Law Enforcement for Rent

How Special Interests Fund Climate Policy through State Attorneys General

BY CHRISTOPHER C. HORNER

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COMPETITIVE ENTERPRISE INSTITUTE

CEI

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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.

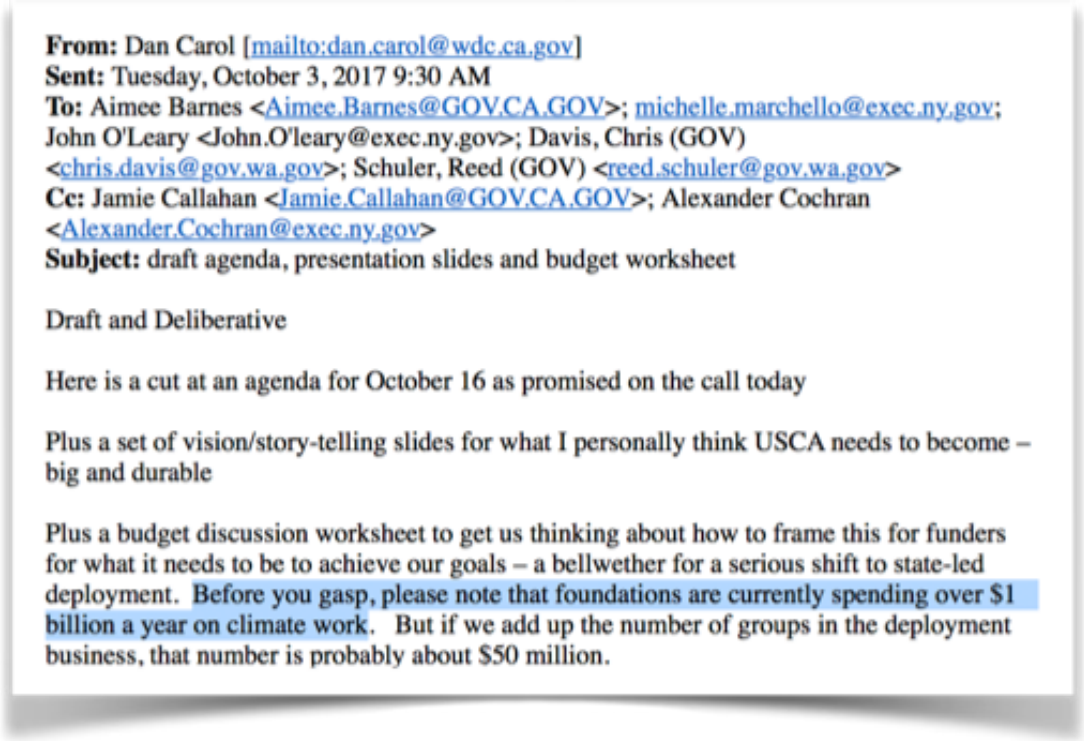
In further support of his position, Carol attached a "draft agenda, presentation slides, and budget worksheet." Those items are among a large cache of public records that were obtained by the Competitive Enterprise Institute (CEI), along with other public policy groups, and that detail and propose the 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 agenda[3] 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:

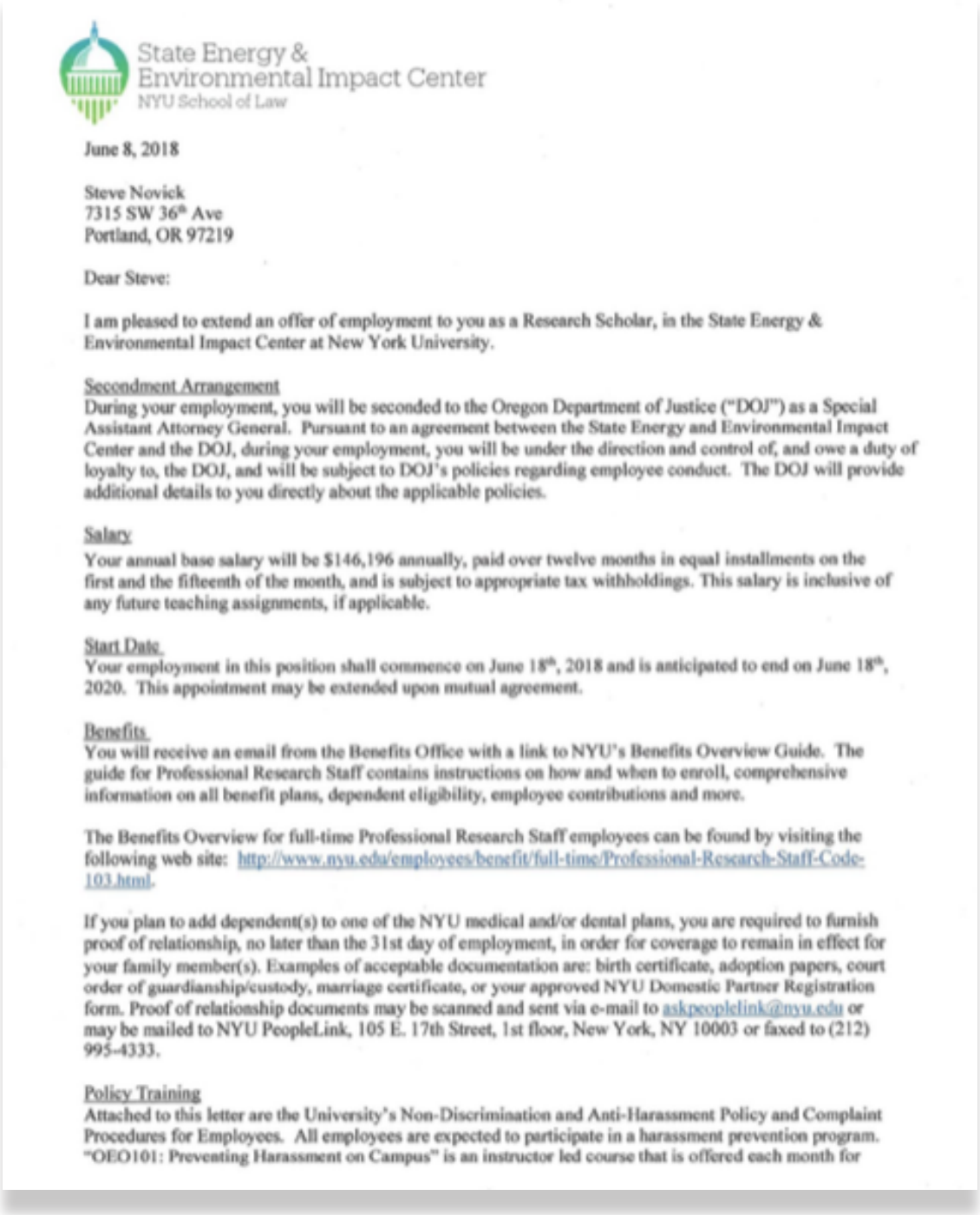
- A state attorney general's office "hires" the NYU Impact Center as its attorney.
- The client pays nothing. Its consideration to NYU is in receiving the NYU Impact Center's prosecutors (see Figure 2), who promise they will work on specified issues expressly of NYU's interest and report back to NYU 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.

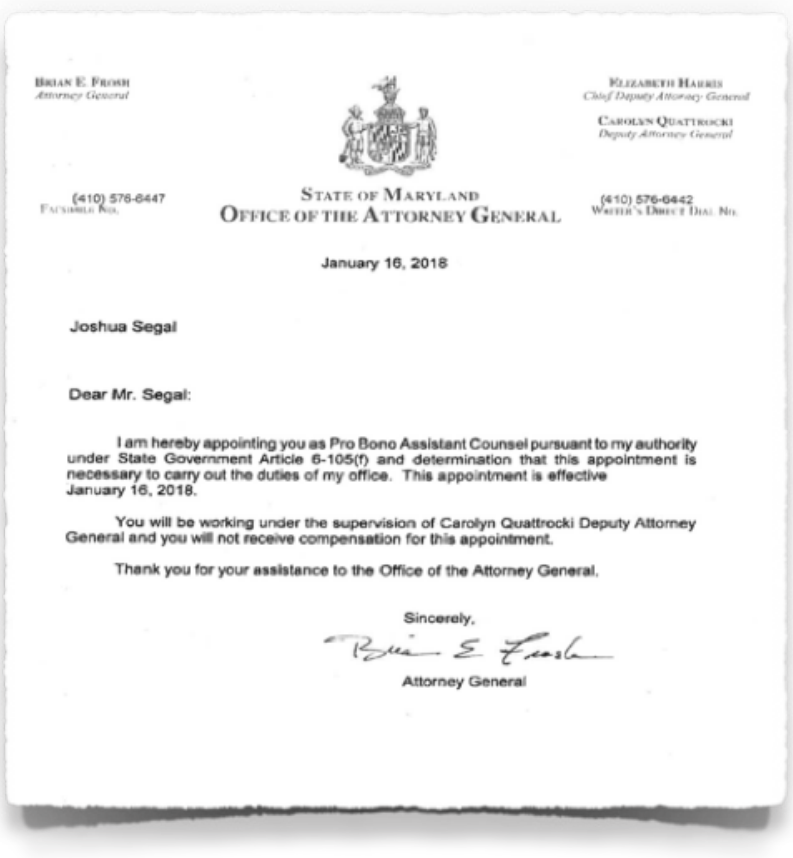
Benefits
You will receive an email from the Benefits Office with a link to NYU's Benefits Overview Guide. The guide for Professional Research Staff contains instructions on how and when to enroll, comprehensive information on all benefit plans, dependent eligibility, employee contributions and more.

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



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January 16, 2018

Joshua Segal

Dear Mr. Segal:

I am hereby appointing you as Pro Bono Assistant Counsel pursuant to my authority under State Government Article 6-105(f) and determination that this appointment is necessary to carry out the duties of my office. This appointment is effective January 16, 2018.

You will be working under the supervision of Carolyn Quattrocki Deputy Attorney General and you will not receive compensation for this appointment.

Thank you for your assistance to the Office of the Attorney General.

Sincerely,

Brian E. Frosh

Attorney General

- 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 realease 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 Texas[44] 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.

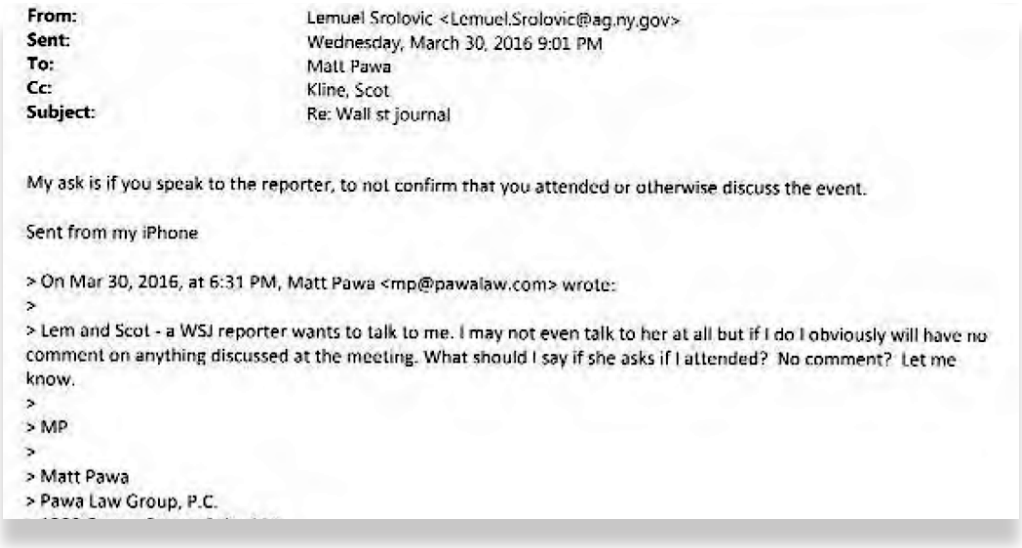
43. Ibid.

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



From: Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>
Sent: Wednesday, March 30, 2016 9:01 PM
To: Matt Pawa
Cc: Kline, Scot
Subject: Re: Wall st journal

My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.

Sent from my iPhone

> On Mar 30, 2016, at 6:31 PM, Matt Pawa <mp@pawalaw.com> wrote:
>
> Lem and Scot - a WSJ reporter wants to talk to me. I may not even talk to her at all but if I do I obviously will have no comment on anything discussed at the meeting. What should I say if she asks if I attended? No comment? Let me know.
>
> MP
>
> Matt Pawa
> Pawa Law Group, P.C.

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]

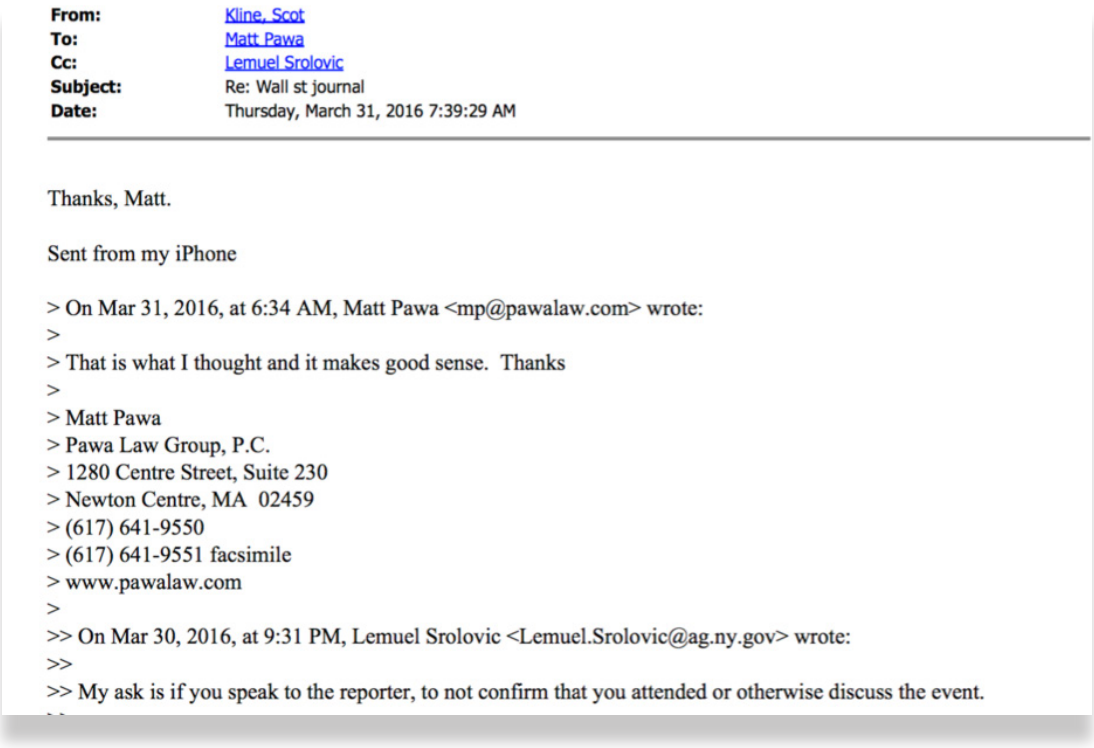
In 2017, the Texas federal court also noted, "Does this reluctance to be open [about collaborating with plaintiffs' attorneys and activists with a litigation agenda] suggest that the attorneys general are trying to hide something from the public?"[49] The same court took notice of Frumhoff's advisory 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



From: Kline, Scot
To: Matt Pawa
Cc: Lemuel Srolovic
Subject: Re: Wall st journal
Date: Thursday, March 31, 2016 7:39:29 AM

Thanks, Matt.

Sent from my iPhone

> On Mar 31, 2016, at 6:34 AM, Matt Pawa <mp@pawalaw.com> wrote:
>
> That is what I thought and it makes good sense. Thanks
>
> Matt Pawa
> Pawa Law Group, P.C.
> 1280 Centre Street, Suite 230
> Newton Centre, MA 02459
> (617) 641-9550
> (617) 641-9551 facsimile
> www.pawalaw.com
>
>> On Mar 30, 2016, at 9:31 PM, Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov> wrote:
>>
>> My ask is if you speak to the reporter, to not confirm that you attended or otherwise discuss the event.

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 Belensz, 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

OSU PRR Response 113

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!

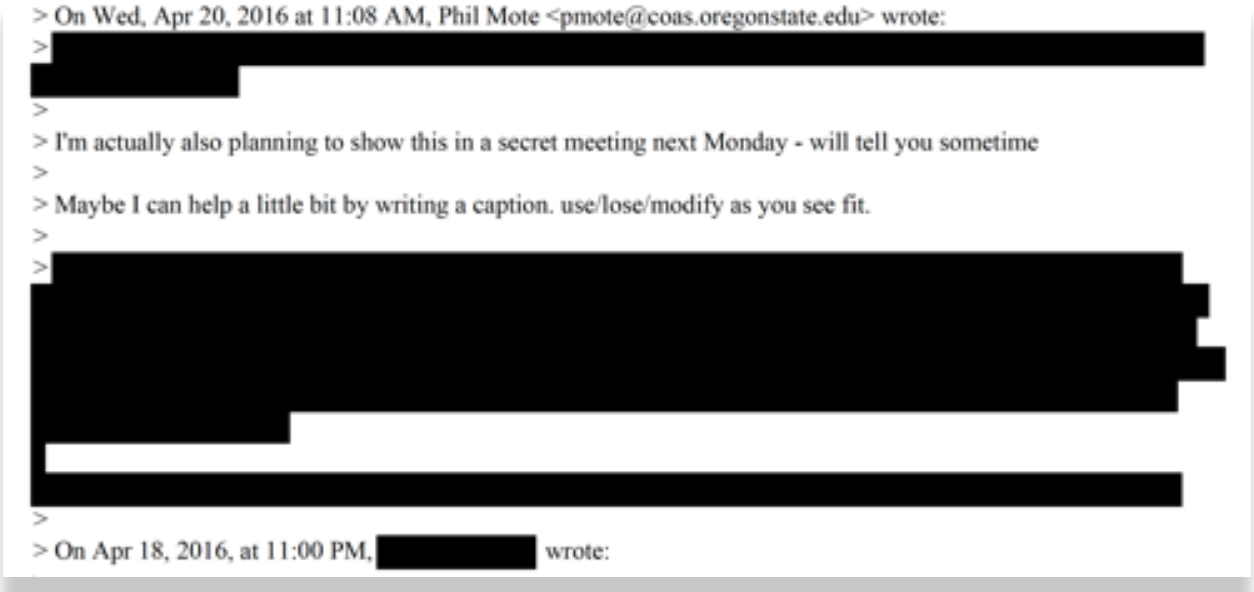
thanks

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] generals 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 Team[81] 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; January12, 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, Chis 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 matter*s 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 Stein 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).

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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: Exon [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: Exon [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 litigation[150] (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 Eaglets," SeattleMet, December 28, 2008, https://www.seattlemet.com/articles/2008/12/28/0708-legaleaglets.

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 sate 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.

Law Enforcement for Rent

How Special Interests Fund Climate Policy through State Attorneys General

By Christopher C. Horner

APPENDIX

AUTHOR'S NOTE: These documents were obtained over two and a half years from open records requests and, in some cases, subsequent litigation. Due to the volume of records cited, key documents are provided in this appendix.

The complete collection of documents cited in the paper is available at ClimateLitigationWatch.org.

FOOTNOTE 1

From: Dan Carol
To:
Date: Tue, 3 Oct 2017 12:30:03 -0400
Subject: draft agenda, presentation slides and budget worksheet
AttachmentList: 3

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.

Next step: maybe John O'Leary can make this better as he always does!

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FOOTNOTE 3

Siegel, Kim (DOJ)

From:	David J. Hayes <david.hayes@nyu.edu>
Sent:	Friday, August 25, 2017 12:51 PM
To:	Eleanor.Blume@doj.ca.gov; PerryZR@ct.gov; Roberts, LaKresha S (DOJ); Natalie.Ludaway@dc.gov; Joshua.A.Wisch@hawaii.gov; ASpillane@atg.state.il.us; Eric.Tabor@iowa.gov; Latasha.Buckner@ky.gov; Linda.Pistner@maine.gov; Brian Mahanna; Mike.Firestone@state.ma.us; MMCCL@ago.state.ms.us; MBaca@nmag.gov; SDearmin@ncdoj.gov; BThomas@ncdoj.gov; Kamala.H.Shugar@doj.state.or.us; JRadosevich@attorneygeneral.gov; DWade@attorneygeneral.gov; MFischer@attorneygeneral.gov; MLenz@riag.ri.gov; Natalie.Silver@vermont.gov; KOHolleran@oag.state.va.us; KateK@atg.wa.gov
Cc:	David J. Hayes; Elizabeth Klein
Subject:	State Energy & Environmental Impact Center
Attachments:	State Impact Center Staff Attorney Position Description.docx

State Energy &
Environmental Impact Center
NYU School of Law

To: State OAG Leaders [list kindly provided by Brian Mahanna][please share this email with your Attorney General]

From: David J. Hayes

Re: State Energy & Environmental Impact Center at the NYU School of Law

I hope that you received word about the formation of the State Energy & Environmental Impact Center (State Impact Center) at the NYU School of Law. NYU issued a press release on the formation of the Center, and it also was referenced in recent articles in the Washington Post and in Greenwire.

I am writing to give you and your Attorney General more information about the new State Impact Center.

The goal of the State Energy & Environmental Impact Center is to enhance the resources that your office has to champion your citizens' interests in clean energy, climate change and environmental matters. We admirer the

vitally important work that you have been doing in this area and are dedicated to giving more support to you, and other Attorneys General – regardless of party affiliation -- who pursue clean energy, climate change and environmental issues.

As explained on our NYU web site, the State Impact Center looks forward to providing assistance to interested AGs in a number of ways.

First, our Center will have three full time attorneys who will be available to provide direct legal assistance to interested AGs on specific administrative, judicial or legislative matters involving clean energy, climate change, and environmental interests of regional and national significance. 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. We are engaged with ethics experts and individuals in some of your offices to ensure confidentiality and work product privilege for matters that State Impact Center attorneys work with you on.

Second, our Center will have a full time communications expert experienced in the clean energy, climate and environmental field to work with, and help leverage, the communications resources in your offices. It is a primary goal of the State Impact Center to draw regional and national attention to the important clean energy, climate and environmental initiatives that your offices are pursing.

Third, we have funding to recruit and hire 10 NYU fellows who will serve as Special Assistant AGs, working as part of the state OAG's staff. It's in everyone's interest that we work with the relevant AGs and hire these lawyers as soon as practicable.

I have inserted below language from our website which lays out the process for placing NYU fellows as SAAGs. **Please note the September 15 application date.** This deadline is coming up quickly. We set a short deadline at the request of several AGs who are anxious to get the process for placing NYU Fellows into AG offices as soon as possible.

How to Hire an NYU Fellow

The State Impact Center is announcing an opportunity for state attorneys general to recruit and hire a limited number of NYU Fellows with five to 10 years of experience in clean energy, climate change, and environmental issues as special assistant attorneys general (SAAGs). These SAAGs would be available for a two-year period to provide a supplemental, in-house resource to attorneys general and their senior staffs on clean energy, climate change and environmental matters of regional and national importance.

State attorneys general who are selected for this program will work cooperatively with the State Impact Center to recruit and hire NYU Fellows as SAAGs. NYU Law will pay the salaries of the SAAGs, and the State Impact Center will provide ongoing support to the SAAGs and their offices. Once hired, however, the SAAGs' duty of loyalty shall be to the attorney general who hired them.

Basic Eligibility Requirements and Application Process

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. Initial funding will support a limited number of NYU Fellows in state attorneys general offices for a two-year term, with the possibility of adding additional NYU Fellows in year two of the program.

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.

Interested state attorneys general should prepare an application as detailed below and return it to stateimpactcenter@nyu.edu no later than Friday, September 15, 2017.

The State Impact Center will review all applications received for completeness and will contact attorneys general if additional information is needed. State Impact Center staff are available for questions regarding this program.

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. Relevant details include the extent to which funding or other capacity constraints have limited the ability to work on these issues or how additional dedicated support could help advance the work of the state attorney general on behalf of his or her constituents.

Priority consideration will be given to state attorneys general who demonstrate a commitment to and acute need for additional support on clean energy, climate change, and environmental issues of regional

--
David J. Hayes
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or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.

2. Program Structure
Applications should include specific details about the scope of expertise the state attorney general needs in a SAAG to advance his or her priorities. Details should also be provided about how the SAAG would be incorporated into the Office of the Attorney General, including the relevant internal reporting structure.

3. Budget Proposal and Confirmation of Authority
To be considered complete, applications must identify a proposed salary (or range) for a SAAG, with an explanation of how it would conform with the existing salary structure in the state AG office.

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).

Application Review

Complete applications will be reviewed on an expedited basis, with decisions on proposed placements of NYU Fellows made as soon as practicable thereafter. Proposed placement decisions will be made by the executive director of the State Impact Center, in consultation with the advisory council. Approximately 10 NYU Fellow slots for five to seven states are expected to be available for the first year of the program. Additional slots may be available in subsequent years.

Once agreements are finalized, the State Impact Center will coordinate directly and immediately with state attorneys general to identify, recruit, and extend SAAG offers to appropriate candidates, with a goal to have SAAG hires in place by the end of 2017.

The State Impact Center will provide ongoing support to the SAAGs. The State Impact Center's support will not be limited, however, to those AG offices that include NYU Fellows. Where appropriate and upon request, and consistent with available resources, the State Impact Center will work with all attorneys general who are pursuing clean energy, climate change, and environmental initiatives.

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 AG's 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. I am attaching a job descriptions for the attorney position in case you have any recommendations.

Our Center will guided by a distinguished Advisory Council, chaired by Richard (Ricky) Revesz, the Dean Emeritus of the NYU School of Law. The Advisory Council also includes two former State Attorneys General, Anne Milgram (New Jersey) and Bruce Babbitt (Arizona), as well as Dan Firger, environmental program officer for Bloomberg Philanthropies.

If you have any questions, please do not hesitate to contact Liz Klein or me via email or by phone.

Thanks.

FOOTNOTE 8

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
ERIC T. SCHNEIDERMAN

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
WILLIAM H. SORRELL

March 7, 2016

Hon. Ellen F. Rosenblum
Attorney General
Office of the Attorney General
1162 Court St. NE
Salem, OR 97301-4096

Dear Attorney General Rosenblum:

Over the last several years, we have worked through an informal coalition of Attorneys General in legal actions to help protect our citizens from the adverse consequences of climate change and to promote energy efficiency. From advocating for, and then defending, the Environmental Protection Agency's Clean Power Plan to convincing the U.S. Department of Energy to adopt energy efficiency standards for commercial equipment and lighting, our collaborative work has been an important part of the national effort to ensure the adoption of stronger federal climate and energy policies.

The commitments of the United States and other nations at last year's Paris climate change conference are very significant steps forward, but states must still play a critical role in ensuring that the promises made in Paris become reality. Put simply, while we have accomplished a lot, much more action to stem climate change and expand the availability and usage of renewable energy is needed, and is needed now.

That's why we believe that this is the moment for Attorneys General who share this mission to renew our commitment to a coalition to take concerted action to protect our citizens from the public safety, health, and environmental harms created by climate change.

To that end, we are hosting a one-day meeting at the Office of the New York Attorney General in Manhattan on March 29, 2016. We plan to have a press event with attending Attorneys General to highlight the importance of climate change to the citizens of our states, our work defending the Clean Power Plan (highlighting the brief our coalition states are filing that day) and the formation of an Attorneys General climate change and energy coalition committed to working together to take effective investigative and legal steps to address the risks that climate change poses to all of our citizens. A staff-level meeting with AG attorneys working on these issues will also be convened to discuss ongoing and potential legal actions and to consider mechanisms to support these actions.

We ask that you RSVP by Friday, March 18 to Michael Meade (Michael.Meade@ag.ny.gov or 212-416-8985) and, if you are attending, provide the names and contact information for all staff who will accompany you.

Thank you for your interest; we hope to see you and your staff on March 29.

Sincerely,

ERIC T. SCHNEIDERMAN
New York State Attorney General

WILLIAM H. SORRELL
Vermont State Attorney General

FOOTNOTE 9

From: John Oleske [mailto:John.Oleske@ag.ny.gov]
Sent: Friday, April 15, 2016 1:33 PM
To: 'Amy Winn'; 'Bill Grantham'; 'Christopher Courchesne'; 'Dennis Ragen'; 'Greg Schultz'; 'James Gignac'; 'Jerry Reid'; 'John Daniel'; 'Joshua Auerbach'; 'Laura Watson'; 'Leslie Seffern'; 'Linda Singer'; Levine, Matthew; 'Melissa Hoffer'; 'Paul Garrahan'; 'Ralph Durstein'; 'Rhodes Ritenour'; Snook, Robert D.; 'Scot Kline'; 'Tam Ormiston'; 'Tania Maestas'; 'Tannis Fox'; 'Tim Nord'; 'Wendy Morgan'
Cc: Monica Wagner; Mandy DeRoche
Subject: RE: 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 4pm as the option for that week instead, if need be.

From: John Oleske
Sent: Friday, April 15, 2016 11:55 AM

To: 'Amy Winn'; 'Bill Grantham'; 'Christopher Courchesne'; 'Dennis Ragen'; 'Greg Schultz'; 'James Gignac'; 'Jerry Reid'; 'John Daniel'; Joshua Auerbach; 'Laura Watson'; 'Leslie Seffern'; 'Linda Singer'; 'Matthew Levine'; 'Melissa Hoffer'; 'Paul Garrahan'; 'Ralph Durstein'; 'Rhodes Ritenour'; 'Robert Snook'; 'Scot Kline'; 'Tam Ormiston'; 'Tania Maestas'; 'Tannis Fox'; 'Tim Nord'; 'Wendy Morgan'
Subject: AG Climate Change Coalition - XOM/Fossil Fuels Working Group

Hi everybody – thanks for expressing interest in developing a working group to address Exxon specifically, and the fossil fuel industry generally, with respect to potential regulatory and enforcement issues. We expect our initial discussions will be focused on determining the overall goals of the group and the potential for sub-group work on discrete factual and legal issues, among other things. We'd like to get started next week if possible, or the week after if necessary.

Some proposed dates and times for the first discussion are below – if folks could respond with their top choice(s), and if there's a particular slot or slots that won't work for them, both with an eye to future recurrences, I can put the responses together and come back to the group with what looks like the best consensus option. Thanks.

Suggested dates/times (all times Eastern):

Wednesday 4/20 - 2pm or 3pm
Thursday 4/21 – 1 pm, 2pm, 3pm, or 4pm
Friday 4/22 – 1pm, 2pm or 3pm
Monday 4/25 – 3pm or 4pm

John Oleske
Senior Enforcement Counsel
New York State Office of the Attorney General
(212) 416-8660
(845) 485-3904

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FOOTNOTE 12

Angulo, Guadalupe

From: Gignac, James
Sent: Monday, April 04, 2016 8:38 AM
To: Dunn, Matthew
Cc: Hendrickson, Cara
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
Attachments: HLS-UCS April 25 agenda draft.docx

Matt, I believe I can make this travel work, if you approve, and then Arlene can get me started on the paperwork. [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.)

James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, March 28, 2016 12:14 PM
To: Gignac, James; Dunn, Matthew
Cc: Nancy Cole
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

James and Matt:

Please find attached a draft agenda. It is still subject to change, but will give you an idea of the general format for the afternoon. Please let me know if you have any other questions.

Travel assistance would come through UCS; I am copying Nancy Cole, the Campaign Director of their Climate & Energy Program.

Best,
Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Monday, March 28, 2016 12:39 PM
To: Shaun Goho

Cc: Dunn, Matthew
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Shaun,

Sorry for the delay in responding. I am including Matt Dunn, Chief of our Environmental Enforcement Division. We think that a representative from our office would be interested in participating in this meeting. Could you send any additional agenda or logistical information? We would be interested in travel assistance, likely airfare from Chicago.

Thanks,
James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Wednesday, March 16, 2016 3:44 PM
To: Gignac, James
Subject: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

James:

I am writing to let you know that we have change the date for the climate science and legal theory meeting that we are hosting here at HLS in conjunction with the Union of Concerned Scientists. The event will now take place on the afternoon of Monday, April 25th. We will be sending out a detailed agenda in the coming week. Please respond to let me know:

1. Will someone from your office be attending the event? How many people plan to come, and who are they? (We may not be able to accommodate multiple attendees because of space constraints, but we will let you know if we think your group is too large.)

2. Do you need travel reimbursement? If so, for which expenses do you anticipate needing reimbursement? (Air, train, hotel, etc.)

3. Do you want to receive a written agenda or would you prefer to discuss it over the phone?

Thanks,
Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

Angulo, Guadalupe

From: Gignac, James
Sent: Wednesday, March 16, 2016 1:46 PM
To: Ali, Khadija
Subject: RE: Exxon climate change investigation;

Yes!

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Ali, Khadija
Sent: Wednesday, March 16, 2016 1:46 PM
To: Gignac, James
Subject: RE: Exxon climate change investigation;

Hi James,

Sorry to bother you, I just wanted to check in with you on the new time change and make sure you're still available at 3:30pm. Thanks!

Khadija

From: Ali, Khadija
Sent: Wednesday, March 16, 2016 10:01 AM
To: Dunn, Matthew; Hendrickson, Cara; Spillane, Ann M.
Cc: Gignac, James; Stachon, Eva; Holmes, Kirsten
Subject: RE: Exxon climate change investigation;

Good Morning,

I apologize for the back and forth, but Wendy Abrams is requesting to meet at 3:30pm instead of 3pm because of Matt Pawa's flight schedule. He would also like to show a PowerPoint presentation when he is here so I will look into whether the large conference room has that capability.

I assume 3:30pm is not an issue, but I wanted to confirm with all of you first. Please let me know. Thank you.

Khadija

From: Dunn, Matthew
Sent: Tuesday, March 15, 2016 11:30 AM
To: Ali, Khadija; Hendrickson, Cara; Spillane, Ann M.
Cc: Gignac, James; Stachon, Eva; Holmes, Kirsten
Subject: Exxon climate change investigation;

James and I have discussed. We will get a draft together with Cara and provide.

Do we have attendees list for Ms. Abrams? [redacted]

Thanks!

From: Ali, Khadija
Sent: Tuesday, March 15, 2016 11:00 AM
To: Dunn, Matthew; Hendrickson, Cara; Spillane, Ann M.
Cc: Gignac, James; Stachon, Eva; Holmes, Kirsten
Subject: RE: Exxon climate change investigation;

Thanks, everyone. This meeting is confirmed for 3pm on March 21st here at JRTC. [redacted]

Eva or Kirsten, can you please reserve the large conference room?

Thanks,
Khadija

From: Dunn, Matthew
Sent: Tuesday, March 15, 2016 10:52 AM
To: Hendrickson, Cara; Ali, Khadija
Cc: Gignac, James; Stachon, Eva
Subject: Re: Exxon climate change investigation;

Good for me.

From: Hendrickson, Cara
Sent: Tuesday, March 15, 2016 10:31 AM
To: Ali, Khadija
Cc: Dunn, Matthew; Gignac, James; Stachon, Eva
Subject: Re: Exxon climate change investigation;

That works for me.

On Mar 15, 2016, at 9:11 AM, Ali, Khadija <kali@atg.state.il.us> wrote:

> Good Morning All,
>
> Wendy Abrams has asked if 3pm on Wednesday, March 21 is possible instead of 2pm. Please let me know so I can get back to her.
>
> Thanks,
> Khadija
>
> ---
>
> **From:** Ali, Khadija
> **Sent:** Monday, March 14, 2016 12:06 PM
> **To:** Dunn, Matthew
> **Cc:** Spillane, Ann M.; Hendrickson, Cara; Gignac, James; Stachon, Eva
> **Subject:** RE: Exxon climate change investigation;
>
> Hi Matt,

I am waiting to hear back from Wendy Abrams on whether Monday, March 21st at 2pm will work. I will let all of you know as soon as I hear back.

Thanks,
Khadija

From: Dunn, Matthew
Sent: Monday, March 14, 2016 12:00 PM
To: Ali, Khadija
Subject: FW: Exxon climate change investigation;

Hi. Has the below meeting been set?

If it is held in P.M., on those dates, I would try to attend.

Thanks.

Matt

Matthew J. Dunn, Chief
Environmental Enforcement/Asbestos
Litigation Division
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706
tx 217-524-5511
fx 217-524-7740
mdunn@atg.state.il.us

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From: Spillane, Ann M.
Sent: Thursday, March 10, 2016 2:12 PM
To: Ali, Khadija
Cc: Hendrickson, Cara; Gignac, James; Stachon, Eva; Holmes, Kirsten
Subject: Re: background information

An hour, I think. At most.

Sent from my iPhone

On Mar 10, 2016, at 1:53 PM, Ali, Khadija <kali@atg.state.il.us> wrote:

> Hello Everyone,

The AG may stop in briefly for this meeting to discuss ExxonMobil if her schedule permits. Can you please let me know if the following dates work on your end so that I may reach out to Wendy Abrams?

Ann, how much time do you think you may need for this meeting?

Monday, March 22
10:30am or 2pm

Tuesday, March 21
10:30am or 2pm

Thanks,
Khadija

From: wendy abrams [mailto[redacted]
Sent: Friday, February 26, 2016 6:07 PM
To: Ali, Khadija
Subject: background information

Kali
Nice to speak with you this afternoon. As I mentioned, I would like to meet with Attorney General Madigan to discuss ExxonMobil's practices and if the IL AG office would be interested in investigating the matter. Below is a brief description from a New York Times article of the NY AG's investigation; and a letter from Matt Pawa outlining the issues.

Please let me know if there is a time in March or early April that would be convenient for the Attorney General to meet.

Best regards,
Wendy Abrams

NYT, Nov 5, 2015:

> The New York attorney general has begun an investigation of Exxon Mobil to determine whether the company lied to the public about the risks of climate change or to investors about how such risks might hurt the oil business.
>
> According to people with knowledge of the investigation, Attorney General Eric T. Schneiderman issued a subpoena Wednesday evening to Exxon Mobil, demanding extensive financial records, emails and other documents.
>
> The investigation focuses on whether statements the company made to investors about climate risks as recently as this year were consistent with the company's own long-running scientific research.

> The people said the inquiry would include a period of at least a decade during which Exxon Mobil funded outside groups that sought to undermine climate science, even as its in-house scientists were outlining the potential consequences — and uncertainties — to company executives.

Re: Violation of Illinois Consumer Fraud and Deceptive Business Practices Act.by ExxonMobil Corp.

Dear General Madigan:

I write to bring to your attention the issue of whether ExxonMobil may have violated the Illinois Consumer Fraud and Deceptive Business Practices Act and to request a meeting with you. By way of background, I have worked closely with attorney general for many years. I represent New Hampshire, Vermont and Rhode Island in MTBE groundwater contamination cases and have worked as co-counsel with attorneys general on a series of environmental cases, including cases dealing with climate change.

Two news organizations recently disclosed internal Exxon documents demonstrating that Exxon was aware of the key pieces of information about global warming in the late 1970s and early 80s. For example, internal Exxon documents disclosed by *Inside Climate News* show that Exxon knew that:

- the use of its core product – fossil fuel – was causing the level of carbon dioxide in the atmosphere to rise;
- "a clear scientific consensus has emerged regarding the expected climatic effects of increased atmospheric CO2," namely, that doubling atmospheric CO2 would cause a planetary warming of approximately 3 degrees Celsius;
- there was "unanimous agreement in the scientific community that a temperature increase of this magnitude would bring about significant changes in the earth's climate"; and
- "the present trend of fossil fuel consumption will cause dramatic environmental effects before the year 2050," and it was "distinctly possible" the effects "will indeed be catastrophic (at least for a substantial fraction of the earth's population)."

In light of this threat to the planet, Exxon's in-house science team informed corporate management in 1977 that "the use of fossil fuels" "should not be encouraged" and warned that "man can afford 5-10 yr. time window to establish what must be done."

In addition. the *Los Angeles Times* revealed that Exxon, among other things, has relied on global climate models since the 1980s in order to project

future warming so that it could protect its own business assets, such as pipelines and offshore platforms located in the Arctic. These are the same models that Exxon spent the next decades publicly seeking to discredit as unreliable.

Exxon's long campaign of deception and denial on global warming has been repeatedly documented through glimpses of information that have occasionally become public.[11] Exxon has made false, misleading and deceptive statements directly and through extensive funding of third parties, such as organizations that have held themselves out as think tanks but in fact have turned out to be secretly paid industry mouthpieces. Exxon's long pattern of false and misleading statements on global warming has, on its face, been aimed in substantial part at trying to convince consumers that its products, i.e., fossil fuels, were and are safe for the climate; this pattern continues to this day. Now, however, we have a glimpse into Exxon's own scientific analysis showing that it has known the key facts about global warming for the entire time it has engaged in this campaign of deception. I enclose a recent article by author and leader of 350.org Bill McKibben on this matter. http://www.tomdispatch.com/blog/176105/tomgram%3A_bill_mckibben,_it's_not_just_what_exxon_did,_it's_what_it's_doing/

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 fifteen tears. Ms. Eubanks, who formerly led the U.S. Department of Justice litigation against tobacco companies under the federal RICO statute; she 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, 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.

Thank you for your attention and consideration.

Angulo, Guadalupe

From: Gignac, James
Sent: Thursday, March 17, 2016 9:39 PM
To: Shaun Goho
Subject: Re: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Thanks, I am out at a conference but will look to get back to you early next week. -James

On Mar 16, 2016, at 4:46 PM, Shaun Goho <sgoho@law.harvard.edu> wrote:

> James:
>
> I am writing to let you know that we have change the date for the climate science and legal theory meeting that we are hosting here at HLS in conjunction with the Union of Concerned Scientists. The event will now take place on the afternoon of Monday, April 25th. We will be sending out a detailed agenda in the coming week. Please respond to let me know:
>
> 1. Will someone from your office be attending the event? How many people plan to come, and who are they? (We may not be able to accommodate multiple attendees because of space constraints, but we will let you know if we think your group is too large.)
>
> 2. Do you need travel reimbursement? If so, for which expenses do you anticipate needing reimbursement? (Air, train, hotel, etc.)
>
> 3. Do you want to receive a written agenda or would you prefer to discuss it over the phone?
>
> Thanks,
> Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

Angulo, Guadalupe

From: Gignac, James
Sent: Saturday, March 26, 2016 11:59 AM
To: Dunn, Matthew
Subject: Fwd: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Matt,

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 office representatives from different states to attend. Assistance for travel costs may be available.

What are your thoughts on our office participating? Would you or Gerry possibly be interested in attending? The date is not a great one for me to travel, but I may be able to make it work. Another option may be for us to suggest a follow-up briefing from some of the participants in lieu of attending in person.

Thanks,
James

Begin forwarded message:

> **From:** Shaun Goho <sgoho@law.harvard.edu>
> **Date:** March 16, 2016 at 4:44:19 PM EDT
> **To:** "Gignac, James" <JGignac@atg.state.il.us>
> **Subject: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016**
>
> James:
>
> I am writing to let you know that we have change the date for the climate science and legal theory meeting that we are hosting here at HLS in conjunction with the Union of Concerned Scientists. The event will now take place on the afternoon of Monday, April 25th. We will be sending out a detailed agenda in the coming week. Please respond to let me know:
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> Shaun

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Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

Angulo, Guadalupe

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Sent: Monday, March 28, 2016 12:14 PM
To: Gignac, James; Dunn, Matthew
Cc: Nancy Cole
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
Attachments: HLS-UCS April 25 agenda draft.docx

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Confidential Review Draft – 20 March 2016

Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal and Historical Perspectives

25 April 2016
Harvard Law School, Cambridge MA

Co-organized by Harvard Law School and the Union of Concerned Scientists

Meeting Objectives:

- Create a 'safe space' for a frank exchange of approaches, ideas, strategies, and questions pertaining to potential state causes of action against major carbon producers and the cultural context in which such cases might be brought.
- Share legal and scientific information having an important bearing on potential investigations and lawsuits.
- Surface and consider key concerns, obstacles, or information gaps that may need to be addressed for investigations and lawsuits to proceed.
- Establish trusted and productive networks to support ongoing development of these ideas.

Meeting Agenda:

12-12:30: meet, mingle, lunch

12:30-1:00: Welcome and introductions (moderator: Goho)
- Professor Richard Lazarus, Harvard Law School
- Ken Kimmell, President, Union of Concerned Scientists

1:00-2:00 Introductory/overview panel (moderator: Frumhoff)
- The question of climate responsibility Naomi Oreskes, Harvard
- Lessons from tobacco litigation: Sharon Eubanks, Bordas & Bordas
- The case for state-based investigations and litigation: tbd
- Key legal issues: Shaun Goho, Harvard Law School

Open Discussion (15 min)

2:00-3:00 Attributing Impacts to Climate Change and Carbon Producers

- Extreme weather and climate change: Phil Mote, Oregon State
- Sea level rise and coastal flooding: Ben Strauss, Climate Central
- Tracing impacts to carbon producers Peter Frumhoff, UCS
- Climate harms from a legal perspective Carroll Muffett, CIEL

Open Discussion (20 min)

3:00-3:20 Break

3:20-4:20 State Causes of Action

- Public nuisance claims: Harvard, tbd.
- Consumer protection claims: UCLA
- Key obstacles & opportunities to address them Ken Kimmell, UCS

Panel Discussion (30 min) (additional participants tbd)

4:20–5:15 Open Discussion (include messaging/communication/public dimension; process for ongoing expert input and dialogue;)

5:15: Wrap up and next steps

5:30: Adjourn

Continued information dialogue over dinner in Harvard Square, location tbd

Angulo, Guadalupe

From: Matt Pawa <mp@pawalaw.com>
Sent: Thursday, March 31, 2016 10:21 AM
To: Matt Pawa
Subject: NY Times: West Antarctic Ice Sheet Could Begin Disintegration Within Decades, Inundating Coastal Cities

AG Folks - I have started an email list to pass along information that may be of interest to AGs on the issue of our time: climate change. I will use this list rather sparingly given that we all receive way too many emails. If you prefer not to receive these emails let me know and my office will remove you.

You may have seen this article in the NY Times today. http://www.nytimes.com/2016/03/31/science/global-warming-antarctica-ice-sheet-sea-level-rise.html?_r=0
Without exaggeration, it is the single most frightening thing I have read on climate change in the 20 years I have been studying and tracking the issue. In essence, new research shows there is a much more serious risk of the West Antarctic Ice Sheet beginning to disintegrate this century than scientists previously had thought. Sea levels could begin inundating coastal cities within decades as opposed to the centuries or millennia previously considered to be the applicable timeframe. I commend this article to you as essential reading.

Best regards,
Matt

Matt Pawa
Pawa Law Group, P.C.
1280 Centre Street, Suite 230
Newton Centre, MA 02459
(617) 641-9550 x202
(617) 641-9551 facsimile
http://pawalaw.com/

This private communication may be confidential or privileged. If you are not the intended recipient, any disclosure, distribution, or use of information herein or attached is prohibited.

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To: Gignac, James
Cc: Hendrickson, Cara
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
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James: that works for me.

Matthew J. Dunn, Chief
Environmental Enforcement/Asbestos
Litigation Division
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706
tx 217-524-5511
fx 217-524-7740
mdunn@atg.state.il.us

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Angulo, Guadalupe

From: Gignac, James
Sent: Monday, April 04, 2016 1:33 PM
To: 'Nancy Cole'
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

I was able to clear my schedule so I can make it. No one else from our office is planning to attend. I would like to make the travel arrangements through your system, since that will make travel approval easier on my end.

Thanks,
James

James P. Gignac
Environmental and Energy Counsel
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(312) 814-0660

From: Nancy Cole [mailto:NCole@ucsusa.org]
Sent: Monday, April 04, 2016 1:21 PM
To: Gignac, James
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hello, James. Nice to hear from you.

First, I need to clarify some confusion on my end. I understood from Shaun at Harvard Law School that the new date didn't work for you personally but that you were arranging for someone else in your office to attend. Do I understand that correctly? Are you coming? And if so, is someone else from your office planning to attend as well? As you may recall, the size of the room is something of an issue, so we are zeroing in on actual participation numbers.

That said, on to your actual questions!

For the travel arrangements, we are fine with either approach. We can indeed secure the flight through our travel agent and cover the expense that way. If, however, you (or your colleague) want the flexibility of selecting your own airline or other such consideration, then we can easily work via a reimbursement system. The latter approach, of course, takes a bit longer to get the money back into your hands, but certainly less than a month.

I think we all agree that the informal post-convening dinner is likely to be very fruitful for discussion, strategy, and relationship building. We can support a one night hotel stay, if that makes it possible for the IL rep(s) to join the dinner conversation. We have a handy-dandy list of nearby (to Harvard Square) accommodations that we are happy to send, if useful.

Please let me know how you'd like to proceed. If you'd like us to handle your travel arrangements, I will put you in touch with the person here who is handling those logistics.

Looking forward to seeing you (or someone from IL) soon. Nancy

Nancy S. Cole

Director of Campaigns
Climate and Energy Program
Union of Concerned Scientists
2 Brattle Square
Cambridge, MA 02138-3780
617.301.8034 (phone)
617.864.9405 (fax)
ncole@ucsusa.org

The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

www.ucsusa.org | Take action with our citizen network or expert network. | Support our work. |
Join the conversation on our blog or follow us on Facebook and Twitter.

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Sent: Monday, April 04, 2016 1:54 PM
To: Nancy Cole
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Nancy, I am getting my travel approval paperwork done here. For travel arrangements, should I make my own through our office and submit them for reimbursement or does UCS have a preferred system/agent for direct bill? Also, I would be interested in staying for the additional dinner portion if there is budget for 1 night hotel stay.

Thanks,
James

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Angulo, Guadalupe

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Sent: Monday, April 04, 2016 1:36 PM
To: Maryanski, Arlene
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
Attachments: HLS-UCS April 25 agenda draft.docx

Hi Arlene, could you go ahead and prepare this travel request? I will be going to Cambridge, MA on April 25 and returning on April 26. The purpose is a legal conference on climate change issues organized by Harvard Law School and the Union of Concerned Scientists. All travel costs will be covered by the Union of Concerned Scientists.

Thank you,
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To: 'Shaun Goho'
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Shaun, wanted to let you know I cleared my schedule and have my travel booked with Nancy for the April 25 meeting. See you there.

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2. Do you need travel reimbursement? If so, for which expenses do you anticipate needing reimbursement? (Air, train, hotel, etc.)

3. Do you want to receive a written agenda or would you prefer to discuss it over the phone?

Thanks,
Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

Confidential Review Draft – 20 March 2016

Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal and Historical Perspectives

25 April 2016
Harvard Law School, Cambridge MA

Co-organized by Harvard Law School and the Union of Concerned Scientists

Meeting Objectives:

- Create a 'safe space' for a frank exchange of approaches, ideas, strategies, and questions pertaining to potential state causes of action against major carbon producers and the cultural context in which such cases might be brought.
- Share legal and scientific information having an important bearing on potential investigations and lawsuits.
- Surface and consider key concerns, obstacles, or information gaps that may need to be addressed for investigations and lawsuits to proceed.
- Establish trusted and productive networks to support ongoing development of these ideas.

Meeting Agenda:

12-12:30: meet, mingle, lunch

12:30-1:00: Welcome and introductions (moderator: Goho)
- Professor Richard Lazarus, Harvard Law School
- Ken Kimmell, President, Union of Concerned Scientists

1:00-2:00 Introductory/overview panel (moderator: Frumhoff)
- The question of climate responsibility Naomi Oreskes, Harvard
- Lessons from tobacco litigation: Sharon Eubanks, Bordas & Bordas
- The case for state-based investigations and litigation: tbd
- Key legal issues: Shaun Goho, Harvard Law School

Open Discussion (15 min)

2:00-3:00 Attributing Impacts to Climate Change and Carbon Producers

- Extreme weather and climate change: Phil Mote, Oregon State
- Sea level rise and coastal flooding: Ben Strauss, Climate Central
- Tracing impacts to carbon producers Peter Frumhoff, UCS
- Climate harms from a legal perspective Carroll Muffett, CIEL

Open Discussion (20 min)

3:00-3:20 Break

3:20-4:20 State Causes of Action

- Public nuisance claims: Harvard, tbd.
- Consumer protection claims: UCLA
- Key obstacles & opportunities to address them Ken Kimmell, UCS

Panel Discussion (30 min) (additional participants tbd)

4:20–5:15 Open Discussion (include messaging/communication/public dimension; process for ongoing expert input and dialogue;)

5:15: Wrap up and next steps

5:30: Adjourn

Continued information dialogue over dinner in Harvard Square, location tbd

Angulo, Guadalupe

From: Gignac, James
Sent: Tuesday, April 05, 2016 3:51 PM
To: 'Erin Burrows'
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Everything looks good, thanks for your help.

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Erin Burrows [mailto:EBurrows@ucsusa.org]
Sent: Tuesday, April 05, 2016 11:02 AM
To: Gignac, James
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Perfect! I'll get everything arranged, and you will see the confirmed info come from Concur Travel. Thanks for your quick reply! Erin

From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Tuesday, April 05, 2016 11:56 AM
To: Erin Burrows
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Erin,

My preferred arrival in Boston would be around 10am on 4/25, so would probably need a 6am or 7am departure from Chicago. I am flexible for return on 4/26, anytime that arrives back in Chicago before 5pm is fine. Something like this would work well:

Apr 25, 2016

From O'Hare Intl. (ORD)

To Logan Intl. (BOS)

American Airlines

7:00am
ORD
to
10:12am
BOS
2h 12m, Nonstop

Show American Airlines 7:00amflight on Mon, Apr 25and baggage fee details

Apr 26, 2016

From Logan Intl. (BOS)
To O'Hare Intl. (ORD)
American Airlines
12:20pm
BOS
to
2:11pm
ORD
2h 51m, Nonstop

Additional info –

James Phillip Gignac
DOB[redacted]
American Frequent Flyer - [redacted]
Phone[redacted]
Email[redacted]

Thanks!
James

From: Erin Burrows [mailto:EBurrows@ucsusa.org]
Sent: Tuesday, April 05, 2016 9:58 AM
To: Nancy Cole; Gignac, James
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Good morning, James:

Per Nancy's email below, I am checking in to determine your preferred travel dates and times, and I'll be happy to make arrangements for flight and hotel through our system.

Also, in addition to time frames, I will need the following information to book your flights:

Name (as it appears on your ID)
Date of Birth
Known Traveler # (if you have one)
Frequent Flyer Program #(if you have one)
Preferred Phone #

Preferred email (if something other than jgignac@atg.state.il.us)

Please let me know if you have any questions or concerns, or if I can be of further assistance.

Thank you and kind regards – Erin

Erin Burrows, Executive Department Coordinator
Union of Concerned Scientists | Two Brattle Square, Cambridge, MA 02138-3780
eburrows@ucsusa.org | www.ucsusa.org | 617-301-8036

The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future. www.ucsusa.org | Take action with our citizen network or expert network. | Support our work. | Join the conversation on our blog or follow us on Facebook and Twitter.

From: Nancy Cole
Sent: Monday, April 04, 2016 4:31 PM
To: Gignac, James
Cc: Erin Burrows
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

James, I just learned that Erin has left early due to the snow storm (yes, I said snow storm!). She will be in touch with you tomorrow to nail down your travel arrangements. Nancy

From: Nancy Cole
Sent: Monday, April 04, 2016 3:47 PM
To: 'Gignac, James'
Cc: Erin Burrows
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Well, good news that you will be coming, James!

I am copying Erin Burrows on this email. She will work with you on preferred travel dates and times so that the reservation can be made through our system.

Look forward to meeting you soon! Nancy

From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Monday, April 04, 2016 2:33 PM
To: Nancy Cole
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

I was able to clear my schedule so I can make it. No one else from our office is planning to attend. I would like to make the travel arrangements through your system, since that will make travel approval easier on my end.

Thanks,
James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Nancy Cole [mailto:NCole@ucsusa.org]
Sent: Monday, April 04, 2016 1:21 PM
To: Gignac, James
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hello, James. Nice to hear from you.

First, I need to clarify some confusion on my end. I understood from Shaun at Harvard Law School that the new date didn't work for you personally but that you were arranging for someone else in your office to attend. Do I understand that correctly? Are you coming? And if so, is someone else from your office planning to attend as well? As you may recall, the size of the room is something of an issue, so we are zeroing in on actual participation numbers.

That said, on to your actual questions!

For the travel arrangements, we are fine with either approach. We can indeed secure the flight through our travel agent and cover the expense that way. If, however, you (or your colleague) want the flexibility of selecting your own airline or other such consideration, then we can easily work via a reimbursement system. The latter approach, of course, takes a bit longer to get the money back into your hands, but certainly less than a month.

I think we all agree that the informal post-convening dinner is likely to be very fruitful for discussion, strategy, and relationship building. We can support a one night hotel stay, if that makes it possible for the IL rep(s) to join the dinner conversation. We have a handy-dandy list of nearby (to Harvard Square) accommodations that we are happy to send, if useful.

Please let me know how you'd like to proceed. If you'd like us to handle your travel arrangements, I will put you in touch with the person here who is handling those logistics.

Looking forward to seeing you (or someone from IL) soon. Nancy

Nancy S. Cole
Director of Campaigns
Climate and Energy Program
Union of Concerned Scientists
2 Brattle Square
Cambridge, MA 02138-3780
617.301.8034 (phone)
617.864.9405 (fax)
ncole@ucsusa.org

The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

www.ucsusa.org | Take action with our citizen network or expert network. | Support our work. |
Join the conversation on our blog or follow us on Facebook and Twitter.

From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Monday, April 04, 2016 1:54 PM
To: Nancy Cole
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Nancy, I am getting my travel approval paperwork done here. For travel arrangements, should I make my own through our office and submit them for reimbursement or does UCS have a preferred system/agent for direct bill? Also, I would be interested in staying for the additional dinner portion if there is budget for 1 night hotel stay.

Thanks,
James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, March 28, 2016 12:14 PM
To: Gignac, James; Dunn, Matthew
Cc: Nancy Cole
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

James and Matt:

Please find attached a draft agenda. It is still subject to change, but will give you an idea of the general format for the afternoon. Please let me know if you have any other questions.

Travel assistance would come through UCS; I am copying Nancy Cole, the Campaign Director of their Climate & Energy Program.

Best,
Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
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(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Monday, March 28, 2016 12:39 PM
To: Shaun Goho
Cc: Dunn, Matthew
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Shaun,

Sorry for the delay in responding. I am including Matt Dunn, Chief of our Environmental Enforcement Division. We think that a representative from our office would be interested in participating in this meeting. Could you send any additional agenda or logistical information? We would be interested in travel assistance, likely airfare from Chicago.

Thanks,
James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Wednesday, March 16, 2016 3:44 PM
To: Gignac, James
Subject: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

James:

I am writing to let you know that we have change the date for the climate science and legal theory meeting that we are hosting here at HLS in conjunction with the Union of Concerned Scientists. The event will now take place on the afternoon of Monday, April 25th. We will be sending out a detailed agenda in the coming week. Please respond to let me know:

1. Will someone from your office be attending the event? How many people plan to come, and who are they? (We may not be able to accommodate multiple attendees because of space constraints, but we will let you know if we think your group is too large.)

2. Do you need travel reimbursement? If so, for which expenses do you anticipate needing reimbursement? (Air, train, hotel, etc.)

3. Do you want to receive a written agenda or would you prefer to discuss it over the phone?

Thanks,
Shaun

Shaun A. Goho
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Angulo, Guadalupe

From: Gignac, James
Sent: Wednesday, April 06, 2016 4:56 PM
To: Maryanski, Arlene
Cc: Dunn, Matthew
Subject: Re: 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.

On Apr 6, 2016, at 2:40 PM, Maryanski, Arlene <AMaryanski@atg.state.il.us> wrote:

> 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.
>
> Thanks,
> Arlene
>
> **From:** Gignac, James
> **Sent:** Tuesday, April 05, 2016 3:50 PM
> **To:** Maryanski, Arlene
> **Subject:** FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
>
> **From:** Dunn, Matthew
> **Sent:** Tuesday, April 05, 2016 10:58 AM
> **To:** Gignac, James
> **Cc:** Hendrickson, Cara
> **Subject:** FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
>
> James: that works for me.
>
> Matthew J. Dunn, Chief
> Environmental Enforcement/Asbestos
> Litigation Division
> Illinois Attorney General's Office
> 500 South Second Street
> Springfield, IL 62706
> tx 217-524-5511
> fx 217-524-7740
> mdunn@atg.state.il.us
>
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From: Gignac, James
Sent: Monday, April 04, 2016 8:38 AM
To: Dunn, Matthew
Cc: Hendrickson, Cara
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Matt, I believe I can make this travel work, if you approve, and then Arlene can get me started on the paperwork. [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.)

James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, March 28, 2016 12:14 PM
To: Gignac, James; Dunn, Matthew
Cc: Nancy Cole
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

James and Matt:

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Travel assistance would come through UCS; I am copying Nancy Cole, the Campaign Director of their Climate & Energy Program.

Best,
Shaun

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From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Monday, March 28, 2016 12:39 PM

To: Shaun Goho
Cc: Dunn, Matthew
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Shaun,

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Thanks,
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James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Wednesday, March 16, 2016 3:44 PM
To: Gignac, James
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3. Do you want to receive a written agenda or would you prefer to discuss it over the phone?

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Shaun

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Angulo, Guadalupe

From: Shaun Goho <sgoho@law.harvard.edu>
Sent: Thursday, April 07, 2016 1:02 PM
To: Shaun Goho
Subject: Logistics for April 25th Convening at HLS
Attachments: Harvard Map reduced.pdf

Thank you for your participation in the upcoming carbon producer accountability convening co-sponsored by Harvard Law School and the Union of Concerned Scientists. This email confirms the logistical details of the upcoming meeting.

The event will occur on Monday, April 25th at Harvard Law School in Cambridge, MA. We will be gathering in room 3016 on the third floor of the WCC building, 1585 Massachusetts Avenue (see attached map). The law school is just north of Harvard Square and is a 10 minute walk from the subway.

The meeting will run from noon to 5:30 pm. Lunch will be available at noon; the formal program begins at 12:30 pm. Snacks and beverages will be available throughout the afternoon. For those who are able to stay longer, we will cap off the discussion with an informal dinner at the Harvard Faculty Club at 20 Quincy Street at 7 pm. **It's important that we get an accurate head count for the dinner, so please RSVP to Nancy Cole at UCS as soon as possible (ncole@ucsusa.org).**

If you want to see a preliminary agenda and have not yet received it, please let one of us know and we will send it to you.

If you need assistance with travel arrangements or lodging, please also let Nancy know.

If you are contributing to one of the afternoon's panels, conference calls are being set up to prepare in advance for the session. If you haven't already received a date for such a call, you will get one soon.

Please give one of us a call if you have any questions or would like more detailed information. Thank you for joining us at this exciting moment. Looking forward to seeing you all soon!

Regards,

Shaun Goho, HLS
(617-496-5692)

Peter Frumhoff, UCS
(617-301-8035)

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

Angulo, Guadalupe

From: Matt Pawa <mp@pawalaw.com>
Sent: Wednesday, April 13, 2016 12:18 PM
To: Matt Pawa
Subject: Climate News

AG Folks - Inside Climate News has today published a new report on the oil industry's early knowledge of the global warming problem. This report is based upon research done by the Center for International Environmental Law (FYI I am on CIEL's Board of Trustees). See links below.

http://insideclimatenews.org/news/13042016/climate-change-global-warming-oil-industry-radar-1960s-exxon-api-co2-fossil-fuels

https://www.smokeandfumes.org/#/

Best regards,

Matt

This email list is for Attorneys General and staff to receive occasional information on global warming and in particular on industry's knowledge, statements and actions on the issue over the years. If you want to be removed from this email list, just let me know.

Matt Pawa
Pawa Law Group, P.C.
1280 Centre Street, Suite 230
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(617) 641-9550 x202
(617) 641-9551 facsimile
http://pawalaw.com/

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Angulo, Guadalupe

From: Shaun Goho <sgoho@law.harvard.edu>
Sent: Friday, April 15, 2016 1:50 PM
To: Shaun Goho
Subject: Logistics for April 25th HLS/UCS Event--RESPONSE NEEDED
Attachments: Harvard Map reduced.pdf

All:

We are looking forward to seeing you in just over a week at the HLS/UCS event on April 25th. Here are some updates on the logistics of the event and two questions for which we need your responses.

The event will occur on Monday, April 25th at Harvard Law School in Cambridge, MA. The room for the event has been changed: **it is now room 3018 on the third floor of the WCC building**, 1585 Massachusetts Avenue (see attached map). The law school is just north of Harvard Square and is a 10 minute walk from the subway.

The meeting will run from noon to 5:30 pm. Lunch will be available at noon; the formal program begins at 12:30 pm. Snacks and beverages will be available throughout the afternoon.

For those who are able to stay longer, we will cap off the discussion with an informal dinner at the Harvard Faculty Club at 20 Quincy Street at 7 pm. If you have not already told us, **please let Nancy Cole at UCS (ncole@ucsusa.org) know whether you will be attending the dinner no later than Monday, April 18th, at 3:00 pm**.

If you will be driving to the event and want a parking pass for the garage in the basement of the WCC building, **please send your license plate number and make and model of your car to Jackie Calahong (jcalahong@law.harvard.edu) no later than Thursday, April 21st, at 5:00 pm**.

Please give one of us a call if you have any questions. Looking forward to seeing you all soon!

Regards,

Shaun Goho, HLS
(617-496-5692)

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Shaun A. Goho
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Angulo, Guadalupe

From: Gignac, James
Sent: Friday, April 15, 2016 2:23 PM
To: 'NCole@ucsusa.org'
Subject: FW: Logistics for April 25th HLS/UCS Event--RESPONSE NEEDED

Nancy, just wanted to confirm I am all set with my travel and will be attending the dinner.

Thanks
James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Friday, April 15, 2016 1:50 PM
To: Shaun Goho
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Regards,

Shaun Goho, HLS
(617-496-5692)

Peter Frumhoff, UCS
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(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

Angulo, Guadalupe

From: Ari Peskoe <apeskoe@law.harvard.edu>
Sent: Monday, April 18, 2016 11:03 AM
To: Kate Konschnik
Subject: Statepowerproject.org: FERC v. EPSA Online Symposium

The Harvard Environmental Law Review recently published a series of articles about FERC v. EPSA, the Supreme Court decision that upheld FERC Order No. 745 about compensation for demand response in wholesale energy markets. The authors include leading energy law scholars and current and former regulators. The articles are available at: http://harvardelr.com/2016/04/14/ferc-v-epsa-and-the-path-to-a-cleaner-electricity-sector/

FERC v. EPSA is about the scope of FERC's authority under the Federal Power Act and whether its demand response rules amounted to regulation of state-jurisdictional retail sales. Because it is not a case about preemption of a state law, we have not covered the case on statepowerproject.org. If you are interested in reading the briefs filed at the Supreme Court, and the Court's decision, please see http://www.scotusblog.com/case-files/cases/federal-energy-regulatory-commission-v-electric-power-supply-association/

Although not a preemption case, EPSA v. FERC is important for its implications for the roles of state and federal regulators. As the authors argue, the decision "highlights the importance of effective and nimble regulation at both the state and federal levels" (Hoskins and Roberti), "is a victory for state policy flexibility," (Rossi and Wellinghoff), and "heralds a new era of allocating jurisdictional responsibility over the electric grid" (Eisen). Other authors discuss how regulators should evaluate demand and supply side resources (Grab) and manage competition (Wara), and the Court's deferential approach to energy decisionmaking in general and to energy ratemaking in particular.

Ari Peskoe | Senior Fellow in Electricity Law
Harvard Law School | Environmental Policy Initiative
6 Everett Street, Suite 4119 | Cambridge, MA 02138
617.495.4425 | apeskoe@law.harvard.edu
Twitter: @AriPeskoe

Angulo, Guadalupe

From: Ari Peskoe <apeskoe@law.harvard.edu>
Sent: Tuesday, April 19, 2016 10:25 AM
To: Kate Konschnik
Subject: Statepowerproject.org Update: Supreme Court Holds Maryland Public Service Commission Order Is Preempted

Eight Supreme Court Justices held that state-mandated contracts that pegged prices to PJM wholesale market prices are preempted by the Federal Power Act (FPA). Justice Ginsburg's opinion, joined by six Justices, concludes that "Maryland's program sets an interstate wholesale rate, contravening the FPA's division of authority between state and federal regulators."

The Court rejected Maryland's argument that the mandated contracts between state-regulated utilities and a power plant developer were permissible bilateral sales, finding that the contracts do not transfer ownership of capacity but dictate a transfer of money based on the developer's sales to PJM. Prices for those sales to PJM are made exclusively through the FERC-approved auction. By adjusting that rate, "Maryland's program invades FERC's regulatory turf."

The opinion specifies that the Court's "holding is limited" and "do[es] not address the permissibility of various other measures States might employ to encourage development of new or clean generation. . . . So long as a State does not condition payment of funds on capacity clearing the auction, the State's program would not suffer from the fatal defect that renders Maryland's program unacceptable." The opinion does not address competing generators' arguments that Maryland's order is preempted because it conflicts with PJM's price signals and requires contracts that are longer in duration than PJM capacity awards.

Justice Sotomayor, who joined the opinion, wrote separately to "clarify [her] understanding of the pre-emption principles that should guide this Court's analysis of the Federal Power Act and that underpin its conclusion in these cases." Importantly, Justice Sotomayor noted that the FPA is a "collaborative federalism statute," and courts must therefore take care not to "confuse the congressionally designed interplay between state and federal regulation" for "impermissible tension" that must be preempted. In this case, rather than relying on generic preemption doctrines, such as field or conflict preemption, the Court "use[s] the purpose of the FPA as the 'ultimate touchstone' of its preemption inquiry." Maryland "contravened the goals of the FPA" by guaranteeing a rate different than FERC's just and reasonable rate, and therefore its actions "must be preempted."

Justice Thomas concurred in the judgment but wrote separately because he concluded that Justice Ginsburg's opinion relied in part on principles of implied preemption. He joined the opinion "only to the extent that it rests on the text and structure of the Federal Power Act."

The Court's opinion is available at: https://statepowerproject.files.wordpress.com/2014/03/hughes-v-talen-supreme-court-opinion.pdf
All of the briefs and lower court opinions are available at: https://statepowerproject.org/states/maryland-and-new-jersey/

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Twitter: @AriPeskoe

Employee Secondment Agreement between the Illinois Attorney General's Office and the State Energy & Environmental Impact Center at NYU School of Law

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, The 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, As 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"); and

WHEREAS, The AGO has been selected by the State Impact Center to participate in Legal Fellowship Program; and

WHEREAS, 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.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and AGO agree to the following:

A. Terms of Service for the Legal Fellowship Program at the AGO:

1. The State Impact Center will provide the services of one attorney to the AGO to act as a Legal Fellow.
2. The specific start and end dates for services will be determined with the mutual agreement between the Legal Fellow, the AGO, and the State Impact Center, provided, however, that the 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. (the "Fellowship Period").
3. During the Fellowship Period, the Legal Fellow will be under the direction and control of, and owe a duty of loyalty to, the AGO, and will be subject to the AGO's policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellow will receive instruction and materials regarding these requirements from the AGO at the commencement of his or her fellowship.
4. During the Fellowship Period, salary and benefits will be provided to the Legal Fellow by the NYU School of Law.

5. When acting as a Assistant Attorney General, AGO considers the fellow to be an "employee" of the state for purposes of the defense and indemnification provisions found in the Illinois State Employee Indemnification Act, 5 ILCS 350.

6. After having attempted to resolve any performance or other issues involving the Legal Fellow and providing notice to the State Impact Center, the AGO may terminate the services of the Legal Fellow in the event the Legal Fellow is not performing at an adequate level. The State Impact Center may terminate this Agreement for any reason upon seven (7) days' written notice to the AGO.

B. Nature of the Fellowship Position at the AGO

1. During the Fellowship Period, the AGO will provide the Legal Fellow the title of Assistant Attorney General, if the Legal Fellow is licensed to practice law by the Supreme Court of Illinois and if such designation is consistent with AGO conflict of interest policies.

2. The AGO will assign the Legal Fellow substantive work primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance.

3. The AGO will aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions and court appearances.

4. The AGO will afford the Legal Fellow the opportunity to partake in the extensive legal education, including CLEs, offered by the AGO to its attorneys.

C. Prohibited Activity

1. The AGO may not request or permit the Legal Fellow to engage in any activities that would constitute any of the following:

   a. to carry on propaganda, or otherwise attempt to influence any specific legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;

   b. To engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;

   c. to influence the outcome of any specific public election; or

d. to support the election or defeat of a candidate for public office, finance electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.

2. The AGO may not request or permit the Legal Fellow to participate in any matter that involves New York University or any of its affiliates as a defendant or opposing party; and, to the extent that the AGO participates in a matter that involves New York University or any of its affiliates as a defendant or opposing party, the AGO will create an ethical wall between the Legal Fellow and the AGO with regard to the matter to ensure that the Legal Fellow has access to no information relating to the matter.

3. The AGO has determined that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to the AGO do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce AGO to undertake or refrain from undertaking any action within the purview of AGO. AGO retains sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving New York University or any of its affiliates.

D. Communications and Reporting

1. 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 AGO.

2. Notwithstanding the above, the AGO 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 AGO. 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.

3. The AGO acknowledges that New York University may be required to make filings or disclosures on that reference the AGO, the Legal Fellow, or the Legal Fellowship Program, and that the AGO is not required to review or approve any such filings except where New York University requests such review or approval.
4. In addition to the formal reporting requirements, the AGO 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.
5. Notifications to the AGO relating to this agreement should be directed to Ann Spillane, Chief of Staff, Office of the Illinois Attorney General.
6. Notifications to the State Impact Center relating to this agreement should be directed to:
   Elizabeth Klein
   Deputy Director
   State Energy & Environmental Impact Center
   NYU School of Law
   c/o Resources for the Future
   1616 P Street NW
   Washington, DC 20038
   202-328-5186
   Elizabeth.klein@nyu.edu

E. Miscellaneous

1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties and shall be governed by the laws State of New York. No amendment to this Agreement will be valid and binding unless reduced to writing and signed by the parties.
2. This agreement shall not be assigned by either party without the consent of the other party.
3. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original and all of which together will constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

Dated: January 22, 2018

New York University

[redacted]

By: [redacted]
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
202-328-5052
david.hayes@nyu.edu

Dated: January 16, 2018

Illinois State Office of the Attorney General

[redacted]

By: [redacted]
Ann Spillane
Chief of Staff
Illinois Attorney General's Office
100 West Randolph Street, 12th Fl.
Chicago, IL 606
aspillane@atg.state.il.us

204257524.1

FOOTNOTE 28

Smith, Ruth Ann.

From: Durstein III, Ralph (DOJ) <Ralph.Durstein@state.de.us>
Sent: Monday, May 09, 2016 6:02 PM
To: Kline, Scot; Monica Wagner; 'Allen Brooks'; 'Amy Winn'; 'Christopher Courchesne'; 'Dennis Ragen'; 'Elizabeth Wilkins'; 'Greg Schultz'; 'Heather Leslie'; 'James Gignac'; 'Jerry Reid'; Daniel, John W.; John Oleske; 'Josh Auerbach'; 'Karen Olson'; 'Laura Watson'; Lemuel Srolovic; 'Leslie Seffern'; Mandy DeRoche; 'Matthew Levine'; 'Melissa Hoffer'; Michael J. Myers; 'Michele Van Gelderen'; Persampieri, Nick; 'Patrick Flanagan'; 'Paul Garrahan'; Peter Washburn; 'Renee Gumbs'; Ritenour, Rhodes B.; 'Robert Snook '; 'Sally Magnani'; 'Tania Maestas'; 'Tannis Fox'; 'Tim Nord'; Morgan, Wendy; 'William Grantham'
Cc: Duane, Michael
Subject: Re: Common interest agreement

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. I have been tasked to monitor proceedings, so, to the extent possible, I would appreciate any updates that can be shared with "outsiders". I wish everyone the very best of luck in these efforts. It was a pleasure to meet so many of you, and I look forward to working with you in the future.

Dirk Durstein
Ralph K. Durstein III
Deputy Attorney General
Environmental Unit
Civil Division
Department of Justice
State of Delaware

From: Kline, Scot <scot.kline@vermont.gov>
Sent: Monday, May 9, 2016 11:10 AM
To: Monica Wagner; 'Allen Brooks'; 'Amy Winn'; 'Christopher Courchesne'; 'Dennis Ragen'; 'Elizabeth Wilkins'; 'Greg Schultz'; 'Heather Leslie'; 'James Gignac'; 'Jerry Reid'; 'John Daniel'; John Oleske; 'Josh Auerbach'; 'Karen Olson'; 'Laura Watson'; Lemuel Srolovic; 'Leslie Seffern'; Mandy DeRoche; 'Matthew Levine'; 'Melissa Hoffer'; Michael J. Myers; 'Michele Van Gelderen'; Persampieri, Nick; 'Patrick Flanagan'; 'Paul Garrahan'; Peter Washburn; Durstein III, Ralph (DOJ); 'Renee Gumbs'; 'Rhodes Ritenour'; 'Robert Snook '; 'Sally Magnani'; 'Tania Maestas'; 'Tannis Fox'; 'Tim Nord'; Morgan, Wendy; 'William Grantham'
Cc: Persampieri, Nick; Duane, Michael
Subject: RE: Common interest agreement

Dear All:

Pursuant to paragraph 6 of the Common Interest Agreement, below is a public records request our office received and the clarification of it.

Scot Kline

FOOTNOTE 35

Kline, Scot

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

Wendy, Scot, Lem –

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

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

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

Attorneys General Climate Change Coalition

Questionnaire Responses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VA (Daniel Rhodes) – No response.

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

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

CT (Matthew Levine) – None.

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

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

MA (Melissa Hoffer) – See above.

ME (Jerry Reid) – None.

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

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

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

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

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

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

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

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

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

MA (Melissa Hoffer) – No.

ME (Jerry Reid) – No.

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

RI (Greg Schultz) – No.

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

VA (Daniel Rhodes) – No response.

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

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

CT (Matthew Levine) – None.

DC (Elizabeth Wilkins) – None.

IL (James Gignac) – None.

MA (Melissa Hoffer) – None.

ME (Jerry Reid) – None.

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

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

USVI (Claude Earl Walker) – None.

VA (Daniel Rhodes) – None.

WA (Laura Watson) – None.

FOOTNOTE 42

From: Peter Frumhoff <PFrumhoff@ucsusa.org>
Sent: Friday, July 31, 2015 1:03 PM
To: Edward W Maibach
Cc: Nancy Cole; Alden Meyer; Aaron Huertas
Subject: FW: Senator Whitehouse's call for a RICO investigation of the fossil fuel industry

Hi Ed,

I'm following up on the scientists letter proposal that you shared with Nancy and Alden earlier this week to let you know that (1) it prompted a lot of discussion among our staff, including with UCS president Ken Kimmell and (2) after taking a close look, we've decided to not pursue this opportunity with you.

Here's why: In reaching out to climate scientists to sign on, we feel that we'd need to give them some firmer grounding for believing that a federal investigation under the RICO statute is warranted - enough so that they'd be able to explain their rationale for signing on to reporters and others. 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.

Just so you know, we're also in the process of exploring other state-based approaches to holding fossil fuel companies legally accountable – we think there'll likely be a strong basis for encouraging state (e.g. AG) action forward and, in that context, opportunities for climate scientists to weigh in. It would be interesting – and perhaps very useful – to consider how calls for legal accountability will play out in the court of public opinion in different states/with different subsets of the American public – something perhaps we could work with you all on as this unfolds.

So, I am sorry to decline this particular opportunity. Thanks for proposing this and please keep us in the loop on how this plays out.

Thanks, Ed.

All best,

Peter

Peter C. Frumhoff Ph.D.
Director of Science and Policy
Chief Scientist, Climate Campaign
Union of Concerned Scientists
Cambridge MA

FOOTNOTE 51

From: Peter Frumhoff
To: Phil Mote
Subject: RE: 1 PM EDT/10 AM PDT: Panel Prep: Attributing Impacts to Climate Change and Carbon Producers
Date: Wednesday, April 20, 2016 7:24:56 AM

Just looking at this now.

Looks good.

One thing I've found useful to illustrate are US examples where we are beginning to connect attribution research to specific characterizations of costs.

In the case of the CA drought, it's tricky (as you know better than I) but I've made in previous talk to AG staff the following point:

Climate change has measurably worsened the ongoing California drought. While scientists largely agree that natural weather variations have caused a lack of rain, rising temperatures are making things worse by driving moisture from plants and soil into the air. One study estimates that increased temperatures have driven up water demands by as much as twenty-five percent (Williams et al. 2015. "Contribution of anthropogenic warming to California drought during 2012–2014." Geophysical Research Letters). In 2015 alone, the drought imposed an estimated $2.7 billion in costs to the California economy.

If something to this effect works for you, I am happy to share a couple of slides that succinctly/visually make this point.

Thoughts?

Peter

From: Phil Mote [mailto:pmote@coas.oregonstate.edu]
Sent: Friday, April 15, 2016 1:59 PM
To: Peter Frumhoff; Erin Burrows; Ben Strauss; Jim McCarthyHarvard; cmuffett@ciel.org; Shaun Goho
Subject: Re: 1 PM EDT/10 AM PDT: Panel Prep: Attributing Impacts to Climate Change and Carbon

FOOTNOTE 54

From: Kline, Scot
Sent: Monday, March 28, 2016 9:08 AM
To: 'Lemuel Srolovic'
Cc: Brian Mahanna; Michael Meade; Morgan, Wendy
Subject: RE: Climate Change Conference Common Interest Agreement
Attachments: Climate Change Conf. Common Interest Agreement.vt.edits.docx

Lem:

Thanks for the draft. We have an overall comment and two suggested language changes. First the latter. The suggested changes are redlined in the attached document. One is worth brief explanation: in paragraph 5 (iii), we have a couple of concerns: we don't think we can return documents of which we have taken possession under our state law unless ordered by a court to do so; and our office is okay with refusing to disclose covered documents if we can do so under our law, but we really avoid taking on an affirmative obligation to always litigate those issues.

The overall comment is whether we really need a common interest agreement for the conference, particularly given the short time left before the conference. We are concerned that this will distract people and take away time and focus from the conference itself. Our thought has been that anyone providing anything in writing at the conference should assume that it may get produced because of some state's public record laws. Matt and Peter should stick to what is in the public domain or be prepared to have those materials become public.

Our two cents.

Thanks.

Scot

From: Lemuel Srolovic [mailto:Lemuel.Srolovic@ag.ny.gov]
Sent: Friday, March 25, 2016 5:18 PM
To: Kline, Scot <scot.kline@vermont.gov>; Morgan, Wendy <wendy.morgan@vermont.gov>
Cc: Brian Mahanna <Brian.Mahanna@ag.ny.gov>; Michael Meade <Michael.Meade@ag.ny.gov>
Subject: Climate Change Conference Common Interest Agreement

Scot and Wendy – sorry for the delay but here's our proposed common interest agreement which is pared down from the VW template. We'd like to distribute to attending offices asap and ask them to sign.

Look ok to you?

Thanks,

Lem

Lemuel M. Srolovic
Bureau Chief

Confidential Review Draft – 20 March 2016

Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal and Historical Perspectives

25 April 2016
Harvard Law School, Cambridge MA

Co-organized by Harvard Law School and the Union of Concerned Scientists

Meeting Objectives:

- Create a 'safe space' for a frank exchange of approaches, ideas, strategies, and questions pertaining to potential state causes of action against major carbon producers and the cultural context in which such cases might be brought.
- Share legal and scientific information having an important bearing on potential investigations and lawsuits.
- Surface and consider key concerns, obstacles, or information gaps that may need to be addressed for investigations and lawsuits to proceed.
- Establish trusted and productive networks to support ongoing development of these ideas.

Meeting Agenda:

12-12:30: meet, mingle, lunch

12:30-1:00: Welcome and introductions (moderator: Goho)
- Professor Richard Lazarus, Harvard Law School
- Ken Kimmell, President, Union of Concerned Scientists

1:00-2:00 Introductory/overview panel (moderator: Frumhoff)
- The question of climate responsibility Naomi Oreskes, Harvard
- Lessons from tobacco litigation: Sharon Eubanks, Bordas & Bordas
- The case for state-based investigations and litigation: tbd
- Key legal issues: Shaun Goho, Harvard Law School

Open Discussion (15 min)

2:00-3:00 Attributing Impacts to Climate Change and Carbon Producers
- Extreme weather and climate change: Phil Mote, Oregon State
- Sea level rise and coastal flooding: Ben Strauss, Climate Central
- Tracing impacts to carbon producers Peter Frumhoff, UCS
- Climate harms from a legal perspective Carroll Muffett, CIEL

Open Discussion (20 min)

3:00-3:20 Break

3:20-4:20 State Causes of Action

- Public nuisance claims: Harvard, tbd.
- Consumer protection claims: UCLA
- Key obstacles & opportunities to address them Ken Kimmell, UCS

Panel Discussion (30 min) (additional participants tbd)

4:20–5:15 Open Discussion (include messaging/communication/public dimension; process for ongoing expert input and dialogue;)

5:15: Wrap up and next steps

5:30: Adjourn

Continued information dialogue over dinner in Harvard Square, location tbd

FOOTNOTE 57

On Feb 23, 2016, at 12:01 PM, Levine, Matthew <Matthew.Levine@ct.gov<mailto:Matthew.Levine@ct.gov>> wrote:
I am available to talk on Thursday morning at 9:30. Please let me know if that works for you.

Matthew I. Levine
Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106

Phone: 860.808.5250
Fax: 860.808.5386
Email: Matthew.Levine@ct.gov<mailto:Matthew.Levine@ct.gov>
URL: http://ct.gov/ag/

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From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, February 22, 2016 2:14 PM
To: Levine, Matthew
Subject: Invitation to event at Harvard Law School

Dear Mr. Levine:

I am writing to invite you and/or members of your staff to a private event for staff from state attorney general offices, which will held at Harvard Law School on the afternoon of either April 11th or 12th. The goal of this event is to inform thinking that is already underway in state AG offices around the country regarding legal accountability for harm arising from greenhouse gas emissions. Alan Belensz, Chief Scientist in the New York Attorney General's office, suggested that I reach out to you.

Please let me know if you are available for a short phone call this week so that I can tell you more about our plans and learn about your availability and interest in attending.

Sincerely yours,

From: Gignac, James [mailto:]Gignac@atg.state.il.us]
Sent: Monday, February 22, 2016 5:28 PM
To: Shaun Goho
Subject: RE: Invitation to event at Harvard Law School

Hi Shaun,

Good to hear from you, and congrats on the continued success of the clinic! I am curious to learn more about the event you are planning. For a call, I am open tomorrow except for 12:30-2:30 ET. Also, Wed. and Thurs. mornings are good too. Let me know what looks good to you.

Thanks for reaching out,

James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0660
jgignac@atg.state.il.us

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, February 22, 2016 1:21 PM
To: Gignac, James
Subject: Invitation to event at Harvard Law School

James:

It has been a while since we were last in touch about HLS environmental alumni issues. The program here has come a long way since then. I hope that you are doing well.

I am writing to invite you and/or other environmental attorneys from the Illinois Attorney General's Office to a private event for staff from state attorney general offices, which will held at Harvard Law School on the afternoon of either April 11th or 12th. The goal of this event is to inform thinking that is already underway in state AG offices around the country regarding legal accountability for harm arising from greenhouse gas emissions. Alan Belensz, Chief Scientist in the New York Attorney General's office, suggested that I reach out to you. He also mentioned Matt Dunn and Gerald Karr, but I thought I would contact you first.

Please let me know if you are available for a short phone call this week so that I can tell you more about our plans and learn about your availability and interest in attending.

Best,
Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138

On Feb 23, 2016, at 12:01 PM, Levine, Matthew **FOOTNOTE 61**
<Matthew.Levine@ct.gov<mailto:Matthew.Levine@ct.gov>> wrote:
I am available to talk on Thursday morning at 9:30. Please let me know if that works for you.

Matthew I. Levine
Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106

Phone: 860.808.5250
Fax: 860.808.5386
Email: Matthew.Levine@ct.gov<mailto:Matthew.Levine@ct.gov>
URL: http://ct.gov/ag/

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From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, February 22, 2016 2:14 PM
To: Levine, Matthew
Subject: Invitation to event at Harvard Law School

Dear Mr. Levine:

I am writing to invite you and/or members of your staff to a private event for staff from state attorney general offices, which will held at Harvard Law School on the afternoon of either April 11th or 12th. The goal of this event is to inform thinking that is already underway in state AG offices around the country regarding legal accountability for harm arising from greenhouse gas emissions. Alan Belensz, Chief Scientist in the New York Attorney General's office, suggested that I reach out to you.

Please let me know if you are available for a short phone call this week so that I can tell you more about our plans and learn about your availability and interest in attending.

Sincerely yours,

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e)
sgoho@law.harvard.edu<mailto:sgoho@law.harvard.edu>

From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Monday, February 22, 2016 5:28 PM
To: Shaun Goho
Subject: RE: Invitation to event at Harvard Law School

Hi Shaun,

Good to hear from you, and congrats on the continued success of the clinic! I am curious to learn more about the event you are planning. For a call, I am open tomorrow except for 12:30-2:30 ET. Also, Wed. and Thurs. mornings are good too. Let me know what looks good to you.

Thanks for reaching out,

James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0660
jgignac@atg.state.il.us

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, February 22, 2016 1:21 PM
To: Gignac, James
Subject: Invitation to event at Harvard Law School

James:

It has been a while since we were last in touch about HLS environmental alumni issues. The program here has come a long way since then. I hope that you are doing well.

I am writing to invite you and/or other environmental attorneys from the Illinois Attorney General's Office to a private event for staff from state attorney general offices, which will held at Harvard Law School on the afternoon of either April 11th or 12th. The goal of this event is to inform thinking that is already underway in state AG offices around the country regarding legal accountability for harm arising from greenhouse gas emissions. Alan Belensz, Chief Scientist in the New York Attorney General's office, suggested that I reach out to you. He also mentioned Matt Dunn and Gerald Karr, but I thought I would contact you first.

Please let me know if you are available for a short phone call this week so that I can tell you more about our plans and learn about your availability and interest in attending.

Best,
Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138

——— Forwarded message ———
From: **Shaun Goho** <sgoho@law.harvard.edu>
Date: Thu, Feb 25, 2016 at 9:18 AM
Subject: Invitation to event at Harvard Law School
To: "Roberta.James@maryland.gov" <Roberta.James@maryland.gov>

Dear Ms. James:

I am writing to invite you and/or other environmental attorneys from the Maryland Attorney General's Office to a private event for staff from state attorney general offices, which will be held at Harvard Law School on the afternoon of either April 11th or 12th. The goal of this event is to inform thinking that is already underway in state AG offices around the country regarding accountability for harm arising from greenhouse gas emissions. We are co-organizing this event with the Union of Concerned Scientists. Michael Myers from the New York Attorney General's office suggested that I reach out to you.

Please let me know if you are available for a short phone call so that I can tell you more about our plans and learn about your availability and interest in attending.

Sincerely yours,

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

FOOTNOTE 63

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Wednesday, April 06, 2016 1:21 PM
To: Kline, Scot <scot.kline@vermont.gov>
Subject: RE: Voice message

Scot:

Here is a draft agenda for the conference. We are still finalizing the list of attendees, but we know that there will be people from at least the following states: California, Connecticut, Illinois, Maryland, Massachusetts, and New York.

Please let me know if you have any other questions.

Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

From: Kline, Scot [mailto:scot.kline@vermont.gov]
Sent: Tuesday, April 05, 2016 10:29 AM
To: Shaun Goho
Subject: Voice message

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.

SK 93

Thanks.

Scot Kline
(802) 828-0033

FOOTNOTE 64

From: Shaun Goho <sgoho@law.harvard.edu>
Sent: Friday, March 18, 2016 5:36 PM
To: Levine, Matthew
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Matt:

That is great news. Regarding other attendees from California or municipalities there, it is my understanding that Massachusetts, at least, intends to send a consumer protection attorney.

Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

From: Levine, Matthew [mailto:Matthew.Levine@ct.gov]
Sent: Thursday, March 17, 2016 4:09 PM
To: Shaun Goho
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Shaun,
I have been approved to attend the event on April 25th. My office will cover my travel expenses. When you have the agenda please forward it and any other details. I look forward to it.
Thank you for including me.
Matt

Matthew I. Levine

Assistant Attorney General
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06106

Phone: 860.808.5250
Fax: 860.808.5386
Email: Matthew.Levine@ct.gov
URL: http://ct.gov/ag/

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FOOTNOTE 71

From: Peter Frumhoff
To: Phil Mote
Subject: invitation to Harvard Law School - UCS convening
Date: Monday, March 14, 2016 7:07:26 AM

Hi Phil,

I hope this finds you well. I'm just digging into the NAS climate attribution report – it looks excellent at first read, and I hope you are pleased with it.

Here's why I'm reaching out now:

Next month, Harvard Law School and UCS are co-convening an off-the record meeting of senior staff from attorney's generals offices from several states to discuss with them the state of climate science (including extreme event attribution) and legal scholarship of relevance to their interests. We're finalizing the date in the next day or so – it will be either Monday April 11, or Monday April 25, from ~12-5 eastern.

I would love to have you join us. We will have a small number of climate science colleagues, as well as prospective funders, at the meeting.

I'd be happy to give you more details in a call.

Please let me know – and thanks!

All best,

Peter

Peter C. Frumhoff Ph.D.
Director of Science and Policy
Chief Scientist, Climate Campaign
Union of Concerned Scientists
Cambridge MA
[redacted]
@peterfrumhoff

The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future

FOOTNOTE 72

From: Erin Burrows
Subject: Technical Expert Bios as part of 4/25 Materials
Date: Tuesday, April 19, 2016 8:02:58 AM

Good morning!

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.

If you wish to be included in this list, please let me know by 5 PM EDT on April 20. No response is required if you would prefer not to be included.

Thanks so much and please let me know if you have any questions or concerns.

Kind regards – Erin

Erin Burrows, Executive Department Coordinator
Union of Concerned Scientists | Two Brattle Square, Cambridge, MA 02138-3780
eburrows@ucsusa.org | www.ucsusa.org | 617-301-8036

The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future www.ucsusa.org | Take action with our citizen network or expert network | Support our work | Join the conversation on our blog or follow us on Facebook and Twitter

FOOTNOTE 77

STATE OF MISSISSIPPI

JIM HOOD

ATTORNEY GENERAL

March 9, 2018

Christopher C. Horner
Competitive Enterprise Institute
1310 L Street NW, 7th floor
Washington, DC 20005

Re: Request for Public Records No. 0810

Dear Mr. Horner:

We are in receipt of your open records request to the Office of the Attorney General, dated February 28, 2018. Your request asks that our office produce the following information:

I. Copies of all correspondence . . . which was sent to or from or copying (whether as cc: or bcc:) Mark Coleman McClinton which are also sent to or from or copy (again whether as cc: or bcc:):
   1) elizabeth.Klein@nyu.edu
   2) ek3041@nyu.edu
   3) david.hayes@nyu.edu
   4) davidjhayes01@gmail.com
   5) djh466@nyu.edu and/or
   6) Daniel Firger (. . . daniel.firger@bloomberg.org and . . . daniel@bloomberg.org)

II. . . . copies of any agreement that includes both your Office and New York University, New York University's School of Law, and/or the (NYU)State Energy & Environmental Impact Center, that was in effect at any time during 2017 or during 2018.

III. . . . copies of any agreement of any sort with any individual staff or attorney(s) who to your Office's knowledge came to your employ or secondment through any of the groups named in II, or who is otherwise placed in and/or works for or in your Office through any of those groups, which agreement(s) was in effect at any time during 2017 or during 2018.

A thorough search was conducted of this office's email database system and records of agreements (relevant to you inquiry). This office has no records responsive to your request.

If you should have any questions or need additional information, please let us know.

Sincerely,

Mark C. McClinton
Special Assistant Attorney General

WALTER SILLERS BUILDING • POST OFFICE BOX 220 • JACKSON, MISSISSIPPI 39205-0220
TELEPHONE (601) 359-3680 • FACSIMILE (601) 359-5025

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 6, 2018

VIA ELECTRONIC MAIL
Mr. Christopher Horner
Competitive Enterprise Institute
1310 L Street, NW 7th Floor
Washington, District of Columbia 20005
chris.horner@cei.org

RE: Freedom of Information Act Request
2018 FOIA 051926

Dear Mr. Horner:

Thank you for writing to the Office of the Illinois Attorney General with your request for information pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2016)).

In a facsimile received on February 27, 2018, you state the following:

Please provide us within the statutorily prescribed time certain described information, as follows:

Copies of all correspondence dated from **August 1, 2017, through the date you process this request**, inclusive, **and its accompanying information, including also any attachments**, which was sent to or from or copying (whether as cc: or bcc:) **Ann Spillane**, which also are to, from or which copy (whether as cc or bcc) one or more of the following:

1) elizabeth.Klein@nyu.edu
2) ek3041@nyu.edu
3) david.hayes@nyu.edu
4) davidjhayes01@gmail.com
5) djh466@nyu.edu and/or
6) Daniel Firger (note that Firger addresses include both those identifying him, e.g., Daniel.firger@bloomberg.org, and not, e.g., daniel@bloomberg.org)

Please consider as responsive entire email "threads" containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters. (Bold and underscore in original.)

Please be advised that this office has conducted a search of its records, and we have located no records responsive to your request.

Very truly yours,

Caitlin Q. Knutte (LJK)

CAITLIN Q. KNUTTE
Assistant Attorney General
Senior FOIA Officer

CQK:LJK:lk

Public Records Reques

REPLY REPLY ALL FORWARD

Mark as read

Tabor, Eric [AG] <Eric.Tabor@ag.iowa.gov>
Fri 3/9/2018 12:31 PM

To: Chris Horner;

Cc: White, Cathleen [AG] <Cathleen.White@ag.iowa.gov>;

1 attachment

Public Reco~.pdf

Download all

Bing Maps + Get more apps

This Office does not have any records that are responsive to the attached request.

Please note new email address: Eric.Tabor@ag.iowa.gov

Eric Tabor
Chief Deputy Attorney General
Office of the Attorney General of Iowa
1305 E. Walnut St.
Des Moines, Iowa 50319
Main: (515) 281-5164 | Direct: (515) 281-5191
Email: Eric.Tabor@ag.iowa.gov | www.iowaattorneygeneral.gov

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STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL

HECTOR H. BALDERAS
ATTORNEY GENERAL

March 13, 2018

VIA ELECTRONIC MAIL ONLY

Christopher C. Horner
Senior Fellow, CEI
1310 L Street NW, 7th Floor
Washington, DC 20005
Email: chris.horner@cei.org

Re: Your Request for Public Records

Dear Mr. Horner:

On February 27, 2018, our office received your request under the New Mexico Inspection of Public Records Act. In your correspondence you have requested to inspect the following records:

I have taken a look at records that would be responsive and other relevant information and suggest the following keywords would assist in approaching this from another angle:

Exxon (including also in ExxonMobil, "Exxon Knew" or ExxonKnew), climate, "fossil fuel", renewable(s), Srolovic, or Milstein.

And:

If you would please try those it may be that these were maintained on Ms. Maestas' account or otherwise on the system.

I believe I can help narrow the search even further by sampling two short windows of time. If you would sample-search for Ms. Maestas' described records (and/or if you have come up with another potential site housing them) a) on the beginning date of the request, March 31, 2016, and then b) the middle of the covered period, the week of April 11-15, in which

the exemplar I forwarded previously and another I forward now both reside, we should have an understanding if the responsive records are still there.

Since we request entire threads, in the event the correspondence from the week of April 11-15 goes back to, e.g., the prior week (or before), we request the entire record.

If this search of a period where we know responsive records were created and received by OAG does turn up the records, then we can then look at other dates using keywords or parties found therein (the exemplars show other names who are on at least some records that will not likely return non-responsive hits, such as Srolovic and Courchesne).

A follow-up to a February 2, 2018 Inspection of Public Records as follows:

Copies of all correspondence, and its accompanying information1, including also any attachments, dated between March 31, 2016 and April 30, 2016, inclusive, which was sent to or from or copying (whether as cc: or bcc:) Tania Maestas (Deputy Attorney General for Civil Affairs and Operations), Bill Grantham, Karen Olson and/or Tannis Fox, which are also to or from or which copy Linda Singer (again, whether as cc: or bcc:).

We have conducted a thorough search of records maintained or held by the Office of the Attorney General and have located no records that are responsive to your request. If you have any questions about your request or this Office's response, please let me know.

Sincerely,

Patricia M. Salazar
Open Government Division

FOOTNOTE 79

Anderson, Donald D.

From: David J. Hayes <david.hayes@nyu.edu>
Sent: Wednesday, January 24, 2018 8:04 AM
To: Anderson, Donald D.
Cc: Elizabeth Johnson Klein
Subject: Re: Meeting in Richmond

Don:

I'm following up, as a reminder, that 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.

We can work around your schedule, if we can avoid Wednesdays (when I teach at NYU law school). Also, Liz and I are both taking a few days off in mid-February around Presidents day.

Thanks.

David

On Fri, Jan 5, 2018 at 10:59 AM, David J. Hayes <david.hayes@nyu.edu> wrote:
Great. Thanks, Don.

Say warm!

David

On Fri, Jan 5, 2018 at 10:58 AM, Anderson, Donald D. <DAnderson@oag.state.va.us> wrote:

Happy New Year!

Let me caucus with John Daniel (who is in court up your way today) and others and get back to you next week.

Thanks.

Don

Donald D. Anderson
Senior Assistant Attorney General/Chief
Office of the Attorney General
202 North 9th Street

FOOTNOTE 82

From: Michael J. Myers
To: 'Max Kieley', 'Greg Schultz', Margaret Murphy (PA), 'Andy Goldberg', 'J. Daniel (Va)', Nord Tim D, Andrea Baker, 'Lauren Maxwell (DC)', 'Matthew Dunn (Il)', 'Laura Watson', Martin Goyette (CA), Stephanie Cobb Williams, 'Tania Maestas', Lisa M. Burianek, 'Gavin McCabe (Ca)', Sarah Morrison (CA AG), 'Karen Olson', Peter Washburn, Gerry Karr, Bill Sherman -- WA AG's office, 'Gregg J. Kinkley (Hi)', 'Ralph Durstein (De)', Lemuel Srolovic, 'Robert Snook ', Melinda Pilling (CA), 'Kay Shirey (Wa)', 'Matthew Gooch (Va)', 'Jillian Riley', 'James Gignac', Jesse Walker, 'Roberta James (Md)', Francisco Benzoni (NC AG), Monica Wagner, 'Bill F. Cooper (Hi)', 'Jacob Larson (Ia)', 'Jerry Reid', 'Josh Auerbach', 'Sally Magnani', 'Heather Leslie', Nur Ibrahim (MN AG), Cheerful Catuano (WA AG), Peter Mulcahy (MA AG), Kimberly Childe (PA DEP), 'David Steward (Ia)', 'Scott Koschwitz (Ct)', Asher Spiller, Donald Anderson (VA), Marc Bernstein (NC), Leah Tulin (MD AG), Elizabeth Davis (PA DEP), 'Amy Bircher (NC)', Flanagan Patrick A, Lynn Angotti, 'B. Legner (Il)', Garrahan Paul, Ken Stalter (NM), Dennis Beck (CA), Joe Iloe (PA DEP), 'Liz Rumsey (Ca)', Dan Salton (CT) (daniel.salton@ct.gov), 'Joseph Yar', Tom Y (WA), 'Elaine Meckenstock (Ca)', 'William Grantham', 'Jonathan Wiener (Ca)', 'Tracy Triplett (Ma)', 'Matthew Levine', 'Dennis Ragen', 'Timothy Sullivan (Ca)', 'Kristen Furlan', 'Christopher Courchesne', Menard, Brenda (NC), Morgan Costello, 'David Zonana (Ca)', 'Beth Mullin (DC)'', Santarsiero, Steven J., Leslie Frederickson (MN PCA), Bo Reiley, Robyn Bender (DC AG), Michelle Moses (PA), Megan Hey (CA), 'Michele Van Gelderen', Seth Schofield (MA), 'Elizabeth Wilkins', Jeremy Magliaro, 'Amy Winn', Blake Thomas (NC), 'david.hayes@nyu.edu', 'Melissa Hoffer', 'Valerie Edge (De)', Jill Lacedonia (CT), 'Rob McDougall', Mike Fischer (PA AG), 'Leslie Seffern', 'Nick Persampieri'
CC: djh466@nyu.edu , Hoffer Melissa (AGO), Reiley Robert A.
Date: Nov 14, 2017 at 1:09 PM
Subject: RE: Multistate AG Coordination Call

The security code for today's call is 1420

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

-----Original Appointment-----
From: Michael J. Myers
Sent: Friday, November 03, 2017 3:02 PM
To: Michael J. Myers; 'Max Kieley'; 'Greg Schultz'; Margaret Murphy (PA); 'Andy

Goldberg'; 'J. Daniel (Va)'; 'Tim Nord'; Andrea Baker; 'Lauren Maxwell (DC)'; 'Matthew Dunn (Il)'; 'Laura Watson'; Martin Goyette (CA); Stephanie Cobb Williams; 'Tania Maestas'; Lisa M. Burianek; 'Gavin McCabe (Ca)'; Sarah Morrison (CA AG); 'Karen Olson'; Peter Washburn; Gerry Karr; Bill Sherman -- WA AG's office; 'Gregg J. Kinkley (Hi)'; 'Ralph Durstein (De)'; Lemuel Srolovic; 'Robert Snook '; Melinda Pilling (CA); 'Kay Shirey (Wa)'; 'Matthew Gooch (Va)'; 'Jillian Riley'; 'James Gignac'; Jesse Walker; 'Roberta James (Md)'; Francisco Benzoni (NC AG); Monica Wagner; 'Bill F. Cooper (Hi)'; 'Jacob Larson (Ia)'; 'Jerry Reid'; 'Josh Auerbach'; 'Sally Magnani'; 'Heather Leslie'; Nur Ibrahim (MN AG); Cheerful Catuano (WA AG); Peter Mulcahy (MA AG); Kimberly Childe (PA DEP); 'David Steward (Ia)'; 'Scott Koschwitz (Ct)'; Asher Spiller; Donald Anderson (VA); Marc Bernstein (NC); Leah Tulin (MD AG); Elizabeth Davis (PA DEP); 'Amy Bircher (NC)'; 'Patrick Flanagan'; Lynn Angotti; 'B. Legner (Il)'; 'Paul Garrahan'; Ken Stalter (NM); Dennis Beck (CA); Joe Iloe (PA DEP); 'Liz Rumsey (Ca)'; Dan Salton (CT) (daniel.salton@ct.gov); 'Joseph Yar'; Tom Y (WA); 'Elaine Meckenstock (Ca)'; 'William Grantham'; 'Jonathan Wiener (Ca)'; 'Tracy Triplett (Ma)'; 'Matthew Levine'; 'Dennis Ragen'; 'Timothy Sullivan (Ca)'; 'Kristen Furlan'; 'Christopher Courchesne'; Menard, Brenda (NC); Morgan Costello; 'David Zonana (Ca)'; 'Beth Mullin (DC)"; Santarsiero, Steven J.; Leslie Frederickson (MN PCA); Bo Reiley; Robyn Bender (DC AG); Michelle Moses (PA); Megan Hey (CA); 'Michele Van Gelderen'; Seth Schofield (MA); 'Elizabeth Wilkins'; Jeremy Magliaro; 'Amy Winn'; Blake Thomas (NC); 'david.hayes@nyu.edu'; 'Melissa Hoffer'; 'Valerie Edge (De)'; Jill Lacedonia (CT); 'Rob McDougall'; Mike Fischer (PA AG); 'Leslie Seffern'; 'Nick Persampieri'
Cc: 'djh466@nyu.edu'; 'Hoffer, Melissa (AGO)'; 'Reiley, Robert A.'
Subject: Multistate AG Coordination Call
When: Tuesday, November 14, 2017 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-2346, code 4149570819

security code to be provided shortly before call
agenda provided at the outset of the call

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From: Myers, Michael
To: 'Valerie Edge (De)', 'Beth Mullin (DC)'', 'Lauren Maxwell (DC)', Tom Y (WA), 'Jacob Larson (Ia)', 'Jonathan Wiener (Ca)', 'Karen Olson', 'Scott Koschwitz (Ct)', Dennis Beck (CA), Joe Iloe (PA DEP), Sarah Morrison (CA AG), 'Gavin McCabe (Ca)', Seth Schofield (MA), 'Robert Snook ', 'Matthew Gooch (Va)', 'Nick Persampieri', 'Joseph Yar', Blake Thomas (NC), 'Kay Shirey (Wa)', Francisco Benzoni (NC AG), Nur Ibrahim (MN AG), Gerry Karr, 'Laura Watson', Asher Spiller, Robyn Bender (DC AG), 'Bill F. Cooper (Hi)', 'Leslie Seffern', Jill Lacedonia (CT), Magliaro, Jeremy, 'Christopher Courchesne', 'Jerry Reid', 'Sally Magnani', Stephanie Cobb Williams, 'Matthew Dunn (Il)', 'Max Kieley', 'William Grantham', 'Amy Bircher (NC)', Leslie Frederickson (MN PCA), Bill Sherman -- WA AG's office, Emily Vainieri, Martin Goyette (CA), 'J. Daniel (Va)', Menard, Brenda (NC), 'Greg Schultz', Leah Tulin (MD AG), Burianek, Lisa, Nord Tim D, Elizabeth Johnson Klein, Andrea Baker, 'Timothy Sullivan (Ca)', Srolovic, Lemuel, Wagner, Monica, 'Kristen Furlan', 'Matthew Levine', Peter Mulcahy (MA AG), 'Ralph Durstein (De)', 'Michele Van Gelderen', 'Liz Rumsey (Ca)', Donald Anderson (VA), 'Andy Goldberg', 'Tracy Triplett (Ma)', Marc Bernstein (NC), Margaret Murphy (PA), 'Elaine Meckenstock (Ca)', Lynn Angotti, Bo Reiley, Costello, Morgan, 'Dennis Ragen', Ken Stalter (NM), 'Gregg J. Kinkley (Hi)', 'David Zonana (Ca)', Melinda Pilling (CA), Dan Salton (CT) (daniel.salton@ct.gov), 'Tania Maestas', 'Heather Leslie', 'Amy Winn', 'Rob McDougall', Garrahan Paul, Cheerful Catuano (WA AG), 'B. Legner (Il)', Michelle Moses (PA), Jesse Walker, 'David Steward (Ia)', 'Jillian Riley', Elizabeth Davis (PA DEP), 'Roberta James (Md)', 'Josh Auerbach', Santarsiero, Steven J., Flanagan Patrick A, Washburn, Peter, 'david.hayes@nyu.edu', 'Melissa Hoffer', Kimberly Childe (PA DEP), 'James Gignac', Megan Hey (CA), Mike Fischer (PA AG)
CC: Reiley Robert A. , Courchesne Christophe (AGO)
Date: Jan 23, 2018 at 10:42 AM
Subject: RE: Multistate AG Coordination Call

All, the security code for today's call is 11768

We will be joined for the first half of the call by David Hayes and Liz Klein from the NYU Law State Impact Ctr. Hope to talk with you at 2.--Mike

Michael J. Myers
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Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

-----Original Appointment-----

From: Myers, Michael
Sent: Friday, January 12, 2018 9:43 AM
To: Myers, Michael; 'Valerie Edge (De)'; 'Beth Mullin (DC)''; 'Lauren Maxwell (DC)'; Tom Y (WA); 'Jacob Larson (Ia)'; 'Jonathan Wiener (Ca)'; 'Karen Olson'; 'Scott Koschwitz (Ct)'; Dennis Beck (CA); Joe Iloe (PA DEP); Sarah Morrison (CA AG); 'Gavin McCabe (Ca)'; Seth Schofield (MA); 'Robert Snook '; 'Matthew Gooch (Va)'; 'Nick Persampieri'; 'Joseph Yar'; Blake Thomas (NC); 'Kay Shirey (Wa)'; Francisco Benzoni (NC AG); Nur Ibrahim (MN AG); Gerry Karr; 'Laura Watson'; Asher Spiller; Robyn Bender (DC AG); 'Bill F. Cooper (Hi)'; 'Leslie Seffern'; Jill Lacedonia (CT); Magliaro, Jeremy; 'Christopher Courchesne'; 'Jerry Reid'; 'Sally Magnani'; Stephanie Cobb Williams; 'Matthew Dunn (Il)'; 'Max Kieley'; 'William Grantham'; 'Amy Bircher (NC)'; Leslie Frederickson (MN PCA); Bill Sherman -- WA AG's office; Emily Vainieri; Martin Goyette (CA); 'J. Daniel (Va)'; Menard, Brenda (NC); 'Greg Schultz'; Leah Tulin (MD AG); Burianek, Lisa; 'Tim Nord'; Elizabeth Johnson Klein; Andrea Baker; 'Timothy Sullivan (Ca)'; Srolovic, Lemuel; Wagner, Monica; 'Kristen Furlan'; 'Matthew Levine'; Peter Mulcahy (MA AG); 'Ralph Durstein (De)'; 'Michele Van Gelderen'; 'Liz Rumsey (Ca)'; Donald Anderson (VA); 'Andy Goldberg'; 'Tracy Triplett (Ma)'; Marc Bernstein (NC); Margaret Murphy (PA); 'Elaine Meckenstock (Ca)'; Lynn Angotti; Bo Reiley; Costello, Morgan; 'Dennis Ragen'; Ken Stalter (NM); 'Gregg J. Kinkley (Hi)'; 'David Zonana (Ca)'; Melinda Pilling (CA); Dan Salton (CT) (daniel.salton@ct.gov); 'Tania Maestas'; 'Heather Leslie'; 'Amy Winn'; 'Rob McDougall'; 'Paul Garrahan'; Cheerful Catuano (WA AG); 'B. Legner (Il)'; Michelle Moses (PA); Jesse Walker; 'David Steward (Ia)'; 'Jillian Riley'; Elizabeth Davis (PA DEP); 'Roberta James (Md)'; 'Josh Auerbach'; Santarsiero, Steven J.; 'Patrick Flanagan'; Washburn, Peter; 'david.hayes@nyu.edu'; 'Melissa Hoffer'; Kimberly Childe (PA DEP); 'James Gignac'; Megan Hey (CA); Mike Fischer (PA AG)
Cc: 'djh466@nyu.edu'; 'ek3041@nyu.edu'; 'Reiley, Robert A.'; 'Courchesne, Christophe (AGO)'
Subject: Multistate AG Coordination Call
When: Tuesday, January 23, 2018 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-2346, code 4149570819

security code to be provide shortly before call
agenda to be provided at outset of call

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From:	Myers, Michael
To:	'Nick Persampieri', Francisco Benzoni (NC AG), 'Jerry Reid', 'Kay Shirey (Wa)', Leah Tulin (MD AG), Costello, Morgan, Robyn Bender (DC AG), Wagner, Monica, 'Robert Snook ', 'Leslie Seffern', 'Jillian Riley', Dan Salton (CT) (daniel.salton@ct.gov), 'Scott Koschwitz (Ct)', Lynn Angotti, 'James Gignac', Nur Ibrahim (MN AG), Washburn, Peter, 'Jonathan Wiener (Ca)', 'Andy Goldberg', 'Tania Maestas', 'Kristen Furlan', Menard, Brenda (NC), 'Valerie Edge (De)', 'Melissa Hoffer', 'Roberta James (Md)', 'Amy Bircher (NC)', 'David Zonana (Ca)', Seth Schofield (MA), 'Matthew Levine', Elizabeth Davis (PA DEP), 'Timothy Sullivan (Ca)', 'Sally Magnani', Asher Spiller, Magliaro, Jeremy, 'Matthew Dunn (Il)', Cheerful Catuano (WA AG), Garrahan Paul, Tom Y (WA), Ken Stalter (NM), Kimberly Childe (PA DEP), 'Bill F. Cooper (Hi)', Mike Fischer (PA AG), 'Gavin McCabe (Ca)', Andrea Baker, Jill Lacedonia (CT), 'Rob McDougall', 'elizabeth.klein@nyu.edu', 'Greg Schultz', 'Jacob Larson (Ia)', Leslie Frederickson (MN PCA), 'Christopher Courchesne', Bo Reiley, 'Amy Winn', Donald Anderson (VA), Nord Tim D, 'William Grantham', 'Karen Olson', Dennis Beck (CA), 'Gregg J. Kinkley (Hi)', 'Lauren Maxwell (DC)', Michelle Moses (PA), Santarsiero, Steven J., 'Laura Watson', 'Tracy Triplett (Ma)', 'Joseph Yar', Melinda Pilling (CA), Sarah Morrison (CA AG), Stephanie Cobb Williams, Jesse Walker, 'Ralph Durstein (De)', 'Elaine Meckenstock (Ca)', Flanagan Patrick A, 'Max Kieley', 'Beth Mullin (DC)", 'Liz Rumsey (Ca)', Megan Hey (CA), Joe Iloe (PA DEP), 'David Steward (Ia)', 'Michele Van Gelderen', Gerry Karr, David J. Hayes, 'B. Legner (Il)', 'Josh Auerbach', Martin Goyette (CA), Bill Sherman -- WA AG's office, 'Dennis Ragen', Marc Bernstein (NC), Srolovic, Lemuel, Burianek, Lisa, Margaret Murphy (PA), 'Heather Leslie', Peter Mulcahy (MA AG), 'Matthew Gooch (Va)', 'J. Daniel (Va)', Blake Thomas (NC)
CC:	Courchesne Christophe (AGO), Larson Jacob [AG], ek3041@nyu.edu , Steward David [AG] , emily.vainieri1@maryland.gov
Date:	Dec 19, 2017 at 11:17 AM
Subject:	RE: Multistate AG Coordination Call

All, the security code for today's call is 7121. Copied below are a few of links of interest.--Mike

https://resources.regulations.gov/public/custom/jsp/navigation/main.jsp (regulatory agendas)

https://www.reginfo.gov/public/do/eAgendaEO13771 (regulatory reform)

https://www.epa.gov/sites/production/files/2017-12/documents/policy_memo.12.7.17.pdf (Pruitt NSR enforcement memo)

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-----Original Appointment-----
From: Myers, Michael
Sent: Monday, December 11, 2017 8:52 AM
To: Myers, Michael; 'Nick Persampieri'; Francisco Benzoni (NC AG); 'Jerry Reid'; 'Kay Shirey (Wa)'; Leah Tulin (MD AG); Costello, Morgan; Robyn Bender (DC AG); Wagner, Monica; 'Robert Snook '; 'Leslie Seffern'; 'Jillian Riley'; Dan Salton (CT) (daniel.salton@ct.gov); 'Scott Koschwitz (Ct)'; Lynn Angotti; 'James Gignac'; Nur Ibrahim (MN AG); Washburn, Peter; 'Jonathan Wiener (Ca)'; 'Andy Goldberg'; 'Tania Maestas'; 'Kristen Furlan'; Menard, Brenda (NC); 'Valerie Edge (De)'; 'Melissa Hoffer'; 'Roberta James (Md)'; 'Amy Bircher (NC)'; 'David Zonana (Ca)'; Seth Schofield (MA); 'Matthew Levine'; Elizabeth Davis (PA DEP); 'Timothy Sullivan (Ca)'; 'Sally Magnani'; Asher Spiller; Magliaro, Jeremy; 'Matthew Dunn (Il)'; Cheerful Catuano (WA AG); 'Paul Garrahan'; Tom Y (WA); Ken Stalter (NM); Kimberly Childe (PA DEP); 'Bill F. Cooper (Hi)'; Mike Fischer (PA AG); 'Gavin McCabe (Ca)'; Andrea Baker; Jill Lacedonia (CT); 'Rob McDougall'; 'elizabeth.klein@nyu.edu'; 'Greg Schultz'; 'Jacob Larson (Ia)'; Leslie Frederickson (MN PCA); 'Christopher Courchesne'; Bo Reiley; 'Amy Winn'; Donald Anderson (VA); 'Tim Nord'; 'William Grantham'; 'Karen Olson'; Dennis Beck (CA); 'Gregg J. Kinkley (Hi)'; 'Lauren Maxwell (DC)'; Michelle Moses (PA); Santarsiero, Steven J.; 'Laura Watson'; 'Tracy Triplett (Ma)'; 'Joseph Yar'; Melinda Pilling (CA); Sarah Morrison (CA AG); Stephanie Cobb Williams; Jesse Walker; 'Ralph Durstein (De)'; 'Elaine Meckenstock (Ca)'; 'Patrick Flanagan'; 'Max Kieley'; 'Beth Mullin (DC)"; 'Liz Rumsey (Ca)'; Megan Hey (CA); Joe Iloe (PA DEP); 'David Steward (Ia)'; 'Michele Van Gelderen'; Gerry Karr; David J. Hayes; 'B. Legner (Il)'; 'Josh Auerbach'; Martin Goyette (CA); Bill Sherman -- WA AG's office; 'Dennis Ragen'; Marc Bernstein (NC); Srolovic, Lemuel; Burianek, Lisa; Margaret Murphy (PA); 'Heather Leslie'; Peter Mulcahy (MA AG); 'Matthew Gooch (Va)'; 'J. Daniel (Va)'; Blake Thomas (NC)
Cc: 'Courchesne, Christophe (AGO)'; 'Larson, Jacob [AG]'; 'ek3041@nyu.edu'; 'Steward, David [AG]'; 'emily.vainieri1@maryland.gov'
Subject: Multistate AG Coordination Call
When: Tuesday, December 19, 2017 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-2346, code 4149570819

security code to be provided shortly before call
agenda to be provided at outset of call

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the sender immediately by reply e-mail and delete the e-mail from your system.

Archived: Wednesday, February 14, 2018 11:48:29 AM
From: Michael J. Myers
Sent: Tuesday, November 14, 2017 10:09:34 AM
To: 'Max Kieley'; 'Greg Schultz'; Margaret Murphy (PA); 'Andy Goldberg'; 'J. Daniel (Va)'; Nord Tim D; Andrea Baker; 'Lauren Maxwell (DC)'; 'Matthew Dunn (Il)'; 'Laura Watson'; Martin Goyette (CA); Stephanie Cobb Williams; 'Tania Maestas'; Lisa M. Burianek; 'Gavin McCabe (Ca)'; Sarah Morrison (CA AG); 'Karen Olson'; Peter Washburn; Gerry Karr; Bill Sherman -- WA AG's office; 'Gregg J. Kinkley (Hi)'; 'Ralph Durstein (De)'; Lemuel Srolovic; 'Robert Snook '; Melinda Pilling (CA); 'Kay Shirey (Wa)'; 'Matthew Gooch (Va)'; 'Jillian Riley'; 'James Gignac'; Jesse Walker; 'Roberta James (Md)'; Francisco Benzoni (NC AG); Monica Wagner; 'Bill F. Cooper (Hi)'; 'Jacob Larson (Ia)'; 'Jerry Reid'; 'Josh Auerbach'; 'Sally Magnani'; 'Heather Leslie'; Nur Ibrahim (MN AG); Cheerful Catuano (WA AG); Peter Mulcahy (MA AG); Kimberly Childe (PA DEP); 'David Steward (Ia)'; 'Scott Koschwitz (Ct)'; Asher Spiller; Donald Anderson (VA); Marc Bernstein (NC); Leah Tulin (MD AG); Elizabeth Davis (PA DEP); 'Amy Bircher (NC)'; Flanagan Patrick A; Lynn Angotti; 'B. Legner (Il)'; Garrahan Paul; Ken Stalter (NM); Dennis Beck (CA); Joe Iloe (PA DEP); 'Liz Rumsey (Ca)'; Dan Salton (CT) (daniel.salton@ct.gov); 'Joseph Yar'; Tom Y (WA); 'Elaine Meckenstock (Ca)'; 'William Grantham'; 'Jonathan Wiener (Ca)'; 'Tracy Triplett (Ma)'; 'Matthew Levine'; 'Dennis Ragen'; 'Timothy Sullivan (Ca)'; 'Kristen Furlan'; 'Christopher Courchesne'; Menard, Brenda (NC); Morgan Costello; 'David Zonana (Ca)'; 'Beth Mullin (DC)"; Santarsiero, Steven J.; Leslie Frederickson (MN PCA); Bo Reiley; Robyn Bender (DC AG); Michelle Moses (PA); Megan Hey (CA); 'Michele Van Gelderen'; Seth Schofield (MA); 'Elizabeth Wilkins'; Jeremy Magliaro; 'Amy Winn'; Blake Thomas (NC); 'david.hayes@nyu.edu'; 'Melissa Hoffer'; 'Valerie Edge (De)'; Jill Lacedonia (CT); 'Rob McDougall'; Mike Fischer (PA AG); 'Leslie Seffern'; 'Nick Persampieri'
Cc: 'djh466@nyu.edu'; 'Hoffer, Melissa (AGO)'; 'Reiley, Robert A.'
Subject: RE: Multistate AG Coordination Call
Importance: Normal

The security code for today's call is 1420

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-----Original Appointment-----
From: Michael J. Myers
Sent: Friday, November 03, 2017 3:02 PM
To: Michael J. Myers; 'Max Kieley'; 'Greg Schultz'; Margaret Murphy (PA); 'Andy Goldberg'; 'J. Daniel (Va)'; 'Tim Nord'; Andrea Baker; 'Lauren Maxwell (DC)'; 'Matthew Dunn (Il)'; 'Laura Watson'; Martin Goyette (CA); Stephanie Cobb Williams; 'Tania Maestas'; Lisa M. Burianek; 'Gavin McCabe (Ca)'; Sarah Morrison (CA AG); 'Karen Olson'; Peter Washburn; Gerry Karr; Bill Sherman -- WA AG's office; 'Gregg J. Kinkley (Hi)'; 'Ralph Durstein (De)'; Lemuel Srolovic; 'Robert Snook '; Melinda Pilling (CA); 'Kay Shirey (Wa)'; 'Matthew Gooch (Va)'; 'Jillian Riley'; 'James Gignac'; Jesse Walker; 'Roberta James (Md)'; Francisco Benzoni (NC AG); Monica Wagner;

FOOTNOTE 84

Archived: Wednesday, February 14, 2018 11:48:30 AM
From: David J. Hayes
Sent: Thursday, November 16, 2017 9:42:12 AM
To: Boss Frederick; Garrahan Paul
Cc: Elizabeth Johnson Klein; Christopher Moyer; Edmunson Kristina
Subject: Comms follow-up
Importance: Normal

Fred and Paul:

Thanks for meeting with Liz and me on Tuesday. It was great to have an opportunity to discuss how we can best work together.

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, Chis 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: http://wapo.st/2zyEA6w?tid=ss_tw&utm_term=.9e5423c3f7d5

Thanks again for the great visit. We look forward to working with you.

David

--
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
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Twitter: @djhayes01

DRAFT 10/18/17

Employee Secondment Agreement between the [AG OFFICE] and the State Energy & Environmental Impact Center at NYU School of Law

This AGREEMENT ("Agreement") is entered into as of September __, 2017, 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 [AG OFFICE].

WHEREAS, The 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, As 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"); and

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

WHEREAS, The [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.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and [AG OFFICE] agree to the following:

A. Terms of Service for the Legal Fellowship Program at the [AG OFFICE]:

1. The State Impact Center will provide the services of one attorney to the [AG OFFICE] to act as a Legal Fellow.
2. The specific start and end dates for services will be determined with the mutual agreement between the Legal Fellow, the [AG OFFICE], and the State Impact Center, provided, however, that the 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. (the "Fellowship Period").
3. During the Fellowship Period, the Legal Fellow will be under the direction and control of, and owe a duty of loyalty to, the [AG OFFICE], and will be subject to the [AG OFFICE]'s policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellow will receive instruction and materials regarding these requirements from the [AG OFFICE] at the commencement of his or her fellowship.
4. During the Fellowship Period, salary and benefits will be provided to the Legal

Fellow by the NYU School of Law.

5. During the Fellowship Period, the [AG OFFICE] will maintain professional liability (malpractice) insurance coverage for the Legal Fellow in an amount not less than $2,000,000 per occurrence and $2,000,000 in the annual aggregate.

6. The [AG OFFICE] may terminate the services of the Legal Fellow upon seven (7) days' written notice to the State Impact Center, provided that the [AG OFFICE] will attempt to resolve any performance or other issues involving the Legal Fellow with the Legal Fellow and the State Impact Center before terminating the services of the Legal Fellow. The State Impact Center may terminate this Agreement for any reason upon seven (7) days' written notice to the [AG OFFICE].

7. The [AG OFFICE] will indemnify, defend and hold NYU, its officers, directors, agents, and employees harmless from any claims, causes of action, or judgments arising out of (1) the negligent or intentional acts or omissions of the [AG OFFICE], its officers, agents or employees, and the Legal Fellow during the Fellowship Period and while the Legal Fellow is subject to the direction and control of the [AG OFFICE] under this Agreement or (2) [AG OFFICE]'s breach of this Agreement. The State Impact Center will indemnify, defend and hold [AG OFFICE] harmless from any claims, causes of action, or judgments arising out of the State Impact Center's breach of this Agreement.

B. Nature of the Fellowship Position at the [AG OFFICE]

1. During the Fellowship Period, the [AG OFFICE] will provide the Legal Fellow the title of Special Assistant Attorney General.

2. The [AG OFFICE] will assign the Legal Fellow 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.

3. The [AG OFFICE] will aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions and court appearances.

4. The [AG OFFICE] will afford the Legal Fellow the opportunity to partake in the extensive legal education, including CLEs, offered by the [AG OFFICE] to its attorneys.

C. Prohibited Activity

1. The [AG OFFICE] may not request or permit the Legal Fellow to engage in any activities that would constitute any of the following:

    a. to carry on propaganda, or otherwise attempt to influence any specific

legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;

b. To engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;

c. to influence the outcome of any specific public election; or

d. to support the election or defeat of a candidate for public office, finance electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.

2. The [AG OFFICE] may not request or permit the Legal Fellow to participate in any matter that involves New York University or any of its affiliates; and, to the extent that the [AG OFFICE] participates in a matter that involves New York University or any of its affiliates, the [AG OFFICE] will create an ethical wall between the Legal Fellow and the [AG OFFICE] with regard to the matter to ensure that the Legal Fellow has access to no information relating to the matter.

3. The [AG OFFICE] has determined that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to the [AG OFFICE] do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce [AG OFFICE] to undertake or refrain from undertaking any action within the purview of [AG OFFICE]. [AG OFFICE] retains sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving New York University or any of its affiliates.

D. Communications and Reporting

1. 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.

3. The [AG OFFICE] acknowledges that New York University may be required to make filings or disclosures on that reference the [AG OFFICE], the Legal Fellow, or the Legal Fellowship Program, and that the [AG OFFICE] is not required to review or approve any such filings except where New York University requests such review or approval.

4. In addition to the formal reporting requirements, the [AG OFFICE] 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.

5. Notifications to the [AG OFFICE] relating to this agreement should be directed to _____.

6. Notifications to the State Impact Center relating to this agreement should be directed to _____.

E. Miscellaneous

1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties and shall be governed by the laws State of New York. No amendment to this Agreement will be valid and binding unless reduced to writing and signed by the parties.

2. This agreement shall not be assigned by either party without the consent of the other party.

3. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original and all of which together will constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

Dated: September ___, 2017 New York University

By: _____
Name:
Title:

Dated: September ___, 2017 [INSERT STATE] State Office of the Attorney General

By: _____
Name:
Title:

204257524.1

FOOTNOTE 91

Anderson, Donald D.

From: David J. Hayes <david.hayes@nyu.edu>
Sent: Friday, October 13, 2017 11:48 AM
To: Anderson, Donald D.
Cc: Elizabeth Johnson Klein
Subject: NYU Law Fellow Program

Donald:

Thank you for your application for an NYU Law Fellow to serve as a Special Assistant Attorney General on clean energy, climate and environmental matters. We have reviewed applications received from 11, and have selected 7 jurisdictions to receive the initial tranche of Law Fellows.

Virginia was not selected in this first round. As the hiring of our initial group of Law Fellows proceeds, we expect to confirm the availability of funding for additional Law Fellows, and 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.

Thank you again for your interest in the NYU program.

David

--

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
Cell phone: 202-258-3909
Email: david.hayes@nyu.edu; davidjhayes01@gmail.com
Twitter: @djhayes01

Archived: Wednesday, February 14, 2018 11:48:27 AM
From: David J. Hayes
Sent: Friday, October 13, 2017 8:45:16 AM
To: Garrahan Paul
Cc: Elizabeth Johnson Klein
Subject: NYU Law Fellow Program
Importance: Normal

Paul:

Thank you for your application for an NYU Law Fellow to serve as a Special Assistant Attorney General on clean energy, climate and environmental matters. We have reviewed applications received from 11, and have selected 7 jurisdictions to receive the initial tranche of Law Fellows.

Oregon was not selected in this first round. As the hiring of our initial group of Law Fellows proceeds, we expect to confirm the availability of funding for additional Law Fellows, and 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.

Thank you again for your interest in the NYU program.

David

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Twitter: @djhayes01

FOOTNOTE 92

Archived: Wednesday, February 14, 2018 11:48:31 AM
From: David J. Hayes
Sent: Wednesday, December 06, 2017 7:51:38 AM
To: Rosenblum Ellen F
Cc: Garrahan Paul; Boss Frederick; Elizabeth Johnson Klein
Subject: Special Assistant Attny General
Importance: Normal

Ellen:

It was great to see you last night and give you the news that the State Energy & Environmental Impact Center is able to fund a Special Assistant Attorney General (SAAG) fellowship in your office to work on clean energy, climate and environmental matters. We had a great meeting with Fred and Paul a couple of weeks ago and were able to get more insight into the exciting developments in Oregon on the climate and clean energy front, as well as your office's strong commitment to public lands issues.

As I mentioned yesterday to Paul, we invite you to take the lead in recruiting a SAAG for the slot. Our Deputy Director, Liz Klein, copied here, can walk Fred and Paul through the process.

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.

David

--
David J. Hayes
Executive Director
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Office phone: 202-328-5052
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Twitter: @djhayes01

FOOTNOTE 93

Anderson, Donald D.

From: David J. Hayes <david.hayes@nyu.edu>
Sent: Friday, January 05, 2018 10:11 AM
To: Anderson, Donald D.
Cc: Elizabeth Johnson Klein; David J. Hayes
Subject: Meeting in Richmond

Don:

It was great meeting General Herring before the holiday and giving him the news about your successful application for a Special Assistant AG who will work on clean energy, climate and environmental issues.

Liz Klein and I would appreciate the opportunity to visit your offices and meet with General Herring, you, and whomever else might be appropriate to discuss your office's potential priorities and get your views on 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.

Liz and I could come down on either Thursday or Friday, Jan 18 or 19, if that might work for your office. We can offer additional dates as well.

Rather than battling the traffic on I-95, Liz and I were thinking of taking Amtrak down. We'd arrive in Richmond at 10:03 am and could easily do a meeting at 11:00 or noon (or potentially 10:30, if the train is on time).

Let us know if this might work.

Thanks, and happy new year!

David

--
David J. Hayes
Executive Director
State Energy & Environmental Impact Center
NYU School of Law
Cell phone: 202-258-3909
Email: david.hayes@nyu.edu; davidjhayes01@gmail.com
Twitter: @djhayes01

Meeting in Philadelphia/Harrisburg

From: "David J. Hayes" [redacted]

To: "Santarsiero, Steven J." [redacted]

Cc: Elizabeth Johnson Klein [redacted], "David J. Hayes" [redacted]

Date: Fri, 05 Jan 2018 10:56:43 -0500

Steve:

I hope you enjoyed the holidays, and are surviving the cold.

I am following up on the good news regarding your successful application for a Special Assistant AG who will work on clean energy, climate and environmental issues.

Liz Klein and I would appreciate the opportunity to visit your offices and meet with General Shapiro, you, and whomever else might be appropriate to discuss your office's priorities and get your views on 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.

When we met in Nashville, you had mentioned the possibility of meeting in your Philadelphia office. That would be particularly convenient for us, given that Liz and I are in Washington. We also could easily drive up to Harrisburg, if that would work better for your boss and you.

If Philadelphia is the venue, Liz and I could meet in the late morning on January 24 or 31. (I will be on my way to NYU, where I am teaching an energy/environment seminar in the late afternoon on wednesdays at NYU Law). We also can offer some other dates for a visit to Philly -- or for a visit to Harrisburg.

Let us know what might work from your end.

Thanks, and happy new year!

David

--
David J. Hayes
Executive Director
State Energy & Environmental Impact Center
NYU School of Law
Cell phone: [redacted]
Email: [redacted]
Twitter: @djhayes01

Click here to report this email as spam.

FOOTNOTE 94

From: Elizabeth Klein
To: Garrahan Paul, Boss Frederick
CC: Brittany Whited
Date: Dec 13, 2017 at 3:27 PM
Subject: fellowship program follow up
AttachmentList: 3

It was nice to connect this afternoon about the NYU law fellowship program. We are excited to partner with your office! As promised, attached our some documents for your review:

1) Position description - if you're interested in making changes, just let us know so that we can take a quick look. Once you are ready to post it, we can provide a link to your posting on our website.

2) Template secondment agreement - as mentioned, once you take a look at this, if you or others in your office would find it useful to talk through any of the provisions on the phone, we're happy to set up a call.

3) Template retainer agreement

Thanks,
Liz

--
Elizabeth Klein
Deputy Director
State Energy & Environmental Impact Center
NYU School of Law
ph 202-328-5186

FOOTNOTE 95

Anderson, Donald D.

From: David J. Hayes <david.hayes@nyu.edu>
Sent: Friday, October 13, 2017 11:48 AM
To: Anderson, Donald D.
Cc: Elizabeth Johnson Klein
Subject: NYU Law Fellow Program

Donald:

Thank you for your application for an NYU Law Fellow to serve as a Special Assistant Attorney General on clean energy, climate and environmental matters. We have reviewed applications received from 11, and have selected 7 jurisdictions to receive the initial tranche of Law Fellows.

Virginia was not selected in this first round. As the hiring of our initial group of Law Fellows proceeds, we expect to confirm the availability of funding for additional Law Fellows, and 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.

Thank you again for your interest in the NYU program.

David

--
David J. Hayes
Executive Director
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NYU School of Law
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Washington, DC 20036
Office phone: 202-328-5052
Cell phone: 202-258-3909
Email: david.hayes@nyu.edu; davidjhayes01@gmail.com
Twitter: @djhayes01

FOOTNOTE 105

From: "Mahanna, Brian" <Brian.Mahanna@ag.ny.gov>
To: "'stateimpactcenter@nyu.edu'" <stateimpactcenter@nyu.edu>, "'david.hayes@nyu.edu'" <david.hayes@nyu.edu>
Cc: "Srolovic, Lemuel" <Lemuel.Srolovic@ag.ny.gov>
Subject: NYOAG Application for NYU State Energy & Environmental Impact Center Fellows
Sent: Fri, 15 Sep 2017 17:10:53 -0400
NYOAG Application (9-15-17).pdf

David—

Great seeing you earlier this week. Per our conversations, attached please find NYOAG's application for two Impact Center fellows. As discussed, NYOAG believes the Fellows would significantly augment our office's recent environmental and energy work, which has already yielded some important victories on issues of regional and national importance. Please let us know if you have any questions or need anything else for the application.

Also, we would be happy to continue to work with you, Liz and Bruce on any of the underlying confidentiality issues and engagement agreements.

NYOAG looks forward to collaborating with the Center on these critically important issues.

Thanks,
Brian

Brian K. Mahanna
Chief of Staff | Deputy Attorney General
New York State Office of the Attorney General
120 Broadway, 25th Floor
New York, NY 10271-0332
Tel: (212) 416-8579 | Brian.Mahanna@ag.ny.gov

Office of New York State Attorney General Eric T. Schneiderman

Application to NYU State Energy & Environmental Impact Center
Special Assistant Attorneys General Fellowship Program

Introduction

The office of New York State Attorney General Eric T. Schneiderman (NYOAG) welcomes this opportunity to apply for two NYU School of Law State Energy & Environmental Impact Center fellows to serve as special assistant attorneys general in the NYOAG. Three factors converge here to present a compelling case for the Center to place fellows in this office. The first is the environmental urgency of today – from the clear and present danger of climate change to the hostility to the public health and environmental values of New Yorkers exhibited by a federal administration that actively is seeking to roll back federal environmental protections. Secondly, the office has a pressing need for additional subject matter expert attorneys to handle both its always-busy environmental docket and the added work of fighting federal rollbacks. Lastly, the NYOG has a proven track record in progressive environmental litigation and advocacy and in building effective advocates in this arena. From Connecticut v. American Electric Power, a common law public nuisance action that served as an impetus for federal action addressing climate change under the Clean Air Act, to New York v. Nuclear Regulatory Commission (D.C. Cir. 2012), requiring the Nuclear Regulatory Commission to conduct a thorough environmental review

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of the consequences of failing to secure permanent storage for the Nation's spent nuclear fuel, to a substantial and growing federal environmental rollback check and balance docket at present, NYOAG has been and remains at the forefront of progressive state attorney general advocacy on clean energy, climate change and environmental matters.

The addition of two NYU School of Law State Energy & Environmental Impact Center fellows will allow NYOAG to meet the growing demands on our office to address and expand these efforts, in collaboration with other states, to protect the environment from federal curtailment of oversight and enforcement and to advance progressive clean energy, climate change and other environmental initiatives.

Application Elements

1. Program Eligibility and Narrative

Extending back for years but especially so now, the NYOAG is a state attorney general's office that coordinates and often leads multi-state coalitions of attorneys general in enforcing against the federal government the federal environmental and procedural laws that protect human health and the environment when federal agencies fail to implement those laws, defending those laws when challenged by industry and allied states and, more recently, challenging federal agencies as they seek to delay, suspend and repeal regulations implementing those laws. Presently, NYOAG is leading or is an active participant in nearly twenty such lawsuits – in courts

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across the country – concerning climate change, oil and gas development on federal lands, interstate air pollution from stationary and mobile sources, water pollution and toxic pesticides. (A select list of some of those actions is attached as Exhibit A). All of those cases present clean energy, climate change or environmental issues of national or regional importance in addition to being important to the citizens of New York State. For example, NYOAG is leading the state attorney general coalitions defending both the Clean Power Plan and the Waters of the United States rule, one a key national rule regarding clean energy and climate change and the other water pollution and wetlands protection.

Since January 2017, NYOAG has filed or joined in the filing of six legal actions contesting the delay or rollback of federal rules regarding methane emissions from the oil and gas development sector, energy efficiency standards, ozone air pollution, the toxic pesticide chlorpyrifos and chemical accident prevention. NYOAG also has served formal and informal notices of intent to sue regarding additional energy efficiency standards, methane rules and car and light duty truck emissions standards.

A number of these actions already have proven successful. In April, NYOAG led a coalition of eight attorneys general, the Pennsylvania environmental agency and the City of New York in filing a petition for review in the U.S. Court of Appeals for the Second Circuit challenging the Department of Energy's delay of the effective date of efficiency standards for

ceiling fans. In May, the department ended the delay and confirmed the effective date of the standards.

Similarly, in August, NYOAG led a coalition of sixteen attorneys general in filing a petition for review challenging EPA's announced delay in designating attainment and non-attainment areas for ozone air pollution. The next day, EPA withdrew the delay announcement.

In court, NYOAG joined with other state attorneys general in seeking to intervene in support of non-governmental organizations challenging the delay of the date for the oil and gas industry to comply with a 2016 methane emissions rule. Thereafter, the court vacated the EPA's administrative stay of the rule and issued a mandate requiring immediate compliance with the rule. Subsequent to that order, the court denied industry's petition for rehearing.

Beyond the federal rollback actions, a significant number of NYOAG's "state-side" environmental cases concern clean energy, climate change or environmental issues of regional or national importance. For example, the office presently is defending two separate petitions for review of our State Department of Environmental Conservation's (NYDEC) denial of water quality certifications under Section 401 of the federal Clean Water Act, 33 U.S.C. § 1341, for two different interstate natural gas pipelines. Those cases are establishing important national precedent on the permissible scope and timing of state water quality review under the Clean Water Act and the

inter-play of that act with the federal Natural Gas Act. We expect additional challenges in this area in the near future as the NYDEC has denied an additional certification and has a number of additional applications pending with the agency.

NYOAG's Environmental Protection Bureau has fewer than forty assistant attorneys general, and over 380 active cases, not counting investigations and non-litigation advocacy. The bureau's responsibilities include handling the prosecution and defense of all civil environmental cases in which the State or its departments and agencies are parties, with twelve of the Assistant Attorneys General primarily defending the state. Additionally, the bureau prosecutes civil litigation in the name of the People of the State of New York and conducts law enforcement investigations, including participating in NYOAG's on-going investigation of ExxonMobil's representations concerning climate change risk

NYOAG has an acute need for additional environmental litigators. First, the initial phase of fighting federal environmental rollbacks necessarily focused on challenging illegal delays to the effective dates of final rules and non-litigation advocacy. Opposing the Scott Pruitt nomination as EPA administrator, advocating for the United States to remain in the Paris Climate Accord, fighting EPA budget cuts and opposing the de-designation or downsizing of National Monuments were all non-litigation advocacy areas led by NYOAG but with significant strain on staff resources. As that initial

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phase winds down, submitting substantive comments opposing the reversal of existing federal environmental rules, including the Clean Power Plan, the Waters of the United States rule, methane rules and car and light duty truck emission and mileage standards – to name a few examples – followed by substantive challenges to new replacement rules and compelling action on ignored legal mandates will be more litigation intensive, requiring additional personnel resources.

Second, given the federal efforts to delay and rescind clean energy and environmental rules and to greatly reduce the number of personnel in EPA and other federal enforcement agencies, we believe that it is likely that non-compliance with federal environmental rules has and will increase during this period of regulatory and enforcement disruption. It is vitally important that state attorneys general investigate and bring enforcement cases for serious violations of federal environmental laws by regulated entities, but NYOAG presently does not have attorney resources available to investigate and prosecute those cases.

Lastly, building on its experience and leadership in advancing common law claims to address climate change in Connecticut v. American Electric Power, NYOAG is building models for two different types of common law cases to seek compensation and other relief for harm caused by fossil-fuel emissions. NYOAG is undertaking this initiative but needs additional

attorney resources to assist with this project and the press of current litigation.

2. Program Structure

NYOAG needs a special assistant attorney general with the skills and experience to serve as lead attorney in complex federal environmental litigation of the type described in this application. This special assistant would lead a team of more junior attorneys and scientific or technical staff, and must be conversant with hiring expert witnesses and presenting their testimony in court. This special assistant would lead in developing and litigating the types of cases described herein. This attorney needs to have strong written and oral communication skills, and strong litigation skills and judgment.

NYOAG also needs a special assistant attorney general with five to six years of litigation experience who can work on cases with more senior lead attorneys. This special assistant would draft pleadings, motion papers and briefs, handle discovery and work with a senior attorney and experts in all other aspects of the cases. If a more experienced attorney as described above could not be placed in NYOAG, two attorneys as here described would be welcomed.

Any NYU fellows joining NYOAG as special assistants would be placed within the Environmental Protection Bureau and managed like their peers in the bureau. Their line of reporting would be to a section chief, deputy bureau

chief and bureau chief, each of whom is a highly experienced environmental litigator. As appropriate, the special assistants would interact with other areas of the office, including other legal bureaus, appeals and opinions, communications and intergovernmental affairs, and the Attorney General.

The bureau has approximately half of its staff at 120 Broadway in New York City, with the other half in Albany next to the state capital or in a small satellite office in Buffalo. NYOAG could host special assistants in New York City or Albany.

3 Budget Proposal and Confirmation of Authority

NYOAG proposes that special assistants be compensated at a rate comparable to Assistant Attorneys General with comparable experience. NYOAG uses metrics for the starting salaries of new hires. Those salaries range from approximately $84,000 for an attorney with five years of experience to $96,000 for an attorney with ten, and up to approximately $124,000 for attorney's with significant experience and specialized skills. Although raises are not assured, Assistant Attorneys General with satisfactory or better performance often advance in compensation on an annual basis. These raises, when given, are generally of approximately 2-4%. NYOAG proposes that special assistants who remain in the office for more than a year maintain salary parity with their Assistant Attorney General peers.

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The Attorney General has authority to hire NYU fellows as Special Assistant Attorneys General pursuant to NY Executive Law § 62, which provides that "[t]he attorney-general may appoint such assistant attorneys-general, deputy assistant attorneys-general and attorneys as he may deem necessary and fix their compensation within the amounts appropriated therefor." This power to hire assistant attorneys general includes the power to hire volunteer assistant attorneys general. 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: (1) the NYU fellows will owe a duty of loyalty to NYOAG only; (2) the NYU fellows' work will be supervised and directed by NYOAG attorneys only; and (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.

NYU fellows, as Special Assistant Attorneys General, will be governed by the provisions of Public Officers Law §§ 73 & 74 – the same provisions that govern the conduct of assistant attorneys general at NYOAG, whether paid or unpaid. See NYS Commission on Public Integrity, Advisory Opinion No. 10-02 (2010) (reviewing volunteer attorney program in DEC's Office of

General Counsel and opinion that volunteer attorneys were subject to Public Officers Law §§ 73 & 74).

Conclusion

We appreciate the opportunity to be considered as a placement for NYU School of Law State Energy & Environmental Impact Center fellows to serve in the NYOAG as Special Assistant Attorneys General and to work with us advancing progressive environmental litigation and other advocacy.

Please do not hesitate to contact us if there is any additional information that would assist in your decision-making.

Dated: New York, New York
September 15, 2017

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: s/s Lemuel M. Srolovic

Lemuel M. Srolovic
Assistant Attorney General
Bureau Chief
Environmental Protection Bureau
Office of the Attorney General
of the State of New York
120 Broadway
New York, New York 10271
212-416-8448
Lemuel.Srolovic.@ag.ny.gov

Exhibit A
(Select List of Actions)

Clean Power Plan

West Virginia v. EPA (defense of EPA Clean Power Plan, regulating carbon dioxide emissions from exiting power plants). (Coalition: New York, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, District of Columbia, Boulder, CO, Chicago, New York City, Philadelphia, South Miami and Broward County, FL).

CO2 New Source Performance Standards for New Power Plants

North Dakota v. EPA (defense of new source performance standards for carbon dioxide emissions from new, modified, or reconstructed power plants) (Coalition: California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, District of Columbia and New York City).

Methane Rule: New Sources in Oil and Gas Development

Clean Air Council v. Pruitt (challenge to EPA delay of methane emission standards applicable to new and modified oil and gas facilities). (Coalition: Massachusetts, Connecticut, Delaware, the District of Columbia, Illinois, Iowa, Maryland, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington and Chicago).

American Petroleum Inst. v. EPA (defense of EPA methane emission standards applicable to new and modified oil and gas facilities). (Coalition: California, Connecticut, Illinois, Massachusetts, New Mexico, New York, Oregon, Rhode Island, Vermont and Chicago).

Methane: Oil, Gas, and Coal Development on Federal Lands

California v Bureau of Land Management (challenge to Bureau of Land Management delay of methane emission regulations). (Coalition: California, Maryland, New Mexico, New York, Oregon andWashington).

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Auto Fuel Efficiency Standards

New York v National Highway Traffic Safety Administration (challenge to NHTSA delay of updated penalties for non-compliance with corporate average fuel efficiency (CAFE) standards). (Coalition: New York, California, Vermont, Maryland and Pennsylvania).

Clean Water Rule (Waters of the United States)

Murray Energy v. EPA (defense of regulations defining the "waters of the United States" – the types of water bodies covered by the Clean Water Act). (Coalition: New York, Connecticut, Hawaii, Massachusetts, Oregon, Vermont, Washington and District of Columbia).

Ground Level Ozone

New York v EPA (challenge to EPA delay in designating nonattainment areas for national ambient air quality standards for ozone). (Coalition: New York, California, Connecticut, Delaware, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and District of Columbia).

Murray Energy v. EPA (defense of 2015 national ambient air quality standards for ozone) (Coalition California, Massachusetts, New York, Rhode Island, Vermont, Washington, District of Columbia and Delaware Department of Natural Resources & Environmental Control).

Mercury Air Pollution

Murray Energy v. EPA (defense of EPA's supplemental cost finding on its Mercury and Air Toxics Rule). (Coalition: Massachusetts, California, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, Baltimore, Chicago, New York City, and Erie County, NY).

Cross State Air Pollution Update Rule

Wisconsin v. EPA (defense of regulation limiting interstate transport of ozone-forming pollutants). (Coalition: New York, Massachusetts, Maryland, New Hampshire, Rhode Island and Vermont).

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Wood Heaters and Boilers

Hearth, Patio, & Barbecue Association v EPA (defense of standards for particulate matter emissions from new and modified wood heaters and wood boilers). (Coalition: New York, Maryland, Massachusetts, Oregon, Rhode Island, Vermont and Puget Sound Clean Air Agency, WA).

Energy Efficiency Standards

New York v. US Department of Energy (challenge to Department of Energy's delay in effective date of energy efficiency standards for ceiling fans). (Coalition: New York, California, Connecticut, Illinois, Maine, Massachusetts, Oregon, Vermont, Washington, Pennsylvania Department of Environmental Protection and New York City).

California v. Perry (challenge to Department of Energy's failure to publish final energy efficiency standards for five consumer and commercial product categories). (Coalition: California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New York, Oregon, Pennsylvania, Vermont, Washington and New York City).

Pesticide Chlorpyrifos

League of United Latin American Citizens v Pruitt (challenge to EPA's failure to make safety determination required to continue federal registration for the sale and use of chlorpyrifos). (Coalition: New York, Maryland, Massachusetts, Vermont, Washington and District of Columbia).

Chemical Risk Management Plan Program

New York v. Pruitt (challenge to EPA delay of rule updating the Chemical Risk Management Program requirements). (Coalition: New York, Illinois, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont and Washington).

FOIL G000103-020718 000327

Great Lakes -- oil pipeline integrity issue

From: "David J. Hayes" <[redacted]>

To: "Fischer, Michael J." [redacted]

Cc: Elizabeth Johnson Klein [redacted]

Date: Thu, 01 Feb 2018 13:31:11 -0500

Mike:

It was great to meet you on Tuesday. As you may recall, I referenced AG Shapiro's participation in a joint statement (along with the AGs from Michigan and Minnesota) on the threat posed by Asian carp to the Great Lakes. (Dec 12, 2017 press release from your office.)

Today, I came across this story:

https://insideclimatenews.org/news/31012018/great-lakes-oil-pipeline-enbridge-line-5-michigan-straits-of-mackinac

Query whether your boss might want to consider learning more about, and potentially addressing, this Great Lakes issue, perhaps with the support of some of the other Great Lakes' Governors and/or AGs?

David

--
David J. Hayes
Executive Director
State Energy & Environmental Impact Center
NYU School of Law
Cell phone: [redacted]
Email: [redacted]
Twitter: @djhayes01

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FOOTNOTE 113

From: Elizabeth Klein [mailto:elizabeth.klein@nyu.edu]
Sent: Friday, October 06, 2017 3:16 PM
To: Gignac, James; Dunn, Matthew; Inouye, Thor
Subject: NYU Law Fellow Program - Follow Up

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. Please take a look and let me know if you'd like to discuss further.

Additionally, as promised attached are some of the resumes we received from individuals interested in fellowship positions.

Sounds like you know how to find this, but here's the link to the Law Fellow position description that is on our website. If you expect to deviate significantly from this (beyond the procedural details about who and how folks should apply), we'll look forward to discussing proposed changes.
http://www.law.nyu.edu/centers/state-impact/apply

Also, once you have a position description ready to go, we can check in again to discuss how we might help distribute it more broadly.

As I mentioned, I'm hopeful that I'll have a draft secondment agreement to circulate early next week, which will outline the terms of the fellowship.

Finally, if you could send along the contact info of your communications person, that would be great.

Thanks so much, and have a great weekend,
Liz

--
Elizabeth Klein
Deputy Director
State Energy & Environmental Impact Center
NYU School of Law
ph 202-328-5186

FOOTNOTE 117

Anderson, Donald D.

From: Anderson, Donald D.
Sent: Friday, September 15, 2017 11:21 AM
To: 'stateimpactcenter@nyu.edu'
Cc: David J. Hayes (david.hayes@nyu.edu)
Subject: NYU Fellow Application

Please accept this application of the Office of the Attorney General of the Commonwealth of Virginia to hire a New York University School of Law fellow as a Special Assistant Attorney General through the State Energy & Environmental Impact Center. We appreciate the opportunity to participate in this program.

General Herring has long been committed to the interests that form the core mission of the State Impact Center—clean energy, climate change and more generally environmental matters. That commitment was evidenced early in his term when he submitted comments on EPA's then proposed Clean Power Plan. After the CPP was issued and challenged, General Herring joined the coalition of seventeen other states and seven major municipalities supporting the plan; the OAG has continued to be engaged in that multi-state effort through the present. In June, after the Trump Administration announced that the United States would withdraw from the Paris Climate Agreement, the OAG joined in the coalition of state AGs, Governors and others in issuing a "We Are Still In" statement. General Herring has also been supportive of Virginia Governor McAuliffe's executive actions to reduce carbon pollution in Virginia. Most recently, the OAG joined a coalition of twenty states and localities urging the EPA to retract Administrator Scott Pruitt's unsolicited letter advising states on the CPP.

General Herring's efforts have not been limited to clean energy and power issues. For example, the OAG filed an amicus brief in *America Farm Bureau v. EPA,* a case involving the total maximum daily load cooperatively developed to protect the Chesapeake Bay. The critical issue in the case was whether the Bay states, including Virginia, had the authority to act together to manage and restore the Bay. More recently, General Herring has submitted comments opposing regulatory proposals by the current administration to open Virginia and other east coast states off-shore waters to petroleum exploration and production.

The OAG has achieved this track record of commitment to regional and national environmental issues with limited resources. The Environmental Section of the Office is staffed with six full-time line attorneys, two other line attorneys who spend approximately half their time on environmental matters, and one paralegal. The attorneys are fully booked with representation of numerous Commonwealth agencies, including the Departments of Conservation and Recreation, Environmental Quality, Forestry, Game and Inland Fisheries, Health (Environmental Health Services), Mines, Minerals and Energy, as well as the Division of Consolidated Laboratory Services, the Marine Resources Commission, the Secretary of Natural Resources, and local Soil and Water Conservation Districts. Moreover, Section attorneys have been engaged in substantial major environmental litigation, including the ongoing defense of the Commonwealth's moratorium on uranium mining against constitutional attack and achievement of the largest natural resource damage settlement in Virginia history. The addition of an NYU Fellow would provide a full-time attorney to allow General Herring to participate much more fully in cooperative efforts to advance the agenda represented by the State Impact Center.

If our Office is selected for the program, the NYU Fellow serving as a Special Assistant Attorney General would be incorporated into the Environmental Section. The Section is housed in the Commerce, Environment and Technology Division of the OAG, headed by Deputy Attorney General John W. Daniel. The Section is headed by Senior Assistant Attorney General and Chief, Donald D. Anderson, who reports directly to Deputy Daniel. The NYU fellow would report directly to the Section Chief.

Currently the line attorneys in the Section range in years of experience at the bar from three to twenty years. The current salary range runs from approximately $70,000 to approximately $100,000. Assuming the NYU fellow would come into the Office with 5-10 years of experience, we anticipate the appropriate salary would be approximately $81,500. We understand that, if selected for the program, our Office would work with the State Impact Center to identify, recruit and extend offers to appropriate candidates. That process, and the specific salary and benefit package for a recruit and related arrangements, would have to determined in cooperation with our finance and human resource directors.

The Virginia OAG has historically employed, and currently employs, fellows funded by law schools. 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 of a NYU fellow as a Special Assistant Attorney General. We have also reviewed the Virginia Rules of Professional Conduct and find no concern about the proposed arrangement, which we understand requires that the attorney's duty of loyalty shall be to the Attorney General and the Commonwealth and its agencies.

Please let us know if you need additional information to consider this application. And thank you.

Donald D. Anderson
Senior Assistant Attorney General/Chief
Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 371-6018 Office
DAnderson@oag.state.va.us
http://www.ag.virginia.gov

FOOTNOTE 118

APPLICATION OF THE PENNSYLVANIA OFFICE OF ATTORNEY GENERAL FOR THE NYU FELLOWS/SAAG PROGRAM

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. Relevant details include the extent to which funding or other capacity constraints have limited the ability to work on these issues or how additional dedicated support could help advance the work of the state attorney general on behalf of his or her constituents.

Priority consideration will be given to state attorneys general who demonstrate a commitment to and 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.

Response:

Pennsylvania is unique among the states in that Article I, §27 of its constitution guarantees that every citizen has a right to clean air, pure water and the preservation of the state's natural resources. PA. CONST., Art. I., §27 ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."). Indeed, Pennsylvania's Supreme Court recently reaffirmed these constitutional, environmental rights in a sweeping decision that makes Pennsylvania an ideal forum in which to pursue a progressive environmental agenda. See Pennsylvania Environmental Defense Foundation v. Commonwealth, 2017 WL 2645417 (Pa. 2017) (holding that certain transfers from the Oil and Gas Lease Fund were unconstitutional under Art. I, §27); see also Robinson Township v. Commonwealth, 83 A. 3rd 901 (Pa. 2013) (plurality) (holding that amendments to the state's Oil and Gas Act unconstitutional under the Art. I, §27).

Since taking office in January 2017, Attorney General Josh Shapiro has demonstrated his commitment to enforcing these environmental rights. He has reorganized and expanded the former Environmental Crimes Unit of the Pennsylvania Office of Attorney General (the "PA OAG") into a new Environmental Protection Section with a much broader mission that includes civil legal enforcement and other environmental matters. He has also created a new Impact Litigation Section, which coordinates impact-oriented civil litigation across a broad array of Pennsylvania and multi-state matters involving legal and policy issues of particular importance to Pennsylvanians.

The new Environmental Protection Section continues to prosecute those who commit environmental crimes – but it also works, in conjunction with the Impact Litigation Section to enforce environmental rights through targeted, civil litigation. These civil cases concern matters of regional and national significance both within Pennsylvania and

undertaken with other state attorneys general. For example, in just the past few months, Attorney General Shapiro has joined other states in challenging the Trump Administration's attempts to roll back important regulations designed to curb greenhouse gas emissions, decrease deadly ozone pollution, and promote fuel and energy efficiency.

There is plenty more to do. Attorney General Shapiro would like to build on these early efforts to further establish the PA OAG as a national leader on environmental issues.

Pennsylvania is a large, industrial state with a long history of fossil fuel production. It is in a unique position among such states because it is pursuing a progressive environmental policy agenda. When the PA OAG joins a lawsuit to prevent the delay of methane emissions standards from new oil and gas sources, it does so as a state whose citizens are directly impacted by emissions from the significant natural gas exploration activities in its own Marcellus Shale region. Similarly, when the PA OAG sues the USEPA to prevent delay in implementing new ozone regulations, it does so as a geographically vast and politically "purple" northeastern state with large metropolitan areas, disproportionately impacted by smog. When the PA OAG monitors potential changes to regulations on issues like coal ash disposal, it does so as a state whose own energy production remains largely based on the burning of coal. This "Pennsylvania perspective" provides a unique and powerful platform from which to create progressive environmental legal and policy change – from within. Put otherwise, while many states can and do fight for progressive environmental legal change, when that fighter is a coal-burning, Marcellus Shale gas-extracting, ozone-suffering state where environmental action may not always be politically palatable, the impact of an environmental leader like Attorney General Josh Shapiro is simply more powerful.

Being a leader of these efforts, however, requires economic resources. Perhaps because of its unique position, previous Pennsylvania attorneys general did not focus on environmental protection efforts. Therefore, the environmental section Attorney General Shapiro inherited was notably smaller than those found in attorney general offices of other environmental leaders. As such, granting Pennsylvania's application will be particularly significant. It will allow the PA OAG not just to join other states in lawsuits challenging the Trump Administration's efforts to weaken environmental regulations, but to hire one or more SAAGs so it can be more proactive across-the-board and serve as the lead plaintiff in future such actions.

Unfortunately, Pennsylvania's budget woes make it unlikely that the PA OAG will be able to get from the state the additional funds required for the attorneys and other resources it needs to realize its goals in environmental protection. Pennsylvania has a large structural deficit that is increasing each fiscal year. It is currently in the midst of its second budget impasse in the last three years and the third in the last eight years. [Pennsylvania's fiscal year begins on July 1 and, as of this writing, its budget has yet to be finalized; the last impasse lasted more than six months.]

As a result of all these factors, the addition of one or more SAAGs to the PA OAG's Environmental Protection Section will have a meaningful and outsized impact on Attorney

General Shapiro's ability to increase Pennsylvania's environmental protection efforts. The NYU Fellows program will be crucial to making those efforts a success.

2. **Program Structure**

Applications should include specific details about the scope of expertise the state attorney general needs in a SAAG to advance his or her priorities. Details should also be provided about how the SAAG would be incorporated into the Office of the Attorney General, including the relevant internal reporting structure.

Response:

To meet its needs the PA OAG will require one or, ideally, two SAAGs with experience litigating in the federal court system. It would be helpful if the SAAGs working with the PA OAG had broad knowledge of the relevant federal environmental statutes, corresponding regulations and the APA so they could better help navigate the legal issues that our cases will present. Naturally, we would prefer someone with strong writing and analytical skills as well.

SAAGs will be members of the Environmental Protection Section of the PA OAG. They will report directly to the Chief Deputy Attorney General ("CDAG") in charge of that section, and will work closely with the CDAG of the Impact Litigation Section on certain matters.

3. Budget Proposal and Confirmation of Authority

To be considered complete, applications must identify a proposed salary (or range) for a SAAG, with an explanation of how it would conform with the existing salary structure in the state AG office.

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).

Response:

The salary for a SAAG hired under this program will depend on his or her level of experience. By way of a range, we offer the following information regarding salaries for Deputy Attorneys General ("DAG") beginning with DAG 1 (i.e., entry level with minimal experience), then DAG 2 (a few years' experience) and ending with DAG 3 (usually 5+ years' experience):

- DAG 1: starting salary $56,020; total cost with benefits and other expenses: $96,700
- DAG 2: starting salary $64,059; total cost with benefits and other expenses: $110,600
- DAG 3: starting salary $73,233 ; total cost with benefits and other expenses: $126,500

The PA OAG has the authority to hire an NYU Fellow as a DAG under the Fellows Program. The PA OAG is unaware of any state-specific limitations or requirements of the appointment of an employee paid by an outside source. Indeed, by law, the PA OAG is "an independent department … headed by the Attorney General" who has broad authority to "appoint and fix the compensation of … [any] deputies, officers and employees who may, at any time, exercise such powers and perform such duties as [he] may … prescribe[]." 71. P.S. s. 201(a) and (c).

FOOTNOTE 119

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL

HECTOR H. BALDERAS
ATTORNEY GENERAL

September 15, 2017

VIA ELECTRONIC MAIL ONLY

NYU State Impact Center
New York University School of Law
40 Washington Sq. South
New York, NY 10012

Re: NYU Law Fellows Program Application

Dear State Impact Center Review Board:

New Mexico Attorney General Hector H. Balderas hereby submits this application to participate in The State Energy & Environmental Impact Center's NYU Law Fellows program.

1. Program Eligibility and Narrative

New Mexico is uniquely positioned from an energy and environmental perspective. We have a vast amount of public land, from state and national parks and landscapes that range from snow covered peaks in the north to burning desert sand dunes in the south. Our water is a precious commodity. We have some of the best land in the country for renewable energy generation, distribution, and development. However, New Mexico also is home to crippling poverty, a struggling economy, and a budget deficit that stretches state resources almost to breaking.

Though the Office houses only two attorneys dedicated to energy, utility, and environmental issues, we have demonstrated a strong commitment to protecting our environment, fighting climate change, and supporting clean energy development. New Mexico is typically among the largest oil and gas producing states to take progressive environmental positions that seek to advance and defend clean energy development, the fight against climate change, and protections for our environment.

The Office has leveraged its limited resources over the last few years by joining with other states in litigating the defense of the Clean Power Plan, the EPA's methane rule for the oil and gas industry (NSPS OOOOa), the EPA's Mercury and Air Toxic's rule, and the BLM's Venting and Flaring Rule. In addition, New Mexico has teamed with other states to bring affirmative litigation challenging recent attempts to roll back environmental regulations, including: i) delay of NSPS

TOLL FREE 1-844-255-9210 TELEPHONE: (505)490-4060 FAX: (505)490-4883 www.nmag.gov
MAILING ADDRESS: P.O. DRAWER 1508 - SANTA FE, NEW MEXICO 87504-1508
STREET ADDRESS: 408 GALISTEO STREET - SANTA FE, NEW MEXICO 87501

OOOOa; ii) illegal suspensions of the Venting and Flaring Rule and of the DOI's Coal, Oil, and Gas Valuation Rule; iii) the DOI's lifting of the moratorium on new coal leases; iv) the EPA's delay of the accident release prevention Rule under Clean Air Act Section 112(r); v) and the EPA's delay of attainment designations under the 2015 ozone standards.

In 2016, the Office brought an action in the name of the State in response to the Gold King Mine spill, which sent millions of gallons of contaminated water coursing down the Animas River and into New Mexico. This suit is a joint effort between the Office of the Attorney General and the New Mexico Environment Department and seeks to redress harms done by the spill, but also to protect the State, our environment, and our water from future catastrophes like it. In another effort to keep New Mexico's environment and water safe, the Office undertook a legal challenge to a rule regulating the waste water and seepage from the copper mining industry in New Mexico.

In addition to litigation that seeks to enhance and defend regulations that protect our environment, the office has taken the lead in utility regulatory actions which has resulted in the reduced dependence on coal burning energy generation and has paved the way for additional transition away from carbon based generation. While statutorily charged with representing consumers in utility matters, the Office has promoted a policy that encourages cheaper, cleaner energy that is more affordable for New Mexicans. In 2015, the Office urged New Mexico regulators to undertake a study of the value which consumer-owned distributed generation adds to the grid. Recently, the Office has joined a petition that seeks to enact a rule creating a clean energy standard in New Mexico—one that would aim to reduce emissions from the energy sector in New Mexico by 80% of its 2012 amounts by 2040. The Office continues to engage stake holders in the electricity sector in ways that will bring resiliency and diversity to the grid, encourage the development of cheap renewable energy, and expand on New Mexico's clean energy potential.

Attorney General Balderas has been outspoken regarding his commitment to fighting climate change, protecting our environment, and developing clean energy. However, the office currently is only able to fund one full-time environmental attorney and one full-time utility attorney to handle these matters. New Mexico's high poverty rate, often amongst the highest in the country, coupled with its high unemployment rate, again often amongst the highest in the country, means that our economy and therefore, tax revenues, are significantly depressed. Additionally, due to our economic dependence on oil and gas production and oil's low prices recently, the State's income has been dramatically decreased.

In the last two fiscal years, as well as the upcoming fiscal year, the NM Attorney General's Office has experienced reductions in funding that has in turn impacted staffing levels due to the lack of funding. In Fiscal Year 2017, during a special session of the New Mexico legislature, the Attorney General's budget was reduced 5.5% and $1,000,000 was taken from the consumer settlement fund. In the past few years, the consumer settlement fund has been appropriated by the NM legislature to partially fund the AG Office's operating costs (40-50% of total budget), and it has been used to supplement other state projects outside of the Office (tens of millions of dollars' worth). Due to this appropriation by the legislature, the consumer settlement fund is projected to be depleted in FY 2018, leaving the agency in search of alternative funding sources.

The budget crisis in New Mexico has gotten so bad that the Office's water and environmental protection efforts have been forced down from employing six full time attorneys to employing two. This has limited the State's ability to identify and pursue opportunities to engage in affirmative legal actions that seek to protect and enhance New Mexico's environment. Additionally, the limited resources has hindered our ability to identify and develop positions to proactively influence state and national policy.

Because New Mexico is a leading producer in oil and gas and because it is rich in potential for renewable energy development, a NYU Law Fellow who has expertise in the issues surrounding the environmental impact of oil and gas extraction and the interplay between the raw fuel and energy generation would fulfill a much-needed role in the office. Ideally, the NYU Law Fellow would have experience and knowledge regarding site extraction, transportation, as well as understanding of the economics surrounding the competition between fossil fuels and renewable energy. The Office would work with the NYU Law Fellow to identify "pressure points" on which litigation can be used to most effectively influence policy.

2. Program Structure

If accepted to host an NYU Law Fellow, the Fellow would be housed in the Consumer and Environmental Protection Division (CEPD) of the Office of the New Mexico Attorney General. CEPD is charged with initiating affirmative litigation on behalf of the State. CEPD has substantial expertise in utility regulation, the federal Clean Air Act, and litigation practice. Thus a Fellow with the expertise described above would greatly benefit the division, the Office and the State. The Fellow would report directly to the Director of CEPD, who, in turn, reports to the Deputy Attorney General of Civil Affairs. The Deputy Attorney General of Civil Affairs reports directly to the Attorney General. The Fellow would be assigned an office in the Santa Fe branch of the Office, which also houses the attorney assigned to utility matters, but would work closely with the other environmental attorney located in Albuquerque.

3. Budget Proposal and Confirmation of Authority

In the Office of the New Mexico Attorney General, an attorney with five to ten years of experience would qualify for a pay range of $70,000-$78,000 annually. This salary conforms to the salary of other, similarly experienced, attorneys in our office. 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). This serves as written confirmation that the Attorney General has the authority to hire an NYU Law Fellow as an Assistant Attorney General.

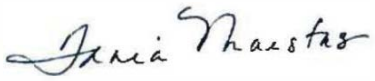
If you have questions or require more information, please contact:

Cholla Khoury
Director, Consumer and Environmental Protection Division
Office of the New Mexico Attorney General
P.O. Drawer 1508

Santa Fe, NM 87504-1508
(505) 490-4052
ckhoury@nmag.gov

Thank you for your consideration. We look forward to hearing from you.

Sincerely,



Tania Maestas
Deputy Attorney General

FOOTNOTE 124

From: Legal Recruitment
Sent: Thursday, January 25, 2018 2:12 PM
To: Wagner, Monica <Monica.Wagner@ag.ny.gov>; Srolovic, Lemuel <Lemuel.Srolovic@ag.ny.gov>; Smith, Joan <Joan.Smith@ag.ny.gov>
Cc: Pablo, Robert <Robert.Pablo@ag.ny.gov>; Voss, Kelly <Kelly.Voss@ag.ny.gov>; King, Allen <Allen.King@ag.ny.gov>; Ramsahai, Soonmatee <Soonmatee.Ramsahai@ag.ny.gov>; Grannum, Sandra <Sandra.Grannum@ag.ny.gov>; Ross, Abbe <Abbe.Ross@ag.ny.gov>; Legal Recruitment <Recruitment@ag.ny.gov>
Subject: Approval to Extend Offer - VAAG/NYU Fellow - EPB NYC (Matthew Eisenson)
Importance: High

Good News!!

The hire slip for **Matthew Eisenson** been signed by the Attorney General. Please extend the offer and advise Legal Recruitment, the Division of Administration, and Kelly Voss (Human Resources) by replying to all copied on this email of the following information:

1. Start Date
2. Date of Birth

Should you have questions, please give Legal Recruitment a call.

Thank you.

Legal Recruitment Bureau
New York State Office of the Attorney General

120 Broadway

New York |New York, New York 10271-0332
Tel: (212) 416-8080| Recruitment@ag.ny.gov|www.ag.ny.gov/job-postings

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise lega protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please not sender immediately by reply e-mail and delete the e-mail from your system.

From: "Srolovic, Lemuel" <Lemuel.Srolovic@ag.ny.gov>
To: "Elizabeth Klein (Elizabeth.Klein@nyu.edu)" <Elizabeth.Klein@nyu.edu>
Subject: NYU Fellows/SAAGS
Sent: Thu, 18 Jan 2018 09:55:22 -0500

Liz – thank you for your call this morning.

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.

Last, if you could provide the name and contact information for the NYU fellowship HR person, I will provide that information to our HR folks so they directly can communicate about logistics of these recruitments.

Thanks much,

Lem

Lemuel M. Srolovic
Bureau Chief
Environmental Protection Bureau
New York State Attorney General
[redacted]8 (o)
[redacted] (m)
lemuel.srolovic@ag.ny.gov

From: Elizabeth Klein <elizabeth.klein@nyu.edu>
Sent: Fri, 22 Dec 2017 16:00:54 -0500
Subject: Final Secondment agreement
To: Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>, Leslie Dubeck <Leslie.Dubeck@ag.ny.gov>, Brian Mahanna <brian.mahanna@ag.ny.gov>
NYU NYOAG Secondment Agreement FINAL.pdf

Hi all,
Here's the final secondment agreement with our signature If you could sign and send us a copy back, that would
Thanks!
Liz

--
Elizabeth Klein
Deputy Director
State Energy & Environmental Impact Center
NYU School of Law
ph 202-328-5186

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

This AGREEMENT ("Agreement") is entered into as of December 22, 2017, 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 Attorney General of the State of New York ("OAG").

WHEREAS, The State Impact Center seeks to provide a supplemental resource to state attorneys general on clean energy, climate change and environmental matters of regional and national importance; and

WHEREAS, As 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"); and

WHEREAS, The OAG has been selected by the State Impact Center to participate in the Legal Fellowship Program; and

WHEREAS, The OAG 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.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and OAG agree to the following:

A. Terms of Service for the Legal Fellowship Program at the OAG:

1. The State Impact Center will provide the services of two attorneys to the OAG to act as a Legal Fellow.
2. The specific start and end dates for services will be determined with the mutual agreement between the Legal Fellow, the OAG, and the State Impact Center, provided, however, that the term of the fellowship will be for two years (the "Fellowship Period"), although the parties may terminate the Fellowship earlier as described in paragraph A.6, below.
3. During the Fellowship Period, the Legal Fellow will be under the direction and control of, and owe a duty of loyalty to, the OAG, and will be subject to NY Public Officers Law §§ 73 & 74 as well as the OAG's policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellow will receive instruction and materials regarding these requirements from the OAG at the commencement of his or her

fellowship.

4. During the Fellowship Period, salary and benefits will be provided to the Legal Fellow by the NYU School of Law.
5. When acting as a Special Assistant Attorney General, the Legal Fellow will be entitled to defense and indemnification by the State of New York consistent with the provisions of N.Y. Public Officers Law § 17.
6. The OAG may terminate the services of the Legal Fellow upon seven (7) days' written notice to the State Impact Center, provided that the OAG will attempt to resolve any performance or other issues involving the Legal Fellow with the Legal Fellow and the State Impact Center before terminating the services of the Legal Fellow. The State Impact Center may terminate this Agreement upon seven (7) days' written notice to the OAG for (1) lack of funding, (2) the OAG's failure to submit reports as required below, or (3) the OAG's failure to assign the Legal Fellow work and responsibility as described in paragraph B.2, below. The State Impact Center shall compensate the Fellow for all time worked prior to termination of this Agreement.
7. Subject to the availability of lawful appropriations and consistent with Section 8 of the State of Claims Act, the OAG shall hold NYU harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the OAG's material breach of this Agreement or to the negligence of the OAG or of its officer or employees when acting within the course and scope of their appointment. The State Impact Center will indemnify, defend and hold OAG harmless from any claims, causes of action, or judgments arising out of the State Impact Center's breach of this Agreement.

B. Nature of the Fellowship Position at the OAG

1. During the Fellowship Period, the OAG will provide the Legal Fellow the title of Special Assistant Attorney General.
2. The OAG will assign the Legal Fellow 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.
3. The OAG will aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions and court appearances.
4. The OAG will afford the Legal Fellow the opportunity to partake in the extensive legal education, including CLEs, offered by the OAG to its attorneys.
5. The Legal Fellow's work as a Special Assistant Attorney General will be supervised

exclusively by the OAG.

6. The OAG will have a proprietary interest in all work product generated by the Legal Fellow as a Special Assistant Attorney General.

C. Prohibited Activity

1. The OAG may not request or permit the Legal Fellow to engage in any activities that would constitute any of the following:

    a. to carry on propaganda, or otherwise attempt to influence any specific legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;

    b. To engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;

    c. to influence the outcome of any specific public election; or

    d. to support the election or defeat of a candidate for public office, finance electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.

2. The OAG may not request or permit the Legal Fellow to participate in any matter that involves New York University or any of its affiliates; and, to the extent that the OAG participates in a matter that involves New York University or any of its affiliates, the OAG will create an ethical wall between the Legal Fellow and the OAG with regard to the matter to ensure that the Legal Fellow has access to no information relating to the matter.

3. The OAG has determined that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to the OAG do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce OAG to undertake or refrain from undertaking any action within the purview of OAG. OAG retains sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving New York University or any of its affiliates.

D. Communications and Reporting

1. 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 information from the Legal Fellow unless the Legal Fellow has obtained prior authorization from the Legal Fellow's supervisor at the OAG.

2. The OAG does not intend to share confidential information with NYU pursuant to this agreement. Confidential information includes, for example, attorney work product, attorney-client communications, materials the disclosure of which would interfere with a law enforcement investigation, and draft or deliberative materials.

3. To the extent practical without divulging confidential information, the OAG will provide periodic reports to the State Impact Center regarding the work of the Legal Fellow. These reports will include a narrative summary 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 OAG. 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 15, 2018.

    b. Activity for the period from May 1, 2018 through July 31, 2018 will be provided no later than August 15, 2018.

    c. Activity for the period from August 1, 2018 through January 31, 2019 will be provided no later than February 15, 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 fifteen (15) days of the end of the Fellowship Period.

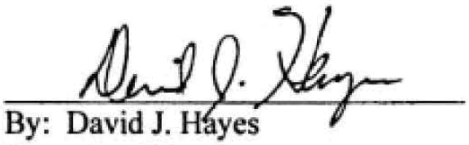
4. The OAG acknowledges that New York University may be required to make filings or disclosures that reference the OAG, the Legal Fellow, or the Legal Fellowship Program, and that the OAG is not required to review or approve any such filings as they pertain to the Legal Fellowship Program, except where New York University requests such review or approval.

5. In addition to the formal reporting requirements, the OAG will collaborate with the State Impact Center on public announcements relating to clean energy, climate change, and environmental matters in which the Legal Fellow is engaged.

6. Notifications to the OAG relating to this agreement should be directed to:
   Lemuel Srolovic
   Bureau Chief, Environmental Protection Bureau
   New York State Office of the Attorney General

Dated: December 22, 2017

State Energy & Environmental Impact Center at NYU School of Law



By: 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
202-258-3909
david.hayes@nyu.edu

Dated: December ___, 2017

New York State Office of the Attorney General

_____

By: Lemuel Srolovic
Bureau Chief, Environmental Protection Bureau
New York State Office of the Attorney General
120 Broadway
New York, NY 10271
212-419-8448
Lemuel.srolovic@ag.ny.gov

204257524.1

120 Broadway
New York, NY 10271
212-419-8448
Lemuel.Srolovic@ag.ny.gov

7. Notifications to the State Impact Center relating to this agreement should be directed to:
Elizabeth Klein
Deputy Director
State Energy & Environmental Impact Center
NYU School of Law
c/o Resources for the Future
1616 P Street NW
Washington, DC 20036
202-328-5186
Elizabeth.klein@nyu.edu

E. Miscellaneous

1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties and shall be governed by the laws State of New York. No amendment to this Agreement will be valid and binding unless reduced to writing and signed by the parties.
2. This agreement shall not be assigned by either party without the consent of the other party.
3. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original and all of which together will constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

FOOTNOTE 125

From: **Boss Frederick** fred.boss@doj.state.or.us
Subject: FW: NYU Fellow Appointment
Date: June 18, 2018 at 10:38 AM
To: Rosenblum Ellen F Ellen.F.Rosenblum@doj.state.or.us

BF

Here is Paul's cleaned up version. Novick will not be entered into the state's personnel system so he will not technically be an employee of the state. There may be a better word to refer to him than "volunteer" but employee is not the right word. I believe we could do a short appointment letter with an attached agreement

From: Garrahan Paul
Sent: Sunday, June 17, 2018 5:37 PM
To: Boss Frederick
Subject: NYU Fellow Appointment

I deleted the HIPAA clauses, and trimmed out some provisions related to reports and work quality that really aren't necessary, I think, with more of an internal SAAG like Steve will be. I thought of deleting out the contract boilerplate at the end, but then decided better safe than sorry. I think this is pretty straightforward now.

Paul Garrahan
Attorney-in-Charge | Natural Resources Section | General Counsel Division
Oregon Department of Justice
1162 Court St. NE, Salem, OR 97301-4096
503.947.4593 (Direct)
503.929.7553 (Mobile)

JUSTICE-
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FOOTNOTE 126

From: **Boss Frederick** fred.boss@doj.state.or.us
Subject: RE: NYU Fellow Appointment
Date: June 18, 2018 at 10:58 AM
To: Rosenblum Ellen F Ellen.F.Rosenblum@doj.state.or.us

BF

Ok

From: Rosenblum Ellen F
Sent: Monday, June 18, 2018 8:57 AM
To: Boss Frederick
Subject: Re: NYU Fellow Appointment

Do not use volunteer!
Ellen Rosenblum
Oregon Attorney General

On Jun 18, 2018, at 8:38 AM, Boss Frederick <fred.boss@doj.state.or.us<mailto:fred.boss@doj.state.or.us>> wrote:
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503.947.4593 (Direct)
503.929.7553 (Mobile)

<JUSTICE-#9011048-v2-NYU_Fellow_Appointment.docx>

From: **Boss Frederick** fred.boss@doj.state.or.us
Subject: Fwd: NYU Fellow Appointment
Date: June 21, 2018 at 11:44 AM
To: Rosenblum Ellen F Ellen.F.Rosenblum@doj.state.or.us

BF

Here is the agreement. I cannot find the term volunteer in this draft.

Sent from my iPhone

Begin forwarded message:

From: Boss Frederick <fred.boss@doj.state.or.us<mailto:fred.boss@doj.state.or.us>>
Date: June 18, 2018 at 8:38:48 AM PDT
To: Rosenblum Ellen F <Ellen.F.Rosenblum@doj.state.or.us<mailto:Ellen.F.Rosenblum@doj.state.or.us>>
Subject: FW: NYU Fellow Appointment

Here is Paul's cleaned up version. Novick will not be entered into the state's personnel system so he will not technically be an employee of the state. There may be a better word to refer to him than "volunteer" but employee is not the right word. I believe we could do a short appointment letter with an attached agreement

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Subject: NYU Fellow Appointment

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1162 Court St. NE, Salem, OR 97301-4096
503.947.4593 (Direct)
503.929.7553 (Mobile)

JUSTICE-
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From: **Boss Frederick** fred.boss@doj.state.or.us
Subject: RE: NYU Fellow Appointment
Date: June 18, 2018 at 11:08 AM
To: Rosenblum Ellen F Ellen.F.Rosenblum@doj.state.or.us

BF

We ran a search and this agreement does not use the term "volunteer"

From: Rosenblum Ellen F
Sent: Monday, June 18, 2018 8:57 AM
To: Boss Frederick
Subject: Re: NYU Fellow Appointment

Do not use volunteer!
Ellen Rosenblum
Oregon Attorney General

On Jun 18, 2018, at 8:38 AM, Boss Frederick <fred.boss@doj.state.or.us<mailto:fred.boss@doj.state.or.us>> wrote:
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To: Boss Frederick
Subject: NYU Fellow Appointment

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FOOTNOTE 127

ELLEN F. ROSENBLUM
Attorney General

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 15, 2017

SENT VIA EMAIL

Mr. David J. Hayes, Executive Director
State Energy and Environmental Impact Center
New York University School of Law
40 Washington Sq. South
New York, NY 10012
David.Hayes@nyu.edu

Re: Oregon Department of Justice Application for Placement of NYU Law Fellow

Dear Mr. Hayes:

Please accept this application for placement of a NYU Law Fellow with the Oregon Department of Justice.

1. Program Eligibility and Narrative

The Attorney General of Oregon is the chief law officer for the State of Oregon and all of its departments, and is the head of the Oregon Department of Justice (DOJ). Under the leadership of current Attorney General Ellen Rosenblum and that of her predecessors, Oregon has been participating in progressive litigation of issues of national environmental and energy policy for more than a dozen years. That work has been substantially funded by our client state agencies. Oregon DOJ is fiscally operated like a private law firm—we track our billable hours, charge our client state agencies an hourly rate, and our client agencies transfer funds from their state accounts to ours to pay for the legal services we provide to them. Without getting into details about the merits of this system, a reality that results is a disincentive for agencies to consult with legal counsel as frequently as may sometimes be advisable and, especially when state budgets are tight, a reluctance to fund legal work on matters that reach beyond the agencies' core and direct state programs.

Fortunately, this has not significantly reduced DOJ's ability to participate in many multistate attorneys general coalitions working on national environmental litigation. In particular, the Oregon Department of Environmental Quality has strongly supported such participation and has accepted responsibility to pay for such work when consistent with its environmental policy objectives. Recent and current examples include litigation regarding the Clean Power Plan, new source performance standards (NSPS) for new power plants, NSPS for control of methane from the oil and gas sector, defense of the mercury and air toxics rule, litigation leading to the adoption of the 2015 ozone national ambient air quality standards, and defense of vehicle

greenhouse gas emissions standards. That said, however, we are a relatively small state with limited resources, and our role in those matters is therefore usually limited to more of a "me too" role, and not as a primary contributing partner.

This year, with the aggressively regressive environmental policy proposals of the new federal Administration, such fiscal restraints are beginning to test our state agencies' budgetary limits. Not only are some agencies facing multistate litigation budget fatigue, but we are also encountering issues where the agency that would be naturally positioned to pay for such litigation is unable to do so due to state constitutional limits (e.g. limits on expenditure of highway funds by the Oregon Department of Transportation), or for which there may not be a state agency that is fiscally prepared to take on such expenses.

Having a NYU Law Fellow as a SAAG in our office could help us not only continue to play a strong contributing role in such matters and to participate in a broader range of substantive matters, but also could allow Oregon DOJ to play a more active and contributing role in those matters.

2. Program Structure

We are comfortable with the experience parameters described in your announcement—for attorneys with five to ten years practice experience in clean energy, climate change, and environmental issues. Our preference would be for the SAAG to be a member of the Oregon State Bar, though membership in another bar would be required at minimum, of course. We intend for the SAAG to report to me, the Attorney-in-Charge (AIC) of the Natural Resources Section (NRS) in the General Counsel Division. I have been responsible for coordinating and overseeing most of the state's participation in multistate environmental litigation matters for the last five years, and I have authority to seek approval for participation in such matters directly from the Attorney General.

3. Budget Proposal and Confirmation of Authority

The salary for Assistant Attorneys General (AAGs) and Sr. AAGs at Oregon DOJ is between $6,513.00 and $12,183.00 per month, depending primarily on the years of legal practice experience of the individual (it takes about 16 years of practice for AAGs to reach the top of the pay scale, for example). We would strongly prefer that the salary of the SAAG be in conformity with that range, while acknowledging that the SAAG's salary could include consideration that the SAAG would not have the benefit of other state employment benefits, such as health insurance or membership in the state retirement plan.

Our preference and proposal is that the SAAG track billable hours like other attorneys at Oregon DOJ, that we be authorized to bill agencies for hours worked by the SAAG on multistate litigation matters (where the agencies have agreed to provide funding), and that the SAAG be available to work on limited and occasional other billable environmental and energy matters for our state agency clients. Such flexibility would allow us to apply the experience and expertise of

existing AAGs to work on additional multistate matters, while still keeping the SAAG's workload predominately on such matters.

The Oregon Attorney General has broad authority to hire special legal assistants as she deems appropriate under Oregon Revised Statute 180.140 (5). I certify that Oregon DOJ has authority to hire an NYU Law Fellow as a SAAG in our office, subject to negotiation of the terms of such employment, and that the Attorney General has approved the filing of this application.

Thank you for considering placing a NYU Law Fellow as a SAAG with Oregon DOJ. If you have any questions regarding this application, please do not hesitate to contact me.

Sincerely,

Paul A. Garrahan
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
Paul.garrahan@doj.state.or.us
503.947.4593 (Direct)
503.929.7553 (Mobile)

cc: Fredrick Boss, Deputy Attorney General

PG:sc9/DM#8503612

FOOTNOTE 128

From: Aimee Barnes [mailto:Aimee.Barnes@GOV.CA.GOV]
Sent: Sunday, August 20, 2017 10:03 AM
To: Davis, Chris (GOV) <chris.davis@gov.wa.gov>; Alexander Cochran <Alexander.Cochran@exec.ny.gov>; Schuler, Reed (GOV) <reed.schuler@gov.wa.gov>; Jamie Callahan <Jamie.Callahan@GOV.CA.GOV>; Kleysteuber, Alexa@EPA (Alexa.Kleysteuber@calepa.ca.gov) <Alexa.Kleysteuber@calepa.ca.gov>; Ricketts, Sam (GOV) <Sam.Ricketts@gov.wa.gov>
Subject: Re: State capacity / Hewlett

Keith and I talked about this as well. I was going to make an intro to the folks in VA for him.

From: Davis, Chris (GOV) <chris.davis@gov.wa.gov>
Sent: Sunday, August 20, 2017 8:57 AM
To: Alexander Cochran; Schuler, Reed (GOV); Aimee Barnes; Jamie Callahan; Kleysteuber, Alexa@EPA (Alexa.Kleysteuber@calepa.ca.gov); Ricketts, Sam (GOV)
Subject: RE: State capacity / Hewlett

This would be a great value add to offer the group --- we should totally prioritize this.

CHRIS DAVIS

Senior Advisor – Energy and Carbon Markets| Office of Governor Jay Inslee

Desk: 360-902-0490| Cell: 360-972-5693

www.governor.wa.gov | chris.davis@gov.wa.gov

From: Alexander Cochran [mailto:Alexander.Cochran@exec.ny.gov]
Sent: Saturday, August 19, 2017 4:54 AM
To: Schuler, Reed (GOV) <reed.schuler@gov.wa.gov>; Aimee Barnes <Aimee.Barnes@gov.ca.gov>; Jamie Callahan <Jamie.Callahan@GOV.CA.GOV>; Kleysteuber, Alexa@EPA (Alexa.Kleysteuber@calepa.ca.gov) <Alexa.Kleysteuber@calepa.ca.gov>; Davis, Chris (GOV) <chris.davis@gov.wa.gov>; Ricketts, Sam (GOV) <Sam.Ricketts@gov.wa.gov>
Subject: Re: State capacity / Hewlett

Just seeing this. Looking forward to discussing it.

Sent from my BlackBerry 10 smartphone.

From: Schuler, Reed (GOV)

Sent: Friday, August 18, 2017 3:53 PM

To: Aimee Barnes; Jamie Callahan; Kleysteuber, Alexa@EPA (Alexa.Kleysteuber@calepa.ca.gov); Alexander Cochran; Davis, Chris (GOV); Ricketts, Sam (GOV)

Subject: State capacity / Hewlett

Hi all,

Alexander mentioned on one of our calls yesterday that one of his interests is in building the capacity of some of the states in USCA. Keith Benes, who some of you have been in contact with, told me earlier this week Jonathan is potentially still interested in funding additional people directly to work for governors. We will obviously have a range of funding priorities to consider, but let's keep an eye open for the possibility that we will identify promising areas of work that would require additional staffing on the state side (and can't be run from the secretariat). In this case, we could conceivably shepherd a process to help a few interested states pick up a staffer for some period of time – potentially a nice carrot for them and a success story for the alliance if they can something meaningful and new. Happy to discuss further.

Reed

FOOTNOTE 129

From: **Garrahan Paul** Paul.Garrahan@doj.state.or.us
Subject: draft agreement
Date: June 15, 2018 at 4:41 PM
To: Steve Novick stevenovick96@gmail.com

GP

Steve: I wanted you to see this draft version, in case we decide to go with an agreement like other SAAG agreements. We may not need a lot of this, such as the detailed HIPAA clause and exhibit. And much of it repeats things that you and DOJ have already committed to in each of our agreements with NYU. Please give me a call if you would like to talk about any of this-including over the weekend on my mobile number, if necessary. Thanks.

Paul Garrahan
Attorney-in-Charge | Natural Resources Section | General Counsel Division
Oregon Department of Justice
1162 Court St. NE, Salem, OR 97301-4096
503.947.4593 (Direct)
503.929.7553 (Mobile)

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DRAFT

OREGON DEPARTMENT OF JUSTICE

APPOINTMENT OF ENERGY AND ENVIRONMENTAL LEGAL FELLOW

This appointment of a Legal Fellow ("Appointment") is an agreement between the Oregon Department of Justice ("DOJ") and Steve Novick (the "Legal Fellow") for the provision of legal services.

RECITALS

A. Pursuant to Oregon Revised Statutes ("ORS") chapter 180, DOJ provides legal services required by the State and its various agencies, departments, boards, bureaus, commissions, and officers;

B. DOJ has authority under ORS chapter 180 to appoint counsel outside of DOJ to provide the State with certain legal services ("Services") on behalf of DOJ;

C. The New York University School of Law ("NYU") has established the State Energy and Environmental Impact Center ("State Impact Center") to provide supplemental, in-house resources to state attorneys general and their senior staffs on clean energy, climate change and environmental matters of regional and national importance;

D. The State Impact Center conducts a legal fellowship program to provide attorneys to act as legal fellows in the offices of certain state attorneys general, and has selected DOJ to participate in that program;

E. DOJ and NYU have entered into a Secondment Agreement, attached as Exhibit A ("Secondment Agreement"), by which NYU will pay the salary of the Legal Fellow and DOJ will appoint the Legal Fellow to work on behalf of the State of Oregon;

F. NYU legal fellows work under the direction and control, and owe a duty of loyalty, to the state legal offices to which they are appointed;

G. DOJ desires to appoint Steve Novick as a NYU legal fellow to provide advice and representation to the State of Oregon on energy and environmental legal issues;

H. Mr. Novick desires to provide the legal services required under this Appointment; and

I. This appointment sets forth the terms and conditions governing the parties' relationship in connection with the Services, consistent with the rules of professional conduct applicable to all attorneys.

The parties agree as follows:

DRAFT

APPOINTMENT

Article I
Effective Date and Duration

1.1 Effective Date. This Appointment is effective on June 18, 2018 ("**Effective Date**"), and continues through June 18, 2020 ("**Fellowship Period**"), unless this Appointment is earlier terminated according to its terms.

1.2 Special Assistant Attorneys General Appointment. By signing this Appointment, the Legal Fellow affirms that he is a member in good standing of the Oregon State Bar, agrees to accept appointment as a Special Assistant Attorney General for the purpose of and subject to the terms and conditions of this Appointment, and agrees to take an Oath of Office or an Affirmation of Office in a form substantially similar to one of the samples set forth in **Exhibit B-1** and **Exhibit B-2**. By signature of either the Attorney General or Deputy Attorney General to this Appointment, the Legal Fellow is appointed as Special Assistant Attorneys General (a "**SAAG**"). Either the Attorney General or Deputy Attorney General may withdraw appointment of the SAAG upon seven (7) days' written notice.

Article II
Statement of Work

2.1 Legal Services. During the Fellowship Period, the Legal Fellow shall (a) provide legal services solely to the State of Oregon, as assigned by, and under the supervision of, the Supervising Attorney, and (b) shall not engage in the private practice of law or otherwise provide legal services on behalf of any other person or entity.

2.2 Quality. The Legal Fellow represents and warrants that he is a member of the Oregon State Bar and that the Services will be performed in a skillful and professional manner according to the standards of the legal profession.

2.3 Compliance with Secondment Agreement. DOJ has provided the Legal Fellow with a copy of the Secondment Agreement. The parties acknowledge and agree to comply with the terms of the Secondment Agreement. To the extent that any terms in the Secondment Agreement are determined to conflict with terms in this Appointment, the terms of the Secondment Agreement shall take precedence. As provided therein, DOJ has specifically noted to the Legal Fellow the requirements of paragraph A.6 of the Secondment Agreement.

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.

Article IV
Ethical Obligations

4.1 Ethical Obligations. The Legal Fellow shall comply with ethical obligations in all respects in delivering Services. Nothing under this provision waives or diminishes the restrictions on the Legal Fellow set forth in Section 6.2.

4.2 Conflicts. The Legal Fellow shall provide adequate information to DOJ related to any conflicts of interest within the meaning of the Oregon Rules of Professional Conduct.

Article V
Termination

5.1 Parties' Right to Terminate. This Appointment may be terminated at any time by mutual written consent of DOJ and the Legal Fellow. DOJ may terminate this Appointment for its convenience upon seven (7) days' written notice to the Legal Fellow. The Legal Fellow may terminate this Appointment effective upon delivery of thirty (30) days written notice to DOJ, provided termination is consistent with the Legal Fellow's ethical obligations. Termination of this Appointment pursuant to this section is without prejudice to any obligations or liabilities of either party already accrued prior to such termination. However, upon receiving a notice of termination under this section, the Legal Fellow shall immediately cease all activities under this Appointment, unless DOJ expressly directs otherwise in the notice of termination.

5.5 Immediate Surrender of Work Product. Upon termination, the Legal Fellow shall immediately surrender to DOJ all items listed in Section 7.2.

Article VI
Compliance with Applicable Law

6.1 Compliance. The Legal Fellow shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Appointment.

6.2 Prohibited Acts. The Legal Fellow is a state officer for the purpose of, and shall not act in contravention of, Article XV, § 7 of the Oregon Constitution.

6.3 HIPAA Requirements. DOJ may be subject to the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act portion of the American Recovery and Reinvestment Act of 2009, and its implementing regulations, including the Privacy and Security Rules found at 45 CFR Parts 160 and 164 (collectively, "**HIPAA**") as a

business associate of a covered entity (i.e., if Benefitting Agency provides services that include a health care component), or as a business associate of a business associate of a covered entity (i.e., if a state agency is acting as a business associate of an entity that provides services that include a health care component).

If DOJ determines that the Legal Fellow is a "**Business Associate**" (as that term is defined at 45 CFR § 160.103) for the Services provided under this Appointment, DOJ will notify the Legal Fellow; the Legal Fellow agrees to comply with the Business Associate Appointment provisions attached as Exhibit C. The Legal Fellow shall comply with HIPAA to the extent that Services or obligations arising under this Appointment are covered by HIPAA, including as specified in Exhibit D, Business Associate Appointment.

Article VII
Work Product

7.1 Ownership of Work Product. The Legal Fellow's work product that results from this Appointment is the property of DOJ, although the Legal Fellow may retain copies of such work product and to use the same consistent with its ethical obligations.

7.2 Surrender of Work Product. Upon request by the Supervising Attorney, the Legal Fellow shall surrender to DOJ or to anyone the Supervising Attorney designates, all copies of final versions of any written work product, documents, research or objects or other tangible things needed to complete the Services and any work product requested hereunder.

7.3 Reports. Upon request by the Supervising Attorney, the Legal Fellow shall provide reports summarizing significant Services performed under this Appointment and developments in any deliverables, proceedings or negotiations.

Article VIII
Indemnity

8.1 Subject to the limitations of Article XI, section 7, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), ODOJ shall indemnify, defend, and hold harmless the Legal Fellow from any legal malpractice claim asserted against the Legal Fellow, provided that:

(a) The Legal Fellow waives attorney client privilege as to any facts related to the complaint asserted against the Legal Fellow and that are relevant to any separate proceedings in which the State of Oregon also has an interest, e.g., defense of a tort claim, termination of employment, etc.; and

(b) The conduct by the Legal Fellow that is the subject of the complaint was in accordance with this Agreement and was:

(i) In accordance with an ODOJ ethics policy or procedure or an opinion of the ODOJ Ethics Committee;

(ii) In accordance with direction provide by the Legal Fellow's ODOJ supervisor; or

(iii) Was apparently within the proper scope and discretion of the duties assigned to the Legal Fellow.

Article IX
Supervising Attorney

11.1 Supervising Attorney. The supervising attorney for this Appointment is Paul Garrahan, Attorney-in-Charge, Natural Resources Section ("**Supervising Attorney**"). The Deputy Attorney General or the Chief Counsel of the General Counsel Division ("**Chief Counsel**") may designate a successor Supervising Attorney upon written notice to the Legal Fellow. Only the Supervising Attorney or another person designated by the Deputy Attorney General or the Chief Counsel is authorized to act on behalf of DOJ under this Appointment. The Supervising Attorney's authority may be temporarily delegated to another attorney at DOJ by notice to the Legal Fellow from either the Supervising Attorney, Deputy Attorney General, or Chief Counsel.

11.2 Direction. The Legal Fellow shall obtain the Supervising Attorney's direction prior to performing Services under this Appointment. The Legal Fellow shall submit all interpretations of Oregon law to the Supervising Attorney for review prior to the issuance of advice based on such interpretation, except as otherwise authorized by the Supervising Attorney. The Legal Fellow shall obtain the Supervising Attorney's approval prior to the initiation of any court, administrative or settlement actions.

11.3 Legal Fellow Judgment. The Legal Fellow shall exercise independent judgment and control with respect to the means and manner of performance under this Appointment.

Article X
Legal Fellow Volunteer Status

12.1 Legal Fellow Status. The Legal Fellow is a volunteer with DOJ under this Appointment. The Legal Fellow represents and warrants that the Legal Fellow (i) is not an employee of the State of Oregon, and (ii) is not an employee of the federal government.

Article XI
Miscellaneous

11.1 Notices. Except as otherwise provided in this Appointment, all notices, requests, demands or other communications required by or otherwise concerning this Appointment must be in writing and are

effective when delivered personally (by courier service or otherwise), when delivered by e-mail and confirmed by the recipient by telephone or responding e-mail, whichever occurs first, or seven days after the date mailed by first-class mail, postage prepaid and return receipt requested in each case to the applicable addresses set forth below.

IF TO DOJ:	IF TO LEGAL FELLOW:
Supervising Attorney Paul Garrahan Department of Justice Justice Building 1162 Court Street NE Salem, OR 97301-4096 (503) 947-4593 (voice) Paul.garrahan@doj.state.or.us	Steve Novick 7315 SW 36th Ave. Portland, OR 97219 (503) 516-0624 Stevenovick96@gmail.com

11.2 Exhibits and Schedules. Exhibit A, Exhibit B-1, Exhibit B-2, and Exhibit C are attached to this Appointment and incorporated by this reference.

11.3 No Subcontracts and Assignment. The Legal Fellow shall not enter into any subcontracts for any of the Services, or assign or transfer any of its interest in this Appointment.

11.4 Amendments. This Appointment may be amended only by a written amendment signed by DOJ and Legal Fellow.

11.5 Records Maintenance; Access. The Legal Fellow shall maintain any records pertinent to this Appointment in such a manner as to clearly document the Legal Fellow's performance hereunder. The Legal Fellow shall permit DOJ, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives, to have access to such records and other books, documents, papers, plans and writings of the Legal Fellow pertinent to this Appointment to enable them to perform examinations and audits, and make excerpts and transcripts. The Legal Fellow shall retain and keep all such records, books, documents, papers, plans, and writings for a minimum of six (6) years or such longer period as may be required by applicable law, following termination of this Appointment, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Appointment, whichever date is later.

11.6 Choice of Law; Designation of Forum; Federal Forum.

11.7.1 Choice of Law. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Appointment, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

11.7.2 Designation of Forum. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Appointment shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

11.7.3 Federal Forum. Notwithstanding Section 13.7.2, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

11.7 Force Majeure. Neither DOJ nor the Legal Fellow are responsible for delay or default caused by fire, riot, acts of God, or war, where such cause was beyond DOJ's or the Legal Fellow's respective reasonable control. The Legal Fellow shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default, and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Appointment.

11.8 Severability. The parties agree that if any term or provision of this Appointment is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected, and the rights and obligations of the parties will be construed and enforced as if the Appointment did not contain the particular term or provision held to be invalid.

11.9 Waiver. No provision in this Appointment may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced. A waiver made on one occasion is effective only in that instance and only for the purpose that it is given and will not be construed as a waiver on any future occasion.

11.10 Execution and Counterparts. This Appointment may be executed in several counterparts, all of which when taken together constitute one Appointment binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Appointment so executed constitutes an original.

11.12 Survival. The covenants, warranties, representations, rights, and obligations set forth in Article IV, Article VII, Article VIII, Sections 11.6, 11.8 and this Section 11.12 survive termination of this Appointment.

The remainder of this page is intentionally left blank.

13.14 Merger Clause. THIS APPOINTMENT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER IDENTIFIED IN ARTICLE II. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS APPOINTMENT. THE LEGAL FELLOW, BY HIS SIGNATURE BELOW, HEREBY ACKNOWLEDGES THAT HE HAS READ AND UNDERSTOOD THIS APPOINTMENT, AND THAT HE AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Steve Novick

_____

Date: _____

STATE OF OREGON acting by and through the OREGON DEPARTMENT OF JUSTICE

By: _____ Date: _____
Frederick M. Boss
Deputy Attorney General

Reviewed:

By: _____ Date: _____
Stephanie A. Thompson
Senior Assistant Attorney General

DRAFT

EXHIBIT A

[ATTACH SECONDMENT AGREEMENT HERE]

DRAFT

EXHIBIT B-1

State of Oregon
Department of Justice
Oath of Office

State of Oregon)
) ss.
County of Marion)

I, Steve Novick, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the laws thereof, and that I will faithfully discharge the duties of Special Assistant Attorney General according to the best of my ability, so help me God.

_____
Subscribed and sworn to before me
this ___ day of _____, 20___

_____
Notary Public for Oregon
My commission expires_____

Note: Execute this oath of office before either a notary public or judicial official and return it to the Supervising Attorney for filing with the Secretary of State.

DRAFT

EXHIBIT B-2

State of Oregon
Department of Justice
Affirmation of Office

State of Oregon)
) ss.
County of Marion)

I, Steve Novick, do solemnly affirm that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the laws thereof, and that I will faithfully discharge the duties of Special Assistant Attorney General according to the best of my ability.

_____
Signed and affirmed before me
this ___ day of _____, 20___

_____
Notary Public for Oregon
My commission expires_____

Note: Execute this affirmation of office before either a notary public or judicial official and return it to the Supervising Attorney for filing with the Secretary of State.

DRAFT

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

DOJ and the Legal Fellow agree that the following terms and conditions constituting a business associate agreement ("**BAA**") apply to the performance of their obligations under the Appointment. Capitalized terms used, but not otherwise defined in this BAA, have the same meaning as those terms in the Privacy Rule and Security Rule, 45 CFR 160 and 164.

1. Business Associate Status.

1.1 DOJ is, for purposes of the Appointment, either a business associate of a State agency (a covered entity) or is a business associate of a State agency acting in its capacity as a business associate of a health care component of another State agency (a hybrid covered entity), because DOJ performs some functions on behalf of a State Agency that involve the creation, receipt, maintenance or transmission of Protected Health Information ("**PHI**"); and

1.2 The Legal Fellow creates, receives, maintains or transmits PHI and Electronic Protected Health Information ("**EPHI**") in the performance of its obligations under the Appointment on behalf of DOJ; and

1.3 The Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as "**HIPAA**"), requires a business associate to enter into a business associate agreement with a subcontractor that creates, receives, maintains or transmits PHI on behalf of a business associate; and

1.4 Both DOJ and the Legal Fellow are committed to compliance with the standards set forth in HIPAA as may be amended further from time to time, in the performance of their obligations under the Appointment.

2. Obligations and Activities of Legal Fellow.

The Legal Fellow shall:

2.1 Not use or disclose PHI or EPHI other than as permitted or required by the Appointment or this BAA, as permitted by the Privacy Rule, the Security Rule or as required by law.

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of the PHI and EPHI other than as provided for by the BAA and the Appointment, or as required by law.

2.3 Implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of DOJ. The Legal Fellow represents that the PHI and EPHI it creates, receives, maintains, or transmits on behalf of DOJ is:

2.3.1 Ensured as to its confidentiality, integrity, and availability,

2.3.2 Protected against threats or hazards to its security or integrity, and

2.3.3 Protected against unauthorized use or disclosure.

2.4 Create and maintain documentation that demonstrates its compliance with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316. Minimally, the Legal Fellow shall:

2.4.1 Maintain PHI and EPHI in a secured server and only permit access to PHI and EPHI by employees or subcontractors who have signed confidentiality agreements and have a need to know the information maintained in the PHI and EPHI for the purposes set forth in the Appointment and this BAA. Legal Fellow represents that its workforce complies with the security standards, including policies and procedures that Legal Fellow maintains pursuant to the Security Rule.

2.4.2 Document the level of security and privacy protection required under this BAA in a security risk management plan. The Legal Fellow shall make this plan available to DOJ upon request.

2.4.3 Provide DOJ, as reasonably requested, access to the Legal Fellow's data officers, agents, contractors, subcontractors, employees, facilities, equipment, records, and any other information reasonably necessary to:

a) Determine Legal Fellow's compliance with the terms and conditions of this BAA;

b) Determine whether or not to continue to provide PHI or EPHI, in whole or in part, under this BAA;

c) Verify documentation of a written security risk management plan.

d) Meet any applicable state or federal laws, rules and regulations regarding use and disclosure relating to PHI and EPHI; and

e) Allow DOJ's Information Security and Privacy Office to audit facilities, equipment, processes, and procedures.

2.5 Mitigate, to the extent practicable, any harmful effect that is known to the Legal Fellow of a use or disclosure of PHI or EPHI by Legal Fellow in violation of the requirements of the BAA.

2.6 Report to DOJ, as promptly as possible, any use or disclosure of the PHI or EPHI not provided for by the Appointment or this BAA, of which it becomes aware.

2.7 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI or EPHI on behalf of the Legal Fellow agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

2.8 At the request of DOJ, and in the time and manner designated by DOJ, provide access to PHI and EPHI in a Designated Record Set, to DOJ or, as directed by DOJ, to an Individual in order to meet the requirements under 45 CFR 164.524.

2.9 Make any amendment(s) to PHI and EPHI in a Designated Record Set that the DOJ directs or agrees to pursuant to 45 CFR 164.526 at the request of DOJ or an Individual, and in the time and manner designated by DOJ.

2.10 Make internal practices, books, and records, including policies and procedures and any PHI or EPHI, relating to the creation, receipt, maintenance or transmission of PHI or EPHI on behalf of DOJ, available to DOJ or to the Secretary of United States Department of Health and Human Services ("**Secretary**"), within the time and in the manner designated by DOJ or the Secretary, for purposes of the Secretary determining DOJ' compliance with the Privacy Rule or Security Rule.

2.11 Refer requests for disclosures of PHI and EPHI to DOJ for response. To the extent the Legal Fellow discloses PHI or EPHI for purposes not related to services provided under the Appointment but are otherwise permitted by this BAA or permitted by the applicable privacy rules, the Legal Fellow agrees to document such disclosures to the extent such documentation is required for DOJ to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

2.12 In time and manner to be designated by DOJ, provide to DOJ or an Individual any information collected in accordance with Section 2.11 of this BAA, to permit DOJ to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

2.13 In the event of discovery of a Breach of Unsecured Protected Health Information:

2.13.1 Notify DOJ of such Breach without unreasonable delay, and in any event no later than thirty (30) days after the discovery of the Breach. A Breach is considered discovered as of the first day on which the Breach is known or, exercising reasonable diligence would have been known, to Legal Fellow or any employee or agent of Legal Fellow, other than the individual committing the Breach. Notification must include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Legal Fellow to have been accessed, acquired or disclosed during such Breach and any other information as may be reasonably required by DOJ necessary for DOJ to meet its notification obligations;

2.13.2 Confer with DOJ as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Legal Fellow to have been accessed, acquired or disclosed as a result of such Breach;

2.13.3 Where the Breach involves more than 500 individuals, confer with DOJ as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions;

2.13.4 Confer with DOJ in a timely manner as to the preparation and issuance of an appropriate notice to the Secretary of Unsecured Protected Health Information that has

been acquired or disclosed in a Breach in order for the Legal Fellow to meet its obligations under 45 CFR 164.408. Legal Fellow understands that if the Breach was with respect to 500 or more individuals, Legal Fellow must provide notice to the Secretary contemporaneously with the notices to individuals. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log must be provided to the Secretary by the Legal Fellow annually documenting such Breaches occurring during the year involved;

2.13.5 Except as set forth in Section 2.13.6 below, provide notifications to individuals without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach. Any notice must be provided in the manner required by the Health Information Technology for Economic and Clinical Health ("**HITECH**") Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by DOJ; and

2.13.6 Delay any notification required by this section if requested by a law enforcement official in accordance with 45 CFR 164.412.

2.13.7 For purposes of this section, the terms "Unsecured Protected Health Information" and "Breach" have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as "discovered" in accordance with 45 CFR 164.410(a)(2).

2.14 Be liable to DOJ, and indemnify DOJ for any and all costs incurred by DOJ, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of Legal Fellow's Breach of Unsecured Protected Health Information.

3. Permitted Uses and Disclosures by Legal Fellow.

3.1 General Use and Disclosure Provisions.

3.1.1 Except as otherwise permitted, limited or prohibited by this BAA, Legal Fellow may use or disclose PHI and EPHI to perform the Services and deliver the associated work product required under this Appointment for or on behalf of DOJ as specified in the Appointment and this BAA, provided that such use or disclosure would not violate the Privacy Rule, Security Rule, or other applicable federal or state laws or regulations if done by DOJ, or the minimum necessary policies and procedures of DOJ.

3.1.2 All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this BAA, except to the extent preempted by the HIPAA Privacy Rule and Security Rule.

3.1.3 Legal Fellow may use or disclose PHI or EPHI as required by law.

3.2 Specific Use and Disclosure Provisions.

3.2.1 Except as otherwise limited in this BAA, Legal Fellow may use PHI and EPHI for the proper management and administration of the Legal Fellow or to carry out the legal responsibilities of the Legal Fellow.

3.2.2 Except as otherwise limited in this BAA, Legal Fellow may disclose PHI and EPHI for the proper management and administration of the Appointment, if applicable, provided that disclosures are required by law, or Legal Fellow obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Legal Fellow of any instances of which it is aware in which the confidentiality of the information has been breached.

3.2.3 Legal Fellow may use PHI and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

3.2.4 Legal Fellow may not aggregate or compile PHI or EPHI with the PHI or EPHI of other Covered Entities unless the Appointment permits Legal Fellow to perform Data Aggregation services. If the BAA permits Legal Fellow to provide Data Aggregation services, Legal Fellow may use PHI and EPHI to provide the Data Aggregation services requested by DOJ as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this BAA. If Data Aggregation services are requested by DOJ, Legal Fellow is authorized to aggregate PHI and EPHI with PHI or EPHI of other Covered Entities that the Legal Fellow has in its possession through its capacity as a Legal Fellow to such other Covered Entities provided that the purpose of such aggregation is to provide DOJ with data analysis relating to the Health Care Operations of DOJ. Under no circumstances may Legal Fellow disclose PHI or EPHI of DOJ to another Covered Entity absent the express authorization of DOJ.

4. Permissible Requests by DOJ. DOJ may conduct an audit and inspection of Legal Fellow with respect to Legal Fellow's compliance with the terms of this BAA and applicable law for the establishment of policies and procedures for the safeguarding of any PHI and EPHI provided to Legal Fellow by DOJ. Legal Fellow shall implement any recommendations of DOJ resulting from such audit and inspection as may be reasonably necessary to ensure compliance with the terms of this BAA and applicable law for the safeguarding of any PHI and EPHI provided to Legal Fellow by DOJ.

5. Regulatory References. A reference in this BAA to a section in HIPAA, the Privacy Rule, Security Rule, or the HITECH Act means the section in effect as of the effective date of this BAA or as the Privacy Rule or Security Rule may be subsequently amended from time to time.

6. Appointment; **Waiver.** The parties agree to take such action as is necessary to amend the BAA from time to time as is necessary for DOJ to comply with the requirements of the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof may be deemed waived

unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event may not be construed as continuing, or as a bar to or waiver of any other right or remedy under this BAA or the Appointment.

7. Interpretation; Order of Precedence. Any ambiguity in this BAA, or ambiguity or apparent conflict between this BAA and the Appointment, will be resolved to permit DOJ to comply with the Privacy Rule and the Security Rule. This BAA does not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict between the provisions of the BAA and the Privacy Rule or Security Rule, the Privacy Rule and Security Rule control.

8. No Third-Party Beneficiaries. DOJ and Legal Fellow are the only parties to this BAA and are the only parties entitled to enforce its terms. Nothing in this BAA gives, is intended to give, or may be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this BAA. The parties agree that Benefitting Agency is the only intended third-party beneficiary under this BAA.

FOOTNOTE 131

From: **Rosenblum Ellen F** Ellen.F.Rosenblum@doj.state.or.us
Subject: Re: AAG position
Date: May 16, 2018 at 11:26 AM
To: Garrahan Paul Paul.Garrahan@doj.state.or.us
Cc: Boss Frederick fred.boss@doj.state.or.us, Wolf Steven steven.wolf@doj.state.or.us

RF

Not in the interview, but I did mention the possibility several months ago.

Ellen Rosenblum
Oregon Attorney General

> On May 16, 2018, at 9:18 AM, Garrahan Paul <Paul.Garrahan@doj.state.or.us> wrote:
>
> Attorney General: Steve and I spoke with Liz Klein at NYU this morning and clarified some of the outstanding issues regarding hiring a fellow. We are following up on a few more issues to make sure there are no HR or state budget issues that we have not adequately considered. We are hoping to clarify those quickly.
>
> Did you raise the concept of the NYU Fellow position in your discussion with Steve? If we resolve all of the other issues and are prepared to offer him that position, we wanted to know whether this would be a new idea to him. Thanks.
>
> Paul Garrahan
> Oregon Department of Justice
> 503.947.4593 (Direct)
> 503.929.7553 (Mobile)
>
> -----Original Message-----
> From: Rosenblum Ellen F
> Sent: Friday, May 11, 2018 6:10 PM
> To: Garrahan Paul
> Cc: Boss Frederick
> Subject: Re: AAG position
>
> Can we hire both at the same time and have Steve take the NYU position? If not he should get the AAG position over Jessica, primarily based upon his more extensive experience (such as Live Canal) but I would really like to see him in the fellowship position. (I do not want to turn him down and ask him to apply for the NYU position or to wait.)
>
> Ellen Rosenblum
> Oregon Attorney General
>
> > On May 11, 2018, at 5:20 PM, Garrahan Paul <Paul.Garrahan@doj.state.or.us> wrote:
> >
> > We have not finalized an agreement with the NYU Center yet--the ball is still in our court. I just completed some further review the draft and sent Fred an email on that today with my comments, questions and some issues for further inquiry. We could probably complete that relatively quickly. 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.
> >
> > Paul Garrahan
> > Oregon Department of Justice
> > 503.947.4593 (Direct)
> > 503.929.7553 (Mobile)
> >
> > -----Original Message-----
> > From: Rosenblum Ellen F
> > Sent: Friday, May 11, 2018 4:43 PM
> > To: Boss Frederick; Garrahan Paul
> > Cc: Green Joan
> > Subject: AAG position
> >
> > I have completed the interviews with Steve Novick and Jessica Ralston. Both are excellent candidates. I would like an update on the NYU position before making my recommendation. Last I heard there was some sort of bureaucratic delay-still? Thanks. Ellen
> >
> > Ellen Rosenblum
> > Oregon Attorney General

FOOTNOTE 133

Knutte, Caitlin

From: Ali, Khadija
Sent: Friday, February 26, 2016 3:43 PM
To: Stachon, Eva; Levy, Courtney
Cc: Holmes, Kirsten
Subject: RE: phone call

Thank you, Eva. I will reach out to Wendy.

From: Stachon, Eva
Sent: Friday, February 26, 2016 3:33 PM
To: Levy, Courtney; Ali, Khadija
Cc: Holmes, Kirsten
Subject: phone call

Wendy Abrams called to schedule a meeting with AG re: Exon Investigation

Please call her on her cell [redacted]

FOOTNOTE 136

Kline, Scot

From: Lemuel Srolovic <Lemuel.Srolovic@ag.ny.gov>
Sent: Thursday, March 24, 2016 9:04 AM
To: Kline, Scot
Cc: Morgan, Wendy; Matt Pawa
Subject: RE: Conference

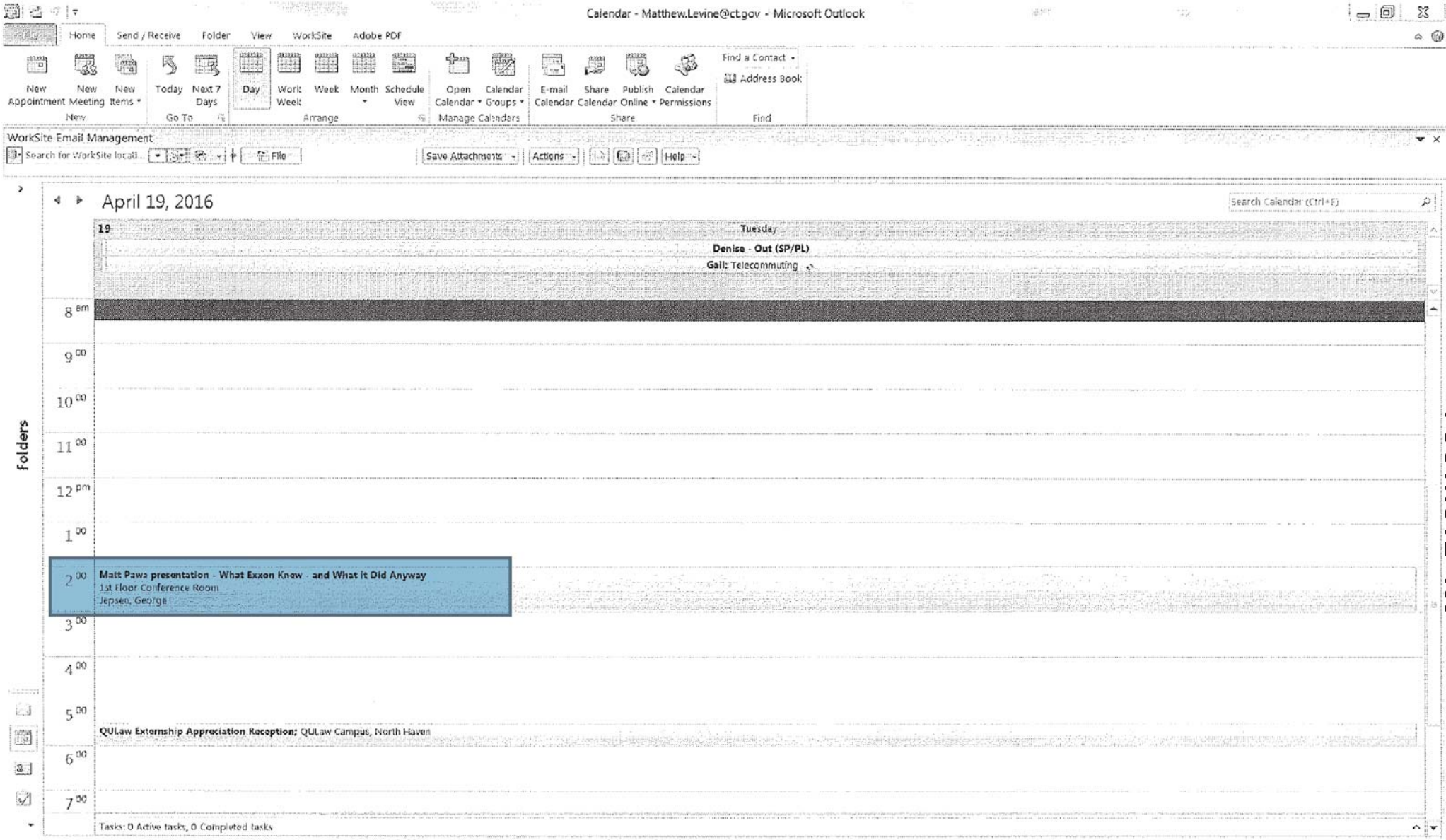
Thanks, Scot. We are too.

-----Original Message-----
From: Kline, Scot [mailto:scot.kline@vermont.gov]
Sent: Thursday, March 24, 2016 8:18 AM
To: Lemuel Srolovic
Cc: Morgan, Wendy; Matt Pawa
Subject: Conference

We are fine with having Sharon Eubanks with Matt. Thanks.

Sent from my iPhone

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.



FOOTNOTE 139

FOOTNOTE 140

Message

From: Amy J. Winn [/O=CALDOJ/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AMY J. WINNC3B]
Sent: 4/4/2016 11:22:05 AM
To: Martin Goyette [Martin.Goyette@doj.ca.gov]
Subject: RE: Tomorrow's Meeting Pawa Law Group in Massachusetts --Environmental and Consumer Focus

We represent the State of New Hampshire in a groundwater pollution case against a score of oil companies, including Exxon-Mobil Corp., Irving Oil Corp., Shell Oil Co., Amerada Hess Corp., and others. New Hampshire has experienced widespread contamination of its water supplies with Methyl Tertiary Butyl Ether ("MTBE"). The State's lawsuit alleges that the oil companies added this chemical oxygenate to their gasoline even though they knew that MTBE would contaminate groundwater.

October 2, 2015 - The Pawa Law Group is pleased to announce that today the New Hampshire Supreme Court issued a decision affirming a $236 million verdict against ExxonMobil for contaminating the state's groundwater with the gasoline additive MTBE.

Redacted

From: Martin Goyette
Sent: Monday, April 04, 2016 10:51 AM
To: Amy J. Winn
Subject: FW: Tomorrow's Meeting - Part 1 of 2
Importance: High

From: David Zonana
Sent: Wednesday, January 13, 2016 2:45 PM
To: Sally Magnani; Martin Goyette; Amy J. Winn; Dennis Ragen; Heather Leslie
Subject: Tomorrow's Meeting - Part 1 of 2
Importance: High

Sally et al.:

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.

My next email will provide a dropbox link to a two part video (total about 30 minutes) that Matt has provided. The password is "**redsox04!**". I've tested the link and it works well in Internet Explorer or Firefox, but not with Chrome. When you get to the main menu, you will see two boxes, one for each part of the video. Click on the second – the one with Matt's face – first.

For tomorrow's 9 a.m. Pacific call, we'll be using the Environment Section call in number:

Dial in – 888-273-3658

Passcode – 949174

Please let me know if you have any trouble with the video and feel free to contact me with any questions.

Best,

David

From: Matt Pawa [mailto:mp@pawalaw.com]
Sent: Wednesday, January 13, 2016 2:17 PM
To: Ben Krass; Janill Richards; David Zonana
Subject: RE: Re: Global Warming Presentation

And attached is the memo.

Please note - part two of the recorded presentation has some down time during minute 28. After the last slide you should see (and hear) a video of me wrapping it up but there is nearly a minute of black screen and silence before that happens. We are new to the technology used to produce this presentation and had a few hiccups.

Looking forward to our discussion tomorrow. Can you circulate a call-in number? We use FreeConference.com and I can circulate that number if you wish but probably CA DOJ's conference line would be more secure.

Best,

Matt

Matt Pawa

Pawa Law Group, P.C.

1280 Centre Street, Suite 230

Newton Centre, MA 02459

(617) 641-9550 x202

(617) 641-9551 facsimile

http://pawalaw.com/

This private communication may be confidential or privileged. If you are not the intended recipient, any disclosure, distribution, or use of information herein or attached is prohibited.

From: Ben Krass
Sent: Wednesday, January 13, 2016 4:49 PM
To: Janill.Richards@doj.ca.gov; David.Zonana@doj.ca.gov
Cc: Matt Pawa <mp@pawalaw.com>
Subject: Re: Global Warming Presentation

Janill & David-

Here is the DropBox link to the global warming presentation on Exxon – it is in 2 parts and also is password protected.

https://www.dropbox.com/sh/gk9f74haye5s67s/AAA3T2QUHWEwcqmokZpOAwm6a?dl=0

I will send the password in a separate email.

Thanks.

Ben

Benjamin A. Krass
Pawa Law Group, P.C.

1280 Centre Street, Suite 230
Newton Centre, MA 02459
(617) 641-9550
(617) 641-9551 facsimile
www.pawalaw.com

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FOOTNOTE 141

Message

From: Amy J. Winn [/O=CALDOJ/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AMY J. WINNC3B]
Sent: 4/1/2016 12:24:06 PM
To: Xianchun J. Vendler [Xianchun.Vendler@doj.ca.gov]; Daniel ODonnell (Daniel.ODonnell@doj.ca.gov) [Daniel.ODonnell@doj.ca.gov]; Nathaniel SpencerMork (Nathaniel.SpencerMork@doj.ca.gov) [Nathaniel.SpencerMork@doj.ca.gov]
Subject: RE: Matt Pawa Meeting in California - Exxon Climate Change Prelimiinary Investigation (LA2015604144)
Attachments: RE Matt Pawa Meeting in California.msg

RE: Matt Pawa Meeting in California
From: Martin Goyette
To: Sally Magnani; David Zonana; Nicklas Akers; Michele Van Gelderen; Amy J. Winn

FOOTNOTE 142

Message

From: Amy J. Winn [/O=CALDOJ/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AMY J. WINNC3B]
Sent: 4/7/2016 2:58:17 PM
To: Martin Goyette [Martin.Goyette@doj.ca.gov]
CC: Xianchun J. Vendler [Xianchun.Vendler@doj.ca.gov]; Daniel ODonnell (Daniel.ODonnell@doj.ca.gov) [Daniel.ODonnell@doj.ca.gov]; Nathaniel SpencerMork (Nathaniel.SpencerMork@doj.ca.gov) [Nathaniel.SpencerMork@doj.ca.gov]
Subject: Notes of Pawa Presentation re Exxon
Attachments: 32446674.doc

Message

From:	Amy J. Winn [/O=CALDOJ/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AMY J. WINNC3B]
Sent:	4/7/2016 2:58:16 PM
To:	Martin Goyette [Martin.Goyette@doj.ca.gov]
CC:	Xianchun J. Vendler [Xianchun.Vendler@doj.ca.gov]; Daniel ODonnell (Daniel.ODonnell@doj.ca.gov) [Daniel.ODonnell@doj.ca.gov]; Nathaniel SpencerMork (Nathaniel.SpencerMork@doj.ca.gov) [Nathaniel.SpencerMork@doj.ca.gov]
Subject:	Notes of Pawa Presentation re Exxon
Attachments:	32446674.doc

100%

Document Withheld from Production

Document Withheld from Production

FOOTNOTE 143

Message

From: Amy J. Winn [/O=CALDOJ/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AMY J. WINNC3B]
Sent: 4/19/2016 3:03:49 PM
To: Eileen Ishizue [Eileen.Ishizue@doj.ca.gov]
CC: Xianchun J. Vendler [Xianchun.Vendler@doj.ca.gov]
Subject: Could you resend your email identifying the documents fro PAWA's presentation?

FOOTNOTE 139

Knutte, Caitlin

From: Ali, Khadija
Sent: Friday, February 26, 2016 3:43 PM
To: Stachon, Eva; Levy, Courtney
Cc: Holmes, Kirsten
Subject: RE: phone call

Thank you, Eva. I will reach out to Wendy.

From: Stachon, Eva
Sent: Friday, February 26, 2016 3:33 PM
To: Levy, Courtney; Ali, Khadija
Cc: Holmes, Kirsten
Subject: phone call

Wendy Abrams called to schedule a meeting with AG re: Exon Investigation

Please call her on her cell [redacted]

FOOTNOTE 144

Angulo, Guadalupe

From: Hendrickson, Cara
Sent: Thursday, March 10, 2016 1:57 PM
To: Ali, Khadija; Spillane, Ann M.; Gignac, James
Cc: Stachon, Eva; Holmes, Kirsten
Subject: RE: background information

Hi Khadija,

Either day, at either time, works for me.

Thanks
Cara

From: Ali, Khadija
Sent: Thursday, March 10, 2016 1:54 PM
To: Spillane, Ann M.; Hendrickson, Cara; Gignac, James
Cc: Stachon, Eva; Holmes, Kirsten
Subject: FW: background information

Hello Everyone,

The AG may stop in briefly for this meeting to discuss ExxonMobil if her schedule permits. Can you please let me know if the following dates work on your end so that I may reach out to Wendy Abrams?

Ann, how much time do you think you may need for this meeting?

Monday, March 22
10:30am or 2pm

Tuesday, March 21
10:30am or 2pm

Thanks,
Khadija

From: wendy abrams [mailto[redacted]
Sent: Friday, February 26, 2016 6:07 PM
To: Ali, Khadija
Subject: background information

Kali
Nice to speak with you this afternoon. As I mentioned, I would like to meet with Attorney General Madigan to discuss ExxonMobil's practices and if the IL AG office would be interested in investigating the matter. Below is a brief description from a New York Times article of the NY AG's investigation; and a letter from Matt Pawa outlining the issues.

Please let me know if there is a time in March or early April that would be convenient for the Attorney General to meet.

FOOTNOTE 147

Knutte, Caitlin

From: Ali, Khadija
Sent: Friday, February 26, 2016 4:20 PM
To: Levy, Courtney
Cc: Holmes, Kirsten
Subject: RE: phone call

Hi,

I spoke with Wendy just now. She says she will send me some information over the weekend regarding this meeting request. She says it is not urgent, but she'd like to have it within a month. In short, she'd like to talk to the AG about Exxon Mobil and whether there is a liability on the company's part if they knew about climate changes and didn't disclose it to its stakeholders. The NY AG is investigating the company and she wanted to know if this was something the AG may be interested in supporting or signing on to—she didn't know what the proper protocol was. She would like to bring in a lawyer named Matt Pawa, who has offices in Boston and DC. Wendy says he may have been the one to go to the NY AG's office about Exxon. Here's a NYT article that gives some additional info.

[redacted]

http://www.nytimes.com/2015/11/06/science/exxon-mobil-under-investigation-in-new-york-over-climate-statements.html?_r=0

Thanks!

From: Stachon, Eva
Sent: Friday, February 26, 2016 3:33 PM
To: Levy, Courtney; Ali, Khadija
Cc: Holmes, Kirsten
Subject: phone call

Wendy Abrams called to schedule a meeting with AG re: Exon Investigation

Please call her on her cel[redacted]

FOOTNOTE 153

Knutte, Caitlin

From: Hendrickson, Cara
Sent: Monday, March 21, 2016 8:58 PM
To: wendy Abrams
Cc: Spillane, Ann M.
Subject: Re: Exxon Document

Thanks, Wendy.

Best,
Cara

On Mar 21, 2016, at 6:39 PM, wendy Abrams <[redacted]> wrote:

> I will forward this tomorrow.
> In the meantime, thought you might enjoy the ad that provides a bit more truth in advertising..
>
> http://youtu.be/XbOezO_s-Gs
>
> again, thank you for your time today. I cannot think of a more critical issue at a critical time; this could be a tipping point.
>
> Best,
> Wendy
>
> Begin forwarded message:
>
> **From:** "O'Neill, Christine M." <coneill2@law.pace.edu>
> **Subject: Exxon Document**
> **Date:** March 21, 2016 at 5:45:53 PM CDT
> **To:** wendy Abrams <[redacted]>
>
> Hi Wendy,
>
> Bobby asked me to email the Exxon Mobil document that he sent to Eric Schneiderman. Unfortunately, it's in my email archive folder and I can't access it from home. Would it be okay if I sent to you tomorrow morning when I get to the office?
>
> Thanks,
> Christine
>
> Christine O'Neill
> Executive Assistant, Robert F. Kennedy, Jr.
> Office: 914-422-4343
> Cell: [redacted]

Knutte, Caitlin

From: wendy abrams [redacted]
Sent: Tuesday, March 22, 2016 9:35 AM
To: Spillane, Ann M.; Hendrickson, Cara
Subject: Re: Madigan demands Peabody prove it has coal mine-closure money | Environment | thesouthern.com
Attachments: ExxonMobilSchneidermanJan5FINAL.docx

From Robert Kennedy, Jr.

On Mar 22, 2016, at 8:42 AM, Spillane, Ann M. <aspillane@atg.state.il.us> wrote:

Thank you!

And thank you for all of your time yesterday - that was really a helpful meeting.

Ann

Sent from my iPhone

On Mar 22, 2016, at 8:39 AM, Wendy [redacted] wrote:

Wonderful!

Sent from my iPhone

Begin forwarded message:

From: Bruce Nilles <bruce.nilles@sierraclub.org>
Date: March 22, 2016 at 8:07:19 AM CDT
To: Wendy Abrams [redacted]
Subject: Madigan demands Peabody prove it has coal mine-closure money | Environment | thesouthern.com

She rocks.
http://thesouthern.com/news/local/environment/madigan-demands-peabody-prove-it-has-coal-mine-closure-money/article_152b8a3f-ca38-54d9-9860-df680bd44689.html

TO: Attorney General, Eric Schneiderman
FROM: Pace Environmental Litigation Clinic
DATE: January 5, 2016
RE: Revocation of ExxonMobil Authority to do Business in New York

"For greed, all of nature is inadequate" – Seneca

INTRODUCTION

ExxonMobil's right to do business in New York derives from a state issued certificate of authority.[1] 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."[2] [3]

I. FACTUAL BACKGROUND

A. Background

ExxonMobil is one of the world's largest and most powerful American publicly traded companies.[4] Since 2001, ExxonMobil has repeatedly broken records for the largest profits of any corporation in history.[5] Recent investigations by three national news organizations have uncovered proof that ExxonMobil has, for nearly forty years, engaged in a malicious campaign to deceive the public about the dangerous impacts of its business activities to human health, global climate and the environment. Since the 1970's Exxon's corporate officials and in-house scientists knew that Exxon's activities were causing catastrophic climate change that might threaten human life and civilization. Instead of coming clean about these hidden risks, Exxon engaged in extraordinary efforts to conceal the truth from the public, press and policy makers. Exxon's purpose was to derail national and international regulations intended to mitigate the damages from its conduct. The company's four decade campaign to keep the dangers of its activities secret from the American people has resulted in irreversible harm to our environment.

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[1] Richard Grossman & Frank T. Adams, Exercising Power Over Corporations Through State Charters, in THE CASE AGAINST THE GLOBAL ECONOMY AND FOR A TURN TOWARD THE LOCAL 374, 386 (Jerry Mander & Edward Goldsmith eds., 1996).

[2] N.Y. BUS. CORP. LAW § 1303 (McKinney 2007).

[3] Thomas Linzey, *Awakening a Sleeping Giant: Creating a Quasi-Private Cause of Action for Revoking Corporate Charters in Response to Environmental Violations*, 13 PACE ENVTL. L. REV. 219, 244 (1995).

[4] *The World's 25 Biggest Oil Companies*, FORBES
, http://www.forbes.com/pictures/eglg45emehm/not-just-the-usual-suspects/ (Last visted Dec 2, 2015).

[5] NBC News & Associated Press, Exxon Mobil Posts Record Profit of $10.7 Billion: Fourth-Quarter Earnings Top Targets for World's Largest Oil Company (Jan. 30, 2006), http://www.msnbc.msn.com/id/11098458/ (last visited Nov. 14); ALISON CASSADY, EXXPOSEEXXON, EXXONMOBIL EXPOSED: MORE DRILLING, MORE, GLOBAL WARMING, MORE OIL DEPENDENCE 11-13 (2005), available at http://www.exxposeexxon.com/report.pdf.

B. What Exxon Knew and When

After months of deep digging, teams of journalists from the Pulitzer Prize–winning website Inside Climate News[6], the Los Angeles Times[7] and the Columbia Journalism School[8] have uncovered bombshell evidence that ExxonMobil knew, as early as the 1970s that its business activities would cause cataclysmic global warming. Because Exxon long prided itself as the world's leader in carbon science, the company invested millions of dollars to understand the fate and activities of carbon atoms. In this enterprise, ExxonMobil employed the world's leading climate scientists. As early as late 1977, eleven years before NASA scientist, James Hansen alerted the world to the perils of global warming in his testimony before Congress, Exxon scientists were briefing top executives that climate change was real, dangerous, and caused by their product. By the early 1980s, Exxon researchers were issuing dire warnings to Exxon's corporate leadership about the danger of carbon induce global warming; Exxon's own climate models were predicting—with great accuracy—the track that the global temperature has taken ever since. Exxon believed its own climate models and used them to guide corporate efforts in the newly melting Arctic, whereas the company's senior researcher observed "warming will clearly affect sea ice, icebergs, permafrost and sea levels. Indeed", he added cheerfully, climate change "can only help lower exploration and development costs," thereby making Exxon's bids for Arctic lease rights more profitable.

Instead of warning the public and policy makers about the existential peril, Exxon made its balance sheet top priority. Beginning in the late 1980's, the company began to systematically fund climate denial; lying to the public, the press and politicians about the state of the science. In 1997, during a key presentation to China's leading officials, Exxon CEO, Lee Raymond, whose responsibilities included overseeing Exxon's climate researchers, insisted that the globe was probably cooling.[9] Lee Raymond used that extraordinary speech to urge the Chinese government to subvert what was then US foreign policy promoting the Kyoto Accords. In Exxon's 1999 annual shareholders meeting, Raymond dismissed climate change warnings as mere "projections based on completely unproven climate models, or, more often, on sheer speculation." Raymond's successor as Exxon's, CEO Rex Tillerson continued the charade, adding insult to injury, telling world leaders in Davos, on January 25th, 2007 that oil companies should not be held responsible

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[6] Neela Banerjee Lisa Song & David Hasemyer, *Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago*, InsideClimate News, Sep. 16, 2015, http://insideclimatenews.org/news/08072015/email-shows-exxon-was-studying-its-climate-impact-80s

[7] Sara Jerving, Katie Jennings, Masako Melissa Hirsch & Susanne Rust, *What Exxon knew about the Earth's melting Arctic*, L.A. Times, Oct. 9, 2015, http://graphics.latimes.com/exxon-arctic/, Kaktie Jennings, Dino Grandoni & Susanne Rust, *How Exxon went from leader to skeptic on climate change research*, L.A. Times, Oct. 23 2015, *available at http://graphics.latimes.com/exxon-research/*

[8] *See* The Energy and Environment Reporting, Columbia Journalism School, http://www.journalism.columbia.edu/page/1184-the-energy-and-environment-reporting-fellowship/8 (list of links to articles in L.A. Times that were written or contributed by Staff, Alumni and Fellows.)

[9] Raymond Spoke made these accusations at the 15th World Petroleum Congress on October 15, 1997. See Global Warming: Is There Still Room for Doubt?, BLOOMBERG BUSINESS (Nov. 2, 1997),

for global warming. The blame, he argued, rests with the very consumers and government officials his company has spent millions of dollars manipulating and deceiving.[10]

C. The costs of Exxon's engineered delay

a) Costs to the planet

When scientists like NASA's Jim Hansen first raised public awareness of climate change, Exxon's CEO might have gone to Congress, and confirmed that the company's internal scientific efforts supported Hansen's predictions. Instead, Exxon went to work lobbying against carbon regulation, funding climate-denial outfits and working with veterans of the tobacco wars to help raise similar doubts about climate science. By promoting a narrative that the company knew was false, Exxon's efforts helped to postpone the day or reckoning for 25 years. It was a critical quarter century in planetary history.

When Dr. Hansen testified before a Congressional committee in 1988, the atmospheric level of CO2 was just passing 350 parts per million ("ppm"). Today we've gone beyond 400 ppm and as the unspeakable miseries of Exxon's own as climate models long ago predicted, the Arctic is melting, the planet's oceans are acidifying, causing mass extinctions of coral and shellfish and zooplankton. Glaciers are shrinking on every continent, contributing to droughts, famines, wars and millions of environmental refugees. As climate models have long projected, global sea levels are rising, and coastal cities are drowning. We are enduring the floods, fires and expanding deserts forecast by the global warming science for three decades. Superstorm hurricanes like Katrina or like Sandy and Irene, which devastated New York in recent years are only the tip of the bad weather iceberg. In recent weeks, "thousand-year-rainfalls" have struck South Carolina and Southern California. A superstorm with record-breaking winds of 200 mph hit Mexico and a typhoon on steroids dropped a meter of rain on the Philippines. Thanks, in part, to Exxon's willingness to sucker the world, our only home planet is now a chaotic mess. America is a decade late in addressing the serious threat from global warming due, in part, to ExxonMobil's campaign of deliberate deception.

b) Costs to New York

ExxonMobil's subterfuge amounts to a crime against humanity. By delaying government action for a quarter century, ExxonMobil has caused massive and predictable environmental damage in New York State. The costs of Exxon's deceit to New Yorkers are impossible to quantify, but any accounting would produce horrendous sums; In 2011 Hurricane Irene caused nearly $6.5 billion in damages and just over a year later Hurricane Sandy[11] caused over $65 billion in damages, and 159 deaths.[12]

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[10] Alan Beattie & Mark Coleman, *Mandelson Hopes for Trade Deal After Davos*, THE IRISH TIMES, Jan. 26, 2007, at FINANCE1, *available at* https://advance.lexis.com/document/teaserdocument/?pdmfid=1000516&crid=03305599-d5bb-4e2d-8b9f-094cc55fcc81&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A4MX3-RTH0-TX39-J2X9-00000-00&pddocid=urn%3AcontentItem%3A4MX3-RTH0-TX39-J2X9-00000-00&pdcontentcomponentid=142626&pdteaserkey=h1&ecomp=f8-g&earg=sr1&prid=a24fc090-1474-4d1d-bc18-9b253e10ba5a.

[11] NOAA, SERVICE ASSESSMENT, HURRICANE IRENE, AUGUST 21-30 2011, (Sept 2012), *available at* http://www.nws.noaa.gov/om/assessments/pdfs/Irene2012.pdf

[12] Billion-Dollar Weather and Climate Disasters: Table of Events, NOAA, http://www.ncdc.noaa.gov/billions/events (last visited Nov 4, 2015).

The costs of Exxon's malfeasance were predictable. Long before Hurricane Sandy devastated New York, climate models including Exxon's in-house science forecasted that global warming would lead to this type of storm. The fact that climate change would have a catastrophic impact in New York was well established. Various publicly available studies, predicted that business as usual could push up temperatures in the New York metropolitan region from two to five and a half degrees Fahrenheit by 2050 and cause sea levels to rise by six to twelve inches. Low lying areas and 578 miles of waterfront, make New York especially vulnerable to flooding from rising oceans. Climate models have long predicted that sea level rise, stronger storms, including hurricanes and Nor'easters will disproportionately harm New York City with wind damage and extreme flooding. Heightened storms will inundate New York City's subways, tunnels and sewage treatment system making the city's wastewater management a major challenge. Additionally, sea level rise would increase beach erosion, and threaten water supplies.[13]

The established science also predicted various other impacts to New York. In September 1997, the United States Environmental Protection Agency ("EPA") reported that a one-degree Fahrenheit warming could more than double heat-related deaths in New York City, from 300 to 700 per year.[14] Exxon also had good reason to know that New York's rich ecosystems will be dramatically diminished. Rising global temperatures will deplete and biologically impoverish New York's diverse range of hardwood forests as dominant species disappear or retreat northward. Between 50-70% of New York's maple trees could be lost, affecting the maple syrup industry and the spectacular foliage that brings preserve and tourist dollars to upstate rural communities. Entire ecosystems will collapse, impacting everything from pest control, to trout habitat, fisheries and cranberry production. All of these dangers underline the urgency for government action to address global warming. Exxon has focused on derailing government action.

D. ExxonMobil Has Funded A Two Decade Global Warming Misinformation Campaign

Despite its internal reports, broad international scientific consensus and contrary actions by other oil companies, ExxonMobil's posture has been to deny that global warming exists and to wage a successful two decade multi-million propaganda campaign to deceive the public, press and policy makers about catastrophic climate change.[15] Its purpose has been to derail government efforts to address global warming and to hinder international treaties intended to

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[13] *Climate Change: International: Introduction to Global Issues*, EPA, (last visited Dec. 2, 2015). http://www3.epa.gov/climatechange/impacts/international.html#content

[14] *Climate Change and New York*, p. 3 EPA, Sep. 1997, *available at* http://nepis.epa.gov/Exe/ZyPDF.cgi/40000IXU.PDF?Dockey=40000IXU.PDF

[15] *See generally* National Resources Defense Council, Global Warming Science: An Annotated Bibliography, http://www.nrdc.org/globalWarming/fgwscience.asp (last visited March 1, 2007); ALISON CASSADY, EXXPOSEEXXON, EXXONMOBIL EXPOSED: MORE DRILLING, MORE GLOBAL WARMING, MORE OIL DEPENDENCE 7-8 (2005), *available at* http://www.exxposeexxon.com/report.pdf.

mitigate global warming.[16] Lee Raymond, Exxon's CEO, from 1993-2005, was the world's leading skeptic on mainstream climate science. His successor Rex Tillerson, inherited that role when he took over the company in 2005.

i. ***ExxonMobil Funded Faulty Science to Prevent Action on Global Warming***

Using phony think tanks like the Competitive Enterprise Institute, scientists-for-hire known as "biostitutes", slick public relations firms and its indentured servants in the political process, Exxon has intentionally defrauded the public by promoting the notion that global warming is a hoax or a questionable theory that requires more study. Its decade of mischief is [17]well documented. Exxon dished out at around $31 million dollars since the negotiation of the Kyoto Protocol (1997) to fund an elaborate network including over 75 industry front groups mobilized in a misleading campaign to cloud public understanding of global warming. Exxon's front groups have preached skepticism about the oncoming climate catastrophe, and worked to counter efforts to regulate global warming pollution.[18] Exxon's objective has been to counterbalance the overwhelming scientific evidence of man-induced climate change with pseudo-scientific denials in order to torpedo political remedies to climate change that might diminish Exxon's profits. In 2005, ExxonMobil paid over $3.5 million to 49 different front groups, according to the company's own records, which are collected each year by ExxonSecrets.org and the "Exxpose Exxon" coalition. Since 1997, Exxon has also donated over $1.87 million to Republicans in Congress who deny climate change. A report released in July of 2015 by the Union of Concerned Scientists traces the roots of this fraudulent propaganda campaign and many of its prime actors— back to the tobacco industry's tactical war on science. No other public company has worked harder or spent more to support those who are attempting to debunk global warming.[19]

A few specific examples of ExxonMobil's generous contributions are telling.

1. **Competitive Enterprise Institute (CEI)**: A Washington based conservative think tank at the center of the global warming misinformation campaign. From 1998 to 2005, ExxonMobil provided CEI with approximately $2,005,000 for its global climate change endeavors, legal work, and general operating support.[20] CEI prides itself on being "a leader

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[16] *See* ExxposeExxon, Exxposing ExxonMobil's Agenda: Keeping You Addicted to Oil, http://www.exxposeexxon.com/facts/ExxposingExxon_rev0107.pdf.

[17] *ExxonMobil's Funding of Climate Science Denial*, DESMOGBLOG http://www.desmogblog.com/exxonmobil-funding-climate-science-denial (last visited Dec 2, 2015).

[18] Greenpeace, Exxon Secrets 2006, available at http://www.exxposeexxon.com/facts/ExxonSecrets2006-1.pdf; see also Exxonsecrets.org, ExxonMobil's Funding of Climate Change Skeptics, List of Organizations, http://www.exxonsecrets.org/html/listorganizations.php (last visited Dec 2, 2015); Put a Tiger in your Think Tank, MOTHER JONES, May/June, 2005, available at http://www.motherjones.com/news/featurex/2005/05/exxon_chart.html (last visited March 12, 2007); ALISON CASSADY, EXXPOSEEXXON, EXXONMOBIL EXPOSED: MORE DRILLING, MORE GLOBAL WARMING, MORE OIL DEPENDENCE 8 (2005), *available at* http://www.exxposeexxon.com/report.pdf.

[19] *See* Chris Mooney, *As the World Burns*, MOTHER JONES, May/June, 2005, *available at* http://www.motherjones.com/news/feature/2005/05/some_like_it_hot.html (last visited Dec 2, 2015) (citing Myron Ebell of the Competitive Enterprise Institute as saying "[m]any corporations have funded, you know, dribs and drabs here and there, but I would be surprised to learn that there was a bigger one than Exxon").

[20] *See generally* Exxonsecrets.org, Fact Sheet: Competitive Enterprise Institute, http://www.exxonsecrets.org/html/orgfactsheet.php?id=2 (last visited Dec 2, 2015). *See also* Exxon Mobil Corporation, 2003 Contributions, at 41, *available at* http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf; Exxon Mobil Corporation 2004 Worldwide Contributions and Community Investments, Public Information and Policy Research, at 3, *available at*

in the fight against the global warming scare."[21] CEI publishes studies and writes articles critiquing the science underlying global warming and advancing its own theories to bolster claims that global climate change is not a problem.[22] CEI proclaims, for example that "the negative impacts of predicted warming have been vastly exaggerated" and it is unlikely that global warming will cause problems in the future. [23] Among its many public statements denying the seriousness of global warming, CEI has argued that climate change would "create a milder, greener, more prosperous world. [24] CEI makes concerted efforts to convince the public to continue unabated energy consumption, and that, any energy cuts would cause disastrous consequences to the world's economies.[25] Unlike many organizations which simply express such views, CEI has forced action through the courts and the legislative process.[26] In 1997, CEI formed the Cooler Heads Coalition, a kind of flat earth society to support climate change denial and to frighten the public about the perilous economic impacts of proposals to reduce greenhouse gas emissions.[27]

2. **American Enterprise Institute for Public Policy Research (AEI):** Under the leadership of its vice chairman, Lee Raymond, then CEO of Exxon Mobil, AEI became, during the George W. Bush administration, one of the richest and most influential think tanks in the United States. AEI boasted of its close ties to the powerful oil industry lobbyists within the George

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http://www.exxonmobil.com/corporate/files/corporate/giving04_environ.pdf; ExxonMobil Corporation, 2002 Public Information and Policy Research, at 3, *available at*, http://www.environmentaldefense.org/documents/5909_2002.giving.report.pdf.

[21] Competitive Enterprise Institute, Global Warming, http://www.cei.org/sections/subsection.cfm?section=3 (last visited March 11, 2007).

[22] *See, e.g.*, Marlo Lewis, Jr., Competitive Enterprise Institute, *Al Gore's Science Fiction: A Skeptic's Guide to* An Inconvenient Truth, (Congressional Working Paper, 2007); Iain Murray, Competitive Enterprise Institute, *Global Warming FAQ: What Every Citizen Needs to Know About Global Warming, available at* http://www.cei.org/pdf/5331.pdf.

[23] *Id.*

[24] Exxonsecrets.org, Fact Sheet: Competitive Enterprise Institute, http://www.exxonsecrets.org/html/orgfactsheet.php?id=2 (last visited Dec 2, 2015).

[25] *See* Iain Murray, Competitive Enterprise Institute, *Global Warming FAQ: What Every Citizen Needs to Know About Global Warming, available at* http://www.cei.org/pdf/5331.pdf). CEI has also put out television spots refuting the global warming problem, urging people that carbon dioxide is essential to life, touting, "they call it pollution; we call it life." *See* Competitive Enterprise Institute, We Call It Life, http://www.cei.org/pages/co2.cfm (last visited March 10, 2007).

[26] *See generally* Exxonsecrets.org, Fact Sheet: Competitive Enterprise Institute, http://www.exxonsecrets.org/html/orgfactsheet.php?id=2 (last visited Dec 2, 2015). For example, in 2002, CEI advised President Bush to distance himself from an EPA report which stated, for the first time from a U.S. government agency, that climate change is real, and Bush did so! *Id.* In 2003, CEI filed a lawsuit against the U.S. government demanding that the National Assessment, a report on climate change, not be disseminated by the government. *See* Chris Mooney, *Earth Last*, THE AMERICAN PROSPECT ONLINE EDITION, May 4, 2004, *available at* http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=7603 (last visited March 10, 2007).

[27] *See generally* The Cooler Heads Coalition, http://www.globalwarming.org/article.php?uid=562 (last visited Dec 2, 2015).

W. Bush Administration and their critical role in setting back carbon regulation by a decade.[28] AEI is an avid opponent of all climate treaties including the Kyoto Protocol and critiques regulatory measures to address climate change.[29] It preaches that the science of global warming is uncertain, and that the U.S. should therefore not rush into regulatory programs that would unnecessarily risk the carbon based energy system.[30] Since 1998, ExxonMobil has provided AEI with $3,615,000 for its policy research.[31] In one stark example of this organization's attempts to distort science, on February, 2007, AEI offered a $10,000 bounty to each scientist or economist who could produce an article undermining a recently published report on climate change by the U.N. Intergovernmental Panel on Climate Change ("IPCC").[32] The IPCC report is widely regarded as the most comprehensive review yet of climate change science.[33]

3. **American Petroleum Institute (API):** Exxon is one of the lead funders of API in the petroleum industry giving roughly $20 million annually to the organization.[34] Exxon CEO, Lee Raymond, served as trustee for API, was two time chairman of the organization and served as chair of API's climate change committee. In 1988, Exxon and API launched a secret campaign to confuse the public about the science behind climate change. A document summarizing the campaign strategy warned that the carbon industry was losing the battle on the science and promoted a massive PR campaign to sow doubt about climate science,

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[28] For example, in 2003, President Bush was the key-note speaker at AEI event, where he said that at AEI, "[s]ome of the finest minds of our nation are at work on some of the greatest challenges to our nation. You do such good work that my administration has borrowed twenty such minds. I want to thank you for you service." *See* Exxonsecrets.org, Fact Sheet: American Enterprise Institute for Public Policy Research, http://www.exxonsecrets.org/html/orgfactsheet.php?id=9 (last visited Dec 2, 2015).

[29] *See* Paula Dobriansky, *Climate Change Policy* (November 19, 2003), *available at* http://www.aei.org/publications/pubID.19525,filter.all/pub_detail.asp ("Kyoto Protocol . . . [is] fundamentally flawed. It is unrealistic, unfair and poses serious and unnecessary risks to our economic wellbeing.").

[30] *See id.* ("Significantly, the extent to which the man-made portion of greenhouse gases is causing temperatures to rise is still unknown, as are the long-term effects of this trend. Predicting what will happen fifty or one hundred years in the future is difficult."); *see also* Samuel Thernstrom, *"Censorship" and the Uncertain Science of Climate Change*, ENVTL. POLICY OUTLOOK, Oct. 1, 2003), *available at* http://www.aei.org/publications/pubID.19348,filter.all/pub_detail.asp.

[31] *See generally* Exxonsecrets.org, Fact Sheet: American Enterprise Institute for Public Policy Research, http://www.exxonsecrets.org/html/orgfactsheet.php?id=9#src10 (last visited March 10, 2007); *see also* Exxon Mobil Corporation, 2003 Contributions, at 39, *available at* http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf; Exxon Mobil Corporation 2004 Worldwide Contributions and Community Investments, Public Information and Policy Research, at 2, *available at* http://www.exxonmobil.com/corporate/files/corporate/giving04_environ.pdf; ExxonMobil Corporation, 2002 Public Information and Policy Research, at 1, *available at*, http://www.environmentaldefense.org/documents/5909_2002.giving.report.pdf.

[32] Ian Sample, *Scientists Offered Cash to Dispute Climate Study*, GUARDIAN UNLIMITED, Feb. 2, 2007, *available at* http://www.guardian.co.uk/international/story/0,,2004230,00.html?gusrc=rss&feed=11 (last visited March 12, 2007).

[33] *Id.*

[34] Steve Mufson, *Jack Gerard, the Force Majeure Behind Big Oil*, WASH. POST. (Apr. 7, 2012), https://www.washingtonpost.com/business/economy/jack-gerard-the-force-majeure-behind-big-oil/2012/04/06/gIQA1hjC0S_story.html

including recruiting front groups, compliant scientists and other spokesmen to carry this message in the public media.[35] According to the memo, "[v]ictory would be achieved" when "citizens 'understand' (recognize) uncertainties in climate science" to the point that denial becomes "conventional wisdom".[36] Another point of victory sought by the memo would be that "[t]hose promoting the Kyoto treaty on the basis of science appears to be out of touch with reality"[37] To achieve this goal they were to create the ("GSDC") that would "become a one-stop resource on climate science for members of Congress, the media, industry and all others concerned."

4. **Global Climate Coalition:** Lee Raymond co-founded the Global Climate Coalition, a group of fossil fuel companies bent on delaying action on climate change and clouding public understanding of the issue. Exxon and Mobil were the leading members of the notorious Global Climate Coalition ("GCC"). Exxon, Mobil and other large companies launched GCC in 1989 derail the Kyoto Protocol to stop other international treaties and regulation of global warming pollution and GCC was "a coalition of companies and trade associations seeking to present the views of industry in the global warming debate." Until it disbanded in 2002, GCC was one of the most influential and outspoken groups battling global commitments to emissions reductions. GCC lobbied Congress, the White House, State Legislature, disseminated "climate denial" reports and supplied well-known climate skeptics as "experts" for press conferences and media appearances to undermine the credibility of climate science. In 1997, BP was the first to break from GCC group after it declared that global warming was a real threat. Shell, Texaco, Ford, General Motors, and DaimlerChrysler followed suit shortly thereafter; ExxonMobil remained until the bitter end when the GCC broke up in 2002.
5. **American Legislative Exchange Council (ALEC):** ALEC organizes various task forces that provide state legislators with model legislation that is favorable to the oil industry. It crafts legislation rejecting carbon dioxide emission reductions and attempts to discredit state legislation aimed at providing incentives to cut global warming pollution; ALEC staffers frequently write "white papers" explaining why global warming is not a problem, and how policies to reduce global warming pollution will devastate the economy. In total since 1998, ExxonMobil has given ALEC $1,619,700.[38]
6. **Heritage Foundation:** Heritage is the leading "denier" think tank. From 1998-2005, ExxonMobil provided this group with roughly half a million dollars.[39] This organization is a fervent opponent of the Kyoto Protocol and otherwise seeks to undermine regulatory efforts to address global climate change.[40] Heritage denies that global warming is connected to human activities.[41]

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[35] Memorandum From Joe Walker, API, to "Global Climate Science Team, Michelle Ross & Susan Moya, *Draft Global Climate Science Communications Plan*, April 1998, *availiable at* http://www.euronet.nl/users/e_wesker/ew@shell/API-prop.html

[36] *Id.*

[37] *Id.*

[38] Exxonsecrets.org, Fact Sheet: ALEC, http://www.exxonsecrets.org/html/orgfactsheet.php?id=10 (last visited Dec. 2, 2015).

[39] *See generally* Exxonsecrets.org, Fact Sheet: Heritage Foundation, http://www.exxonsecrets.org/html/orgfactsheet.php?id=42 (last visited Dec. 2, 2015); *see also* Exxon Mobil Corporation, 2003 Contributions, at 42, *available at* http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf; 2002 Public Information and Policy Research, at 4, *available at*, http://www.environmentaldefense.org/documents/5909_2002.giving.report.pdf.

7. **National Center for Public Policy Research ("NCPPR"):** Since 1998, ExxonMobil has given $445,000 to NCPPR, to fund the "denier groups", including EnvironTruth website, which outlines the "myths and misunderstandings surrounding the topic of climate change," the first myth being that humans are causing global climate change.[42] NCPPR otherwise informs the public about the "truth" regarding global warming, i.e., that it is not harmful and not caused by humans.[43]
8. **George C. Marshall Institute:** This tax-exempt public policy organization, states that its mission "is to encourage the use of sound science in making public policy about important issues for which science and technology are major considerations . . . [through] accurate and impartial analyses."[44] The Institute's goal of using "sound science" involves attacking the apparently "unsound science" linking oil combustion to global warming.[45] From 1998-2005, ExxonMobil donated $630,000 to the Institute for such "impartial analyses."[46]

ii. Exxon Manipulated Government Officials To Weaken Government Response To Climate Change

Through its vast political contributions and lobbying clout, ExxonMobil has, for two decades, manipulated government officials and influenced government to dampen the regulatory response to climate change. Its influence was particularly evident during the critical years of the George W. Bush administration. Exxon used vast political influence to guide the Bush administration's posturing on climate change. For example, in 2002, ExxonMobil successfully arranged the ousting of the world's top climate scientist, Robert Watson, as chairman of the Intergovernmental Panel on Climate Change ("IPCC") in an effort to disrupt the principal international science assessment program on global warming. An ExxonMobil memo to President Bush's top staffers asked bluntly "[c]an Watson be replaced now at the request of the U.S.?" The White House's carbon cronies obligingly complied, arranging for Watson's dismissal. He was replaced by a little known scientist from New Delhi who would not be regularly available for Congressional hearings.

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[40] *See e.g.*, Ben Lieberman, The Heritage Foundation, Don't Rush to Judgment on U.N.'s IPCC Global Warming Summary, WebMemo #1351, Feb. 7, 2007, http://www.heritage.org/Research/EnergyandEnvironment/wm1351.cfm (last visited March 10, 2007).

[41] *See, e.g.*, *id.*; Helle Dale, The Heritage Foundation, *Just the Facts* (Feb. 8, 2007), http://www.heritage.org/Press/Commentary/ed020807b.cfm (last visited March 10, 2007).

[42] ALISON CASSADY, EXXPOSEEXXON, EXXONMOBIL EXPOSED: MORE DRILLING, MORE GLOBAL WARMING, MORE OIL DEPENDENCE 10 (2005); *see also* http://www.envirotruth.org/.

[43] National Center for Public Policy Research, Global Warming Information Center, Global Warming Earth Summit Fact Sheet, http://www.nationalcenter.org/KyotoFactSheet.html (last visited March 10, 2007).

[44] GEORGE C. MARSHALL INSTITUTE, http://www.marshall.org/ (last visited March 10, 2007).

[45] *See, e.g.*, GEORGE C. MARSHALL INSTITUTE, CLIMATE ISSUES AND QUESTIONS 1 (2004), *available at* http://www.marshall.org/pdf/materials/268.pdf (stating that "there is not a robust scientific basis for drawing definitive and objective conclusions about the extent of human influence and future climate).

[46] Exxonsecrets.org, Fact Sheet: George C. Marshall Institute, http://www.exxonsecrets.org/html/orgfactsheet.php?id=36 (last visited March 10, 2007); *see also* Exxon Mobil Corporation, 2003 Contributions, at 42, *available at* http://www.environmentaldefense.org/documents/5910_2003.giving_report.pdf; 2002 Public Information and Policy Research, at 3, *available at*, http://www.environmentaldefense.org/documents/5909_2002.giving.report.pdf.

A 2002 Exxon memo shows the oil company coaching one of the President's top environmental advisers, Philip Cooney, chief of staff at the White House Council on Environmental Quality on how to weaken the governmental scientific research on climate change by emphasizing "significant uncertainties" in the science. The New York Times later revealed that Cooney, a former lobbyist for the American Petroleum Institute which is generously funded by Exxon, made myriad changes to government climate studies designed to weaken their strong conclusions about the need to act on global warming. Typically Cooney would insert the words "significant and fundamental" before "uncertainties" in the reports. Cooney, a non-scientist, helped suppress or alter several major taxpayer funded scientific studies on global warming including a decade-long study commissioned by President George W. Bush's father. Cooney resigned two days after the Times broke the story. Within a week ExxonMobil announced it had hired him.

In a further effort to block public access to information on global warming, ExxonMobil extended its influence to kill the distribution of An Inconvenient Truth to schools around the country. When the producers of the documentary offered 50,000 free DVDs to the National Science Teachers Association ("NSTA") for educators to use in their classrooms, Exxon pressured the organization to decline the offer. Though the film has been endorsed by leading climate scientists worldwide, NSTA explained that it had to accept the DVDs or it would jeopardize funding from Exxon. ExxonMobil had given the organization over $6 million since 1996, much of it for the "Building a Presence for Science" program, an electronic networking initiative intended to bring standards-based teaching and learning into schools.

iii. Of All the Major Oil Companies ExxonMobil Has, By Far, the Most Aggressive Record of Global Warming Denial

Even as other oil companies began to acknowledge their contribution to climate change around 2005, Exxon dug in its heels and adopted the hardest line in the industry. As recently as last month, Exxon's unrepentant PR spokesman told the LA Times that the paper's revelations about Exxon's campaign of deception were "complete bullshit". This response is consistent with ExxonMobil's long history as the industry's most entrenched and adamant global warming denier. Exxon adopted this posture even as its competitors acknowledged their contribution to climate chaos. As early as 2005, BP's corporate policy acknowledged that "[t]here is an increasing consensus that climate change is linked to the consumption of carbon based fuels and that action is required now to avoid further increases in carbon emissions as the global demand for energy increases."[47] Chevron recognizes that "[t]he use of fossil fuels to meet the world's energy needs has contributed to an increase in greenhouse gases," and that a critical challenge facing the world today is to reduce "long-term growth in GHG emissions."[48] Shell announced that it "shares the widespread concern that the emission of greenhouse gases from human activities is leading to changes in the global climate."[49] To be sure, these other oil companies

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[47] BP Global, Environment and Society, Climate Change Overview, http://www.bp.com/sectiongenericarticle.do?categoryId=9007616&contentId=7014482 (last visited March 10, 2007).

[48] Chevron, Global Climate Change, http://www.chevron.com/social_responsibility/environment/global_climate.asp#intro (last visited March 10, 2007).

[49] Shell, Climate Change, http://www.shell.com/home/Framework?siteId=envandsoc-en&FC2=/envandsoc-en/html/iwgen/leftnavs/zzz_lhn7_1_1.html&FC3=/envandsoc-

could have done much more to address the global warming problem; however, by recognizing that global warming exists and acknowledging the need for public policies and action plans to deal with it, they put themselves across the moral milestone from ExxonMobil. Despite its secret internal science, ExxonMobil stuck by its 2002 statement that the "nature and causes of climate change are still debated,"[50] that "science is not now able to confirm that fossil fuel use has led to any significant global warming,"[51] and that "the corporation intends to 'stay the course' in its skepticism regarding global warming 'until someone comes along with new information."[52]

Exxon responded to roars of outrage in 2006 over its sociopathic antics by announcing that it would stop funding the Competitive Enterprise Institute - which had collected over $2 million from the oil giant since 1998, to weave lies about climate change - and 4-5 other groups that Exxon refused to name. Exxon's contrition was hardly sincere.[53] The company apparently continued to fund some 40 other groups that had previously received Exxon's support in its unrelenting campaign of deception. [54]

When, on January 22, 2007, a coalition of ten major companies - including industry giants like DuPont, Dow and Alcoa - and leading environmental groups launched the U.S. Climate Action Partnership, calling for firm limits on carbon dioxide emissions to aggressively combat climate change. Exxon refused to join.

II. LEGAL BACKGROUND

A. Applying the "Corporate Death Penalty" to Exxon

Corporations exist by virtue of their corporate charter.[55] The charter conditionally grants the corporation privilege to operate within a particular state and to benefit from state laws in exchange for its promise to "serve the common good"[56] and "cause no harm."[57] Once

incorporated in one state, a corporation seeking to conduct business in other states, must apply for a certificate of authority to do business as a foreign corporation. That certificate imposes similar obligations as a charter. If a corporation does not maintain the condition in its corporate charter or certificate—the state may revoke its right to exist. Laws in every state pre-condition a corporation's right to conduct business upon established standards of good corporate citizenship, which if not met, expose a corporation to dissolution.

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en/html/iwgen/key_issues_and_topics/global_environmental_issues/climate_change/dir_climate_change_12042006.html (last visited Dec. 2, 2015).

[50] Art Hobson, *Boycott Exxon*, NWA TIMES, Aug. 20, 2005, *available at* http://physics.uark.edu/hobson/NWAT/04and05/05.08.20.html (Date of statement not provided)

[51] Andy Rowell, *Exxon's 25 Year "Drop Dead" Denial Campaign*, OIL CHANGE INT'L., April 14, 2014, *available at* http://priceofoil.org/2014/04/14/exxons-25-year-drop-dead-denial-campaign/. (Statement made May 31st, 2002)

[52] *Id.* (Statement was made on March 11, 2002)

[53] MSNBC, Exxon cuts ties to global warming skeptics (Jan. 12, 2007), available at http://www.msnbc.msn.com/id/16593606/.

[54] Letter from ExxposeExxon, to Ken Cohen, Vice President of Public Affairs, ExxonMobil Corp. (Jan. 12, 2007), *available at* http://www.exxposeexxon.com/ExxposeExxon-to-Ken-Cohen-1-12-07.pdf (requesting ExxonMobil to reveal who they were no long funding; ExxonMobil did not respond).

[55] Richard Grossman & Frank T. Adams, *Exercising Power Over Corporations Through State Charters*, *in* THE CASE AGAINST THE GLOBAL ECONOMY AND FOR A TURN TOWARD THE LOCAL 374, 375 (Jerry Mander & Edward Goldsmith eds., 1996).

[56] *Id.* at 375.

[57] *Id.*

New York has an especially expansive law for both charter revocation and annulment of the authority to do business. Pursuant to New York Business Corporation Law section 1101(a)(2), if:

> [t]he corporation has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or **transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the state** has become liable to be dissolved.[58]

The ExxonMobil Corporation is incorporated in the State of New Jersey and is therefore a foreign business corporation. As such, New York Business Corporation Law section 1303 applies;

> [t]he attorney general may bring an action or special proceeding to annul the authority of a foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause of dissolution under section 1101 . . . .[59]

New York courts have held that before the State can obtain judicial dissolution of a corporation, the Attorney General must show that the defendant engaged in a grave and substantial continuing abuse, involving a public right.[60] When applying this standard, the courts give a considerable deference to the Attorney General's determination that dissolution is warranted.[61]

In 1998, Republican Attorney General Dennis Vacco revoked the charters of two non-profit tax-exempt tobacco industry front groups, the Tobacco Institute and Council for Tobacco Research.[62] **City of New York v. Tobacco Institute, Inc., 1997 WL 760502 (S.D.N.Y. 1997)**[63] Both defendants were officially incorporated "to provide truthful information about the effects of smoking on public health," Vacco explained that they were instead "[feeding] the public a pack of lies in an underhanded effort to promote smoking to addict America's kids."[64] Attorney General Vacco seized all assets of these corporations and distributed the proceeds to public institutions.[65] Just as the tobacco industry created front-groups to misrepresent the effects of cigarette products, ExxonMobil has abused its authority to do business by misrepresenting the effects of its products.

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[58] N.Y. BUS. CORP. LAW § 1101(a)(2) (McKinney 2007) (emphasis added).

[59] N.Y. BUS. CORP. LAW § 1303 (McKinney 2007).

[60] People by Abrams v. Oliver Sch., 206 A.D.2d 143, 146 (4th Dep't 1994) (citing People v. North Riv. Sugar Ref. Co., 121 N.Y. 582, 608 (N.Y. 1980) (discussing that judgment of corporate death "must rest upon grave cause, and be warranted by material misconduct")).

[61] *Id.* at 147-48 (citing People v Buffalo Stone & Cement Co., 131 N.Y. 140, 143 (N.Y. 1892); Instalment Dept. v State of New York, 21 A.D.2d 211, 212 (3d Dep't 1964)).

[62] Charlie Cray and Lee Drutman, *Corporations and the Public Purpose: Restoring the Balance*, 4 SEATTLE J. SOC. JUST. 305, 323 (2005).

[63] *See* Dana Gold, Solage E. Bitol-Hanson, Charlie Cray & Bruce Freed, *Protecting the Polity: Strategies for Reform*, 30 Seattle U. L. Rev. 991, 1001 f. 18 (2007)

[64] *Id.*

[65] Paul Cienfuegos, EARTH ISLAND JOURNAL, Mar. 22, 2001, at 35.

B. Summary of New York Case Law

(1) ***People v. North Riv. Sugar Ref. Co. (1890)*** [66]: The Attorney General dissolved a corporation found to be an illegal sugar trust.

(2) ***State v. Saksniit (1972)***[67]: The Attorney General dissolved a corporation operating a business that offered the preparation and sale of term papers to high school and college students.[68] The court found that the corporation was committing acts contrary to public policy.

(3) ***State v Cortelle Corp. (1975)***[69]: The Attorney General sought to dissolve a corporation that committed fraud by inducing homeowners facing foreclosure to convey their title to the corporation in order to obtain loans, and then refused to reconvey title even after those loans were paid by the customers.[70] Notably, the Appellate Division held that the statute of limitations did not apply to dissolution actions.[71]

(4) ***People by Abrams v. Oliver Sch. (1994)***[72]: The Attorney General brought an action to judicially dissolve defendant business school chain under New York Business Corporation Law section 1101 because the defendant had used student loan refunds in a fraudulent manner.[73]

C. Summary of Other State Cases

(1) Pennsylvania: In Commonwealth ex rel. v. Potter County Water Company (1905), the Supreme Court of Pennsylvania upheld the order of the trial court revoking the water company's corporate charter for the purpose of providing water for drinking and fire suppression. The Attorney General alleged that the company had lied about the freshness of its water which was contaminated by runoff from a mill pond and sewage efficient pump.

(2) ***Michigan***: In *Attorney General v. Capitol Service, Inc.* (1959), the Michigan Attorney General successfully ousted the defendant of its corporate franchise[74] upon finding that the defendant was engaging in educational activities as a general corporation, in contravention of a state statute requiring educational institutions to be incorporated as such.[75]

(3) ***California:*** In Citizens Utilities Company of California v. Superior Court of Alameda County (1976), the Attorney General revoked charter and the Citizen Utilities Company of California for delivering "discolored and malodorous" water to its customers.

(2) ***Pennsylvania***: In *Commonwealth ex rel. v. Potter County Water Company* (1905), the Supreme Court of Pennsylvania upheld the order of the trial court revoking the water company's corporate charter for the purpose of providing water for drinking and fire suppression.[76] [77] The Attorney General alleged that the company had lied about the freshness of its water which was contaminated by runoff from a mill pond and sewage efficient pump.[78] [79]

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[66] People v. North Riv. Sugar Ref. Co.121 N.Y. at 608.

[67] State v. Saksniit, 69 Misc. 2d 554 (Sup. Ct. New York County 1972).

[68] *Id.* at 555.

[69] State v. Cortelle Corp., 38 N.Y.2d 83 (N.Y. 1975).

[70] *Id.* at 85-86.

[71] *Id.* at 89.

[72] People by Abrams v. Oliver Sch., 206 A.D.2d 143, 144 (4th Dep't 1994).

[73] *Id.* at 144.

[74] Attorney Gen. v. Capitol Servs., Inc., 94 N.W.2d 814 (Mich. 1959).

[75] *Id.* at 816-17.

[76] Commonwealth ex rel. v. Potter County Water Co., 61 A. 1099, 1101 (Pa. 1905).

[77] Id. at 1101.

[78] *Id.* at 1099.

(4) ***Washington***: In *Washington v. Brotherhood of Friends* (1952), the Prosecuting Attorney of Spokane County, Washington successfully ousted the corporate charter of a non-profit social club for operating illegal slot machines.[80]

(4) ***California: (1976)***: In *Citizens Utilities Company of California v. Superior Court of Alameda County* (1976), the Attorney General revoked charter and the Citizen Utilities Company of California for delivering "discolored and malodorous" water to its customers.[81]

C. The Impacts of Charter Revocation Annulment Would Diminish But Not Eliminate ExxonMobil's Ability to Conduct Business in New York

i. Exxon's Current Business in New York

The application of the corporate death penalty against Exxon for its violations of Corporation Law section 1303 would substantially limit but not eliminate ExxonMobil's current presence in New York. Exxon has around fourteen entities registered with New York Secretary of State, including a pipeline company, a retiree club, a foundation a chemical company office, a risk management office, a transportation and equipment company office **and** a sales and supply company[82], all of which may be affected by charter revocations. ExxonMobil's stock is traded on the New York Stock Exchange. The New York State Common Retirement Fund has a little under a billion dollars in Exxon Stock (as of June 2015).[83] Most significantly, ExxonMobil operates contracts or manages around 1,050 New York gas stations.[84]

Prior to revoking Exxon's charter, the Attorney General would want to understand which entities will be impacted and whether revocation will result in negative impacts to the welfare and people of New York State.

As established above, New York Business Corporation Law section 1301(a) provides that foreign corporations may do business in New York State only if it is authorized by a certificate of authority. However, not every business transaction requires a certificate of authority. New York broadly defines "doing business within the state" by narrowly categorizing the activities that do not fall within this definition.[85] Among the activities not covered by the statute are "maintaining or defending a legal proceeding, shareholders' and directors' meetings, maintaining bank accounts, and maintaining offices and agencies related to the foreign corporation's securities.[86] Even after charter revocation, Exxon could continue to conduct these sorts of activities in New York State, without consequence.

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[79] *Id.*

[80] Washington v. Bhd. of Friends, 247 P.2d 787, 789 (1952).

[81] *See* Citizens Utilities Company of California v. Superior Court of Alameda County, 56 Cal. App. 399, 402 (1976).

[82] NYS Department of State Division of Corporation, Search term "ExxonMobil", https://appext20.dos.ny.gov/corp_public/CORPSEARCH.SELECT_ENTITY?p_srch_results_page=0&p_entity_name=Exxon&p_name_type=A&p_search_type=BEGINS

[83] Thomas D. DiNapoli, *New York State Local Retirement System 2015 Comprehensive Annual financial Report for the Fiscal Year Ended March 31*, 2015, p. 93, *available at* http://www.osc.state.ny.us/retire/word_and_pdf_documents/publications/cafr/cafr_15.pdf

[84] Exxon Mobil Stations, http://www.exxonmobilstations.com/station-locations/united-states/new-york

[85] *See* N.Y. BUS. CORP. LAW § 1303(b) (McKinney 2007).

[86] *Id.*

Determining which of Exxon's activities constitute "doing business within the state" and therefore are covered by the statute is a quantitative and qualitative factual determination dependent on the extent of the corporation's activity within the state.[87] Isolated, occasional and non-continuous business transactions are not "doing business within the state."[88] While maintenance of an office is merely a factor and is not itself dispositive [89] one court has held that "[a] series of extensive and persistent transactions involving various phases of construction work with men and machines in this state over varying periods of time signify an intent to establish a permanent situs in this state."[90]

Under the case law, a foreign sales corporation engaged in continuous high volume sales in the state is "doing business in the state."[91] In *Berkshire*, the court held that the defendant's homebuilding activities constituted doing business within the state.[92] When activities included erecting structures and signs, stationing equipment, transportation of materials into the state and making its services available for local business needs, including through telephone listings.[93] Under the ruling, Exxon would be principally impacted by having to sell its New York gas stations. A typical gas station is similar to the homebuilding operation in *Berkshire* because it involves erecting structures and signs, stationing equipment, moving commodities (petroleum) into the state and advertising to local consumers.

Annulment would limit ExxonMobil's ability to sell refined oil products to New York State. Section 1301 of the statute prevents unauthorized foreign corporations from engaging in regular high volume sales into the state.[94] The regular and direct sales of millions of gallons of refined oil products to retail stations constitutes doing business in the state.[95] However, ExxonMobil could legally continue to direct its products to the state through an intermediary. In *New York Automatic Canteen Corp. v. Keppel & Ruof*,[96] an unauthorized Pennsylvania candy manufacturer sold directly to retailers in New York State through an independent sales representative. The *Keppel* court held that this activity did not constitute doing business in New York.[97] It should be noted that the defendant in *Keppel* did not have a physical presence in the state and the sales in New York only accounted for seven percent of the defendant's total business.[98]

ii. ***Charter Revision Would Not Have Grave Negative Impacts on New York State***

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[87] *See, e.g.*, Netherlands Shipmortgage Corp. v. Madias, 717 F.2d 731, 738 (2d Cir. 1983).
[88] Id. at 923
[89] Id.
[90] Id. at 924.
[91] Berkshire Eng'g Corp. v. Scott-Paine, 217 N.Y.S.2d 919, 923 (N.Y. Co. Ct. 1961).
[92] 217 N.Y.S.2d at 923.
[93] *Id.*
[94] *Berkshire*, 217 N.Y.S.2d at 923.
[95] *Cf. id.*
[96] New York Automatic Canteen Corp. v. Keppel & Ruof, Inc., 90 N.Y.S.2d 454, 458 (N.Y. City Ct. 1949).
[97] *Id.*
[98] *Id.*

According to the opinion of a high-level oil industry insider, (the CEO of Exxon's competitor) the negative potential political and economic repercussions of decertifying ExxonMobil in New York State would be minimal:

- ExxonMobil does $4 billion per year in sales in New York State. It has 21% of the auto fuels market, which is significant. However, revoking the certificate would not have a noticeable impact on gasoline supply in New York State because of the many other suppliers that could quickly fill supply gaps. There would be no long-term shortage. At most, there would be a short term spike in gasoline prices that would last no more than "a couple of weeks." Even this could be avoided by alerting the industry in advance. Refill is every seven days, so the response time by ExxonMobil's competitors would be fast in any case. Furthermore, ExxonMobil gas prices tend to be higher than its smaller competitors, so its withdrawal from the market will not result in any inflation of statewide gasoline prices. There are enough oil suppliers that there would be no impact on price or supply lasting over two weeks.

- The impact on ExxonMobil would not be financial, it would be reputational. Revocation of ExxonMobil's Certificate to do Business would be a "big time" psychological shock to the company. "It would ding them for sure. The shock and alarm factor would certainly be effective." However, ExxonMobil is so big globally; there would be no impact on ExxonMobil stock prices or the value of New York State and city pension funds. ExxonMobil stock represents 2.5% or $1.6 billion of the New York State Common Retirement System's total portfolio and 3%, or $1.6 billion of the New York State Teachers Retirement Fund—the largest energy holding by a factor of three.
- ExxonMobil once had many terminals in the state, but it has sold most of them off to avoid the environmental liability issues and is selling its six remaining terminals as fast as it can.
- ExxonMobil has 1,050 gas stations in New York State, mostly owned by franchisees. These businesses would suffer transition and other costs as they shifted to other suppliers. Franchisees typically sign 10-year contracts with ExxonMobil that prohibit them from buying from other suppliers. ExxonMobil might have legal actions against them if they tried to switch suppliers.
- ExxonMobil operates a dozen or more stations on the New York State Thruway, which it owns. These stations operate under burdensome contractual strictures and low profit margins that keep smaller independent companies from bidding for the contract. However, the advertising benefits of these locations make them attractive to large majors, one of which will certainly step in to fill the vacuum.

E. Conclusion: Justice - The Public Interest Demands That Exxon Be Punished For Irresponsible Harm Caused By Its Deception

Mainly elected leaders understand that government officials have a duty to demonstrate that government is able to safeguard the public from sociopathic corporate conduct. Members of Congress— including Ted Lieu and Mark DeSaulnier of California and presidential candidates Governor Martin O'Malley, Senator Bernie Sanders and Senator Hillary Clinton have called on the Department of Justice to prosecute Exxon for its campaign of public fraud. Washington

Monthly condemned Exxon's decades of deceit in language usually reserved for war criminals: "A fossil fuel company intentionally and knowingly obfuscating research into climate change constitutes criminal negligence and malicious intent at best, and a crime against humanity at worst. The Department of Justice has a moral obligation to prosecute Exxon and its co-conspirators accordingly." Even Exxon's hometown newspaper, Dallas Morning News—a virtual oil patch trade journal—delivered a blistering condemnation of Exxon on its front page. Under the headline is 'Exxon's Missed Opportunity to Address Climate Change,' the editors compared Exxon's lies to perfidies of Big Tobacco and concluded:

....Exxon had the opportunity to lead the world toward a measured, manageable approach toward a solution. With profits to protect, Exxon provided climate change doubters a bully pulpit they didn't deserve, and gave lawmakers the political cover to delay global action until long after the environmental damage had reached severe levels. That's the inconvenient truth as we see it.'

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. Exxon's punishment won't bring back those wasted years or lost lives, but will help break the political power that immoral companies exert on our democracy. Law enforcement officials must show that government has the power to reign in rogue companies. Charter revocation will, in this case, demonstrate that government has the power to safeguard the public interest from corporate abuse. Such action will disincentivize efforts by other companies to derail government efforts to address humanity's existential threat. New York State, for historical reasons, is an appropriate place to demonstrate bold leadership in the fight Exxon's corporate abuse. It was a New York State politician – Theodore Roosevelt, who broke up Standard Oil. As the world's largest oil company, the financial leader in this sector and Standard Oil's successor, ExxonMobil should be a role model of good corporate citizenship. Instead, ExxonMobil has made itself the template for unsheathed arrogance of unregulated power, greed and callous disregard toward the cataclysmic misery presaged by its actions.

If we are to have a functioning democracy and a legal system capable of providing justice and holding accountable the richest company in the country, then Exxon must pay a price for its four decade public fraud.

Angulo, Guadalupe **FOOTNOTE 156**

From: Gignac, James
Sent: Wednesday, April 06, 2016 4:56 PM
To: Maryanski, Arlene
Cc: Dunn, Matthew
Subject: Re: 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.

On Apr 6, 2016, at 2:40 PM, Maryanski, Arlene <AMaryanski@atg.state.il.us> wrote:

> 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.
>
> Thanks,
> Arlene
>
> **From:** Gignac, James
> **Sent:** Tuesday, April 05, 2016 3:50 PM
> **To:** Maryanski, Arlene
> **Subject:** FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
>
> **From:** Dunn, Matthew
> **Sent:** Tuesday, April 05, 2016 10:58 AM
> **To:** Gignac, James
> **Cc:** Hendrickson, Cara
> **Subject:** FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
>
> James: that works for me.
>
> Matthew J. Dunn, Chief
> Environmental Enforcement/Asbestos
> Litigation Division
> Illinois Attorney General's Office
> 500 South Second Street
> Springfield, IL 62706
> tx 217-524-5511
> fx 217-524-7740
> mdunn@atg.state.il.us

From: Shaun Goho <sgoho@law.harvard.edu>
Sent: Monday, March 28, 2016 12:14 PM
To: Gignac, James; Dunn, Matthew
Cc: Nancy Cole
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
Attachments: HLS-UCS April 25 agenda draft.docx

James and Matt:

Please find attached a draft agenda. It is still subject to change, but will give you an idea of the general format for the afternoon. Please let me know if you have any other questions.

Travel assistance would come through UCS; I am copying Nancy Cole, the Campaign Director of their Climate & Energy Program.

Best,
Shaun

Shaun A. Goho
Senior Clinical Instructor and Staff Attorney
Harvard Law School | Emmett Environmental Law & Policy Clinic
6 Everett St., Suite 4119, Cambridge, MA 02138
(t) 617.496.5692 (f) 617.384.7633 (e) sgoho@law.harvard.edu

From: Gignac, James [mailto:JGignac@atg.state.il.us]
Sent: Monday, March 28, 2016 12:39 PM
To: Shaun Goho
Cc: Dunn, Matthew
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Shaun,

Sorry for the delay in responding. I am including Matt Dunn, Chief of our Environmental Enforcement Division. We think that a representative from our office would be interested in participating in this meeting. Could you send any additional agenda or logistical information? We would be interested in travel assistance, likely airfare from Chicago.

Thanks,
James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Wednesday, March 16, 2016 3:44 PM

Angulo, Guadalupe

From: Gignac, James
Sent: Monday, April 04, 2016 1:36 PM
To: Maryanski, Arlene
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016
Attachments: HLS-UCS April 25 agenda draft.docx

Hi Arlene, could you go ahead and prepare this travel request? I will be going to Cambridge, MA on April 25 and returning on April 26. The purpose is a legal conference on climate change issues organized by Harvard Law School and the Union of Concerned Scientists. All travel costs will be covered by the Union of Concerned Scientists.

Thank you,
James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Gignac, James
Sent: Monday, April 04, 2016 8:38 AM
To: Dunn, Matthew
Cc: Hendrickson, Cara
Subject: FW: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Matt, I believe I can make this travel work, if you approve, and then Arlene can get me started on the paperwork. [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.)

James

James P. Gignac
Environmental and Energy Counsel
Illinois Attorney General's Office
(312) 814-0660

From: Shaun Goho [mailto:sgoho@law.harvard.edu]
Sent: Monday, March 28, 2016 12:14 PM
To: Gignac, James; Dunn, Matthew
Cc: Nancy Cole
Subject: RE: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

James and Matt:

Please find attached a draft agenda. It is still subject to change, but will give you an idea of the general format for the afternoon. Please let me know if you have any other questions.

FOOTNOTE 157

From: Gignac, James
Sent: Saturday, March 26, 2016 11:59 AM
To: Dunn, Matthew
Subject: Fwd: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016

Hi Matt,

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 office representatives from different states to attend. Assistance for travel costs may be available.

What are your thoughts on our office participating? Would you or Gerry possibly be interested in attending? The date is not a great one for me to travel, but I may be able to make it work. Another option may be for us to suggest a follow-up briefing from some of the participants in lieu of attending in person.

Thanks,
James

Begin forwarded message:

> **From:** Shaun Goho <sgoho@law.harvard.edu>
> **Date:** March 16, 2016 at 4:44:19 PM EDT
> **To:** "Gignac, James" <JGignac@atg.state.il.us>
> **Subject: SAVE THE DATE--HLS/UCS Meeting on April 25, 2016**
>
> James:
>
> I am writing to let you know that we have change the date for the climate science and legal theory meeting that we are hosting here at HLS in conjunction with the Union of Concerned Scientists. The event will now take place on the afternoon of Monday, April 25th. We will be sending out a detailed agenda in the coming week. Please respond to let me know:
>
> 1. Will someone from your office be attending the event? How many people plan to come, and who are they? (We may not be able to accommodate multiple attendees because of space constraints, but we will let you know if we think your group is too large.)
>
> 2. Do you need travel reimbursement? If so, for which expenses do you anticipate needing reimbursement? (Air, train, hotel, etc.)
>
> 3. Do you want to receive a written agenda or would you prefer to discuss it over the phone?
>
> Thanks,
> Shaun

[redacted]

FOOTNOTE 159

From: Bobbie James <roberta.james@maryland.gov>
Date: March 3, 2016 at 9:52:50 AM EST
To: Andrea Baker -MDE- <andrea.baker@maryland.gov>
Cc: Lynn Angotti -MDE- <lynn.angotti@maryland.gov>, "Staton, Donna" <dstaton@oag.state.md.us>
Subject: Re: Training

[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. [redacted] Please let me know if you have any questions.

Bobbie James, Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230
Ph. (410) 537-3748
Fax (410) 537-3943
roberta.james@maryland.gov

[redacted]

FOOTNOTE 162

From: **Boss Frederick** fred.boss@doj.state.or.us
Subject: RE: New NRS SAAG - Steve Novick
Date: June 18, 2018 at 11:21 AM
To: Rosenblum Ellen F Ellen.F.Rosenblum@doj.state.or.us

BF

Will do

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 <fred.boss@doj.state.or.us<mailto:fred.boss@doj.state.or.us>> wrote:
No, Steve did not run this by me! Paul, Kristina and I have a call this morning at 10:30

From: Rosenblum Ellen F
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

Begin forwarded message:
From: Wolf Steven <steven.wolf@doj.state.or.us<mailto:steven.wolf@doj.state.or.us>>
Date: June 18, 2018 at 8:36:17 AM PDT
To: General Counsel <GcUsers@doj.pri<mailto:GcUsers@doj.pri>>
Cc: Executive Staff <ExecutiveStaff@doj.pri<mailto:ExecutiveStaff@doj.pri>>
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' offices in defending and promoting clean energy, climate and environmental laws and policies. Steve will work on both multistate litigation matters and on other energy and environmental matters for NR agencies. In that capacity, he will be a resource to both NRS and the AG's Office.

I doubt that many are unfamiliar with Steve and his accomplishments in Oregon state and local governments. But I would mention that before returning to Oregon in 1997, he practiced for USDOJ in Washington, DC, primarily representing EPA in environmental litigation, including serving as lead counsel in the Love Canal toxic waste case.

Steve will be stationed in the Portland Office, in room 632 near the elevators. But he will be in the Salem office on Monday, to complete his initial paperwork and for some training. Please join me in welcoming Steve to the Department and to General Counsel.

- Steve

Steven Wolf
GCD Chief Counsel
503.947.4528

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