AG Madigan’s executive assistant Eva Station emailed to scheduler Khadija Ali and others: “Wendy Abrams called to schedule a meeting with AG re: Exxon [sic] Investigation.”¹⁴⁴ The objective was “to discuss ExxonMobil’s practices and if the [Illinois] AG office would be interested in investigating the matter.”¹⁴⁵ They also planned to discuss the following:

Exxon Mobil [sic] and whether there is a liability on the company’s part if they knew about climate changes and didn’t disclose it to stakeholders. The NY AG is investigating the

company, and she [Abrams] wanted to know if this was something the AG may be interested in supporting or signing on to.¹⁴⁶

After speaking with Abrams, Madigan’s scheduler wrote to other staff members: “Wendy says he may have been the one to go to the New York AG’s office about Exxon.”¹⁴⁷

All of this correspondence seems to provide any supposed “missing link” between the climate industry and the AGs.

One email also asserts: “She may bring Mark Templeton of the University of Chicago, [whom] I believe the AG has met before.”¹⁴⁸ Templeton is director of the Abrams Environmental Law Clinic at the University of Chicago Law School, and his notable experience includes distributing revenues from large environmental settlements.¹⁴⁹

Establishing such clinics to provide donor-supported staff members and swarms of young lawyer-trainees for the cause—eager trainees who are paying for the privilege—seems to be a deliberate tactic of the climate litigation industry. Steve Berman established one at a law school near his firm’s main office in 2003—a formative time for the then-nascent field of climate change litigation¹⁵⁰ (the clinic shuttered

140. January 13, 2016, email from David Zonana to Sally Magnani, Martin Goyette, Amy J. Winn, Dennis Ragen, and Heather Leslie; Subject: Tomorrow’s Meeting—Part 1 of 2.

141. April 1, 2016, email from Amy Winn to numerous California OAG recipients; Subject: Matt Pawa Meeting in California—Exxon Climate Change Preliminary Investigation.

142. April 7, 2016, email from Amy Winn to numerous California OAG recipients; Subject: Notes of Pawa Presentation re Exxon.

143. April 19, 2016, email from Amy Winn to two California OAG recipients; Subject: Could you [resend] your email identifying the documents fro [sic] PAWA’S presentation?

144. February 26, 2016, email from Eva Station to Khadija Ali, Courtney Levy, and Kirsten Holmes; Subject, RE: Phone call. Khadila responded, “Thank you, Eva. I will reach out to Wendy.”

145. February 26, 2016, email from Abrams to Khadija Ali, Subject: Background information.

146. February 26, 2016, email from Khadija Ali to Courtney Levy, Kirsten Holmes; Subject, RE: phone call.

147. Ibid.

148. March 15, 2016, email from Khadija Ali to numerous IL OAG colleagues; Subject: Exxon climate change investigation.

149. Mark N. Templeton bio, University of Chicago Law School, accessed July 26, 2018, <https://www.law.uchicago.edu/faculty/templeton>.

150. In 2003, a milestone lawsuit, *American Electric Power Company v. Connecticut*, was filed in July 2004 and would be decided by the U.S. Supreme Court in 2011, thereby throwing cold water on the idea of suing businesses under a federal common law claim for climate change damages. *AEP v. Connecticut*, 564 U.S. 410 (2011).

in 2009).¹⁵¹ The law schools of Columbia, Georgetown University, Harvard, New York University, and UCLA all have dedicated operations with roles in the climate industry.¹⁵²

As we also see in the records, Pace University has an Environmental Litigation Clinic at the movement's disposal. Abrams provided numerous documents to the Illinois OAG in advance of Pawa's and her meeting in which they advocated for the campaign to investigate targets of the climate political agenda. One particularly interesting memo that Abrams forwarded broached a novel tool for law enforcement's assistance with the climate litigation industry's campaign. This was a 17-page screed from Pace's Clinic titled "Revocation of ExxonMobil Authority to Do Business in New York."¹⁵³ (She twice forwarded email from Christine O'Neill at Pace, executive assistant to Robert F. Kennedy Jr., who is listed as "Professor Emeritus" on the Clinic's website.¹⁵⁴) The email opened, "Hi, Wendy, Bobby asked me to email the Exxon Mobil document that he sent to Eric Schneiderman."

The memo seeks to recruit the NYOAG to "appl[y] the corporate death penalty" and prohibit the company from doing business in the state. It states:

ExxonMobil's right to do business in New York derives from a state-issued certificate of authority. The Attorney General can annul this certificate whenever ExxonMobil exceeds

or abuses its authority, when the company fails to serve the "common good" or violates its duty to do no harm.

The memo is just getting warmed up in its overheated hyperbole when describing the campaign's political opponents as "a kind of flat earth society." It goes on thus:

- Entire ecosystems will collapse, impacting everything from pest control, to trout habitat, fisheries, and cranberry production. ...
- Exxon responded to roars of outrage in 2006 over its sociopathic antics. ...
- Mainly elected leaders understand that government officials have a duty to demonstrate that government is able to safeguard the public from sociopathic corporate conduct. ...
- Under the most generous construction, Exxon's conduct was immoral. In the worst and more plausible construction, Exxon is guilty of criminal negligence that will contribute to the deaths of human beings, the extinction of species and hundreds of billions of dollars in damages, ...
- ExxonMobil has made itself the template for unsheathed arrogance of unregulated power, greed, and callous disregard toward the cataclysmic misery presaged by its actions. ...¹⁵⁵

Forwarding even this jeremiad as somehow informative did not apparently diminish the donor's standing within the Illinois OAG,

151. "UW School of Law to Establish the Kathy and Steve Berman Environmental Law Clinic," Hagens Berman blog, April 23, 2003, <https://www.hbsslaw.com/blog/hagens-berman-blog/steve-w-berman/uw-school-of-law-to-establish-the-kathy-and-steve-berman-environmental-law-clinic>. Daniel Jack Chasen, "Legal Eagles," *SeattleMet*, December 28, 2008, <https://www.seattlemet.com/articles/2008/12/28/0708-legealeagles>.

152. As a forthcoming paper will detail, Georgetown University Law School is playing an active role serving activist elected office holders, who were recently losing out on a contract bid to manage a climate advocacy campaign as the cutout hiring "staff" and consultants as the back-room manager of a governors' climate advocacy campaign. UCLA Law School is slow-walking at least three separate requests relating to the AGs' work, including two by CEI.

153. Memo available at <https://climatelitigationwatch.org/cei-obtains-rfk-pace-univ-memo-seeking-revocation-of-business-license/>. See also, Carl Campanille, "RFK Jr. Sent Secret Memo Asking to Ban ExxonMobil," *New York Post*, June 17, 2018, <https://nypost.com/2018/06/17/rfk-jr-sent-secret-memo-asking-to-ban-exxonmobil/>.

154. Robert Kennedy Bio, Pace Elisabeth Haub School of Law, accessed July 26, 2018, <https://law.pace.edu/faculty/robert-kennedy>.

155. January 5, 2016, memo to AG Eric Schneiderman from Pace Environmental Litigation Clinic, "Revocation of ExxonMobil Authority to Do Business in New York."

because emails show AG Madigan spread word of the meeting request among the senior staff ranks, and her scheduler stated that the AG would attempt to do a drop-in on the meeting. Staff members rearranged their schedules to match those of the climate lobbyists. In the end, just two of the four to five prospective presenters (plaintiffs' lawyer Pawa and the donor Abrams) made it from that side.

Only a couple weeks later, a senior Illinois OAG attorney and an Abrams meeting participant, James Gignac, traveled to the "secret meeting" at Harvard Law School that was co-hosted by a group on whose board the donor, Abrams, had just served and had a close relationship with. As the principal beneficiary of the OAGs' contribution of taxpayer time, UCS generously offered to cover attendees' travel expenses.¹⁵⁶ Gignac notified his office:

Our office is invited to attend a one-day legal conference in Boston on climate change organized by Harvard Law School environmental law clinic and the Union of Concerned Scientists. My understanding is that the organizers are inviting a few AG representatives from different states to

attend. Assistance for travel costs may be available.¹⁵⁷

Gignac took UCS up on the offer and traveled at its expense.¹⁵⁸ Others traveled on the taxpayer dime to brief UCS' "prospective funders," in addition to spending taxpayer time this way. At least one OAG participant found a way to avoid the terrible optics and possible impropriety inherent in both options. Maryland Assistant AG Roberta James—who, apparently, internally described the "carbon producer accountability" briefing for activists and "prospective funders" as "Training"—created no such funding trail to follow so far as we know from productions, other than one heavily redacted email, which was surrounded in the production by completely redacted records. She informed colleagues:

"[REDACTED] ARMA has agreed to pay for my train up to Boston, so the funding from the Union of Concerned Scientists will not be needed. I will be staying with my best friend from college, so no hotel expenses. [THREE LINES REDACTED] Please let me know if you have any questions."¹⁵⁹

156. "Travel assistance would come through UCS; I am copying Nancy Cole, the Campaign Director of their Climate & Energy Program" was stated in the March 28, 2016, email from Shaun Goho to Illinois OAG's Gignac and Matthew Dunn; Subject: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016. "Hi, Arlene, UCS is able to cover all travel costs including hotel and ground transpo" was in the April 6, 2016, email from Gignac to Arlene Maryanski, copying Dunn; Subject: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016. "All travel costs will be covered by the Union of Concerned Scientists" was in the April 6, 2016, email from Gignac to Arlene Maryanski; Subject: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016.

157. March 26, 2016, email from James Gignac to Matthew Dunn, Chief of Environmental Enforcement, Subject: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016. Gignac's bio, which he circulated, shows he was former Midwest director of the Sierra Club's Beyond Coal campaign, so he was among friends at this otherwise unusual event—unusual in that it was a fundraiser for UCS, the group leading the outside support for the campaign by AGs to use law enforcement offices in pursuit of opponents of a political agenda.

158. This led to some internal puzzlement when the Illinois OAG's Gignac took UCS up on the offer. For example, "Hi James: Am I missing something? I see you want to stay overnight, 'returning on April 26.' I also see in the e-mail exchange that you asked for 'airfare from Chicago.' Who is going to pay for the hotel? How about taxi to and from? Please advise." This statement was in the April 6, 2016, email from Arlene Maryanski to Gignac, Subject: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016. In an April 4, 2016, email from Gignac to Dunn and Cara Hendrickson, Subject: SAVE THE DATE—HLS/UCS Meeting, we find: "Matt, I believe I can make this travel work. [I]f you approve, Arlene can get me started on the paperwork. [TWO LINES REDACTED] Cara, as background for you, we were invited to participate in this meeting in Boston with Harvard Environmental Law Clinic and Union of Concerned Scientists and some state AG offices—related to Exxon and climate issues."

159. March 3, 2016, email from Roberta James to colleagues; Subject: Re: Training.

Curiously, ARMA is apparently a trade group, formerly known as the Association of Records Managers and Administrators.¹⁶⁰ The Metro Maryland ARMA Chapter describes itself thus:

“The Metro Maryland ARMA Chapter is dedicated to providing educational and

networking opportunities for area records and information professionals to enhance their knowledge and be informed of state of the art developments; exchange ideas and concerns in an informal, friendly, and fun atmosphere; and expand their abilities to contribute to the successful operation of their organizations and businesses.”¹⁶¹

160. ARMA website, FAQ, accessed July 7, 2018, <https://www.arma.org/page/FAQ>.

161. ARMA Metro Maryland website, viewed July 7, 2018, <http://www.arma-metromd.org>.

Conclusion

AS DESCRIBED ABOVE, A LARGE cache of public records obtained by the Competitive Enterprise Institute, along with others including those obtained by this author on behalf of organizations over the course of two and a half years, reveals an elaborate and years-long campaign by major left-leaning donors, green advocacy groups, and activist state AGs to politicize law enforcement in the service of the “progressive” environmental policy agenda.

This campaign has evolved from a failed model run by AGs—with the support of, at least, the Union of Concerned Scientists and some faculty allies—to a complex effort entailing privately funded, in-house activist attorneys, known as Special Assistant AGs and paid by private donors, with an apparently much larger network of attorneys and public relations specialists provided to the cause also by donors.

By this means, state AGs are using law enforcement offices to advance those donors’ and environmental advocacy groups’ ideologically aligned policy agenda. Those attorneys were recruited, expressly and at least in part, to investigate and prosecute the opponents of those donors’ and green groups’ political agenda to obtain financial settlements. This is a case of law enforcement for hire.

Whether because of the scrutiny of public record requests and because of the

legal and ethical implications (including for all investigations or matters tainted by the involvement of a privately funded law enforcement brought in for the purpose), it appears that at least 3 among the 10 previously eager AGs stopped short of bringing on a third-party-funded special assistant AG. This includes even offices, like Illinois’ OAG, that had already formally contracted with the nonprofit to accept the privately funded investigator/prosecutor.

The New York, Maryland, and Oregon AGs have confirmed to us that they have indeed brought on donor-funded prosecutors. Applications to NYU suggest these privately funded law enforcement officers will pursue a finite and readily identifiable set of parties who oppose a certain political agenda. Some have refused to confirm or deny their participation, while others merely seek to obscure it in apparent defiance of transparency statutes.

For example, Washington state and Washington, DC, have still not produced requested records that answer the question about how they proceeded, despite months for them to do so. Nonetheless, a June 18, 2018, internal email obtained from Oregon’s OAG asserted that both those offices had brought on NYU-funded special AGs. “Oregon joins New York, Massachusetts, Maryland, Washington, and the

District of Columbia (so far) as beneficiaries of this fellowship program.”¹⁶²

The extension of this billion-dollar per year climate industry to privately fund AGs to advance an expressly activist agenda and to pursue politically motivated investigations and litigation sets a dangerous precedent. It represents private interests commandeering state police powers to target opponents of their policy agenda. This scheme seeks to hijack the justice system to overturn a political agenda’s rejection through the proper democratic process.

Clearly, much more remains to be discovered about an enterprise “currently spending over \$1 billion a year on climate work.” Government employees participating in this public–private partnership are so reluctant to let the public in on the details of their campaign that they routinely force litigation before releasing the relevant public records. However, enough is known to require immediate legislative oversight—at the state and federal levels—to determine the propriety of this scheme, its legality, its extent, and the fruits it has yielded to date.

162. June 18, 2018, email from Steven Wolf to “General Counsel,” copying “Executive Staff”; Subject: New NRS SAAG—Steve Novick.

About the Author

CHRISTOPHER HORNER HAS BEEN A senior fellow with Competitive Enterprise Institute, which is a Washington, D.C., think tank, for 20 years, and he works with the transparency group titled Government Accountability & Oversight. As an attorney in private practice for more than two decades in Washington, Horner provides regulatory counsel and has represented think tanks, scientists, and Members of Congress on matters of environmental policy in the federal courts.

Horner has contributed to numerous opinion pages including the Daily Caller, *Washington Examiner*, *Washington Times*, National Review Online, Pajamas Media, BigGovernment.com, *Human Events*, and *Energy Tribune*, as well as Spain's *Actualidad Economica* and the Brussels legislative news magazine *EU Reporter*. He has discussed legal, policy, and political issues hundreds of times on television and radio programs in the United States, Europe, Canada, and Australia. He was also a guest on "The Daily Show" with Jon Stewart in 2007.

He is the author of four books including two best-sellers, *Red Hot Lies: How Global Warming Alarmists Use Threats, Fraud, and*

Deception to Keep You Misinformed and *The Politically Incorrect Guide to Global Warming and Environmentalism*, which spent six months on *The New York Times* bestseller list in 2007. His fourth book, from Simon & Schuster's Threshold Editions, was a freedom of information exposé and manual titled *The Liberal War on Transparency: Confessions of a Freedom of Information "Criminal."*

Politico called Horner "Master of FOIA [Freedom of Information Act]" and "a determined digger" who "bedevils the White House" with his exposés about the Environmental Protection Agency and other federal agencies. He has testified before state legislative bodies, the U.S. Senate Committees on Foreign Relations and Environment and Public Works, and the House and Senate Western Caucuses, and he has given numerous addresses both to audiences in the European Parliament in Strasbourg and Brussels and before policy makers in multiple European capitals.

Horner received his Juris Doctorate from Washington University in St. Louis, where he received the Judge Samuel Breckenridge Award for Advocacy.



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