

January 9, 2019

Dan A. Emmett, Esq.
Chairman, Douglas Emmett, Inc.
Chairman, Emmett Family Foundation
1299 Ocean Avenue, Suite 1000
Santa Monica, CA 90401
<https://www.douglasemmett.com/>
(310) 255-7700

Dear Chairman Emmett,

I have had a long career as an environmental epidemiologist at UCLA and I am writing regarding the UCLA Emmett Institute on Climate Change and the Environment (Emmett Institute). I request the opportunity to discuss with you three unethical aspects of the Emmett Institute and its Faculty Director Ann E. Carlson (Carlson): 1) November 8, 2018 CEI v. UC Regents Complaint seeking Emmett Institute documents linking Carlson and others to the "climate litigation industry;" 2) April 27, 2018 The Two Hundred v. California Air Resources Board (CARB) Complaint linking Emmett Institute faculty like Carlson to CARB Climate Change (GHG) Policies that are exacerbating extreme poverty in California; and 3) the improper political activism described in the April 1, 2012 NAS Report "A Crisis of Competence: The Corrupting Effect of Political Activism in the University of California." The first two aspects are described in detail in the four attached items, which you should read carefully. The third aspect is described in the downloadable NAS Report. The public has the right to assess and criticize the unethical activities of a prominent institute at a public university like UCLA. Please respond as soon as you can.

Thank you very much for your consideration of my very serious request.

Sincerely yours,



James E. Enstrom, PhD, MPH, FFACE
UCLA Research Professor/Researcher (retired) and
President, Scientific Integrity Institute
907 Westwood Boulevard #200
Los Angeles, CA 90024-2904
jenstrom@ucla.edu
(310) 472-4274

University of California Sued Over Stonewalling Of 'Climate Litigation' Documents

- **The University of California Board of Regents was sued to compel the release of “climate litigation” documents.**
- **The suit was filed by D.C.-based think tank, the Competitive Enterprise Institute (CEI).**
- **CEI filed two records requests with UC Los Angeles, which it says the school has delayed fulfilling for months.**

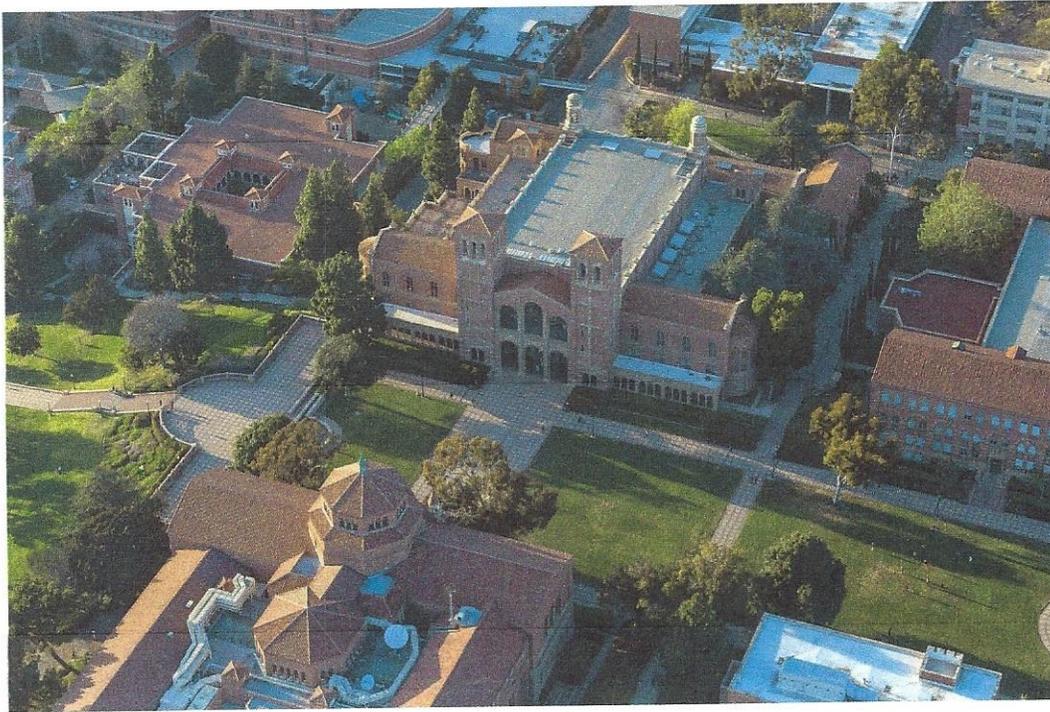
A free market think tank filed suit Thursday against the University of California’s Board of Regents to compel the release of documents linking law school professors to the “climate litigation industry.”

Competitive Enterprise Institute (CEI) senior fellow Chris Horner, the man behind the lawsuit, said University of California-Los Angeles’s (UCLA) law school is just one of a growing number of law schools being used to aid global warming litigators.

“That one of them is a public university means the public has a right to learn much more about how it’s resources and institutions are being used in this industry,” Horner told The Daily Caller News Foundation.

“UCLA’s response, however, shows a commitment to delaying or even denying the public right to obtain such knowledge,” Horner said.

The complaint asks the court to force UCLA to release records regarding its “work with private outside parties including law enforcement to develop theories of litigation against” the energy companies and political opponents. [**\(RELATED: Jordan Peterson Says Global Warming Hype Is ‘Low-Resolution Thinking’\)**](#)



Los Angeles, California, USA – April 18, 2018: Afternoon aerial view of historic architecture on the UCLA campus near Westwood. (trekandshoot/Shutterstock)

UCLA’s role in climate litigation “has included participating in ‘secret’ briefings by this campaign for ‘prospective funders’ in pursuit of ‘potential state causes of action against major carbon producers,’ which is the subject of great media and public interest,” [reads the complaint](#).

CEI filed records requests under the California Public Records Act (CPRA) in February and May. UCLA for months delayed responding to CEI’s records requests, according to the complaint.

“The placement of privately employed ‘special prosecutors for climate’ in state AG offices added an astounding twist to the unfolding story of the climate litigation industry,” Horner told TheDCNF. “UCLA’s involvement offers yet another.”

“Both involve donor-funded use of public institutions to pursue opponents of a political agenda, and to impose that agenda that has failed through the proper democratic process,” Horner said.

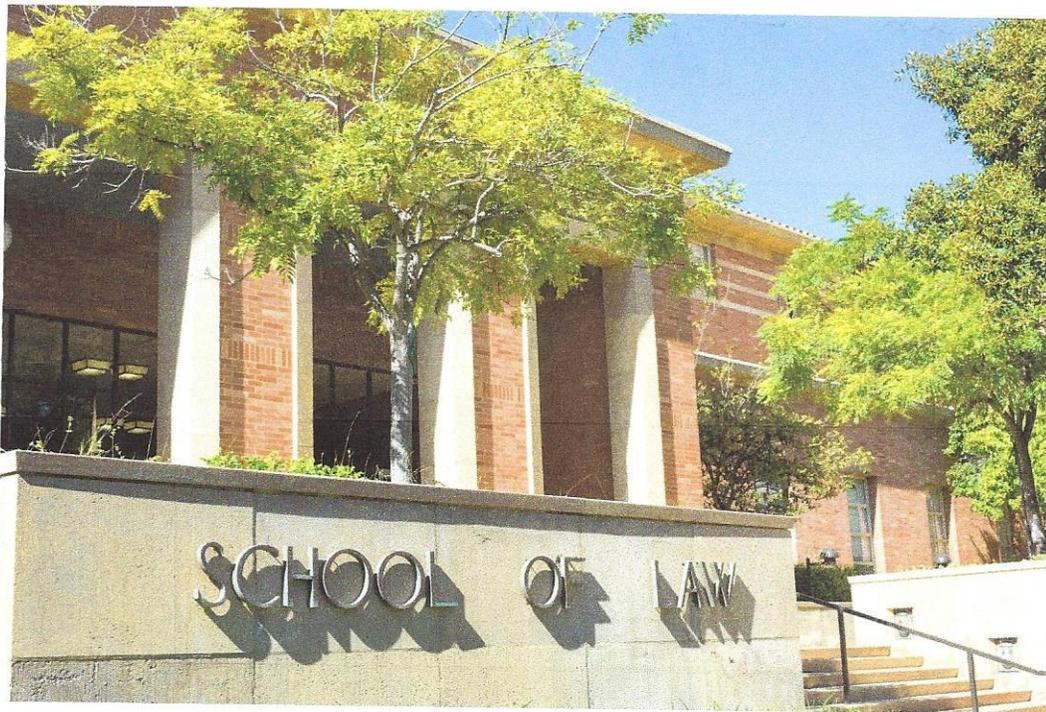
The Board of Regents did not respond to TheDCNF’s request for comment.

Horner recently released a report detailing the growing role law schools have in promoting litigation, including against coal, gas and oil companies, over global warming. Horner's report focused on the ties between private donors and Democratic state attorneys general.

The August report [detailed how attorneys general were using New York University law school fellows](#) to pursue litigation against energy companies and oppose the Trump administration's agenda.

In particular, legal fellows are being used to aid the efforts of about 20 attorneys general, initially brought together by former New York Attorney General Eric Schneiderman, [to go after fossil fuel producers](#) and sue the Trump administration.

The scheme is funded by former New York City Mayor Michael Bloomberg's foundation. At least one of those fellows' [name is on New York state's lawsuit against ExxonMobil](#) for allegedly misleading investors on climate science.



Source: Michael Gordon/Shutterstock

Horner came upon evidence that showed lawyers at UCLA's Emmett Institute on Climate Change and the Environment were allegedly involved in the web of activists, attorneys and politicians trying to enact global warming policies through the courts.

The Emmett Institute was founded in 2008 through donations from wealthy real estate investor Dan Emmett. The institute [bills itself](#) as the “premier source of environmental legal scholarship, nonpartisan expertise, policy analysis, and training.”

For example, Horner obtained documents about a “secret meeting” in 2016 hosted by the Union of Concerned Scientists, an activist group, in Cambridge, Massachusetts, for “prospective funders.” State attorneys general attended that meeting, Horner found.

Horner said documents show UCLA lawyers participated in that “secret meeting.” Now, he wants documents regarding the meeting and other activities of UCLA professors to aid activists and Democratic politicians.

The Daily Caller

November 8, 2018 1:47 PM

Michael Bastasch

Energy Editor

COPY

1 James K.T. Hunter (State Bar No. 73369)
2 10100 Santa Monica Boulevard, 13th Floor
3 Los Angeles, California 90067
4 Telephone: (310) 277-6910
5 Facsimile: (310) 201-0760
6 E-mail: jhunter@pszjlaw.com

7 Christopher C. Horner
8 Government Accountability & Oversight, P.C.
9 1489 Kinross Lane
10 Keswick, VA 22947
11 Telephone: (202) 262-4458

12 *Application for admission pro hac vice to be filed*

13 Attorneys for Petitioner,
14 Competitive Enterprise Institute

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Los Angeles Superior Court
NOV 08 2018

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

17 COMPETITIVE ENTERPRISE INSTITUTE,

18 Petitioner,

19 v.

20 THE REGENTS OF THE UNIVERSITY OF
21 CALIFORNIA, AND DOES 1 - 30,

22 Respondents.

Case No. 18 ST CP 02832

VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND WRIT OF MANDATE ORDERING
COMPLIANCE WITH THE
CALIFORNIA PUBLIC RECORDS ACT

Gov. Code §§ 6250, et seq.
Code Civ. Proc. §§ 1085, et seq.

23 Petitioner Competitive Enterprise Institute, alleges the following with personal knowledge as
24 to its own status, condition and acts and on information and belief as to all other matters.

25 INTRODUCTION

26 1. By this petition and pursuant to Code of Civil Procedure §§1085 et seq. and
27 Government Code §§6250 et seq., Competitive Enterprise Institute (“Petitioner”) seeks a writ of
28 mandate directing the Regents and/or their *de facto* custodian of records for the University of

VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE

1 California at Los Angeles Law School (“UCLA” or “the University”) to comply with the California
2 Public Records Act (“CPRA”).

3 2. In February 2018, Petitioner requested records concerning the University’s work with
4 private outside parties including law enforcement to develop theories of litigation against, and
5 pursue as targets of investigation, perceived opponents of a political and policy agenda shared by
6 these outside parties and certain faculty (the “February CPRA Request”).

7 3. Public records already obtained from other institutions affirm the University’s role,
8 through its faculty’s role in their official UCLA capacities, in this effort led by activist groups and
9 the Attorney General of New York. This role has included participating in “secret” briefings by this
10 campaign for “prospective funders” in pursuit of “potential state causes of action against major
11 carbon producers”, which is the subject of great media and public interest due to the controversial
12 origin of - and collaboration involved in - these investigations.

13 4. After first waiting five weeks to unnecessarily confirm that Petitioner had in fact
14 made this request, the University then engaged in a further series of delays, pushing off its promised
15 response dates a couple months at a time, for now well over six months.

16 5. In May 2018 Petitioner filed a second request (the “May CPRA Request” and, jointly
17 with the February CPRA Request, the “CPRA Requests”), in response to which Respondent has
18 proceeded in the same manner as above, repeatedly postponing by months the estimated date by
19 which it would respond.

20 6. Respondent has produced no records, no response asserting that any one or more
21 exemptions purportedly allows Respondent to withhold any or all of the records requested in the
22 CPRA Requests nor any indication it is in fact processing the CPRA Requests consistent with
23 Respondent’s legal obligation under California’s Public Records Act.

24 7. Petitioner therefore seeks relief under California Government Code § 6259. The
25 Court should issue a writ of mandate commanding the University to comply with the CPRA and
26 release the public records sought by Petitioner in the CPRA Requests.

PARTIES

1
2 8. Petitioner Competitive Enterprise Institute (“CEI”) is a nonprofit research and public
3 policy organization incorporated in Washington, DC. CEI is dedicated to advancing responsible
4 regulation and, in particular, economically sustainable environmental and energy policy. CEI’s
5 programs include analysis, publication, and a transparency initiative seeking public records relating
6 to environmental and energy policy and how policymakers use public resources. CEI also has found
7 itself the target of an attorney general subpoena as part of the larger collaboration that has been
8 exposed between universities, pressure groups, plaintiffs’ attorneys and state and territorial attorneys
9 general. The resulting campaign has targeted more than 100 research and advocacy groups, scientists
10 and other private parties and entities.¹

11 9. Respondent Regents of the University of California (Regents) is, and at all times
12 mentioned herein was, an agency of the California state government, that operates law schools
13 including the UCLA School of Law in Los Angeles. Petitioner is informed and believes that
14 Respondent Regents are responsible for maintaining the agency records described herein and that
15 they have the authority to release the records.

16 10. Petitioner is ignorant of the true names and capacities of respondents sued herein as
17 Does 1-30, and therefore sues these defendants by such fictitious names. Petitioner will amend this
18 complaint to allege their true names and capacities when these are ascertained. Petitioner is informed
19 and believes and thereon alleges that each of the fictitiously named respondents is responsible in
20 some manner for the occurrences herein alleged, and that Petitioner’s damages as herein alleged
21 were proximately caused by the conduct of such fictitiously named respondents.

JURISDICTION AND VENUE

22
23 11. This Court has jurisdiction pursuant to Government Code sections 6258 and 6259,
24 Code of Civil Procedure sections 1060 and 1085, and Article VI, section 10 of the California
25 Constitution.

26
27 ¹ See, e.g., Valerie Richardson, “Exxon climate change dissent subpoena sweeps up more than 100 U.S. institutions”,
28 Washington Times, May 3, 2016, <https://www.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-communications/>; Walter Olson, “Massachusetts AG to Exxon: hand over your communications with think tanks”, [overlawyered.com](https://www.overlawyered.com/2016/06/massachusetts-ag-exxon-hand-communications-think-tanks/), June 16, 2016, <https://www.overlawyered.com/2016/06/massachusetts-ag-exxon-hand-communications-think-tanks/>.

1 12. Venue is proper in this Court because the records in question, or some portion of
2 them, are located in the County of Los Angeles. The *de facto* custodian of the records resides in, and
3 Petitioner believes the records are physically located in, the County of Los Angeles at UCLA.

4 **FACTUAL BACKGROUND**

5 **A. The CPRA Requests**

6 13. On February 5, 2018 Petitioner sent the February CPRA Request, requesting certain
7 described correspondence, over a two-month period of time in 2016, of two faculty members
8 participating in the activities described, *supra*, Cara Horowitz and Ann Carlson. Petitioner limited
9 its request to records using one or more of seven names or keywords. A true and correct copy of the
10 request is attached to this petition as Exhibit 1.

11 14. On May 21, 2018 Petitioner sent the May CPRA Request, requesting certain
12 described correspondence of the same two faculty members participating in the above-described
13 campaign. Petitioner limited its request to records using eight names or keywords. A true and
14 correct copy of the request is attached to this petition as Exhibit 2.

15 15. The named correspondents and subjects of correspondence are institutions and
16 individuals associated with institutions known to be urging state attorneys general to institute legal
17 actions against traditional energy industry participants or political opponents of the “climate” policy
18 agenda. Five among the limiting search parameters in Petitioner's two requests are Shaun Goho,
19 Harvard, Pawa, Frumhoff, and Union of Concerned Scientists/UCS.

20 16. Matthew Pawa is an attorney in private practice with Hagens Berman (formerly with
21 Pawa Law Group, P.C.), where he serves as co-chair of the firm’s environmental practice group. He
22 specializes in environmental cases, including filing cases involving climate change.² He briefed
23 numerous states’ attorneys general before a March 29, 2016 press conference announcing their
24 efforts to pursue parties over climate change. Pawa also provided three separate presentations on
25 legal strategies to a 2012 meeting in La Jolla, California convened to contemplate the general failure

26 ² Sean Higgins, *NY atty. general sought to keep lawyer's role in climate change push secret*, Washington Examiner (Apr.
27 18, 2016), <http://www.washingtonexaminer.com/ny-atty-general-sought-to-keep-lawyers-role-in-climate-change-push-secret/article/2588874>; Terry Wade, *U.S. state prosecutors met with climate groups as Exxon probes expanded*, Reuters
28 (Apr. 15, 2016), <http://www.reuters.com/article/us-exxonmobil-states/u-s-state-prosecutors-met-with-climate-groups-as-exxon-probes-expanded-idUSKCN0XC2U2>.

1 of legislative efforts to impose the “climate” agenda, the summary of which stated, *inter alia*, “State
2 attorneys general can also subpoena documents, raising the possibility that a single sympathetic state
3 attorney general might have substantial success in bringing key internal documents to light. In
4 addition, lawyers at the workshop noted that even grand juries convened by a district attorney could
5 result in significant document discovery.”³ Pawa has previously suggested that this campaign to use
6 the courts this way is in response to the failure to impose that policy agenda through the democratic
7 process.⁴

8 17. Dr. Peter Frumhoff is Director of Science and Policy and Chief Climate Scientist at
9 the Union of Concerned Scientists (UCS), an advocacy organization focused on climate change and
10 environmental policy. Public records show he emailed an activist academic on July 31, 2015,
11 arguing against pursuing political opponents through federal racketeering law but noting that he was
12 instead working on “state (e.g. AG) action” against “the fossil fuel industry” in which the academic
13 might have a role.⁵ Public records from other state attorneys general confirm Frumhoff worked with
14 them on such matters, including but not limited to briefing attorney general participants prior to their
15 March 29, 2016 press conference,⁶ including “Attorneys General Eric Schneiderman of New York
16 and William Sorrell of Vermont ...George Jepsen of Connecticut, Brian E. Frosh of Maryland,
17 Maura Healey of Massachusetts, and Claude Walker of the US Virgin Islands... along with former
18 Vice President and leading climate activist Al Gore, and representatives from a total of 17 state
19 attorneys general offices”,⁷ including California’s Office of Attorney General.⁸

20 ³ Climate Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco*
21 *Control* 11 (Oct. 2012), <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>
22 (Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies).

23 ⁴ Zoe Carpenter, *The Government May Already Have the Law It Needs to Beat Big Oil*, *The Nation* (July 15, 2015),
24 <https://www.thenation.com/article/the-government-may-already-have-the-law-it-needs-to-beat-big-oil/> (quoting Pawa, in
25 an article advocating RICO actions against fossil fuel companies: “Legislation is going nowhere, so litigation could
26 potentially play an important role.”)

27 ⁵ July 31, 2016, email from UCS’s Frumhoff to Maibach, copying UCS’s Nancy Cole and Alden Meyer and their outside
28 PR advisor Aaron Huertas; Subject: FW: Senator Whitehouse’s call for a RICO investigation of the fossil fuel industry.
Obtained from George Mason University.

⁶ Higgins, *supra*, note 10 (“In addition to Pawa, the attorneys general and their staffs heard a private presentation from
Peter Frumhoff, director of science and policy at the Union of Concerned Scientists.”); Wade, *supra*, note 10 (noting
Frumhoff’s involvement at the meeting).

⁷ Press Release, “ATTORNEY GENERAL HERRING JOINS COLLEAGUES FROM 17 STATES TO ANNOUNCE
COALITION TO CURB CLIMATE CHANGE”, March 29, 2016, [https://oag.state.va.us/media-center/news-
releases/725-march-29-2016-attorney-general-herring-joins-colleagues-from-17-states-to-announce-coalition-to-curb-
climate-change](https://oag.state.va.us/media-center/news-releases/725-march-29-2016-attorney-general-herring-joins-colleagues-from-17-states-to-announce-coalition-to-curb-climate-change)

1 18. Public records obtained from one public university and a state attorney general's
2 office show that both Pawa and Frumhoff participated in what one presenter called, at least twice, a
3 "secret meeting"⁹ with "prospective funders"¹⁰ at Harvard Law School which is central to the
4 records requests at issue in this matter. For this fundraiser/briefing, senior attorneys from numerous
5 state attorneys general offices flew in to address "potential state causes of action against major
6 carbon producers"¹¹. It was secret enough that the Vermont Office of Attorney General litigated to
7 withhold the agenda-under implausible claims of privilege-for a year and a half before being
8 compelled by a court¹² to release the lineup for what turned out to have been an attorneys general-
9 assisted fundraiser with participation by UCLA.¹³

10 19. Email correspondence obtained in open records productions from several state
11 attorneys general offices in 2016-2018 describe the event as:

- 12 • "a secret meeting";
- 13 • designed "to inform thinking that is already underway in state AG offices around the
14 country regarding legal accountability for harm arising from greenhouse gas
15 emissions";¹⁴

16
17 ⁸ "We also have staff representing other attorneys general from across the country including Kamala Harris of
California", video of 3/29/26 press conference at 1:14 - 1:21 ,
https://www.youtube.com/watch?time_continue=80&v=hd4Udhnha2A.

18 ⁹ "I will be showing this Monday at a secret meeting at Harvard that I'll tell you about next time we chat. very [sic]
exciting!" April 22, 2016, email from Oregon State University Professor Philip Mote to unknown party, Subject:
19 [REDACTED], and "I'm actually also planning to show this in a secret meeting next Monday—will tell you sometime."
20 April 20, 2016, Philip Mote email to unknown party, Subject: [REDACTED]. Both obtained from Oregon State
University on March 29, 2018, in response to January 9, 2018 Public Records Act request.

21 ¹⁰ "We will have as small number of climate science colleagues, as well as prospective funders, at the meeting." March
14, 2016, email from Frumhoff to Mote; Subject: invitation to Harvard Law School—UCS convening. Obtained under
same PRA request cited in FN 10, *supra*.

22 ¹¹ "Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers:
Scientific, Legal, and Historical Perspectives." Obtained in *Energy & Environment Legal Institute v. Attorney General*,
23 Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017.

24 ¹² 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
25 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 J.
Teachout, Decision, The State's Motion for Summary Judgment, Superior Court of the State of Vermont, 349-16-9 Wnc,
26 December 6, 2017.

27 ¹³ "3:20-4:20 State Causes of Action: Consumer protection claims: UCLA...Panel discussion (30 min) (additional
participants tbd)". "Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major
Carbon Producers: Scientific, Legal, and Historical Perspectives."

28 ¹⁴ 2/22/2016 emails from Goho to Connecticut OAG's Matthew Levine, and Illinois OAG's James Gignac, Subject:
Invitation to event at Harvard Law School.

- 1 • “[A] private event for staff from state attorney general offices;”¹⁵
- 2 • “[T]he “carbon producer accountability convening;””¹⁶
- 3 • for “prospective funders”; and
- 4 • A “climate science and legal theory meeting.”¹⁷

5 20. The agenda included UCLA to discuss possible “Consumer protection claims” which
6 the plaintiffs lawyers, pressure groups and/or attorneys general present might bring.

7 21. A document produced by Oregon State University, which employs one of the
8 presenters and did in fact respond to open records requests for relevant documents, is an email from
9 UCS’s Peter Frumhoff to Oregon State Professor Phil Mote inviting Mote to present along with, *e.g.*,
10 UCLA faculty, “We will have as small number of climate science colleagues, as well as prospective
11 funders, at the meeting.”¹⁸

12 22. Subsequent to this, the University and particularly the two faculty whose
13 correspondence on this matter is the subject of this action, officially hosted a similarly themed (if
14 non-"secret") event, also co-hosted by UCS.¹⁹

15 23. All of the records requested fall within the definition of public record set forth in the
16 CPRA. Gov. Code § 6252(e).

17 24. The University has produced no records or provided any indication it is in fact
18 processing either request.

19 **B. The University Refuses To Disclose Public Records**

20 25. On February 5, 2018, the University acknowledged the February CPRA Request
21 made earlier that day, assigning it the tracking # 2018-5367 and promising an initial response by
22 February 15, 2018. On February 15, 2018, the University wrote, “The purpose of this letter is to

23 _____
¹⁵ Ibid.

24 ¹⁶ April 7, 2016 email from Shaun Goho to bcc: list, Subject: Logistics for April 25 Convening at HLS.

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

26 ¹⁸ “We will have as small number of climate science colleagues, as well as prospective funders, at the meeting.” March
2016, email from Frumhoff to Mote; Subject: invitation to Harvard University—UCS convening. Obtained under
same PRA request cited in FN 9, *supra*.

27 ¹⁹ Holding Fossil Fuel Companies Liable for Climate Change Harms in California: Law, Science, and Justice, January
2018, <https://law.ucla.edu/centers/environmental-law/emmett-institute-on-climate-change-and-the-environment/events/4065/2018/1/25/Holding-Fossil-Fuel-Companies-Liable-for-Climate-Change-Harms-in-California-c--Law-Science-and-Justice---Keynote-Remarks-by-Bill-McKibben/>.

1 confirm that UCLA Information Practices (IP) continues to work on your public records request
2 dated February 5, 2018, herein enclosed. As allowed pursuant to Cal. Gov't Code Section 6253(c),
3 we require additional time to respond to your request, due to the following circumstance(s): The
4 need to search for and collect the requested records from field facilities or other establishments that
5 are separate from the office processing the request.”

6 26. Five weeks following this acknowledgement, on March 13, 2018 the University asked
7 for confirmation regarding Petitioner's February CPRA Request, specifically “UCLA seeks
8 confirmation that you are, in fact, seeking correspondence that both contains the term Harvard and
9 relates to the April 25, 2016 briefing at Harvard.” Petitioner responded that same day by letter
10 reiterating the request which noted “Public records show that Professor Horowitz participated in an
11 April 25, 2016 briefing at Harvard Law School on “Potential Causes of Action Against Major
12 Carbon Producers: Scientific, Legal and Historical Perspectives”, attended by other academics,
13 environmentalist pressure group activists, private attorneys and public employees of various state
14 attorney general offices”, citing again to the request’s language, “We seek correspondence relating
15 to this trip, presentation, and other assistance provided Prof. Horowitz and/or her colleague Ms.
16 Carlson to the extent this information was produced or received using University resources.”

17 27. The University apparently understood the request upon this reiteration of what
18 Petitioner wrote the first time, as Petitioner has not heard from the University since except for serial
19 postponements. Specifically, Respondent’s February 5, 2018 letter closed, “IP [UCLA Information
20 Practices] will respond to your request no later than the close of business on March 1, 2018 with an
21 estimated date that responsive documents will be made available.”

22 28. On March 1, 2018, IP wrote “with the estimated date that responsive documents will
23 be made available to you, which is April 27, 2018.”

24 29. On April 27, 2018, IP wrote, *in toto*, “We apologize, but the review process has not
25 yet been completed on the attached Public Records Act request of yours, and so we must revise the
26 estimate availability date to July 20, 2018. Your patience is very much appreciated.”

27 30. On July 20, 2018, IP wrote “Although we had previously provided you with an
28 estimated availability date of July 20, 2018, we need to revise this date as the review process has not

1 yet been completed. We expect to provide our response by August 31, 2018. We thank you for your
2 continued patience.”

3 31. On August 31, 2018, IP wrote, *in toto*, “Please accept our sincere apologies, but the
4 review process has not yet been completed on your attached Public Records Act request, so we must
5 revise the estimated availability date to November 30, 2018. We very much appreciate your
6 patience.”

7 32. As to Petitioner’s May CPRA Request, Respondent acknowledged the request,
8 assigning it PRR # 18-5666. On May 31, 2018, Respondent wrote, in pertinent part, “IP will respond
9 to your request no later than the close of business on June 14, 2018 with an estimated date that
10 responsive documents will be made available.”

11 33. On June 14, 2018, IP wrote, in pertinent part, “as promised in our letter to you of May
12 31, 2018, we are now able to provide you with the estimated date that responsive documents will be
13 made available to you, which is August 31, 2018.”

14 34. On August 31, 2018, IP wrote, *in toto*, “Please accept our sincere apologies, but the
15 review process has not yet been completed on your attached Public Records Act request, so we must
16 revise the estimated availability date to November 30, 2018. We very much appreciate your
17 patience.”

18 35. The CPRA declares that “access to information concerning the conduct of the
19 people's business is a fundamental and necessary right of every person in this state.” Gov. Code §
20 6250. The CPRA’s emphasis on open government is enshrined in the California Constitution, which
21 provides: “The people have the right of access to information concerning the conduct of the people's
22 business, and, therefore, ... the writings of public officials and agencies shall be open to public
23 scrutiny.” Cal. Const., art. I, § 3(b)(1). As the California Supreme Court has explained, “[p]ublic
24 access laws serve a crucial function. Openness in government is essential to the functioning of a
25 democracy. ‘Implicit in the democratic process is the notion that government should be accountable
26 for its actions. In order to verify accountability, individuals must have access to government files.
27 Such access permits checks against the arbitrary exercise of official power and secrecy in the
28

1 political process.” *City of San Jose v. Super. Ct.*, 2 Cal.5th 608, 615 (2017) (quoting *Int’l Fed’n of*
2 *Prof’l and Techn. Eng’rs v. Super. Ct.*, 42 Cal.4th 319, 328-29 (2007)).

3 36. The “CPRA establishes a basic rule requiring disclosure of public records upon
4 request. In general, it creates ‘a presumptive right of access to any record created or maintained by a
5 public agency that relates in any way to the business of the public agency.” *City of San Jose*, 2
6 Cal.5th at 616 (2017) (citation omitted).

7 37. Cal. Govt. Code § 6257 requires defendants to “make the records promptly
8 available...” The CRPA establishes an expedited procedure for judicial review of a public agency’s
9 failure to comply with its obligation to disclosure public records. Gov. Code §§ 6258 (providing that
10 any person may seek a writ of mandate to enforce the CPRA, and directing that “[t]he times for
11 responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with
12 the object of securing a decision as to these matters at the earliest possible time.”); 6259(a)
13 (providing for in-camera review of withheld public records). And “[i]f the court finds that the public
14 official’s decision to refuse disclosure is not justified . . . , he or she shall order the public official to
15 make the record public.” Gov. Code § 6259(b).

16 38. The subject matter of any responsive records withheld in this matter is of great public
17 interest. It is all the more so given the apparent confluence of publicly funded universities as
18 strategists and advisors for political activists and the donor class on the one hand, and senior law
19 enforcement on the other hand, in developing an investigation into political opponents on an issue
20 that is inherently a political one.²⁰ This confluence has been demonstrated, for example, by records
21 released and privilege logs in open-records requests and litigation in other states (specifically
22 Vermont²¹ and New York²²), and from numerous other state attorneys general offices that produced

23 ²⁰ See FN 4, *supra*; see also, e.g., *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 871–77 (N.D. Cal.
24 2009), *aff’d*, 696 F.3d 849 (9th Cir. 2012), dismissing a previous suit against ExxonMobil brought by Pawa. “The suit
25 was dismissed by a U.S. district court in 2009 on the grounds that regulating greenhouse gas emissions is “a political
26 rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts.” Climate
27 Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control*, at p.
28 12.

²¹ See, e.g., Docket No. 349-6-16 Wncv, *Energy & Environment Legal vs. Attorney General of Vermont*; Docket No.
558-9-16 Wncv, *Energy & Environment Legal vs. Attorney General of Vermont*; Docket No. 450-8-17 Wncv, *Energy &*
Environment Legal vs. Attorney General of Vermont.

²² See, e.g., *Free Market Environmental Law Clinic et al. v. The Attorney General of New York*, Index No. 101759/2016;
Energy & Environment Legal Institute v. The Attorney General of New York, Index No.101678/2016.

1 records without requiring litigation including but not limited to California, Connecticut, Illinois,
2 Washington State, and from Oregon State University.

3 39. The University has not justified its refusal to produce responsive public records, but
4 has merely serially delayed responding, with no indication it is in fact processing the requests.

5 40. Petitioner was at all times herein mentioned ready to tender the appropriate fees to
6 cover respondent agency's costs in providing copies of the aforementioned records, and made as
7 much clear in its requests.

8 41. Respondent has not provided Petitioner with access to or copies of the
9 aforementioned records. Respondents' failure to provide the records lacks any legal justification.

10 42. Petitioner is informed and believes that it has exhausted all administrative remedies
11 provided by Respondent agency.

12 43. Petitioner has no adequate remedies at law in that the records are unique and
13 monetary damages will not compensate Petitioner for denial of access to the information which
14 Petitioner is seeking. Moreover, Cal. Govt. Code § 6258 expressly provides for the declaratory and
15 injunctive relief sought by Petitioner.

16 44. Cal. Govt. Code § 6259 provides for recovery of Petitioner attorneys' fees. Petitioner
17 has incurred reasonable attorney's fees in an amount to be determined later.

18 **FIRST CLAIM FOR RELIEF**

19 **(For Violation of the CPRA and Cal. Const., art. I, § 3(b)(1)**

20 45. Petitioner incorporates here by reference paragraphs 1 through 44, *supra*, as if fully
21 set forth herein.

22 46. Respondent's refusal promptly to disclose public records responsive to the CPRA
23 Requests, including the prompt assertion of any one or more exemptions purportedly allowing
24 Respondent to withhold any or all of the records requested in the CPRA Requests, violates the
25 CPRA and Article 3, subdivision (b) of the California Constitution.
26
27
28

PRAYER FOR RELIEF

Wherefore, Petitioner prays for the following relief:

1. That the Court issue a peremptory writ of mandate (a) declaring (i) that Respondent has been, and remains, in violation of the CPRA's requirement that Respondent promptly disclose public records responsive to the CPRA Requests, including the prompt assertion of any one or more exemptions purportedly allowing Respondent to withhold any or all of the records requested in the CPRA Requests and (ii) that by reason of Respondent's prolonged, deliberate and unjustified failure to timely respond to the CPRA Requests, Respondent has waived, and may not assert, any exemption that is for the benefit of Respondent as opposed to the protection of the privacy or other rights of a person other than Respondent and (b) directing Respondent, subject to any legitimate withholdings based on exemptions properly asserted for the protection of the privacy or other rights of a person other than Respondent, to make public all records responsive to the CPRA Requests within fifteen days of the Court's order.

2. That Petitioner be awarded attorneys' fees and costs under Government Code section 6259(d) and any other applicable law, and all further relief to which Petitioner may be justly entitled.

Dated: November 6, 2018

JAMES K.T. HUNTER

By: 
James K.T. Hunter

Attorney for Petitioner,
Competitive Enterprise Institute

POLITICS & POLICY

California Climate Policies Facing Revolt from Civil-Rights Groups

By ROBERT BRYCE | September 15, 2018 6:30 AM



Wind farm in Palm Springs, Calif. (Lucy Nicholson/Reuters)

Hugely expensive green mandates will hit poor Californians the hardest.

In April, civil-rights groups sued to stop some of California's policies designed to address climate change. Then on Monday, California governor Jerry Brown signed into law SB 100, which requires the state's utilities to obtain all their electricity from carbon-free sources by 2045. Before signing the bill, Brown **said** the legislation was "sending a message to California and to the world that we're going to meet the Paris agreement." In fact, it will only increase the hardships that California's climate policy imposes on the poor, as detailed in the lawsuit.

High electricity prices should be a concern for California policymakers, since electric rates in the state are already 60 percent higher than those in the rest of the country. According to a recent study by the Berkeley-based think tank Environmental Progress, between 2011 and 2017 California's electricity rates rose **more than five times as fast** as those in the rest of the U.S. SB 100 will mean even higher electricity prices for Californians.

SB 100 requires the state to get 60 percent of its electricity from renewables by 2045, and the other 40 percent from “zero-carbon” sources. Proponents of the measure say those sources could include nuclear, or perhaps power plants that have carbon capture and sequestration systems. Neither approach seems very promising, given that California closed the San Onofre nuclear plant in 2013 and will close the Diablo Canyon plant by 2025. Carbon capture and sequestration has been tried at a handful of locations but has yet to be proven affordable on a large scale.

Furthermore, it’s clear that the more California relies on renewables, the more it will have to deploy large amounts of electricity storage. Those storage systems will have to be large enough to handle massive seasonal fluctuations in wind and solar output. (Wind-energy and solar-energy production in California is roughly three times as great during the summer months as it is in the winter.) The Clean Air Task Force, a Boston-based energy-policy think tank, was one of several environmental groups that supported the passage of SB 100 and the 60 percent–renewable mandate. If California attempts to push past the 60 percent threshold, the storage challenge becomes more daunting. For instance, Clean Air Task Force analysts have calculated that if California attempts to get 80 percent of its electricity from renewables, the state will require about 9.6 terawatt-hours of storage. This would require about 500 million **Tesla Powerwalls**, or roughly 15 Powerwalls for every resident. A full 100 percent–renewable electricity mandate would require some 36.3 terawatt-hours of storage, or about **60 Powerwalls** for every resident of California.

Increasing reliance on renewable energy also means increasing land-use conflicts. Since 2015, more than 200 government entities from Maine to California have voted to reject or restrict the encroachment of wind-energy projects. In 2015 the Los Angeles County Board of Supervisors voted unanimously in favor of an ordinance **banning large wind turbines** in the county’s unincorporated areas. Three other California counties — San Diego, Solano, and Inyo — have also passed restrictions on Big Wind. Last year, the head of the California Wind Energy Association **lamented** that “we’re facing restrictions like that all around the state,” adding that “it’s pretty bleak in terms of the potential for new development.” The result of the anti-wind restrictions can be seen in the numbers. Last year, California had about **5,600 megawatts** of installed wind capacity. That’s roughly 150 megawatts *less* than what the state had back in 2013.

The land-use problem facing Big Wind in California is the same throughout the rest of the U.S. and Europe: People in cities like the idea of wind turbines. People in rural areas increasingly don’t want anything to do with them. Those rural landowners don’t want to see the red blinking lights atop those massive turbines, all night, every night, for the rest of their lives. Nor do they want to be subjected to the **harmful noise** — both audible and inaudible — that they produce.

NOW WATCH: 'Trump Says Government Shutdown Meeting Was Productive'



Even before SB 100 passed, though, California’s leaders were already facing a legal backlash from minority leaders over the high cost of the state’s climate policies. On April 27, The Two Hundred, a coalition of civil-rights leaders, filed a lawsuit in state court against the California Air Resources Board, seeking an injunction against some of the state’s carbon dioxide–reduction rules. The 102-page **lawsuit** declares that California’s “reputation as a global climate leader is built on the state’s dual claims of substantially reducing greenhouse gas emissions while simultaneously enjoying a thriving economy. Neither claim is true.”

The gist of the lawsuit is this: California’s high housing, transportation, and energy costs are discriminatory because they are a regressive tax on the poor. The suit claims that the state’s climate laws violate the Fair Employment and Housing Act because CARB’s new greenhouse-gas-emissions rules on housing units in the state “have a disparate negative impact on minority communities and are discriminatory against minority communities and their members.” The suit also claims the state’s climate laws are illegal under the Federal Housing Act, again because their effect is felt predominantly by minority communities. It also makes a constitutional claim that minorities are being denied equal protection under the law because California’s climate regulations are making affordable housing unavailable to them.

The lawsuit, which Michael Shellenberger of Environmental Progress spotlighted in his recent *Forbes* column, **points out** that since 2007, “California has had the highest poverty rate in the country, over 8 million people living below the US Census Bureau poverty line when housing costs are taken into account.” The lawsuit claims that CARB has “ignored” the state’s “modest scale of

greenhouse gas reductions, as well as the highly regressive costs imposed on current state residents by CARB's climate programs."

On Thursday I spoke to John Gamboa, a member of The Two Hundred. He said SB 100 is merely the latest example of California politicians' ignoring the poor and the middle class when making energy policy. "Every time they pass new regulations, the burden falls on the people who can least afford it," he told me. "That's the history of the environmental movement: They care more about spotted owls than brown babies."

The lawsuit focuses largely on the state's housing and transportation policies, but it also says that California's climate change policies increase "the cost of transportation fuels" and "further increase electricity costs." Those high costs, it claims, "have caused and will cause unconstitutional and unlawful disparate impacts to California's minority populations, which now comprise a plurality of the state's population."

There's simply no doubt that SB 100 will mean even higher electricity prices for Californians. A parallel can be seen in **Germany**, which has pledged to cut its carbon-dioxide emissions by 80 percent by 2050 and, like California, is closing its nuclear plants and pushing hard for more renewable energy. According to Agora Energiewende, a think tank that focuses on Germany's transition toward renewables, between 2007 and 2018, residential electricity prices in Germany jumped by 50 percent. German residential customers now have **some of the highest-priced** electricity in Europe, about \$0.37 per kilowatt-hour.

Ontario, Canada has had a similar experience. Over the past decade, Ontario closed its coal plants and implemented lucrative subsidies for renewables. The result: Between 2008 and 2016, residential electricity rates in Ontario rose 71 percent, which was **more than double** the average increase in the rest of Canada during that time. And rates in Ontario **could rise another 40 percent** by 2035. A report released by the Fraser Institute in April **concluded** that "soaring electricity costs in Ontario have placed a significant financial burden on the manufacturing sector and hampered its competitiveness."

Or consider Australia, where consumers are paying some of the world's highest electricity prices after the government imposed renewable-energy mandates and emissions caps on the electric sector. Electricity costs became such a hot issue that they played a decisive role in last month's sacking of the country's prime minister, Malcolm Turnbull. Among the hardest-hit regions of Australia is South Australia, where electricity rates shot up after the closure of two large coal-fired power plants. The state now gets about 40 percent of its electricity from solar and wind and power costs are roughly three times that seen by the average American.

The high cost of renewable-energy mandates was noted by a handful of California’s Democratic legislators during the debate over SB 100. “This is yet another in a laundry list of bills that are discriminatory to the people I represent,” said Adam Gray of Merced. According to the *Los Angeles Times*, Gray **went on to say** that the supporters of SB 100 were more motivated “to impress national progressives rather than poor residents in rural communities who would face higher electric bills.”

SB 100’s sponsor, state senator Kevin de León, is running for U.S. Senate in this fall’s election. When I asked Gamboa about de León, and more specifically why a Latino leader would be so supportive of a measure that could hurt low-income Latinos, he paused and let out a sigh. “I know Kevin. He has a good heart,” Gamboa said. “He got excited about getting votes from the environmental community and this was a good way to do it.”

Last month, after SB 100 passed the state assembly, **de León** claimed that California has “taken another great stride toward a 100 percent clean energy future.” That may be true. But California’s ratepayers, especially the poor and working class, will be the ones paying the cost of that stride.

Editors’ note: This article has been revised since its initial publication to correct a misstatement of the requirements that SB 100 will impose.



ROBERT BRYCE — Robert Bryce is a senior fellow at the Manhattan Institute and the author and producer of the forthcoming book and documentary *Juice: How Electricity Explains the World*. [@pwrhungry](#)

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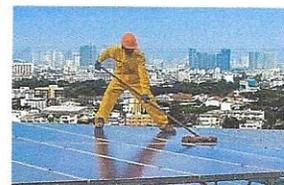


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1 Jennifer L. Hernandez (State Bar No. 114951)
Charles L. Coleman III (State Bar No. 65496)
2 Marne S. Sussman (State Bar No. 273712)
HOLLAND & KNIGHT LLP
3 50 California Street, 28th Floor
San Francisco, California 94111
4 Tel: (415) 743-6900 Fax: (415) 743-6910
Email: jennifer.hernandez@hklaw.com
5 charles.coleman@hklaw.com

6 Attorneys for Plaintiffs/Petitioners
THE TWO HUNDRED, *et al.*

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FRESNO COUNTY SUPERIOR COURT
By: A. Ramos, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO**
10 **UNLIMITED CIVIL JURISDICTION**

11
12 THE TWO HUNDRED, an unincorporated
13 association of civil rights leaders, including
14 LETICIA RODRIGUEZ, TERESA MURILLO,
and EUGENIA PEREZ,

15 Plaintiffs/Petitioners,

16 v.

17 CALIFORNIA AIR RESOURCES BOARD,
18 RICHARD COREY, in his Official Capacity, and
19 DOES 1-50,

20 Respondents/Defendants.
21
22
23
24
25
26
27
28

Case No. 18CECG01494.

**VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Code Civ. Proc. §§ 1085, 1094.5, 1060,
526; Gov. Code § 12955 *et seq.* (FEHA);
42 U.S.C. § 3601 *et seq.* (FHA); Cal.
Const. Art. I, § 7; Art. IV, § 16; U.S.
Const. Amd. 14, § 1; 42 U.S.C. § 1983;
Pub. Res. Code § 12000 *et seq.* (CEQA);
Gov. Code § 11346 *et seq.* (APA); H&S
Code § 38500 *et seq.* (GWSA); H&S
Code § 39000 *et seq.* (CCAA); Gov.
Code § 65088 *et seq.* (Congestion
Management Plan)]

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1 **I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

2 **A. California’s Greenhouse Gas Policies and Housing-Induced Poverty Crisis**

3 1. California’s reputation as a global climate leader is built on the state’s dual claims
4 of substantially reducing greenhouse gas (“GHG”) emissions while simultaneously enjoying a
5 thriving economy. Neither claim is true.

6 2. California has made far less progress in reducing GHG emissions than other states.
7 Since the effective date of California’s landmark GHG reduction law, the Global Warming
8 Solutions Act,¹ 41 states have reduced per capita GHG emissions by more than California

9 3. California’s lead climate agency, the California Air Resources Board (“CARB”),
10 has ignored California’s modest scale of GHG reductions, as well as the highly regressive costs
11 imposed on current state residents by CARB’s climate programs.

12 4. Others have been more forthcoming. Governor Jerry Brown acknowledged in 2017
13 that the state’s lauded cap-and-trade program, which the non-partisan state Legislative Analyst’s
14 Office (“LAO”) concluded would cost consumers between 24 cents and 73 cents more per gallon
15 of gasoline by 2031,² actually “is not that important [for greenhouse gas reduction]. I know that.
16 I’m Mr. ‘It Ain’t That Much.’ It isn’t that much. Everybody here [in a European climate change
17 conference] is hype, hype to the skies.”³

18 5. Governor Brown’s acknowledgement was prompted by a report from Mother
19 Jones—not CARB—that high rainfall had resulted in more hydroelectric power generation from
20
21

22 _____
23 ¹ The Global Warming Solutions Act of 2006 (“GWSA”) is codified at Health and Safety Code
24 (“H&S Code”) § 38500 *et seq.* and became effective in 2007. The Act is often referred to as “AB
25 32”, the assembly bill number assigned to the legislation. AB 32 required California to reduce
26 GHG emissions from a “business as usual” scenario in 2020 to the state’s 1990 GHG emission
27 level. AB 32 was amended in 2017 by Senate Bill 32 by the same author. SB 32 established a
28 new GHG reduction mandate of 40% below California’s 1990 GHG levels by 2030.

² LAO, Letter to Assembly Member Fong (Mar. 29, 2017), www.lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

³ Julie Cart, *Weather Helped California’s Greenhouse Gas Emissions Drop 5% Last Year*, CALMatters (Dec. 2, 2017), <https://timesofsandiego.com/tech/2017/12/02/weather-helped-californias-greenhouse-gas-emissions-drop-5-last-year/>.

1 existing dams than had occurred during the drought, and that this weather pattern resulted in a 5%
2 decrease in California’s GHG emissions.⁴

3 6. GHG emissions data from California’s wildfires are also telling. As reported by
4 the *San Francisco Chronicle* (again not CARB), GHG emissions from all California regulatory
5 efforts “inched down” statewide by 1.5 million metric tons (from total estimated emissions of 440
6 million metric tons),⁵ while just one wildfire near Fresno County (the Rough Fire) produced 6.8
7 million metric tons of GHGs, and other fires on just federally managed forest lands in California
8 emitted 16 million metric tons of GHGs.⁶

9 7. Reliance on statewide economic data for the false idea that California’s economy
10 is thriving conflates the remarkable stock market profits of San Francisco Bay Area technology
11 companies with disparate economic harms and losses suffered by Latino and African American
12 Californians statewide, and by white and Asian American Californians outside the Bay Area.

13 8. Since 2007, which included both the global recession and current sustained period
14 of economic recovery, California has had the highest poverty rate in the country—over 8 million
15 people living below the U.S. Census Bureau poverty line when housing costs are taken into
16 account.⁷ By another authoritative poverty methodology developed by the United Way of
17 California, which counts housing as well as other basic necessities like transportation and medical
18 costs (and then offsets these with state welfare and related poverty assistance programs), about
19 40% of Californians “do not have sufficient income to meet their basic cost of living.”⁸ The
20

21 ⁴ *Ibid.*

22 ⁵ California Air Resources Board, 2017 Edition California Greenhouse Gas Inventory for 2000-
2015 (June 2017), <https://www.arb.ca.gov/cc/inventory/data/data.htm>.

23 ⁶ David R Baker, *Huge wildfires can wipe out California’s greenhouse gas gains*, SF Chronicle,
24 (Nov. 21, 2017), <https://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php>.

25 ⁷ Liana Fox, *The Supplemental Poverty Measure: 2016*, U.S. Census Bureau Report Number:
26 P60-261, Table A-5 (Sept. 21, 2017),
<https://www.census.gov/library/publications/2017/demo/p60-261.html>; Dan Walters, *Why does*
27 *California have the nation’s highest poverty level?*, CALMatters (Aug. 13, 2017),
<https://calmatters.org/articles/california-nations-highest-poverty-level/>.

28 ⁸ Betsy Block et al., *Struggling to Get By: The Real Cost Measure in California 2015*, United
Ways of California (2016), <https://www.unitedwaysca.org/realcost>.

1 Public Policy Institute of California used a methodology that also accounts for the cost of living
2 and independently concluded that about 40% of Californians live in poverty.⁹

3 9. Poverty is just one of several indicators of the deep economic distress affecting
4 California. California also has the highest homeless population, and the highest homelessness
5 rate, in the nation. According to the U.S. Department of Housing and Urban Development, about
6 25% of the nation's homeless, or about 135,000 individuals, are in California.¹⁰

7 10. National homeownership rates have been recovering since the recession levels, but
8 California's rate has plunged to the second lowest in the country—with homeownership losses
9 steepest and most sustained for California's Latinos and African Americans.¹¹

10 11. As shown in Figure 1, with the exception of white and Asian populations in the
11 five-county Bay Area, elsewhere in California—and for Latino and African American residents
12 statewide—incomes are comparable to national averages.

13 **Figure 1**

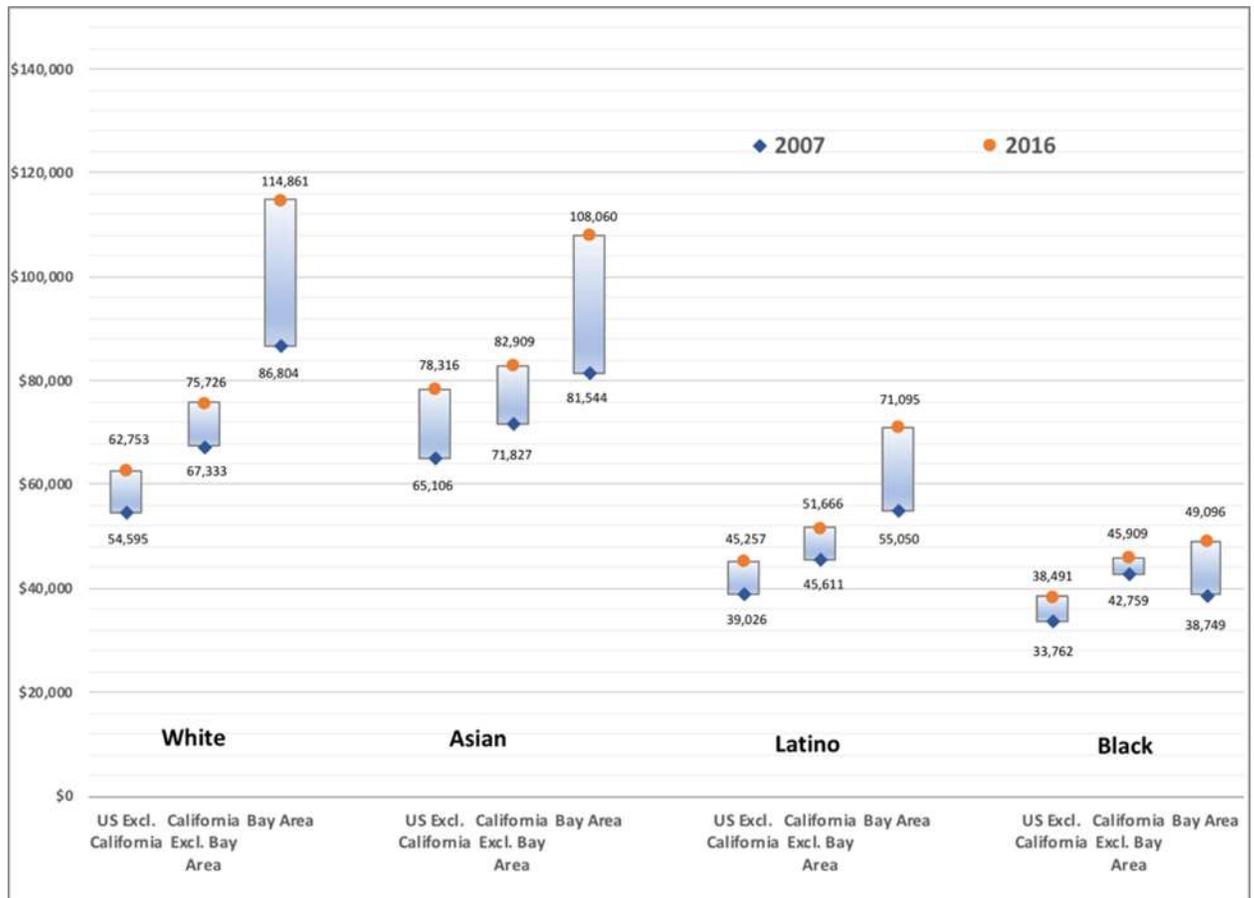
14 **Median Income in 2007 and 2017, White, Asian, Latino and Black Populations**
15 **Bay Area, California excluding the Bay Area, and U.S. excluding California**
16 **(nominal current dollars)¹²**

19 ⁹ Public Policy Institute of California, *Poverty in California* (Oct. 2017),
20 <http://www.ppic.org/publication/poverty-in-california/>.

21 ¹⁰ U.S. Department of Housing and Urban Development, *2017 Annual Homeless Assessment*
22 *Report to Congress*, <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>;
23 Kevin Fagan et al., *California's homelessness crisis expands to country*, *SF Chronicle* (Sept. 8,
24 2017), <https://www.sfchronicle.com/news/article/California-s-homelessness-crisis-moves-to-the-12182026.php>.

25 ¹¹ U.S. Census Bureau, *Housing Vacancies and Homeownership (CPS/HVS)*, Table 16.
26 *Homeownership Rates for the 75 Largest Metropolitan Statistical Areas: 2015 to 2017*,
27 <https://www.census.gov/housing/hvs/data/ann17ind.html>. See also 2007 and 2016 American
28 *Community Survey 1-Year Estimates*, Table B25003 series (Tenure in Occupied housing units),
California, <https://factfinder.census.gov/>.

¹² Median income estimated from household income distributions for 2007 and 2016 American
Community Survey 1-Year Estimates, Table B19001 series, <https://factfinder.census.gov/> (using
the estimation methodology described by the California Department of Finance at
http://www.dof.ca.gov/Forecasting/Demographics/Census_Data_Center_Network/documents/How_to_Recalculate_a_Median.pdf).



12. However, Californians pay far higher costs for basic necessities. A national survey of housing, food, medical and other costs conducted by the Council for Community & Economic Research showed that in 2017, California was the second most expensive state in the nation (after Hawaii), and had a cost of living index that was 41% higher than the national average.¹³ The LAO reported that “California’s home prices and rents are higher than just about anywhere else,” with average home prices 2.5 times more than the national average and rents 50% higher than the national average.¹⁴ Californians also pay 58% more in average electricity cost per KWh hour (2016 annual average)¹⁵ and about \$0.80 cents more per gallon of gas than the national average.¹⁶

¹³ The 2017 survey by the Council for Community & Economic Research was published by the Missouri Economic Research and Information Center, https://www.missourieconomy.org/indicators/cost_of_living/index.stm.

¹⁴ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015), <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

¹⁵ U.S. Energy Information Agency, Electric Power Annual, Table 2.10 (Dec. 2, 2017), <https://www.eia.gov/electricity/annual/> (showing average annual 2016 prices).

¹⁶ American Automobile Association, Regular Gas Prices, <http://gasprices.aaa.com/state-gas-price-averages/>, last visited April 25, 2018.

1 13. These high costs for two basic living expenses—electricity and transportation—are
2 highest for those who live in the state’s inland areas (and need more heating and cooling than the
3 temperate coast), and drive farthest to jobs due to the acute housing crisis the LAO has concluded
4 is worst in the coastal urban job centers like the San Francisco Bay Area and Los Angeles.¹⁷

5 14. An estimated 138,000 commuters enter and exit the nine-county Bay Area
6 megaregion each day.¹⁸ These are workers who are forced to “drive until they qualify” for
7 housing they can afford to buy or rent.

8 15. San Joaquin County housing prices in cities nearest the Bay Area, such as
9 Stockton, are about one-third lower, even though commute times to San Jose are 77 minutes each
10 direction (80 miles and 2.5 hour daily commutes), and to San Francisco are 80 minutes (82 miles
11 and 3 hour daily commutes).¹⁹ The median housing price in Stockton is about \$286,000—still
12 double the national average of \$140,000—while the median housing price in San Jose is over
13 \$1,076,000 and in San Francisco is over \$1,341,000.²⁰

14 16. California’s poverty, housing, transportation and homeless crisis have created a
15 perfect storm of economic hardship that has, in the words of the civil rights group Urban Habitat,
16 resulted in the “resegregation” of the Bay Area.²¹ Between 2000 and 2014, substantial African
17 American and Latino populations shifted from central cities on and near the Bay, like San
18 Francisco, Oakland, Richmond and San Jose, to eastern outer suburbs like Antioch, and Central
19 Valley communities like Stockton and Suisun City.²² As reported:

20 _____
21 ¹⁷ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015),
<http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

22 ¹⁸ Bay Area Council, Another Inconvenient Truth (Aug. 16, 2016),
www.bayareaeconomy.org/report/another-inconvenient-truth/.

23 ¹⁹ Commute times from Google navigation, calculated April 25, 2018.

24 ²⁰ Zillow, Stockton CA Home Prices & Home Values, <https://www.zillow.com/stockton-ca/home-values/>;
25 San Jose CA Home Prices and Home Values, <https://www.zillow.com/san-jose-ca/home-values/>;
San Francisco CA Home Prices and Home Values, <https://www.zillow.com/san-francisco-ca/home-values/>.

26 ²¹ Urban Habitat League, Race, Inequality, and the Resegregation of the Bay Area (Nov. 2016),
27 <http://urbanhabitat.org/new-report-urban-habitat-reveals-growing-inequality-and-resegregation-bay-area-reflecting-divided>;
see also LAO, Lower Income Households Moving to Inland California from Coast (Sept. 2015), <http://www.lao.ca.gov/LAOEconTax/Article/Detail/133>.

28 ²² *Id.* p. 10-11, Maps 5 and 6.

1 Low income communities of color are increasingly living at the
2 expanding edges of our region. . . . Those who do live closer to the
3 regional core find themselves unable to afford skyrocketing rents
4 and other necessities; many families are doubling or tripling up in
5 homes, or facing housing instability and homelessness.²³

6 17. Los Angeles (#1) and the Bay Area (#3) are already ranked the worst in the nation
7 for traffic congestion, flanking Washington DC (#2).²⁴ Yet California’s climate leaders have
8 decided to intentionally increase traffic congestion—to lengthen commute times and encourage
9 gridlock—to try to get more people to ride buses or take other form of public transit.²⁵ This
10 climate strategy has already failed, with public transit ridership—particularly by bus—continuing
11 to fall even as California has invested billions in public transit systems.²⁶

12 18. Vehicle miles travelled (“VMT”) by Californians forced to drive ever-greater
13 distances to homes they can afford have also increased by 15% between 2000 and 2015.²⁷ Serious

14 ²³ *Id.* p. 2.

15 ²⁴ INRIX Global Traffic Scorecard (2017), <http://inrix.com/scorecard/>.

16 ²⁵ Governor’s Office of Planning and Research (“OPR”), Updating Transportation Analysis in the
17 CEQA Guidelines, Preliminary Discussion Draft (Aug. 6, 2014),
18 http://www.opr.ca.gov/docs/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_SB_743_080614.pdf, p. 9 (stating that “research indicates that adding new traffic lanes in areas
19 subject to congestion tends to lead to more people driving further distances. (Handy and Boarnet,
20 “DRAFT Policy Brief on Highway Capacity and Induced Travel,” (April 2014).) This is because
21 the new roadway capacity may allow increased speeds on the roadway, which then allows people
22 to access more distant locations in a shorter amount of time. Thus, the new roadway capacity may
23 cause people to make trips that they would otherwise avoid because of congestion, or may make
24 driving a more attractive mode of travel”). In subsequent CEQA regulatory proposals, and in
25 pertinent parts of the 2017 Scoping Plan, text supportive of traffic congestion was deleted but the
26 substantive policy direction remains unchanged. Further, the gas tax approved by the Legislature
27 in 2017 was structured to limit money for addressing congestion to \$250 million (less than 1% of
28 the \$2.88 billion anticipated to be generated by the new taxes). See Jim Miller, *California’s gas
tax increase is now law. What it costs you and what it fixes*. Sacramento Bee (April 28, 2017),
<http://www.sacbee.com/news/politics-government/capitol-alert/article147437054.html>.

²⁶ See, e.g., Bay Area Metropolitan Planning Commission, Transit Ridership Report (Sept. 2017),
<http://www.vitalsigns.mtc.ca.gov/transit-ridership> (showing transit ridership decline on a per
capita basis by 11% since 1990 with per capita bus boardings declining by 33%); see also
University of California Institute for Transportation Studies, Falling Transit Ridership: California
and Southern California (Jan. 2018),
https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf (showing Los Angeles
regional public transit decline).

²⁷ TRIP, California Transportation by the Numbers (Aug. 2016),
[https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p
df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf).

1 adverse health impacts to individual commuters,²⁸ as well as adverse economic impacts to drivers
2 and the California economy,²⁹ from excessive commutes have also worsened.

3 19. In 2016 and 2017, the combination of increased congestion and more VMT
4 reversed decades of air quality improvements in California, and caused increased emissions of
5 both GHG and other traditional air pollutants that cause smog and other adverse health effects,³⁰
6 for which reductions have long been mandated under federal and state clean air laws.

7 20. In short, in the vast majority of California, and for the whole of its Latino and
8 African American populations, the story of California's "thriving" economy is built on CARB's
9 reliance on misleading statewide averages, which are distorted by the unprecedented
10 concentration of stock market wealth created by the Bay Area technology industry.

11 21. For most Californians, especially those who lost their home in the Great Recession
12 (with foreclosures disproportionately affecting minority homeowners),³¹ or who never owned a
13 home and are struggling with college loans or struggling to find a steady job that pays enough to
14 cover California's extraordinary living costs, CARB's assertion that California is a booming,
15 "clean and green" economy is a distant fiction.

16 **B. California's Historical Use of Environmental and Zoning Laws and**
17 **Regulations to Oppress and Marginalize Minority Communities**

18 22. The current plight of minority communities in California is the product of many
19 decades of institutional racism, perpetuated by school bureaucrats of the 1940's who defended the
20 "separate but equal" system, highway bureaucrats of the 1950's who targeted minority
21 neighborhoods for demolition to make way for freeway routes, urban planning bureaucrats in the
22

23 ²⁸ Carolyn Kylstra, *10 Things Your Commute Does to Your Body*, Time Magazine (Feb. 2014),
<http://time.com/9912/10-things-your-commute-does-to-your-body/>.

24 ²⁹ TRIP, California Transportation by the Numbers (Aug. 2016),
[https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf)
25 [df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf) (stating that traffic congestion is estimated to cost California \$28 billion, including lost time
26 for drivers and businesses, and wasted fuels).

27 ³⁰ Next 10, 2017 CA Green Innovation Index (Aug. 22, 2017),
<http://next10.org/sites/default/files/2017-CA-Green-Innovation-Index-2.pdf>.

28 ³¹ Gillian White, *The Recession's Racial Slant*, Atlantic Magazine (June 24, 2015),
<https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>.