

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

UNITED STATES VIRGIN ISLANDS  
OFFICE OF THE ATTORNEY  
GENERAL,

Plaintiff,

v.

EXXONMOBIL OIL CORP.,

Defendant.

Case No. 2016 CA 2469

Judge \_\_\_\_\_

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

Pursuant to Rule 43(e), Superior Court Rules of Civil Procedure, I, Sam Kazman, declare as follows:

1. I am General Counsel for the Competitive Enterprise Institute ("CEI"), a position that I have held since 1986. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would competently testify thereto.

2. Founded in 1984, CEI is a non-profit organization and organized under section 501(c)(3) of the federal tax code. CEI's office is located in Washington, D.C.

3. As an organization, CEI is dedicated to advancing the principles of limited government, free enterprise, and individual liberty. To that end, it seeks to promote public understanding of overregulation in such areas as energy and technology and to engage in policy advocacy on such issues.

4. As part of its mission, CEI engages in research and analysis of public policy issues in such fields as financial regulation, health care, and energy production.

5. For over 25 years, CEI has been involved in the global warming controversy. In general, CEI has opposed aggressive policy responses to climate change that are based on alarmist predictions. In CEI's view, such responses are unwarranted, unjustified by any proven threats, and actually threaten human welfare by reducing the availability of

affordable and reliable energy, especially to those most in need of it. CEI has also generally opposed policies that seek to tilt the playing field in the energy market through subsidies and other kinds of disparate government treatment.

6. CEI's policy research is published on its website and in print.

7. In addition to its research, CEI has advocated its views on climate policy to the public and policymakers, through op-eds and other articles, videos, commentary in the media and other media appearances, online publishing, speeches and events, grassroots education, litigation, congressional briefings, and other means.

8. CEI's research and advocacy on climate policy have been widely cited and extremely influential in policy debates. Members of Congress, other public officials, the media, academics, and others regularly cite CEI's publications and the work of CEI experts on climate policy.

9. Even those who disagree with CEI's views on climate policy have recognized its influence and success in that area. In 2006 former Vice President Al Gore stated, "[for] over 20 years, I have seen them have a tremendous effect."

10. CEI leads an ad hoc "Cooler Heads Coalition" of organizations that share and advocate the same general views on climate change and climate policy.

11. CEI devotes substantial resources, in terms of money and personnel time, to research and advocacy on climate policy.

12. CEI's research and advocacy on climate policy is carried out through its Center for Energy and Environment, directed by Myron Ebell. This Center is CEI's largest program.

13. On April 7, 2016, CEI was served with a subpoena filed in the District of Columbia Superior Court by the Attorney General for the U.S. Virgin Islands ("USVI") seeking records relating to CEI's work on climate change as part of a racketeering investigation targeting groups skeptical of aggressive governmental action to combat climate change.

14. Although I have inquired with persons affiliated with other policy organizations, I am not aware that any other policy organization was served with a subpoena as part of the USVI investigation.

15. CEI relies chiefly on individual, foundation, and corporate contributors, as well as sales of tickets to its annual dinner, to fund its programs.

16. CEI has not received any grants from ExxonMobil since 2005. In 2006, ExxonMobil publicly announced that it was ceasing its funding of CEI and disassociating itself from CEI's work.

17. Although some details may have shifted due to advancing scientific understanding, CEI's general approach to climate policy and skepticism of government intervention in energy markets, as described above, has not changed from the early 1990s, before it received funding from ExxonMobil, through the time that it received such funding and since the time that ExxonMobil ceased its contributions. CEI's climate policy has been consistent for decades, irrespective of any funding that it received from anyone.

18. The subpoena impairs CEI's public mission, because it makes donors and potential donors wary of involvement with CEI, especially since the underlying racketeering investigation targets ExxonMobil, which was itself previously a CEI donor.

19. The subpoena impairs CEI's ability to engage in effective advocacy, because it requires CEI to turn over internal and external communications, including communications with its donors and its allies.

20. Likewise, required disclosure of its strategies and tactics would undermine CEI's ability to engage in effective advocacy, as well as its coalition-building activities.

21. Likewise, required disclosure of CEI's internal communications would undermine its ability to engage in effective advocacy because it would necessarily chill CEI's ability to candidly communicate internally, with its allies and supporters, and with the general public. That ability is necessary for an organization like CEI to succeed.

22. I believe that many of CEI's allies and donors would be reluctant to associate with CEI if they knew or suspected that CEI would disclose their communications and relationships with CEI.

23. I do not believe that CEI has done anything wrong, and I sincerely doubt that CEI has any evidence of violations of anti-racketeering laws. Nonetheless, I believe the subpoena and investigation pose an existential threat to CEI. If government officials can target an organization like CEI for abuse and harassment in retaliation for its speech, then the costs and burdens of fighting back may be too great for CEI to bear over the long term, particularly if the retaliation drives away CEI supporters.

24. Unfortunately, I believe that the subpoena and underlying investigation are already chilling CEI's associations, as potential donors and allies worry that their relationships and communications with CEI may be disclosed. To an extent, the subpoena is also impacting CEI's speech and other advocacy, as CEI personnel have to consult with attorneys before publishing materials and inevitably ask themselves whether the notes they take and the emails they send and receive will eventually be subject to disclosure in litigation.

25. Based on a preliminary review of the facts, I estimate that complying with the subpoena would require approximately 30 person-weeks of labor, although it could be far higher depending on the state of CEI's files from nearly 20 years ago. That effort would further divert CEI personnel from carrying out CEI's organizational mission and impose substantial costs on CEI. Because CEI engages in litigation as part of its mission, all materials would need to be reviewed for privileges and work-product protections, in addition to relevancy, and I believe that this could be a particularly time-consuming process.

26. The subpoena impairs the ability of CEI to conduct research, and dealing with it has consumed a very large amount of CEI staff time from the very moment that CEI received it. In so doing, the subpoena has diverted CEI personnel from carrying out its organizational mission.

27. The subpoena has already imposed substantial costs on CEI. Due to its enormous breadth, the risk it poses for CEI's continued operations, and the complexity of the legal issues it raises, CEI has had to retain the services of outside counsel to contest the subpoena's validity. Having to pay legal expenses diverts scarce funds from CEI's programs.

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

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

By:   
Sam Kazman  
General Counsel  
Competitive Enterprise Institute