

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

4 Attorney for Petitioner Energy Policy Advocates

5
6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
8

9 ENERGY POLICY ADVOCATES,
10
11 Petitioner,

11 v.

12 THE REGENTS OF THE UNIVERSITY OF
13 CALIFORNIA,

14 Respondent.

)Case No. 22STCP03214

)
)**DECLARATION OF CHRISTOPHER**
)**HORNER IN SUPPORT OF PETITION**
)**FOR WRIT**

) Trial Date: December 14, 2023 (*Reserved*)

) Time: 9:30 a.m.

) Place: Dept. 85

)
) Petition filed: August 30, 2022
)
)
)
)

17 I, Christopher Horner, declare:

18
19 **INTRODUCTION**

20 1. I make this declaration in support of the Petition for Writ filed by Petitioner Energy
21 Policy Advocates (“EPA”) in the above-captioned proceeding against Respondent The Regents of
22 the University of California (“Regents”). In this Declaration, I address the Regents’ response to the
23 California Public Records Act (“CPRA”) request at issue in this matter dated August 2, 2021 (the
24 “8/2/21 CPRA Request”)¹, and also set forth my opinions based on my experience with open records
25 requests in California and nationwide, particularly as they relate to energy, environmental policy,
26 and the global warming debate. Except as qualified, I make this declaration based on my personal

27
28 ¹ While the Petition also references two other related CPRA requests made by EPA, EPA has
determined that the trial on the Petition should exclusively address the issues raised regarding the
8/2/21 CPRA Request since those are the issues of the greatest general import.

1 and firsthand knowledge of those facts hereinafter set forth and could and would testify competently
2 thereto under oath if called as a witness.

3 2. I obtained my *Juris Doctor* from Washington University in St. Louis in 1991 and am
4 admitted to practice law in the District of Columbia. I have spent most of my professional life since
5 1997 requesting or assisting others in requesting, assessing and disseminating public information,
6 pursuant to state and federal open records laws. Those pursuits have been the principal focus of my
7 work for more than the past decade. These requests typically seek public information to educate
8 about how public institutions have been or are being used, with whom, and how they came to be
9 used that way. These requests require litigation when an agency does not respond as prescribed in
10 the relevant statute or withholds all or parts of records in ways with which I, my colleagues or my
11 client do not agree is proper. I have made, provided legal assistance in other parties making, and/or
12 participated in litigation over hundreds of such requests to federal agencies, state executive and
13 attorneys general offices and other agencies, and over two dozen academic institutions.

14 3. I came to this work after learning, relatively and somewhat embarrassingly late in life
15 but at least first-hand, about the business of leveraging pressure campaigns to influence public
16 institutions. Specifically, I began using open records laws to explore public-private interplay after,
17 and in great part inspired by, an eye-opening stint with a Houston-based energy company in 1997,
18 after having left my law firm to become the company's director of federal government relations (in a
19 non-attorney capacity). I was gone from the company's ranks within weeks, about four years before
20 it found itself in the news and its very name, Enron, became a cultural metaphor in 2001. After
21 arriving at Enron I helped create an uncomfortable work environment for myself by indelicately
22 voicing concerns over the company's leading role in what was becoming a "global warming"
23 industry. I was particularly struck by a meeting I had attended on the company's behalf, in a large
24 national law firm's Washington, D.C. conference room among a Who's Who of environmentalist
25 pressure groups as well as senior representatives of individual companies and trade associations
26 representing several industry sectors, discussing how to ensure U.S. participation, despite public and
27 congressional opposition, in what several months later would be called the Kyoto Protocol, a "global
28 warming" treaty. As Lawrence Solomon of Canada's *Financial Post* wrote as part of a series

1 exposing industry’s driving role behind this pact and related policies, Enron was the early ringleader
2 of the global warming industry:

3 Enron Chairman Kenneth Lay...saw his opportunity when Bill Clinton and Al Gore were
4 inaugurated as president and vice-president in 1993. To capitalize on Al Gore’s interest in
5 global warming, Enron immediately embarked on a massive lobbying effort to develop a
6 trading system for carbon dioxide, working both the Clinton administration and Congress.
7 Political contributions and Enron-funded analyses flowed freely, all geared to demonstrating
8 a looming global catastrophe if carbon dioxide emissions weren’t curbed. An Enron-funded
9 study that dismissed the notion that calamity could come of global warming, meanwhile, was
quietly buried.²

10 To magnify the leverage of their political lobbying, Enron also worked the environmental
11 groups. Between 1994 and 1996, the Enron Foundation donated \$1-million to the Nature
12 Conservancy and its Climate Change Project, a leading force for global warming reform,
13 while Lay and other individuals associated with Enron donated \$1.5-million to environmental
14 groups seeking international controls on carbon dioxide.³

15 In December 1997, immediately on the heels of the 1997 Kyoto negotiation, CEO Ken Lay received
16 a memo titled “Implications of the Climate Change Agreement in Kyoto & What Transpired” from
17 Enron’s point-man on the issue (“You know that I am responsible for developing "climate change"
18 polices that promote our products and services”⁴), one who urged a (different) opponent of this form
19 of corporate “rent-seeking” (*infra*) to come around in an email, Subject line: “Climate Change/work
20 with me to make Enron rich.”⁵ The memo noted, *inter alia*, “this treaty is exactly what I have been
21 lobbying for,” “This agreement will be good for Enron stock!,” “if implemented, this agreement
22 will do more to promote Enron’s business than will almost any other regulatory initiative outside of
23 restructuring of the energy and natural gas industries in Europe and the United States,” “Enron has

25 ² Sadly, no donors at the time or since have had the vision to organize an “Enron Knew” campaign.

26 ³ Lawrence Solomon, "Enron's Other Secret", *Financial Post* (Canada), May 30, 2009, available at
<https://ep.probeinternational.org/2009/05/30/enrons-other-secret/>. This was “real money” at the time.

27 ⁴ Memo from John Palmisano to Steve Kean, Cynthia Sandherr, February 28, 1997, available at
<https://climatelitigationwatch.org/wp-content/uploads/2021/09/Principal-Enron-docs-11.11.15.pdf>.

28 ⁵ <https://climatelitigationwatch.org/wp-content/uploads/2021/09/Work-with-me-to-make-Enron-rich.pdf>.

1 immediate business opportunities which derive directly from this agreement,” “Enron now has
2 excellent credentials with many ‘green’ interests including Greenpeace, [World Wildlife Fund],
3 [Natural Resources Defense Council], German Watch, the U.S. Climate Action Network, the
4 European Climate Action Network, Ozone Action, WRI, and Worldwatch, “ and therefore that “This
5 position should be increasingly cultivated and capitalized on (monitized).” (sic)⁶

7 4. Monetizing a (at the time) “global warming” industry was Enron’s Big Idea. It
8 planned on making money trading ration coupons, or “carbon credits”, and from government
9 policies juicing revenues to the then-world’s largest windmill company which Enron had recently
10 purchased (Zond Wind, which became Enron Wind). This required the system to be designed
11 according to or as close as possible to Enron’s and its peers’ specifications. This was revelatory to
12 me, though I came to learn just how widespread are these “Baptist-and-Bootlegger coalitions,”
13 which is the term coined by then-Professor and now Dean Emeritus at Clemson University, Bruce
14 Yandle.⁷ The Enron, *et al.*, group of industry lobbies planned to use the “global warming” issue to
15 obtain from government policy what economists call “rents”.⁸ Again quoting Lawrence Solomon,
16 “We all know that the financial stakes are enormous in the global warming debate—many oil, coal
17 and power companies are at risk should carbon dioxide and other greenhouse gases get regulated in a
18
19
20
21

22 ⁶ Memo from John Palmisano, “Implications of the Climate Change Agreement in Kyoto & What
23 Transpired” (1997).

24 <https://web.archive.org/web/20110820070144/http://www.politicalcapitalism.org/enron/121297.pdf>

25 ⁷ See, e.g., Testimony before the United States Senate Committee on Environment and Public Works
26 Honorable Barbara Boxer, Chairman On the U.S. Climate Action Partnership Report, Fred L. Smith,
27 Jr., President, Competitive Enterprise Institute, February 13, 2007, available at
28 <https://govoversight.org/wp-content/uploads/2021/09/fred.writtentestimony.senate.pdf>.

⁸ “Cap-and-trade” legislation was for a time the approach selected by the political class, including
Enron. See, e.g., Jim Tankersley, “Industry Leaders join Obama on emissions limits,” *Los Angeles
Times*, May 18, 2009, discussing the passage, at long last (in one legislative house, only), of the
Waxman-Markey “cap-and-trade” legislation. See also President Obama’s serial use of language in
support of these policies, that he would “finally make clean energy *the profitable kind* of energy in
America” (emphasis added)(in, e.g., 2010 State of the Union address,
<https://obamawhitehouse.archives.gov/the-press-office/remarks-president-state-union-address>)..

1 manner that harms their bottom line. The potential losses of an Exxon or a Shell are chump change,
2 however, compared to the fortunes to be made from those very same regulations.”⁹

3 5. Industry participants, like Enron, which had bought uneconomic assets or otherwise
4 made financial arrangements (“bets”) in anticipation of getting this agenda in place — which assets
5 would then be rewarded by government policies — joined with, e.g., the Union of Concerned
6 Scientists (see, *infra*) to (at the time) rather quietly lobby for policies in the name of the threat of
7 catastrophic man-made global warming, soon to be re-branded as “climate change” and “clean
8 energy economy.”¹⁰ Later that year, as affirmed by certain internal Enron documents which
9 emerged and were reported in a Robert Novak column in, *inter alia*, the *Washington Post*, the public
10 learned of an August 1997 Oval Office meeting between Enron’s Ken Lay and BP’s John Brown
11 with both President Clinton and Vice President Al Gore.¹¹ There, according to a memo reported in
12 the Novak column, Ken Lay was to advise the President to disregard the unanimous Senate
13 instruction under the Constitution’s “advise and consent” clause just over a week prior, on July 25,
14 1997, and agree to the Kyoto Protocol, and also ensure that the agreement include “cap-and-trade”
15 which, of course, Enron would help design. Unanimous Senate instruction under Article II, Sec. 2 of
16 the U.S. Constitution notwithstanding, President Clinton did in fact enter Kyoto by the signature, on
17 November 12, 1998, of Acting Ambassador to the United Nations Peter Burleigh.

21 _____
22 ⁹ Lawrence Solomon, "Enron's Other Secret", *Financial Post* (Canada), May 30, 2009.

23 ¹⁰ After the November 2009 “Climategate” email scandal as well as poll-testing of the issue led
24 “global warming” to be been rebranded “the climate crisis” and the focus shifting to a line that
25 somewhat nods to the actual genesis of the agenda, “the clean energy economy.” See, e.g., Edward
26 Felker and Stephen Dinan, “Democrats urged to play down ‘global warming’”, *Washington Times*,
27 June 19, 2009 <https://www.washingtontimes.com/news/2009/jun/19/party-memo-urges-democrats-to-fix-pitch-on-climate/>; to the displeasure of some advocates, see, e.g., “When did ‘climate change’
28 become ‘clean energy’?” (print and syndication title (see, e.g.,
https://madison.com/ct/news/opinion/column/maxwell-t-boykoff-when-did-climate-change-become-clean-energy/article_78e0aaec-6a34-5439-b721-31085e6041a8.html), *Washington Post*, February 5,
2012, https://www.washingtonpost.com/opinions/a-dangerous-shift-in-obamas-climate-change-rhetoric/2012/01/26/gIQAYnwzVQ_story.html; speaking of re-branding, the Post has elected for the
more ominous and lecturing on-line title, “A dangerous shift in Obama’s ‘climate change’ rhetoric”.

¹¹ See, e.g., “Enron's Secret Energy Plan,” *Chicago Sun-Times*, January 17, 2002.

1 6. At the time, a mere six years out of law school, these coalitions and the cavalier
2 approach to, e.g., “advice and consent” in pursuit of an agenda rather shocked my naïve, younger
3 self. I had not yet learned the terrible economic and social costs of these “global warming” policies,
4 particularly on seniors and the poor and most notably from death of the alone from hypothermia, but
5 instead this experience prompted my early forays into the freedom of information realm by probing
6 further into the role of Enron and others in advancing this agenda in the federal government, from
7 correspondence to rosters of participation in trade junkets. I inquired after records discussing the
8 scientific, economic, and political angles, moving to a range of issues as they emerged or developed
9 and seeking the deliberations in agencies throughout government about the relationships, the costs,
10 and the agendas of those in government. In the two-and-a-half decades since and particularly the
11 most recent, I have maintained a strong emphasis in my work on open records requests, litigation,
12 and advice. I made and have continued pursuing the request at issue in this matter on behalf of
13 several public policy and governmental transparency groups including Petitioner Energy Policy
14 Advocates.

17 6. My efforts are often successful in obtaining and broadly disseminating public
18 information, through publication and/or coverage in, e.g., the *Wall Street Journal* news, editorial and
19 opinion pages, *Washington Times* news and opinion pages as well as numerous on-line outlets.
20 Recipients of information requests and their allies also target my work for criticism, often on the
21 grounds that these requests reflect *the wrong kind of people* seeking access to public information, for
22 example in the *Washington Post* editorial page (*infra*). *Politico* wrote in its June 2013 article “Master
23 of FOIA” that my work is that of “a determined digger” who “bedevils the White House” with
24 Freedom of Information requests. This alludes to my having discovered then-U.S. Environmental
25 Protection Agency Administrator Jackson’s use of a false-identity email account in the name of
26 “Richard Windsor,” in violation of the Federal Records Act and of course increasing the chance that
27
28

1 FOIA productions seeking Ms. Jackson’s public-record correspondence as EPA Administrator
2 would not be properly located or released. *Politico* noted, *inter alia*, “Horner’s far from a pioneer in
3 using FOIA, of course. Environmental groups file most FOIA requests with EPA, and businesses
4 often use the law to acquire information on competitors.” In 2014 *The Hill* named me one of its “100
5 People to Watch” for these efforts¹², and the *Washington Examiner* wrote that “Horner has been
6 busy busting what he sees as absurd global warming claims and the federal government's deepening
7 lack of transparency”¹³. I have given addresses on the topic of my open records work in numerous
8 places throughout the United States, and also, e.g., to policy-attuned audiences in London and
9 Munich some of whom, I am heartened to see, have picked up the mantle. The public record reflects
10 some of what I also have been otherwise informed of, that I have also been the subject of numerous
11 open records requests made to state and federal agencies by other parties, including pressure-group
12 activists and journalists, seeking to learn and disseminate information about how public institutions
13 are used and with whom, which I understand to be part of the package of dealing with public entities.

16 7. I have written four books, three of them on energy and environmental policy and
17 politics, two of which were national best-sellers. The fourth book was on federal and state open
18 records laws and how to use them. Three of these books included a focus on information obtained
19 through public record requests as well as on efforts to fight the release of such information. One of
20 these books addressed in detail the “Climategate” affair. That involved the anonymous release of
21 thousands of pages of correspondence opening a window onto the taxpayer-financed climate-science
22 industry, many of which records were subject to numerous open records laws — state and federal,
23 and non-U.S. — but whose custodians, according to correspondence among themselves, were not
24 interested in complying with or otherwise responding to requests for data (even, expressly, because
25

27 ¹² <http://thehill.com/business-a-lobbying/315837-100-people-to-watch-this-fall-?start=7>.

28 ¹³ <http://washingtonexaminer.com/chris-horner-foia-watchdog-demands-transparency-from-governments-global-warming-advocates/article/2544632>.

1 that could assist the requesters in possibly finding fault with the scientists' claims, previously
2 deemed an elementary component of science). This reluctance led to one principal having, according
3 to correspondence, "conveniently lost many emails,"¹⁴ "moved all their emails from all the named
4 people off their PCs and they are all on a memory stick,"¹⁵ suggested to colleagues "to delete all
5 emails at the end of the process" just in case it turns out the records are subject to open records
6 laws,¹⁶ admitting in an email to colleagues that he "deleted loads of emails" despite at first claiming,
7 publicly, "We've not deleted any emails or data here at [his institution]"¹⁷ while also instructing a
8 colleague "delete after reading - please!"¹⁸ and, "With the earlier FOI requests re David Holland, I
9 wasted a part of a day deleting numerous emails and exchanges with almost all the skeptics. So I
10 have virtually nothing. I even deleted the email that I inadvertently sent. There might be some bits of
11 pieces of paper, but I'm not wasting my time going through these".¹⁹

12
13
14 8. Other behavior obstructing public access to public records, which I have personally
15 experienced in my work involves facts similar to those present in the matter at issue here, when
16 institutions tasked individuals who are also the principals in the records sought with conducting the
17 initial canvass for potentially responsive records to be turned over for review and possible release.
18 As noted, *infra*, this situation has resulted in officials, including faculty, deciding they do not
19 appreciate the records request and, e.g., for one reason or another concluding that some or all
20

21
22 _____
23 ¹⁴ <https://tomnelson.blogspot.com/search?q=conveniently+lost+many+emails>.

24 ¹⁵ Id.

25 ¹⁶ <https://tomnelson.blogspot.com/2012/01/email-4778-may-2009-phil-jones-to.html>.

26 ¹⁷ Leo Hickman, "Climate scientist at centre of leaked email row dismisses conspiracy claims," The
27 Guardian, November 24, 2009, <https://www.theguardian.com/environment/2009/nov/24/climate-professor-leaked-emails-uea>.

28 ¹⁸ http://tomnelson.blogspot.com/2011/11/climategate-2_8905.html.

¹⁹ Id. See also, <https://climateaudit.org/2011/02/23/new-light-on-delete-any-emails/>, and Department
of Commerce Inspector General's report available at Department of Commerce, Office of Inspector
General, "Response to Sen. James Inhofe's Request to OIG to Examine Issues Related to Internet
Posting of Email Exchanges Taken from the Climatic Research Unit of the University of East
Anglia, UK," February 18, 2011, pp. 12-16, available at
<https://www.oig.doc.gov/OIGPublications/2011.02.18-IG-to-Inhofe.pdf>.

1 potentially responsive records are not “records” under the law in question, or anyway would be
2 exempt if they were, and so the individual does not turn them over for further processing.

3 9. It is my experience that, with exceedingly rare exception, universities are the
4 institutions most reluctant to cooperate with public records requests, and have even profligately
5 offered false “no records” responses, typically after administrations ask the faculty whose
6 correspondence or other records is sought to make the initial determination whether they possess any
7 responsive records.
8

9 10. Consistent with this reluctance and attitude, it is my opinion that — despite
10 substantial public financing in the scores of billions of dollars nationally per year — academic
11 institution officials and their faculties often hold the view that lawmakers were mistaken to include
12 public schools in open records statutes, or anyway that universities shouldn’t be forced to comply
13 with these laws. Whether derived from this seemingly widespread attitude or not, it is my experience
14 that requests to universities disproportionately result in the employment of *ad hominem* in support of
15 the idea of selective application of open records laws (the “bad person” (non-)defense). This is
16 sometimes — as in a prior case involving Regents in which I was involved — express, though more
17 typically is the work of supporters or surrogates likely, in my opinion, because it is widely known
18 among any party tasked with processing open records laws that these considerations are inherently
19 irrelevant. Of course, demands that these laws be applied unevenly so as to afford unequal rights of
20 access to public information inherently require irrelevant if extended *argumentum ad hominem*.
21
22

23 11. It is my experience that Respondent’s practices in responding to CPRA requests for
24 records that illuminate the Climate Change Agenda (“Climate Change Agenda Records”) includes
25 both (a) the unjustified delay of responses to, and the unjustifiably delayed production of documents
26 demanded in, requests for Climate Change Agenda Records, and (b) the assertion of unwarranted
27
28

1 claims of exemption and also sweeping and improper claims of “not public records” in attempts to
2 avoid the production of key Climate Change Agenda Records.

3 12. It is my opinion that these practices are intentional. Indeed, as long ago as September
4 2012, UCLA published a Statement on the Principles of Scholarly Research and Public Records
5 Requests (the “September 2012 Statement on Principles of Scholarly Research and Public Records
6 Requests”) which remains in effect today that states, in relevant parts, as follows:
7

8 “... faculty scholarly communications must be protected from PRA and FOIA requests to
9 guard the principles of academic freedom, the integrity of the research process and peer
10 review, and the broader teaching and research mission of the university. Moreover, these
11 requests have increasingly been used for political purposes or to intimidate faculty working
12 on controversial issues. These onerous, politically motivated, or frivolous requests may
13 inhibit the very communications that nourish excellence in research and teaching, threatening
14 the long-established principles of scholarly research. ... *Faculty often choose research topics
15 that are highly relevant to society and therefore may generate strong reactions.* These topics
16 may be controversial and highly politicized (*e.g.* global warming) ... Faculty must be free to
17 work on these important topics without fear of retribution, threats or interference.” (Italics in
18 original.)

19 13. The use of public institutions in pursuit of the Climate Change Agenda, whether
20 academia or law enforcement, is of great public interest, is a principal area of focus of EPA, and is
21 the source of much financial support by private, outside parties to these institutions and officeholders
22 who obtain substantial contributions to use their institutions in assisting this effort. Universities,
23 including mostly private institutions such as the University of Chicago, Harvard, Columbia, New
24 York University law schools, but also the University of California at Los Angeles and University of
25 Minnesota School of Law, have taken it upon themselves, in concert with activists, the plaintiff’s tort
26 bar, major financial contributors, and state attorneys general, to institute a national campaign of legal
27 actions against ideological opponents (“climate denialists”, to employ Prof. Horowitz’s vocabulary).
28 As Prof. Horowitz candidly if indelicately described this campaign in an email to her Institute’s

1 principal non-governmental benefactor Dan Emmett, this entails “going after climate denialism—
2 along with a bunch of state and local prosecutors nationwide”²⁰. Law school clinics have been
3 described as a “[secret weapon](#)” in the climate litigation campaign.²¹ “Climate denialism” is nowhere
4 an offense, but shorthand for pursuing (with “prosecutors nationwide”) those viewed as standing in
5 the way of certain desired “progress”. That campaign has led to attorney general investigations of
6 private parties²², and targeted more than 100 research and advocacy groups, scientists and other
7 private parties and entities.²³ One of these is the Competitive Enterprise Institute (CEI) with which I
8 was affiliated for twenty years, including at the time it was subpoenaed in 2016²⁴.

10 14. This campaign flowed from a 2012 legal strategies meeting in La Jolla, California
11 convened to contemplate the general failure of legislative efforts to impose the “climate” agenda and
12 the use of courts to overcome that failure, to which end Co-Executive Director Horowitz asserts the
13 Emmett Institute is dedicated (FN 20, *supra*). The summary of the La Jolla meeting stated, *inter alia*,
14 “State attorneys general can also subpoena documents, raising the possibility that a single
15

17 ²⁰ “Hi Dan, Thought you would like to hear that Harvard’s enviro clinic, UCLA Emmett Institute,
18 and the Union of Concerned Scientists are talking together today about going after climate denialism
19 [sic]—along with a bunch of state and local prosecutors nationwide. Good discussion.” April 25,
20 2016 email from UCLA Law School’s Cara Horowitz to Dan Emmett, namesake and funder of the
21 Harvard and UCLA centers, Subject: See, e.g., [https://climatelitigationwatch.org/on-the-subject-of-](https://climatelitigationwatch.org/on-the-subject-of-recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/)
22 [recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/](https://climatelitigationwatch.org/on-the-subject-of-recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/).

21 ²¹ “Yale’s civil litigation clinic aims to train law students and make a difference,” Stephanie Francis
22 Ward, ABA Journal, April 1, 2018,
23 https://www.abajournal.com/magazine/article/san_francisco_yale_civil_litigation_clinic.

22 ²² *People of the State of New York v PricewaterhouseCoopers and Exxon Mobil Corporation*, New
23 York State Supreme Court, New York County, No. 451962/2016, and 1:17-cv-2301 in U.S. District
24 Court, Southern District of New York; *People of the State of New York v. Exxon Mobil Corporation*,
25 Supreme Court of New York Index No. 452044/2018; *Commonwealth of Massachusetts v. Exxon*
26 *Mobil Corporation*, Suffolk County Superior Court, 19-3333.

25 ²³ See, e.g., Valerie Richardson, “Exxon climate change dissent subpoena sweeps up more than 100
26 U.S. institutions”, Washington Times, May 3, 2016,
27 [https://www.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-](https://www.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-communications/)
28 [communications/](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”, June 16, 2016, [https://www.overlawyered.com/2016/06/+setts-ag-exxon-hand-](https://www.overlawyered.com/2016/06/+setts-ag-exxon-hand-communications-think-tanks/)
[communications-think-tanks/](https://www.overlawyered.com/2016/06/+setts-ag-exxon-hand-communications-think-tanks/).

²⁴ See <https://cei.org/publication/first-amendment-fight-ceis-climate-change-subpoena/>.

1 sympathetic state attorney general might have substantial success in bringing key internal documents
2 to light. In addition, lawyers at the workshop noted that even grand juries convened by a district
3 attorney could result in significant document discovery.”²⁵ The same report also stated, “Equally
4 important was the nearly unanimous agreement on the importance of legal actions, both in wresting
5 potentially useful internal documents from the fossil fuel industry and, more broadly, in maintaining
6 pressure on the industry that could eventually lead to its support for legislative and regulatory
7 responses to global warming.”²⁶

9 15. Public records already obtained from UCLA and other institutions affirm certain
10 details of the University’s role, through its faculty’s involvement in their official UCLA capacities,
11 in this effort led by activist groups and the Attorneys General (AGs) of Massachusetts and New
12 York, later joined by other AG offices. This role has included participating in that “secret meeting at
13 Harvard” to brief not only state attorneys general staff and activists, but “prospective funders”²⁷ of a
14 coordinated campaign pushing “potential state causes of action against major carbon producers”²⁸,
15 which is the subject of great media and public interest due to the controversial origin of — and
16 collaboration involved in — these investigations. A public record obtained from the California
17 Office of Attorney General (OAG) titled “Technical Advisors and Experts” lists Prof. Horowitz
18

20 ²⁵ Climate Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control* (Oct. 2012), page 11,
21 <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>
22 (Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies).

23 ²⁶ *Id.* at 27.

24 ²⁷ “We will have as small number of climate science colleagues, as well as prospective funders, at
25 the meeting.” March 14, 2016, email from Frumhoff to Mote; Subject: invitation to Harvard
26 University—UCS convening. Obtained under same PRA request cited in FN 22, *supra*.
27 [https://climatelitigationwatch.org/wp-content/uploads/2018/08/BOOM-OAGs-flew-in-for-briefing-
28 for-UCS-prospective-funders.png](https://climatelitigationwatch.org/wp-content/uploads/2018/08/BOOM-OAGs-flew-in-for-briefing-for-UCS-prospective-funders.png).

29 ²⁸ “Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major
30 Carbon Producers: Scientific, Legal, and Historical Perspectives.” Obtained in *Energy &*
31 *Environment Legal Institute v. Attorney General*, Superior Court of the State of Vermont, 349-16-9
32 *Wnc*, December 6, 2017. [https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-55-
33 Harvard-AGs-briefing-UCS-fundraiser-agenda-copy.pdf](https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-55-Harvard-AGs-briefing-UCS-fundraiser-agenda-copy.pdf).

1 among the presenters at that briefing, expressly as the “Andrew Sabin Family Foundation Co-
2 Executive Director of the Emmett Institute on Climate Change and the Environment, Co-Director,
3 UCLA Environmental law Clinic, UCLA School of Law, Los Angeles, CA.”²⁹. The agenda,
4 obtained by the Energy & Environment Legal Institute in litigation with the Vermont Office of the
5 Attorney General, shows that at this meeting, Prof. Horowitz advocated “climate” related
6 “Consumer protection claims” be brought against energy companies. The Massachusetts Attorney
7 General’s Office sent five attorneys to this briefing,³⁰ and its subsequently filed complaint against
8 ExxonMobil for “potential violations of the Massachusetts consumer protection statute” is now
9 pending in a Massachusetts state court. From that “secret meeting”, Prof. Horowitz wrote the
10 breathtaking email to her principal (non-governmental) benefactor Dan Emmett, “Hi Dan, Thought
11 you would like to hear that Harvard's enviro clinic, UCLA Emmett Institute, and the Union of
12 Concerned Scientists are talking together today at Harvard about going after climate denialism--
13 along with a bunch of state and local prosecutors nationwide. Good discussion.”

16 16. The Law Clinic/Sher Edling Agreements’ purported “client”, Sher Edling, is a law firm
17 that specializes in bringing contingency lawsuits against fossil fuel companies on behalf of public
18 entities.³¹ This litigation campaign in furtherance of an activist climate change agenda, and the
19 gravity of the public’s interest in the disclosure of the Law Clinic/Sher Edling Agreements is
20 highlighted in three recent letters exchanged between Sher Edling’s counsel, William Pittard of the
21 law firm KaiserDillon PLLC, and Senator Ted Cruz (ranking member of the of the U.S. Senate
22 Committee on Commerce, Science and Transportation), joined in the more recent correspondence by
23

24 _____
25 ²⁹ See <https://climatelitigationwatch.org/wp-content/uploads/2018/04/Union-of-Concerned-Scientists-Technical-Advisors-and-Experts-1.pdf>.

26 ³⁰ See, e.g., March 17, 2016, email from OAG’s Melissa Hoffer to Harvard Law School’s Shaun
27 Goho, Subject: RE: SAVE THE DATE—HLS/UCS Meeting on April 25, 2016, listing Andy
28 Goldberg, Glenn Kaplan, Christophe Courchesne, Richard Johnson as participants in addition to
herself. <https://climatelitigationwatch.org/wp-content/uploads/2019/10/MA-AAG-Hoffer-to-HLS-on-MA-OAG-attendees.pdf>.


³¹ <https://www.sheredling.com/cases/climate-cases/>

1 Congressman James Comer (Chairman of the House of Representatives Committee on Oversight and
2 Accountability). Copies of these letters posted on a congressional website are attached according to
3 their chronological order as Exhibit 1 hereto. Therein, Senator Cruz and Chairman Comer seek
4 information concerning, among other matters, (1) the role played by third-party donations in Sher
5 Edling’s pursuit of its global warming agenda through litigation in federal and state courts, (2)
6 whether “dark money” is fueling Sher Edling’s litigation to accomplish a left-wing legislative goal:
7 the eradication of fossil fuels and (3) whether the California fisc effectively subsidized Sher Edling’s
8 pursuit of its global warming agenda through the Law Clinic/Sher Edling Agreements.
9

10 17. It is my experience that public records acts generally are grounded in the principle of
11 keeping governments and covered public institutions accountable, with tools to discourage as well as
12 to defeat efforts by officials with such institutions to obstruct faithful application of the law.
13

14 18. It is my experience that certain parties, disproportionately represented among
15 journalists and academics, believe that open records laws were designed *for them*, and the wrong
16 kind of people do not have the same access. It is my opinion, based upon the totality of the events in
17 this matter and indeed at least two prior requests made to Regents of which I am aware, that this
18 same perspective is at play in the instant matter, manifested in the administration impeding release
19 of records responsive to EPA’s requests, and Regents’ defense thereof in this Court.
20

21 I declare under penalty of perjury under the laws of California that the foregoing is true and
22 correct, and that this declaration was executed on October 27, 2023 at Keswick, Virginia.
23

24 

Christopher Horner
25
26
27
28

EXHIBIT 1

AMY KLOBUCHAR, MINNESOTA
 BRIAN SCHATZ, HAWAII
 EDWARD MARKEY, MASSACHUSETTS
 GARY PETERS, MICHIGAN
 TAMMY BALDWIN, WISCONSIN
 TAMMY DUCKWORTH, ILLINOIS
 JON TESTER, MONTANA
 KYRSTEN SINEMA, ARIZONA
 JACKY ROSEN, NEVADA
 BEN RAY LUJAN, NEW MEXICO
 JOHN HICKENLOOPER, COLORADO
 RAPHAEL WARNOCK, GEORGIA
 PETER WELCH, VERMONT

TED CRUZ, TEXAS
 JOHN THUNE, SOUTH DAKOTA
 ROGER WICKER, MISSISSIPPI
 DEB FISCHER, NEBRASKA
 JERRY MORAN, KANSAS
 DAN SULLIVAN, ALASKA
 MARSHA BLACKBURN, TENNESSEE
 TODD YOUNG, INDIANA
 TED BUDD, NORTH CAROLINA
 ERIC SCHMITT, MISSOURI
 J.D. VANCE, OHIO
 SHELLEY MOORE CAPITO, WEST VIRGINIA
 CYNTHIA LUMMIS, WYOMING

LILA HELMS, MAJORITY STAFF DIRECTOR
 BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <https://commerce.senate.gov>



May 12, 2023

Mr. Vic Sher
 Partner
 Sher Edling LLP
 100 Montgomery St., Suite 1410
 San Francisco, CA 94104

Mr. Matt Edling
 Partner
 Sher Edling LLP
 100 Montgomery St., Suite 1410
 San Francisco, CA 94104

Dear Messrs. Sher and Edling,

As the Ranking Member of the U.S. Senate Committee on Commerce, Science and Transportation, I write seeking information concerning the role that Ann Carlson, President Biden’s nominee to be Administrator of the National Highway Traffic Safety Administration (“NHTSA”), and third-party donations played in your firm’s global warming agenda through litigation in federal and state courts.

As you know, Sher Edling is a for-profit law firm that touts itself as a leader in climate change litigation. According to its website, the firm’s forty-person “climate practice” seeks to hold the fossil fuel industry “accountable” for climate change through lawsuits.¹ Sher Edling has filed over twenty “climate cases” against traditional energy companies throughout the country since 2017.² The firm reportedly shopped these lawsuits around to Democrat-controlled states, counties, and cities, offering its legal services at no cost unless it obtained a “settlement against the industry.”³ There is no indication, however, that a single one of the climate change lawsuits has succeeded.

Sher Edling’s continued operation without any fee-generating wins raises questions about how it is funding these climate change lawsuits. Investigations have revealed that the answer may be left-wing pass-through funds, including the Resources Legacy Fund and New Venture Fund.⁴ These funds are purportedly the “fiscal sponsors,” meaning the managers, of climate funds established by

¹ *Expertise*, Sher Edling, <https://www.sheredling.com/expertise/>.

² *Climate Cases*, Sher Edling, <https://www.sheredling.com/cases/climate-cases/>.

³ Anne C. Mulkern, *Oil Company Allies Say Climate Lawsuits Were Shopped Around*, CLIMATEWIRE (Apr. 10, 2018), <https://www.eenews.net/articles/oil-company-allies-say-climate-lawsuits-were-shopped-around/>; Lesley Clark, *Baltimore County Officials Balk at Climate Lawsuit*, CLIMATEWIRE (Nov. 21, 2022).

⁴ Joe Schoffstall and Thomas Catenacci, *Group Leo DiCaprio Funneled Grants Through to Fund Climate Lawsuits Moved to Largest US Dark Money Network*, FOX NEWS (Oct. 21, 2022), <https://www.foxnews.com/politics/group-leo-dicaprio-funneled-grants-fund-climate-lawsuits-moved-largest-us-dark-money-network>; Michael I. Krauss, *Using Charitable Funds to Subsidize “Legislation Through Litigation,”* FORBES (Jul. 28, 2020), <https://www.forbes.com/sites/michaelkrauss/2020/07/28/using-charitable-funds-to-subsidize-legislation-through-litigation/?sh=63aff8e43342>.

wealthy liberals like Hollywood star Leonardo DiCaprio.⁵ From 2017 through 2021, the DiCaprio-funded Resources Legacy Fund, which is focused on advancing “bold environmental outcomes,” gave Sher Edling over \$5.3 million—\$2.4 million in 2020 alone.⁶ In 2021, the New Venture Fund, which also gears itself towards “conservation, climate, and energy issues,” gave Sher Edling \$3 million.⁷ While these millions of dollars poured in, Sher Edling continued to push forward climate change lawsuits. Indeed, it appears that dark money—a purported concern of many who support radical environmental legislation—is fueling your firm’s litigation to accomplish a left-wing legislative goal: the eradication of fossil fuels.

Just as Sher Edling has been discrete about its financing, Ms. Carlson has been less than forthcoming about her involvement with the firm. She made no mention of the firm in her 2021 U.S. Department of Transportation ethics form.⁸ However, on her UCLA annual reporting forms for the years 2016 through 2019 (all of which she curiously filed the month before she joined NHTSA), Ms. Carlson stated that she performed “pro bono consulting on litigation for municipalities litigating against oil companies” as a “consultant/committee member” for Sher Edling each year.⁹ Publicly available emails further reveal that Ms. Carlson’s efforts extended to fundraising for the firm,¹⁰ and travelling to Hawaii “to encourage Hawaii to consider a nuisance lawsuit.”¹¹ Moreover, UCLA’s Environmental Law Clinic was reportedly providing assistance to Sher Edling on these climate cases.¹²

I am therefore seeking further documents and information to better understand how Sher Edling’s donors may influence its climate-related litigation and Ms. Carlson’s role in that litigation.

Please provide written answers and relevant documents in response to the following questions no later than May 19, 2023.

⁵ Thomas Catenacci, *Leonardo DiCaprio Funneled Grants Through Dark Money Group to Fund Climate Nuisance Lawsuits, Emails Show*, FOX NEWS (Aug. 15, 2022), <https://www.foxnews.com/politics/leonardo-dicaprio-funneled-grants-dark-money-group-fund-climate-nuisance-lawsuits-emails-show>.

⁶ Internal Revenue Service. (2020). *Form 990: Return of Organization Exempt From Income Tax: Resources Legacy Fund*, <https://resourceslegacyfund.org/wp-content/uploads/2022/03/RLF-2020-IRS-Form-990-Public-Copy-Amended.pdf>.

⁷ Internal Revenue Service. (2021). *Form 990: Return of Organization Exempt From Income Tax: New Venture Fund*, <https://newventurefund.org/wp-content/uploads/2022/11/NVF-2021-990-Public-Disclosure-Copy.pdf>.

⁸ Thomas Catenacci, *Biden Nominee Wants to Hijack Little-Known Agency to Ram Through Climate Agenda*, FOX NEWS (Apr. 3, 2023), <https://www.foxnews.com/politics/biden-nominee-wants-hijack-little-known-agency-ram-through-climate-agenda>.

⁹ Ann Carlson, *Annual Reporting Form*, University of California, Los Angeles School of Law (Dec. 6, 2020) <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>.

¹⁰ Feb. 26, 2018, E-mail from Ann Carlson to D. Emmett, <https://govoversight.org/wp-content/uploads/2022/05/Sabin-and-his-Rs.pdf>.

¹¹ Jun. 24, 2019, E-mail from Ann Carlson to D. Emmett, <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-Discretionary-Fund-Requested-Records-20-8371.pdf>.

¹² Maxine Joselow, *Lawsuits Target Exxon’s Social Media “Green Washing,”* E&E NEWS (Aug. 22, 2021), <https://www.eenews.net/articles/lawsuits-target-exxons-social-media-green-washing/>.

1. Ms. Carlson indicated in her UCLA outside activities form that she worked as a “consultant/committee member” for Sher Edling.¹³ Please describe the nature of Ms. Carlson’s work for Sher Edling, including the years she served in those roles, what her work in each role entailed, the specific cases she advised on, and her compensation each year, including any benefits she received or expenses Sher Edling reimbursed.
2. Please state whether any members of UCLA Law’s Emmett Institute on Climate Change and the Environment and/or UCLA Law’s Environmental Law Clinic provided any assistance to Sher Edling on any of its cases. If so, please describe the nature of their work, the years during which that assistance was provided, and the specific cases they worked on. Please also identify any expenses for that work that Sher Edling reimbursed and any donations the firm or its partners has made to UCLA Law since 2017.
3. Please provide a list of every person and entity, excluding clients and vendors, that provided Sher Edling with any amount of money. For each person or entity listed, please include the following information:
 - a. The amount of the money provided;
 - b. The date the money was provided;
 - c. The purpose for which the money was directed to be used; and
 - d. The manner in which that money was provided, i.e., through a grant, litigation funding agreement, or some other contract or agreement. If the funding was provided pursuant to a written agreement, please provide a copy of that agreement.
4. In May 2020, the Stanford Law Review published an essay entitled, “Forum Versus Substance: Should Climate Damages Cases be Heard in State or Federal Court” by Mr. Sher.¹⁴ Please state whether Ms. Carlson assisted with that essay in any way, including drafting, reviewing, or commenting on it, or taking any action directed towards Stanford’s publishing of it.

Thank you for your attention to this matter.

Sincerely,



Ted Cruz
Ranking Member

¹³ Thomas Catenacci, *Biden nominee wants to hijack little-known agency to ram through climate agenda*, FOX NEWS (Apr. 3, 2023), available at <https://www.foxnews.com/politics/biden-nominee-wants-hijack-little-known-agency-ram-through-climate-agenda>.

¹⁴ Vic Sher, *Forum Versus Substance: Should Climate Damages Cases Be Heard in State or Federal Court?*, 72 STANFORD LAW REV. (2020), available at <https://www.stanfordlawreview.org/online/forum-versus-substance/>.



1099 14TH ST. NW
8TH FLOOR WEST
WASHINGTON, DC 20005
(202) 640-2850
WWW.KAISERDILLON.COM

wpittard@kaiserdillon.com

July 28, 2023

VIA ELECTRONIC MAIL

Sen. Ted Cruz
Ranking Member, Committee on Commerce, Science, and Transportation
U.S. Senate

RE: Your May 12, 2023 Letter to Vic Sher and Matt Edling

Dear Senator Cruz:

I write on behalf of my firm's client, Sher Edling LLP ("Sher Edling"), and in follow-up to myriad conversations and emails with your staff, which followed my May 19, 2023 initial response to your May 12, 2023 letter to Vic Sher and Matt Edling ("May 12 Letter").

Your May 12 Letter asked various questions as part of the consideration by the U.S. Senate Committee on Commerce, Science, and Transportation ("the Committee") of President Biden's nomination of Ann Carlson to serve as the Administrator of the National Highway Traffic Safety Administration ("NHTSA"). On May 30, 2023, the White House withdrew Ms. Carlson's nomination.¹

Notwithstanding the removal of the predicate for your questions, your staff subsequently has pressed for responses. As I know you and your staff understand, Sher Edling's primary responsibility is to its clients and the cases it is litigating, and some of your inquiries raise a host of confidentiality, privilege, and privacy concerns. Moreover, several assumptions cited in your letter are inaccurate—notwithstanding that they have long been asserted by organizations that may be directed, controlled, or funded by defendants in the climate damage and deception cases that Sher Edling supports as outside counsel.

First, then, I want to correct the record with respect to some of the statements and accusations made in your letter that underlie your questions.

¹ See PN464 – Nomination of Ann Elizabeth Carlson for Department of Transportation, 118th Congress (2023-2024), <https://www.congress.gov/nomination/118th-congress/464>.

To begin, Sher Edling's work is grounded in supporting cities, counties, states, and other public entities in litigation to protect their residents, workers, and taxpayers. The climate damage and deception cases that Sher Edling supports as outside counsel, and that you reference in your letter, are a relatively small part of the firm's practice. Sher Edling, for example, has more than 100 active cases, only about 20 of which are related to the climate damage and deception cases that you reference.

Moreover, and contrary to your assertion that Sher Edling has operated "without any fee-generating wins," many of the firm's cases have been successfully resolved, thereby generating significant fees for Sher Edling's "continued operation."

For example, some of the firm's recent and ongoing work includes:

- Helping the New York communities of Bethpage and South Farmingdale secure \$64.5 million from Northrop Grumman and the U.S. Navy for damages from toxic contamination of drinking water delivered to the public on Long Island.²
- Successfully negotiating on behalf of the California communities of Imperial Beach and Chula Vista and the Port of San Diego a settlement with the U.S. Department of Justice over the International Boundary Water Commission's decades-long failure to protect California communities from toxic sewage flows crossing the Mexican border, and thereby harming the public health, the economy, and the environment of southern California.³
- Serving on the Plaintiffs' Executive Committee of the nation's largest multidistrict litigation comprised of thousands of lawsuits holding accountable manufacturers of aqueous film-forming foam (AFFF) that contains Per- and Polyfluoroalkyl Substance (PFAS) for contaminating drinking water supplies across the country.⁴ I know you are aware, from your efforts in support of a CDC study "on the effects

² Hailey Konnath, *Northrop Grumman, US Ink \$64.5M Deal With Water Districts*, Law360 (Apr. 11, 2022), <https://www.law360.com/articles/1483018/northrop-grumman-us-ink-64-5m-deal-with-water-districts>.

³ Joshua Emerson Smith, *Feds pledge more action on Tijuana sewage spills under legal settlement with Imperial Beach*, The San Diego Union-Tribune (Feb. 22, 2023), available at <https://www.sandiegouniontribune.com/news/environment/story/2023-02-22/imperial-beach-chula-vista-san-diego-port-settle-lawsuit-tijuana-river-sewage>.

⁴ Case Management Order No. 10, *In re: Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873-RMG (D.S.C. Mar. 23, 2020), available at <https://www.scd.uscourts.gov/mdl-2873/orders/CMO%2010.pdf>.

of PFAS contamination of drinking water,”⁵ of the serious public health threats and costs associated with PFAS chemicals in Texas and around the country. That is no doubt why the Texas Rural Water Association has over 110 members participating in the AFFF action.⁶ As you and your staff may have read, there have been multiple news reports in recent weeks about potential multi-billion-dollar settlements with defendants in that and related matters.⁷

Second, with those corrections and that context, I’d like to further address your concerns:

1. Ms. Carlson, in the past, has consulted *pro bono* on the legal issues underlying the climate damage and deception cases for which Sher Edling serves as outside counsel. This is a matter of public record,⁸ and not surprising. Conversations and communications between attorneys and legal experts are common, particularly in the context of high-profile and cutting-edge lawsuits. Such conversations and communications, as you know, are privileged. In any event, and after reasonable investigation, it appears that Ms. Carlson did not consult with Sher Edling about any specific climate damage and deception cases, and it further appears that Ms. Carlson has not provided any consultation after her departure from UCLA to join the U.S. Department of Transportation.
2. Sher Edling had a working relationship with a legal clinic at UCLA Law School, which was established as an educational opportunity for law students. That, too, is a common occurrence, and the relationship was governed by a legal services agreement, as previously disclosed.
3. As described above, Sher Edling is a successful, fee-generating law firm with a diverse portfolio of many types of cases. The firm works to comply with all state and federal

⁵ *Sen. Cruz Champions Texas Military Communities & Advances America’s Defense Capabilities in 60th National Defense Authorization Act*, Sen. Cruz Press Release (June 24, 2020), <https://www.cruz.senate.gov/newsroom/press-releases/sen-cruz-champions-texas-military-communities-and-advances-america-and-146s-defense-capabilities-in-60th-national-defense-authorization-act>.

⁶ See Texas Rural Water Association, *PFAS Litigation*, <https://www.trwa.org/page/pfas-litigation> (last visited July 24, 2023).

⁷ See, e.g., Kris Maher, *Chemour, DuPont, Corteva Settle PFAS Litigation for \$1.185 Billion*, The Wall Street Journal (June 2, 2023), available at <https://www.wsj.com/articles/chemours-dupont-corteva-settle-pfas-litigation-for-1-185-billion-9edf9078>; Kris Maher and John Keilman, *3M Settles ‘Forever Chemicals’ Litigation for Up to \$12.5 Billion*, The Wall Street Journal (June 22, 2023), available at <https://www.wsj.com/articles/3m-settles-forever-chemicals-litigation-for-up-to-12-5-billion-abbaba36>.

⁸ See, e.g., Ann Carlson, *Annual Reporting Form*, University of California, Los Angeles School of Law (Dec. 6, 2020).

laws governing American small businesses, and it also works to comply with all ethical rules governing law firms. Philanthropic grants that support Sher Edling's work on climate damage and deception litigation have been widely reported in the media for years, and they have been disclosed in the IRS 990 filings of relevant organizations.⁹

4. Mr. Sher did publish in the May 2020 Stanford Law Review.¹⁰ After reasonable investigation, it does not appear that Ms. Carlson assisted with that publication.

* * *

Thank you for the opportunity to correct the record, provide context, and otherwise address to your concerns.

Sincerely,



William Pittard

cc: Sen. Maria Cantwell, Chair, Committee on Commerce, Science, and Transportation

⁹ See, e.g., Internal Revenue Service. (2020). *Form 990: 2020 Return of Organization Exempt from Income Tax: Resources Legal Fund*, https://apps.irs.gov/pub/epostcard/cor/954703838_202012_990_2022030219678910.pdf.

¹⁰ See Vic Sher, *Forum Versus Substance: Should Climate Damages Cases Be Heard in State or Federal Court?*, 72 Stan. L. Rev. Online 134 (2020), available at <https://www.stanfordlawreview.org/online/forum-versus-substance/>.

Congress of the United States
Washington, DC 20515

September 25, 2023

Mr. Vic Sher
Partner
Sher Edling LLP
100 Montgomery St., Suite 1410
San Francisco, CA 94104

Mr. Matt Edling
Partner
Sher Edling LLP
100 Montgomery St., Suite 1410
San Francisco, CA 94104

Dear Messrs. Sher and Edling:

Over the past five years, your law firm, Sher Edling LLP (“Sher Edling”), has launched a barrage of lawsuits aimed at bankrupting oil and gas companies.¹ While people may use their resources to bring whatever cases they want—even those that may be so frivolous as to be sanctionable—it appears that left-wing funds are footing the bill for Sher Edling’s climate crusade. Radical activists are backing these lawsuits, too. Ann Carlson, the acting administrator of the National Highway and Traffic Administration (“NHTSA”),² gave legal services to Sher Edling while she was a professor at University of California, Los Angeles (“UCLA”) School of Law. Ms. Carlson’s prior work for your firm raises concerns about her current efforts to extralegally create new climate policy through vehicle fuel economy standards. As the Republican leaders of the Senate and House committees with oversight over energy policy and NHTSA, we seek information concerning the third-party donations funding your firm’s climate cases as well as Ms. Carlson’s role in those lawsuits.

Sher Edling has established a niche for itself in the so-called “climate cases” field. Since 2017, Sher Edling has filed over twenty such cases on behalf of Democrat-controlled states, counties, and cities.³ These lawsuits distort common law causes of action—like public nuisance claims, which target wrongful conduct that directly harmed the plaintiff—and allege that oil and gas companies are liable for causing “climate change-related injuries.”⁴ Sher Edling’s lawsuits rely upon a daisy-chain causation theory: energy companies extracted and sold fossil fuels knowing that their actions caused climate change; climate change, in turn, triggered weather events like storm surges and droughts that would not have occurred but for the extraction and sale of the companies’ fossil fuels; these events damaged the state’s property and resources; and the state incurred expenses to address the damage. In effect, Sher Edling is asking courts to create novel liability for perfectly legal activities without alleging those activities directly harmed anyone.

¹ *Climate Damage and Deception*, Sher Edling, <https://www.sheredling.com/cases/climate-cases/>.

² Republican senators on the Senate Commerce Committee have raised concerns that Ms. Carlson’s appointment as acting administrator was invalid. See Sept. 20, 2023 Letter from Republican Members of the Senate Commerce Committee to President Biden, <https://www.commerce.senate.gov/services/files/796C3233-2110-4A65-ADA3-4CFA39FDE167>.

³ *Id.*

⁴ Complaint, *Rhode Island v. Chevron Corp.*, No. PC-2018-4716, ¶ 224 (Providence Super. Ct. Jul. 2, 2018).

Sher Edling purports to be taking a righteous gamble that this ludicrous argument will pan out. The firm shopped these lawsuits to jurisdictions around the country.⁵ And to convince them to sign up for what is likely to be very costly litigation, Sher Edling agreed to provide its legal services at no cost unless it obtained a “settlement against the industry.”⁶ So far, however, it is unlikely Sher Edling has earned any fees from these lawsuits, as none has settled.

It appears that Sher Edling is not really working on these lawsuits on a contingency basis, but rather the lawsuits are being funded, tax-free, by wealthy liberals via dark money pass-through funds. For example, from 2017 through 2021, the Resources Legacy Fund, which is focused on advancing “bold environmental outcomes,”⁷ gave Sher Edling over \$5.2 million,⁸ including \$2.4 million in 2020 alone.⁹ In 2021, the New Venture Fund, which also gears itself towards “conservation, climate, and energy issues,” gave Sher Edling \$3 million.¹⁰ Both of these firms purportedly manage the funds of affluent elitists like Hollywood star Leonardo DiCaprio.¹¹ And as these groups showered Sher Edling with millions of dollars, your law firm advanced numerous climate change lawsuits. It therefore appears that dark money—a purported concern of many who support radical climate legislation—is fueling your firm’s litigious effort to achieve a left-wing goal lacking majority support in Congress: the eradication of fossil fuels.

Mr. DiCaprio is not Sher Edling’s only friend in high places. NHTSA’s acting administrator Ann Carlson provided professional services to the firm for years, though she has remained tight-lipped about it. She did not identify the firm in her U.S. Department of Transportation recusal form.¹² Yet on her UCLA annual reporting forms for the years 2016 through 2019 (all of which she filed in a single month just before she joined NHTSA), Ms. Carlson stated that she performed “pro bono consulting on litigation for municipalities litigating against oil companies” as a “consultant/committee member” for Sher Edling each year.¹³ Publicly-available emails further reveal that Ms. Carlson fundraised for the

⁵ Anne C. Mulkern, *Oil Company Allies Say Climate Lawsuits Were Shopped Around*, CLIMATEWIRE (Apr. 10, 2018), <https://www.eenews.net/articles/oil-company-allies-say-climate-lawsuits-were-shopped-around/>.

⁶ Lesley Clark, *Baltimore County Officials Balk at Climate Lawsuit*, CLIMATEWIRE (Nov. 21, 2022), <https://subscriber.politicopro.com/article/eenews/2022/11/21/baltimore-county-officials-balk-at-climate-lawsuit-00069641>; see also Alex Kuffner, *Kilmartin Sues “Big Oil” Over Climate-Change Damage*, THE PROVIDENCE JOURNAL (Jul. 2, 2018), <https://www.providencejournal.com/story/news/courts/2018/07/02/ri-ag-sues-fossil-fuel-companies-over-alleged-role-in-climate-change/11607325007/> (Rhode Island “will pay the firm only if the fossil-fuel companies pay damages.”).

⁷ *The RLF Story: Innovating to Meet the Moment*, Resources Legacy Fund, <https://resourceslegacyfund.org/our-story/>.

⁸ Joe Schoffstall and Thomas Catenacci, *Group Leo DiCaprio Funneled Grants Through to Fund Climate Lawsuits Moved to Largest US Dark Money Network*, FOX NEWS (Oct. 21, 2022), <https://www.foxnews.com/politics/group-leo-dicaprio-funneled-grants-fund-climate-lawsuits-moved-largest-us-dark-money-network>.

⁹ 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *Resources Legacy Fund* (Feb. 2, 2022), <https://resourceslegacyfund.org/wp-content/uploads/2022/03/RLF-2020-IRS-Form-990-Public-Copy-Amended.pdf>.

¹⁰ 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *New Venture Fund* (Nov. 4, 2022), <https://newventurefund.org/wp-content/uploads/2022/11/NVF-2021-990-Public-Disclosure-Copy.pdf>.

¹¹ Joe Schoffstall and Thomas Catenacci, *supra* note 8.

¹² U.S. Department of Transportation Recusal Form, Ann Carlson (Jun. 9, 2022) (on file with Committee).

¹³ Ann Carlson, *Annual Reporting Form*, University of California, Los Angeles School of Law (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>.

firm,¹⁴ travelled to Hawaii “to encourage Hawaii to consider a nuisance lawsuit,”¹⁵ and allowed students in UCLA’s Environmental Law Clinic to give assistance to Sher Edling on these climate cases.¹⁶ Moreover, it appears that Ms. Carlson has moved from attacking traditional energy through litigation to attacking it through regulation: on July 28, 2023, NHTSA proposed stringent fuel economy standards that, as even NHTSA admits, will make purchasing cars less affordable in the name of reducing “the impacts and risks associated with climate change.”¹⁷

This inquiry is not the first time a member of Congress has raised concerns about Sher Edling’s funding or the work Ms. Carlson did for the firm. On May 16, 2023, following Ms. Carlson’s nomination to be administrator of NHTSA, Ranking Member Cruz sent Sher Edling a letter requesting information on these topics.¹⁸ Then, on May 30, the administration suddenly withdrew Ms. Carlson’s nomination without explanation.¹⁹ Meanwhile, Sher Edling failed to comply with numerous requests for a response. The firm waited until July 28 to have its outside counsel—who was part of the left-wing campaign that tried to smear Supreme Court Justice Brett Kavanaugh during his confirmation process²⁰—send a nonresponsive letter, asserting nonsensical justifications for its decision to stonewall a congressional inquiry.²¹ For example, it stated that Ms. Carlson “did not consult with Sher Edling about *any specific climate damage and deception cases*” but also claimed that, as a “legal expert” who “consulted pro bono on the legal issues underlying the climate damage and deception cases,” Ms. Carlson’s communications with Sher Edling are “privileged”²² despite Congress not being bound by common law privileges. Even a court, which *is* bound by common law privileges, would reject Sher Edling’s blanket assertion of an unspecified privilege. Moreover, Ranking Member Cruz asked for details about the nature of Ms. Carlson’s work, not for communications. Instead of answering legitimate oversight questions, all Sher Edling offered were vague nonresponsive claims about compliance and a generalized assertion of privacy, confidentiality, and privilege without disclosing anything of substance about Ms. Carlson’s work for the firm.

¹⁴ Feb. 26, 2018, E-mail from Ann Carlson to D. Emmett, <https://govoversight.org/wp-content/uploads/2022/05/Sabin-and-his-Rs.pdf>.

¹⁵ Jun. 24, 2019, E-mail from Ann Carlson to D. Emmett, <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-Discretionary-Fund-Requested-Records-20-8371.pdf>.

¹⁶ Maxine Joselow, *Lawsuits Target Exxon’s Social Media “Green Washing,”* CLIMATEWIRE (Jul. 22, 2021), <https://www.eenews.net/articles/lawsuits-target-exxons-social-media-green-washing/>.

¹⁷ Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027-2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030-2035, 88 Fed. Reg. 56128, 56325 (Aug. 17, 2023) (to be codified at 49 C.F.R. pts. 531, 533, 535, and 537); *USDOT Proposes Updated Fuel Economy Standards to Strengthen Energy Security, Save Americans Hundreds of Dollars at the Gas Pump*, NHTSA (Jul. 28, 2023), <https://www.nhtsa.gov/press-releases/usdot-proposal-updated-cafe-hdpuv-standards>.

¹⁸ May 16, 2023 Letter from Sen. Cruz to Sher Edling (on file with Committee).

¹⁹ *Nominations and Withdrawals Sent to the Senate*, The White House (May 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/05/30/nominations-and-withdrawals-sent-to-the-senate-11/>.

²⁰ Abera Coe, *A Who’s Who of Attorneys Shaping the Kavanaugh Hearing*, Law360 (Sept. 26, 2018), <https://www.law360.com/articles/1086346/a-who-s-who-of-attorneys-shaping-the-kavanaugh-hearing> (noting that Kavanaugh-accuser Deborah Ramirez was represented by William Pittard of D.C.-based KaiserDillon PLLC).

²¹ July 28, 2023 Letter from Sher Edling to Sen. Cruz (on file with Committee).

²² *Id.* (emphasis added).

The timing of Sher Edling’s letter is also curious. It was sent the same day as Ms. Carlson’s agency released a rule that would severely reduce gasoline usage²³ and two days before Democratic senators urged the U.S. Department of Justice to bring lawsuits against the fossil fuel industry that bear an eerie similarity to those your firm has brought.²⁴ Sher Edling’s obstructionism, coupled with that curious timing, only raises further concerns that the firm’s operations are not above board.

So that our committees may understand how third parties are financing Sher Edling’s climate change lawsuits and Ms. Carlson’s role in those lawsuits, please provide the written responses and documents in response to the questions below no later than October 9, 2023.

1. Ms. Carlson indicated in her UCLA outside activities form that she worked as a “consultant/committee member” for Sher Edling.²⁵ Please describe the nature of Ms. Carlson’s work for Sher Edling, including the years she served in those roles, what her work in each role entailed, the specific lawsuits she worked on, the specific lawsuits she had any role in and her compensation each year, including any benefits she received or expenses Sher Edling reimbursed.
2. Please describe the nature of UCLA’s Environmental Law Clinic’s work for Sher Edling, the years during which that assistance was provided, and the specific cases that members of that clinic worked on. Please also identify any expenses for that work that Sher Edling reimbursed and any donations the firm or its partners have made to UCLA School of Law since 2017.
3. Please provide a list of every person and entity, excluding clients and vendors, that provided Sher Edling with any amount of money. For each person or entity listed, please include the following information: (a) the amount of the money provided; (b) the date the money was provided; (c) the purpose for which the money was directed to be used; and (d) the manner in which that money was provided, i.e., through a grant, litigation funding agreement, or some other contract or agreement. If the funding was provided pursuant to a written agreement, please provide a copy of that agreement.

Sincerely,



Ted Cruz
Ranking Member
Committee on Commerce, Science,
and Transportation



James Comer
Chairman
Committee on Oversight and
Accountability

²³ Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027-2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030-2035, *supra* note 17.

²⁴ July 31, 2023 Letter from Senators Sanders, Merkley, Markey and Warren to Attorney General Merrick Garland, <https://www.sanders.senate.gov/wp-content/uploads/Letter-to-DOJ-Fossil-Fuel-Industry.pdf>.

²⁵ Ann Carlson, *supra* note 13.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES)

4 I, Maria R. Viramontes, am employed in the city and county of Los Angeles, State of
5 California. I am over the age of 18 and not a party to the within action; my business address is
10100 Santa Monica Blvd., 13th Floor, Los Angeles, California 90067-4003.

6 On October 27, 2023, I caused to be served the **DECLARATION OF CHRISTOPHER**
7 **HORNER IN SUPPORT OF PETITION FOR WRIT** in this matter by sending a copy of said
document(s) as follows:

<p>8 Jean-Paul P. Cart 9 Antonia I. Stabile Venable LLP 10 101 California Street, Suite 3800 San Francisco, CA 94111 11 Email: JPCart@Venable.com AISTabile@Venable.com</p> <p>12 13 Attys for Respondent, The Regents of the University of California</p>	
--	--

- 14 (BY MAIL) I am readily familiar with the firm's practice of collection and processing
15 correspondence for mailing. Under that practice it would be deposited with the U.S.
16 Postal Service on that same day with postage thereon fully prepaid at Los Angeles,
17 California, in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.
- 18 (BY EMAIL) I caused to be served the above-described document by email to the party
indicated above at the indicated email address.
- 19 (BY FAX) I caused to be transmitted the above-described document by facsimile
20 machine to the fax number(s) as shown. The transmission was reported as complete and
without error. (Service by Facsimile Transmission to those parties listed above with fax
21 numbers indicated.)
- 22 (BY OVERNIGHT DELIVERY) By sending by FEDERAL EXPRESS to the
addressee(s) as indicated above.
- 23 (BY HAND DELIVERY) I caused to be served the above-described document by hand
24 delivery to the party indicated above at the indicated address.

25 I declare under penalty of perjury, under the laws of the State of California that the foregoing
is true and correct.

26 Executed on October 27, 2023, at Los Angeles, California.

27 /s/Maria R. Viramontes

28

Maria R. Viramontes