

Climate change

## Understanding the #ExxonKnew controversy

ExxonKnew is a coordinated campaign perpetuated by activist groups with the aim of stigmatizing ExxonMobil. Funders of the “#ExxonKnew” campaign have placed “pay to play” news stories, released flawed academic reports and coordinated with public officials to launch investigations and litigation, creating the false appearance that ExxonMobil has misrepresented its company research and investor disclosures on climate change to the public.

Article

Feb. 10, 2021

### Timeline of #ExxonKnew

This coordinated campaign dates back to a 2012 meeting of environmental activists and class-action lawyers in La Jolla, CA.

✓ 2012

**June 14-15, 2012: Rockefeller-funded organizations hold conference in La Jolla, California to brainstorm how they could use racketeering laws against ExxonMobil.**

The Union of Concerned Scientists (UCS) and the Climate Accountability Institute (CAI) organize a **conference for activists** such as Naomi Oreskes (author of *Merchants of Doubt*), Peter Frumhoff of the Union of Concerned Scientists and attorney Matt Pawa, who served on the board of CAI.

June

✓ 2014

**Fall 2014: Columbia University School of Journalism**

Columbia University School of Journalism fellows, who were later reported to be **sponsored** by the Rockefellers, begins investigating ExxonMobil, looking into the company’s internal documents on climate change. Following Schneiderman’s subpoena against the company in 2015, a source **discloses** that the Columbia fellows’ reporting made the issue “more ripe.”

✓ 2015

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**July 31, 2015: Peter Frumhoff of the Union of Concerned Scientists (UCS) starts working with Democratic Attorneys General**

As Frumhoff says in a July 31, 2015 **email**, "we're also in the process of exploring other state-based approaches to holding fossil fuel companies legally accountable – we think there'll likely be a strong basis for encouraging state (e.g. AG) action forward, and in that context, opportunities for climate scientists to weigh in."

July

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**Sept. 16, 2015: *InsideClimate News* and Columbia School of Journalism publish #ExxonKnew series; Columbia fails to disclose Rockefeller funding**

*InsideClimate News* publishes the **first article** in its #ExxonKnew series.

September

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**Oct. 9, 2015: The Columbia School of Journalism follows up with its first ExxonMobil article in the *LA Times***

The **LA Times** story did not initially disclose that the Columbia School of Journalism is funded by the Rockefeller Brothers Fund (RBF). Likewise, the website of the **Columbia Energy and Environment Reporting Fellowship** did not **originally disclose** its Rockefeller funding.

October

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**Oct. 12, 2015: Rockefeller-funded Yale School of Forestry and Environmental Studies releases report suggesting ExxonMobil funds climate denial**

The Yale School of Forestry and Environmental Studies **produced a report** suggesting that "corporate funding" to "climate counter movement" institutions is responsible for skepticism about climate science. The report was **funded by the Rockefellers** and other groups bankrolling the #ExxonKnew campaign.

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**Nov. 4, 2015: New York Attorney General Eric Schneiderman announces subpoena of ExxonMobil.**

*InsideClimate News* reports that this announcement followed a "year-long probe" by the attorney general's office.

November

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**November 2015: Friends of the Earth President Erich Pica emails Maryland Attorney General's office**

Pica emails Maryland Attorney General Brian Frosh's office, offering to brief the attorney general on "the potential consumer related complaints and other authorities re: ExxonMobil." Just days after the meeting, Frosh announces he is **considering** an investigation into ExxonMobil.

✓ 2016

**January 5, 2016: Environmental activist Robert Kennedy Jr. sends a secret legal memo to Schneiderman, urging him to ban ExxonMobil from doing business in New York for allegedly misleading the public for decades about climate change**

January

**Jan. 8, 2016: #ExxonKnew activists meet behind closed doors at the Rockefeller Family Fund**

A **leaked memo** reveals that a coalition of activists including Bill McKibben of 350.org and attorney Matt Pawa gathered for a **secret, closed-door meeting** at the Rockefeller Family Fund offices. According to the memo, the coalition's goals were to establish "in the public's mind that ExxonMobil is a corrupt institution."

**March 10, 2016: Schneiderman contacts Tom Steyer about ExxonMobil investigation and funding for gubernatorial race**

As the *New York Post* **reported**, "In March 2016, four months after announcing the Exxon probe, the Democratic AG tried to arrange a phone meeting with hedge-fund mogul and environmental activist Tom Steyer. 'Eric Schneiderman would like to have a call with Tom regarding support for his race for governor. . . regarding Exxon case,'" reads the March 10 email.

March

**March 15, 2016: Virgin Islands Attorney General subpoenas ExxonMobil and the Competitive Enterprise Institute, uses law firm linked to #ExxonKnew activists**

The **subpoenas** served by Virgin Islands Attorney General Claude Walker were issued through a Washington, D.C. law firm, **Cohen, Milstein, Hausfeld & Toll**, where Matt Pawa **used to work**.

**March 24, 2016: Rockefellers admit to funding #ExxonKnew campaign**

Lee Wasserman of the Rockefeller Family Fund told **Reuters** that funding the #ExxonKnew campaign is part of "our push to drive better public understanding and better climate policy."

**March 28, 2016: Attorneys General draft common interest agreement to avoid transparency with the public**

In **an email** to Lem Srolovic with the New York Attorney General's office, Vermont Assistant Attorney General Scott Kline expresses concerns about sharing documents related

to the meeting, as they could be revealed to the public via a records request. Kline says **"our office is okay with refusing to disclose covered documents."** The New York Attorney General's office then requests a "Common Interest Agreement" be signed to avoid having the public find out about their meetings.

#### **March 29, 2016: #ExxonKnew activists brief attorneys general ahead of press conference with Al Gore**

**Reuters** reports on emails between the offices of the state attorneys general, which reveal that Peter Frumhoff of the Union of Concerned Scientists (UCS) and Matt Pawa, an attorney then on the board of the Climate Accountability Institute (CAI), briefed the attorneys general ahead of their March 29 press conference with Al Gore. Later Frumhoff is **forced to admit his attendance**: "I was invited to brief the attorneys general that gathered on March 29 on my work, and that is what I did."

#### **March 30, 2016: Attorneys General offices tell activist not to tell the press about their collusion**

Matt Pawa sends **an email** to Lem Srolovic with the New York Attorney General's office, as well as Scott Kline in the Vermont Attorney General's office, explaining that "a *WSJ* reporter wants to talk to me. I may not even talk to her at all but if I do I obviously will have no comment on anything discussed at the meeting." Pawa then asks, "What should I say if she asks if I attended? No comment? Let me know." Srolovic responds that Pawa should effectively stonewall the *WSJ* reporter. "My ask is if you speak to the reporter," Srolovic writes, "to not confirm that you attended or otherwise discuss the event."

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#### **April 13, 2016: Attorneys General sign Common Interest Agreement to keep investigations secret**



New emails **confirm** that Gregory Schultz of the Rhode Island Attorney General's office signed on to a Common Interest Agreement that was distributed to all the attorneys general offices involved by the New York Attorney General's office.

#### **April 21, 2016: Emails show the Delaware Attorney General pulled out of common interest agreement**

**Emails** released by Energy & Environmental Legal Institute (E&E Legal) show that just a few weeks after Delaware Attorney General Matthew Denn (D) agreed to sign on to the Common Interest Agreement – which would keep their proceedings on the ExxonMobil investigations secret – he suddenly pulled out, telling the other attorneys general that he would no longer be participating.

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**May 20, 2016: Virgin Islands Attorney General withdraws its subpoena of the Competitive Enterprise Institute**

The **withdrawal** comes after editorial boards across the country strongly push back on the #ExxonKnew campaign. For instance, the *Financial Times* say, "the legal basis for these actions seems flimsy...Beyond that, the implications of the investigations for free speech on public policy issues are alarming."

May

**June 15, 2016: Thirteen state attorneys general call ExxonMobil investigation "a grave mistake"**

The attorneys general of thirteen states send **a letter** to the attorneys general launching climate investigations warning that their efforts raise "substantial First Amendment concerns." They ask the attorneys general to "stop policing viewpoints."

June

**June 22, 2016: Congressional Progressive Caucus holds #ExxonKnew forum on Capitol Hill**

The Congressional Progressive Caucus holds **a forum**, which includes key #ExxonKnew activists. Kathy Mulvey of the Union of Concerned Scientists **admits**, "Yes, UCS has also been involved in providing information to attorneys general who are moving into the issue on whether these companies violated any state laws in providing this information to shareholders and the public...our chief scientist Peter Frumhoff who's actually here with me as well and he has briefed a number of the AGs..."

**June 29, 2016: Virgin Islands Attorney General withdraws subpoena of ExxonMobil**

This **withdrawal** comes as legal experts across the country criticized the #ExxonKnew campaign for being legally unsound. For instance, Harvey Silverglate of the ACLU **says** the ExxonMobil investigation is "pure harassment." Columbia Law Professor Merritt B. Fox **notes** that the investigations are "unlikely" to "be a winner."

**July 13, 2016: House Science Chairman Lamar Smith subpoenas New York and Massachusetts attorneys general and eight activist groups in relation to their work on the #ExxonKnew campaign**

Chairman Smith explains in the press release, "the Committee has a responsibility to protect First Amendment rights of companies, academic institutions, scientists, and nonprofit organizations. That is why the Committee is obligated to ask for information from the attorneys general and others."

July

**August 2016: Schneiderman **changes** the justification for his investigation into ExxonMobil.**

Schneiderman claims that rather than looking into whether ExxonMobil's internal climate research said something different than what the company had told investors, the NY OAG was looking into the company's **accounting practices** and how they could affect what the company had promised investors in the future.

August

**September 20, 2016: The U.S. Securities and Exchange Commission (SEC) **launches** its own investigation into ExxonMobil to understand how the company values its assets in order to determine if ExxonMobil misled investors on the risks climate change poses to its business.**

September

**Oct. 13, 2016: Federal judge issues discovery order to Massachusetts Attorney General Maura Healey**

Federal judge Ed Kinkeade issued **a discovery order** against Massachusetts Attorney General Maura Healey to determine whether "bias or prejudgment" influenced her decision to initiate a "bad faith" investigation into ExxonMobil, just days after she appeared before news cameras with New York Attorney General Eric Schneiderman, Al Gore and other Democratic state attorneys general in New York.

October

**Nov. 17, 2016: Federal judge adds Schneiderman to discovery order**

Judge Ed Kinkeade ruled that a standing discovery order – which was issued to determine if Massachusetts Attorney General Maura Healey was engaging in a "bad faith" pursuit of ExxonMobil – **could be amended** to include New York Attorney General Eric Schneiderman, who has been spearheading the entire #ExxonKnew effort.

November

**Dec. 2, 2016: Rockefellers admit to funding #ExxonKnew campaign on national TV**

The Rockefeller family appeared **CBS This Morning with Charlie Rose** and owned up to the fact that they specifically paid the Columbia School of Journalism and *InsideClimate News* to write stories about ExxonMobil.

December

**Dec. 22, 2016: Rockefellers forced to admit they directly lobbied Schneiderman to launch an ExxonMobil investigation**

In **a column** published by the *New York Review of Books*, David Kaiser and Lee Wasserman of the Rockefeller Family

Fund admit: "It is up to government officials, not public interest advocates, to determine whether ExxonMobil's conduct has violated any state or federal laws within the relevant statutes of limitations. Recognizing this, the Rockefeller Family Fund (RFF) informed state attorneys general of our concern that ExxonMobil seemed to have failed to disclose to investors the business risks of climate change. We were particularly encouraged by Schneiderman's interest in this matter, because New York's Martin Act is arguably the most powerful tool in the nation for investigating possible schemes to defraud."

✓ 2017

**Feb. 13, 2017: *New York Post* reports that the Rockefellers and New York Attorney General Eric Schneiderman were discussing the #ExxonKnew investigation before either the *InsideClimate News (ICN)* or Columbia School of Journalism #ExxonKnew pieces were published**

February

As the **New York Post** revealed, "Documents show Schneiderman's top staffers were in correspondence with Lee Wasserman of the Rockefeller Family Fund going back to February 2015. Schneiderman launched his probe that November."

**March 29, 2017: Judge Kinkeade transfers ExxonMobil's First Amendment appeal against attorneys general Eric Schneiderman and Maura Healey to the U.S. District Court for the Southern District of New York.**

March

Kinkeade **rules** that New York District Court was the appropriate venue to hear Exxon's case because "a substantial part of the events or omissions giving rise to the claim occurred" in New York City at the March 29, 2016 press conference with Al Gore.

**April 6, 2017: #ExxonKnew campaign claims global warming caused the Exxon Valdez spill**

 April

This was **yet another article** written by graduate students at the Rockefeller-funded Columbia Journalism School, which was published in the *Los Angeles Times*. The article claims that ExxonMobil had evidence that the Columbia Glacier was calving due to climate change, but allowed one of its tankers to put itself in the way of the icebergs anyway.

**June 2, 2017: Schneiderman again changes the justification for his investigation into ExxonMobil**

Schneiderman **shifted** from his original claim that the company was publicly trying to downplay the risks of global warming to a position that the company misrepresented how it was incorporating future climate policies into its business decisions, arguing that it may have inflated the risks climate change posed to its operations.

June

**June 14, 2017: Court documents reveal Schneiderman used a private email address for official business while conducting #ExxonKnew investigation.**

Court **documents**, submitted by lawyers for the Energy and Environment Legal Institute (E&E Legal), show that Schneiderman's personal email address was used for official business because it is contained within a privilege log of correspondence that he provided to the court. A judge only recognized that the personal email was used after an in camera review of this log.

**Aug. 10, 2017: Vermont Judge orders Vermont Attorney General's office to disclose all email communications with Schneiderman's office – including Gmail correspondence**

Superior Court Judge Mary Miles Teachout **ordered** the release of records between the attorneys general of New York and Vermont, specifically any discussions of sharing documents with "outside advisors" pursuant to a secrecy pact. She also granted access to Vermont Attorney General Bill Sorrell's private emails since both he and New York Attorney General Eric Schneiderman used private email accounts, specifically Gmail, in their **ExxonMobil discussions**.

August

**Aug. 23, 2017: Naomi Oreskes and Geoffrey Supran publish a study conceding that #ExxonKnew was never really about what ExxonMobil "knew," but about punishing ExxonMobil for arguing against specific climate policy proposals**

Of course, Oreskes is the activist that the *New York Times* has **credited** for helping kick off the #ExxonKnew campaign, whose goal was to **convince** "a single sympathetic state attorney general" to investigate the company for supposed climate fraud. If there's any doubt about her positions ahead of releasing this report, in 2015, **Oreskes wrote**: "Did Exxon deliberately mislead the public on climate change? Hello. Of course they did!"



**September 19, 2017: San Francisco and Oakland sue ExxonMobil and four other oil and gas producers.**

With representation from **Matt Pawa**, the cities allege that oil and gas producers' operations amount to a public nuisance and the companies should be held liable for damages to help the cities mitigate against the effects of climate change.

September

**October 17, 2017: State Impact Center announces that the NY OAG is one of seven state attorneys general offices selected to participate in the initial phase of its fellowship program.**

October

**November 5, 2017: Eric Schneiderman's investigation into ExxonMobil reaches its two-year anniversary.**

After **two years**, Schneiderman has not filed charges and ExxonMobil has turned over three million documents to the NY OAG.

November

✓ 2018

**March 30, 2018: Judge Valerie Caproni, U.S. District Court for the Southern District of New York, dismisses ExxonMobil's First Amendment appeal against attorneys general Eric Schneiderman and Maura Healey.**

Caproni **rules** that the evidence presented in the case, including the events that occurred at the March 29, 2016 press conference do not support ExxonMobil's allegations. ExxonMobil appealed Judge Caproni's decision to the U.S. Second Circuit Court of Appeals in April 2018.

March

**May 3, 2018: The New York Supreme Court Appellate Division upholds the lower court's ruling in the Competitive Enterprise Institute's (CEI) lawsuit against Schneiderman.**

CEI sued AG Schneiderman after his office refused to disclose documents relating to the Common Interest Agreement that he led. In the May 2018 **ruling**, the court rejected Schneiderman's claim that the common interest agreement contained confidential attorney work product, because the agreement did not contain any legal analysis and instead focused on global warming issues that were repeated from a press release issued by the NY Attorney General.

May

**August 3, 2018: The SEC drops its investigation of ExxonMobil.**

After reviewing more than 4.2 million company documents, **the SEC** does not find evidence warranting any enforcement action.

August

**August 10, 2018: Multiple states file support ExxonMobil's 2<sup>nd</sup> Circuit appeal.**

The states of Texas, Alabama, Arkansas, Georgia, Louisiana, Maine, Michigan, Mississippi, Nebraska, Oklahoma, South Carolina and Wisconsin file an amicus brief supporting ExxonMobil's 2<sup>nd</sup> Circuit appeal.

**August 29, 2018: Justice Barry R. Ostrager urges the NY OAG to conclude its investigation.**

At a hearing in the investigation, New York Supreme Court Justice Ostrager advised the NY OAG to end its investigation and either press charges against ExxonMobil or move on, **saying**, "This cannot go on interminably. It's not my place to tell you when an investigation ends, but it is my place to put an end date on the requests for information and the filing of a complaint."

**October 24, 2018: Attorney General Barbara Underwood ends the state's investigation into ExxonMobil and files a lawsuit under the Martin Act.**

The **lawsuit**, following the more than three-years long investigation, claims that ExxonMobil misled investors by underestimating the risks climate change posed to its business in its financial disclosures.

October

**October 25, 2018: The Wall Street Journal editorial board calls the NY AG's lawsuit against ExxonMobil an "embarrassment."**

The editorial board further **writes that**, "The reality is that nobody knows the future cost of carbon, and it will hinge as much on politics as on the evolving science and facts of climate change."

✓ 2019

**March 2019: The NY OAG refuses to comply with ExxonMobil's discovery requests.**

After the New York Supreme Court **ruled** that ExxonMobil could proceed with discovery related to the Attorney General's investigation of the company's climate change disclosures, the NY OAG **refused to comply** with discovery

March

requests that could help determine whether the office brought its investigation in "bad faith."

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**April 11, 2019: The NY OAG attempts to permanently seal its third-party communications.**



The **letter filed** by the NY OAG sought to seal correspondences with contacts such as Matt Pawa and Mark Cuban.

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**June 12, 2019: A hearing on the New York Office of the Attorney General's motion to dismiss five of ExxonMobil's affirmative defenses is held in the New York Supreme Court in front of Justice Ostrager.**

June

During the proceedings, Ostrager demanded the OAG narrow its preliminary **witness list** and ruled that ExxonMobil's selective enforcement defense can stand. Ostrager also ruled that the OAG must turn over **discovery** related to that defense.

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**October 22, 2019: Trial begins in the NY AG lawsuit.**

During opening statements, ExxonMobil counsel **told** the court that "the evidence will show that the allegations in the complaint are bizarre and twisted and not connected to the reality of the truth."

October

**October 25, 2019: The MA AG sues ExxonMobil in Suffolk County Superior Court.**

The Massachusetts Attorney General's Office files a complaint three years after announcing its investigation despite having never interviewed a single ExxonMobil employee or gathered any evidence from the company. The MA AG's **complaint**, which alleges that ExxonMobil misled investors and deceived consumers about its contribution to climate change, **copies and pastes language** directly from the NY AG's October 2018 lawsuit.

**October 30, 2019: Former ExxonMobil Chairman and CEO Rex Tillerson testifies in NY AG trial.**

Mr. Tillerson **told** the court that during his tenure, ExxonMobil took climate change seriously. "We knew, we knew it was a real issue," Tillerson **said**. "We knew it was a serious issue and we knew it was one that's going to be with us now, forevermore, and it's not something that was just suddenly going to disappear off of our concern list because it is going to be with us for certainly well beyond my lifetime."

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**December 10, 2019: Justice Ostrager rules that the NY AG failed to prove that ExxonMobil misled shareholders over the costs of climate change, deciding the case definitively in the company's favor.**

In his 55-page **ruling** that cleared ExxonMobil of all charges, Justice Ostrager acknowledged the "politically motivated statements by former New York Attorney General Eric Schneiderman" and noted that the testimony presented at trial "demonstrated that ExxonMobil has a culture of disciplined analysis, planning, accounting, and reporting."

December

✓ 2020

**March 17, 2020 – Judge hears arguments on case venue in the MA AG's lawsuit against ExxonMobil.**

Oral arguments on Massachusetts Attorney General Healey's motion to remand are **heard** before Judge William G. Young of the U.S. District Court of Massachusetts. The judge **notes** that he plans to remand the case back to state court.

March

**May 15, 2020 – Beyond Pesticides, a Washington, D.C.-based nonprofit, sues ExxonMobil in D.C. Superior Court, alleging the company deceived consumers about the impacts its products had on climate change.**

Beyond Pesticides, a Washington D.C.-based non-profit organization, **files** a lawsuit in Washington, D.C. Superior Court against ExxonMobil, alleging the company violated Washington, D.C.'s Consumer Protection Law.

May

**May 28, 2020 – Judge rules MA AG case against ExxonMobil can proceed in state court.**

U.S. District Judge William G. Young officially **remands** Massachusetts' case against ExxonMobil back to state court.

**June 5, 2020 – The MA AG files amended complaint in its case against ExxonMobil, eliminating the claim featured in NY AG's failed lawsuit.**

The Massachusetts Attorney General files an **amended complaint** in its lawsuit against ExxonMobil, narrowing its case to eliminate the investor deception claim that was tried in the New York Attorney General's **failed lawsuit** against the company.

June

**June 18, 2020 – A panel of Texas judges calls California lawsuits targeting energy companies “lawfare.”**

A Texas appellate court **dismisses** ExxonMobil’s petition seeking to depose Matt Pawa and the California public officials suing the company for public nuisance, but refers to those lawsuits as “an ugly tool” and deemed them **“lawfare.”**

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**July 30, 2020 – ExxonMobil argues that MA AG lawsuit is in violation of company’s First Amendment rights.**

ExxonMobil files an **anti-SLAPP** (Strategic Lawsuit Against Public Participation) motion against the Massachusetts Attorney General. The law prohibits the use of litigation that has the effect of punishing a defendant for statements on matters that are under consideration by a legislative or judicial body.

July

**August 10, 2020 – ExxonMobil moves to dismiss MA AG lawsuit.**

ExxonMobil notifies the Suffolk County Superior Court that it intends to file a **motion to dismiss** Massachusetts Attorney General Maura Healey’s case against the company.

August

**September 14, 2020 – Connecticut Attorney General sues ExxonMobil, alleging the company deceived consumers about the risks of fossil fuels.**

Connecticut Attorney General William Tong **sues** ExxonMobil for allegedly deceiving the public over the role that burning fossil fuels plays in climate change. Connecticut participated in the March 2016 press conference with Al Gore where Massachusetts Attorney General Maura Healey announced her office was opening an investigation into ExxonMobil over climate change allegations.

September

**October 2, 2020 – ExxonMobil appeals its petition to depose California public officials and Matt Pawa to the Texas Supreme Court.**

After a lower court in the state dismissed the company’s petition in June, ExxonMobil **filed** a Petition for Review to the Texas Supreme Court in its case seeking to depose public officials from California municipalities that have sued the company for allegedly conducting its business operations in a way that worsened the impacts of climate change in their communities. In the petition, ExxonMobil also seeks to depose environmental attorney Matt Pawa, who initially represented two of the California municipalities in their litigation against the company.

October

### October 14, 2020 – ExxonMobil removes Connecticut AG’s lawsuit to federal court.

ExxonMobil removes the Connecticut Attorney General’s lawsuit to federal court, arguing it seeks “to wade into complex federal statutory, regulatory, and constitutional issues and frameworks, and to substitute one state’s judgment for that of longstanding decisions by the federal government about national and international energy policy and environmental protection.”

### November 13, 2020 – ExxonMobil moves to dismiss Connecticut AG’s lawsuit based on lack of personal jurisdiction.

ExxonMobil **files** its **motion to dismiss** Attorney General William Tong’s complaint based on the absence of personal jurisdiction in Connecticut over ExxonMobil in the case.

November

### December 4, 2020 – Texas Supreme Court directs respondents to file a response to ExxonMobil’s petition for review.

The Texas Supreme Court requested that respondents file a response to ExxonMobil’s Petition for Review in its case seeking to depose public officials from California municipalities that have sued the company, as well as their initial legal counsel. The response was initially due January 4, 2021. Respondents subsequently requested, and were granted, an extension until February 3, 2021.

December

## Editorial boards and legal experts denounce #ExxonKnew campaign

Leading voices from across the country have denounced the #ExxonKnew campaign. From the *Wall Street Journal* to the *Washington Post*, editorial boards have expressed first amendment concerns.

### Editorials

*New York Post*

#### **Exxon’s big court win exposes major malpractice in the New York Attorney General’s Office**

“Exxon’s win Tuesday against New York state’s climate-change lawsuit couldn’t have been more complete: Not only did the judge find the Attorney General’s Office failed to prove fraud, he also blasted the case as “hyperbolic” — and praised Exxon. State Supreme Court Judge Barry Ostrager said the state’s lawyers failed to show the company ever “made any material misstatements or omissions” that could mislead any “reasonable” observer. The AG’s Office had claimed Exxon defrauded investors in violation of the Martin Act and other laws. But Ostrager flagged the “politically motivated statements by former New York Attorney General Eric Schneiderman,” who launched the Exxon probe — which show that the litigation was political from the start.”

(Dec. 14, 2019)

*New York Daily News*

**Fossil fools: Predictably, New York State's case against ExxonMobil runs aground**

"As sea levels rise and extreme weather increases, New York has plenty to fear and many costly battles to fight. A weak legal case against ExxonMobil should never have been among them. That massive lawsuit, brought by former Attorney General Eric Schneiderman and continued by Tish James under New York's low-burden-of-proof Martin Act, claimed the company used one set of accounting methods for internal calculations about climate change's financial risks on the company's bottom line and another for the public, and that this added up to more than a billion dollars in damage to shareholders. Just one problem: Those supposedly two sets of books didn't describe the same thing. Actually, two problems: Projecting the cost of future climate regulations is a terribly tricky business subject to volatile domestic and global politics. Actually, make it three: The figures available to the public projected that climate restrictions would wind up being more stringent; the internal number assumed more modest efforts to limit emissions. A grand conspiracy would likelier have done the opposite." (Dec. 11, 2019)

*The Wall Street Journal*

**New York's Stranded Exxon Case**

"Well, that was embarrassing. After spending nearly four years trying to nail Exxon Mobil for myriad climate-change deceptions, New York's attorney general was excoriated Tuesday by a state judge for making "hyperbolic" claims and essentially trying to deceive the court. In case readers missed it—and no doubt New York Attorney General Letitia James hopes you did—State Supreme Court Judge Barry Ostrager (appointed by Democratic Gov. Andrew Cuomo) dismissed New York's lawsuit alleging that Exxon violated the state's Martin Act. That securities law merely requires that a "reasonable" investor might have been misled regardless of whether there was fraudulent intent, but the AG couldn't even meet this low bar." (Dec. 10, 2019)

*New York Daily News*

**Out of gas: Attorney General Tish James' dubious lawsuit against ExxonMobil looks even weaker than when the trial began**

"This is the way the push to hold Big Oil accountable for climate change in New York courts ends, not with a bang but a whimper. Thursday, as a three-week-long trial came to a close, Attorney General Tish James' prosecutors sought to withdraw two counts of fraud, even as they asked the judge to rule on two other counts alleging misrepresentations that might be illegal under the state's uber-powerful Martin Act. So weak is the case on those first two claims, Exxon's attorneys urged the judge to rule on them with prejudice, in order to clear the 'cloud over the reputation of the people.'" (Nov. 10, 2019)

*The Wall Street Journal*

**Parody of a Climate Trial**

"Not a single Exxon shareholder at trial claimed to have been deceived. A PricewaterhouseCoopers director who performed 13 years of audits for Exxon said he was not aware of any attempt to manipulate either cost, though he once inadvertently used the two costs interchangeably in an internal memo. The AG says Exxon's fictitious fraud cost investors between \$476 million and \$1.6 billion based on declines in its share price after government investigations were reported. But as one economic consultant interviewed during the trial quipped, 'You don't shoot the arrow and then draw a bull's-eye around it.'" (Nov. 7, 2019)

*Wall Street Journal*

**New York's Climate Show Trial**

"The only reason New York has any chance to win this case is because it is using the Martin Act, the notorious New York statute that doesn't require proof of fraudulent intent. The AG also doesn't need to prove that an actual investor was deceived, only that a 'reasonable investor' might have been deceived. We doubt Ms. James cares all that much if she wins in any case. If she loses at trial, she'll appeal to higher state courts to keep the publicity alive. And even if she loses every appeal, she'll have done her political duty as a progressive and harassed a corporate sinner. If this legal attack doesn't work, maybe another one will." (Oct. 21, 2019)

*NY Post*

**The incredible collapsing '#ExxonKnew' climate change lie**

"Which is why Schneiderman (before the revelation of horrifying personal conduct

ended his career) was forced to find a different rationale: Big Oil, he said, might be 'overstating' its assets by 'trillions,' by failing to account for potential future regulations that restrict fossil fuels. Oops: The company had warned about the risks of new rules; that's why a Securities and Exchange Commission probe cleared it of those charges. And the case that now-AG Letitia James takes to trial Tuesday is a huge comedown from even that claim, charging that Exxon fraudulently used two sets of books to state the risks. The company says it merely releases different estimates for different purposes, with full disclosure." (Oct. 20, 2019)

*Dallas Morning News*

**Exxon says there's a conspiracy against the company among environmental activists, and it's probably right**

"The narrative of an organic movement of environmental defenders taking on Big Oil has been depicted by some as a David-versus-Goliath showdown. But as more and more facts emerge, it is becoming increasingly clear that Exxon has been unfairly maligned by a group of activists and lawyers driven by politics but bereft of facts." (Aug. 3, 2018)

*Wall Street Journal*

**AG Campaign is an 'Attempt to Stamp Out All Disagreement on Global-Warming' Policy**

"Even with the fearsome power of the Martin Act, this investigation appears built for media consumption more than courtroom success. There are no "facts" about the eventual extent and impact of climate change that Exxon or anyone else can hide, because inside or outside the company there are only estimates based largely on computer models." (Nov. 8, 2015)

*Bloomberg View*

**Investigation is 'Dangerous Arrogation of Power'**

"Much as one may sympathize with Schneiderman's desire to encourage stronger action on climate change, this is not the way to go about it...Engaging in scientific research and public advocacy shouldn't be crimes in a free country. Using the criminal law to shame and encumber companies that do so is a dangerous arrogation of power." (Nov. 10, 2015)

*Washington Post*

**Exxon 'Didn't Commit a Crime,' science depends on allowing criticism**

"Legitimate scientific inquiry depends on allowing strong, even unfair, criticism of the claims that scientists make. As the Exxon investigations show, respecting that principle will not lead to positive outcomes in all cases. But it nevertheless demands that the government leave a sizable buffer zone between irresponsible claims and claims it believes may be criminally fraudulent." (Nov. 14, 2015)

*USA Today*

**ExxonMobil has a right to its opinion**

"Schneiderman's push is based on an extraordinarily powerful New York law known as the Martin Act. It only requires prosecutors to prove a factual error — not fraudulent intent. This is the type of law that should be used with great caution for critical public purposes. There lies the irony in using a law designed to protect investors to go after the oil giant. The investigation won't push Exxon to reevaluate its public stance on climate change so future investors won't be misled. The company did that years ago. And the most likely effect of a costly legal examination of Exxon's past statements is a lower stock price, hurting current investors." (Nov. 22, 2015)

*Financial Times*

**Legal basis for AG investigation is flimsy, free speech implications are alarming**

"The investigations launched by the attorneys generals of some U.S. states and the Virgin Islands set a troubling precedent for other policy debates, and threaten to undermine the cause that they aim to support...The legal basis for these actions seems flimsy...Beyond that, the implications of the investigations for free speech on public policy issues are alarming." (April 24, 2016)

*Boston Herald*

**Healey should pull out of this foolish effort to basically try to regulate speech**

"Exxon can hire squads of lawyers to defend every statement it ever made about its research (they already are challenging Healey in court). The issue is moot today. The company cooperates with several carbon-reduction programs, supports a tax on carbon



dioxide emissions and long has discussed climate risks in required financial disclosures." (June 27, 2016)

*New York Post*

**Schneiderman's new claim in Exxon probe is a 'ludicrous stretch'**

"Attorney General Eric Schneiderman must have hit a wall with his Exxon climate-change probe, since he's suddenly changed his target.... Schneiderman's new tack will only continue to politicize scientific debate and reinforce New York's image as anti-business. It's time for him to put the public's interests before his own desire to please enviro-radicals — and end this probe for good." (Aug. 21, 2016)

## Law Experts

**J.W. Verret**

**Associate Professor, George Mason University School of Law**

"The D.C. attorney general is not even original in its abuse of power here. Instead, the case essentially cuts and pastes from a similar complaint that was brought by the New York attorney general against oil firms and rapidly dismissed by the courts for failure to make a case. The point, however, is not to bring a successful case through to trial, but instead to score cheap political points for taking a stand against climate change. The debate over policy responses to climate change belongs in the legislative and regulatory arena, where the difficult economic costs for consumers and our inability to alter emissions from developing countries can be considered." (July 28, 2020)

**Curt Levey**

**President, The Committee for Justice**

"As America's largest energy company, Exxon Mobil is an attractive target for climate activists and trial lawyers. But it isn't illegal to drill for, refine or sell fossil fuels. So litigants have to come up with creative theories of how oil and gas companies are violating the law. In some jurisdictions, they have tried public-nuisance theories, which have fallen flat. New York took a different route, pursuing at least three different theories in search of a legal argument that could stick." (Dec. 18, 2019)

**Sherman Joyce**

**President, American Tort Reform Association**

"The rush by local governments to file lawsuits in local courts seeking outsized payments in response to a national or international public policy crisis is misguided and harmful. Targeting "deep-pocket" defendants as a funding source to address public crises does little to help those in need. And lawsuit abuse has a real effect on the public: fewer jobs, increased insurance rates, and companies forced to redirect money away from research and development to pay for rising legal costs. (Dec. 17, 2019)

**Walter Olson**

**Senior Fellow, The Cato Institute**

"It was a hashtag prosecution, a social-media campaign posing as a legal case: #ExxonKnew. And like yesterday's media balloon become today's litter, its deflated remains floated back down to earth last week in a New York courtroom. Whatever you think of them otherwise, ExxonMobil's communications on climate change had neither the intent nor the effect of wronging the company's investors." (Dec. 16, 2019)

**Ernest Istook**

**Former Congressman; Attorney**

"Bad laws like the Martin Act prompt bad lawsuits. Nowhere is that more evident than in the abusive civil suit and subsequent trial brought by the New York attorney general's office against ExxonMobil, which just ended on Nov. 7. The judge's decision is expected by mid-December. [...] But four years later and after changing legal theories several times, the successor New York attorney general ginned up a civil lawsuit that boils down to simple accounting practices, but repackaged to sound like misleading claims about climate change. The allegation is not about how ExxonMobil deals with science or with environmental regulations, but that the company's accounting supposedly underestimated the cost of future regulations — regulations that don't even exist yet!" (Nov. 25, 2019)

**Manny Alicandro**

**Former New York Attorney General Candidate; Attorney**

"Of course, this trial is not really about corporate accounting standards and securities laws. It is about the politics of climate change and the determination by environmental activists to hang this problem around the necks of one company or the energy industry more broadly. In fact, Bloomberg reported some protesters outside the courthouse in Manhattan seemed to think the state is trying to hold ExxonMobil accountable for climate change rather than looking as securities fraud." (Nov. 6, 2019)

**Nicholas L. Waddy**

**Associate Professor, State University of New York – Alfred**

"For the last four years, New York has pursued a legal vendetta against ExxonMobil – not because it began with probable cause, but because many New York politicians are eager to be at the forefront of a movement to demonize and destroy the fossil-fuel industry. This pernicious movement, as I have written before, is based not on the law but on ideology and animus. Many New York politicians have eagerly embraced the unthinking crusade against perfectly legal energy sources. Witness the fact that, in a clear conflict of interest, anti-fossil fuel activists have even directly funded part of New York state's legal team pursuing the case against ExxonMobil." (Oct. 25, 2019)

**J.W. Verret**

**Associate Professor, George Mason University Antonin Scalia Law School**

"James is using the Martin Act in this filing of civil fraud charges against the company. This law is, in itself, a dangerous and unbounded tool. While we can all agree that those who commit fraud should experience appropriate consequences, the Martin Act is notorious for allowing the New York attorney general to bring charges even when the traditional common law elements of a fraud claim are not present." (Oct. 23, 2019)

**Merritt B. Fox**

**Professor, Columbia University School of Law**

"The Martin Act grants the attorney general extraordinary powers to subpoena private documents without either obtaining a court order, which is required in most ordinary New York criminal proceedings, or the filing of a complaint, which is required in an ordinary civil action and is subject to court review. The Exxon subpoena is an abuse of these extraordinary powers [...] At the extreme, the Martin Act subpoena power could be used to bully corporations into any kind of desired reform under the guise of a securities investigation." (Aug. 15, 2016)

**Philip Hamberger**

**Professor, Columbia University**

"Mr. Schneiderman's subpoena to Exxon Mobil thus stands apart. His ability to demand information in this way is a quintessential case of the fox guarding the henhouse. The threats to privacy in our society are not merely technological; they also are legal. In addition to electronic surveillance, nonjudicial subpoenas allow government to examine private documents as if they were an open book. And as shown by Mr. Schneiderman, when attorneys general can issue such subpoenas, a valuable judicial power becomes a prosecutorial threat to liberty and due process." (May 11, 2016)

**Dennis Vacco**

**Former Attorney General, State of New York**

"I was proud to play a major role in holding tobacco companies responsible for the damage they caused and in setting America on a healthier path. We had a clear, convincing legal case and a noble cause. The same cannot be said for attorneys general involved in the current crusade [...] The tobacco companies were deceivers. ExxonMobil has been open. But that doesn't seem to matter to the politicized attorneys general pursuing the company. A chilling impact on public debate is not in our collective interest." (July 14, 2016)

**Harvey Silverglate**

**Civil Liberties Attorney; Member, ACLU**

"The Exxon investigation is "pure harassment [...] It is outrageous for any law enforcement official to be seeking to win this battle for minds by flexing law enforcement muscle and trying to shut up the other side." (June 16, 2016)

**Tristan Brown**

**Professor, State University of New York; Attorney**

"In the interest of full disclosure, I should point out that I am in the camp that believes that climate change is occurring, and that it will ultimately impose tremendous costs on the global financial system as its impacts increase in magnitude [...] That said, the

Democratic coalition is pursuing a dangerous means of achieving its goal of reducing greenhouse gas emissions. Its unprecedented definition of fraud threatens to impose an undue and possibly unachievable regulatory burden on energy firms and their investors." (June 21, 2016)

### **C. Boyden Gray**

#### **Former U.S. Ambassador to the EU; Former White House Counsel**

"The decision to single out Exxon is especially ill-conceived, because when it comes to actual proposals for real legislative action on climate change, Exxon's advocacy has been indistinguishable from some of the leading environmental organizations. The Sierra Club's former chief climate counsel has recounted how he and ExxonMobil's climate policy manager "found common ground when we realized that we actually agreed on the best approach to climate policy" — namely a revenue neutral carbon tax — hardly the strategy one would expect from a company dedicated to covering up climate science" (Feb. 11, 2016)

### **Elizabeth Price Foley**

#### **Constitutional Law Professor, Florida International University**

"When the attorneys general used their prosecutorial power to investigate scientists because the scientists are not embracing an orthodox view of climate change or anything else — that is an abuse of prosecutorial power." (Sept. 14, 2016)

## Thought Leaders

### **Steve Forbes**

#### **Publishing Executive**

"On the very day in March when more than a dozen state attorneys general accused Exxon-Mobil of "fraud" and "deceiving the American people" on climate change, New York's attorney general, who led that news conference, met secretly with environmental activist organizations to discuss how they could attack oil companies. Email records show the New York AG's office urging activists "to not confirm that you attended or otherwise discuss the event" if reporters come calling. Exxon-Mobil won the first round in its fight against these coordinated state attorneys general in getting the truth-ignoring ringleader of this assault, who hails from the U.S. Virgin Islands, to withdraw his unreasonable subpoena. It should continue to take the fight to the other states that are coordinating with the green activists." (Sept. 16, 2016)

### **Kimberley Strassel**

#### **Columnist, *Wall Street Journal***

"The first thing to know about the crusade against Exxon by state attorneys general is that it isn't about the law. The second thing to know is that it isn't even about Exxon. What these liberal prosecutors really want is to shut down a universe of their most-hated ideological opponents... The goal of the Exxon probe isn't to protect consumers or help the environment. It's a message: Oppose us, and we will marshal our terrifying government powers to intimidate and threaten you, to force you to spend millions defending yourself, to eat up the time you'd otherwise use speaking out." (June 16, 2016)

### **Holman Jenkins Jr.**

#### **Columnist, *Wall Street Journal***

"The premise of the assault on Exxon, the Journal, other campaigns against "deniers," is worse than foolish. The climate crowd has turned to persecuting critics as a substitute for meaningful climate action because, as President Obama has acutely observed, voters won't support their efforts to jack up energy prices." (June 28, 2016)

### **George Will**

#### **Columnist, *Washington Post***

"Progressivism's determination to regulate thought by regulating speech is apparent in the campaign by 16 states' attorneys general and those of the District of Columbia and the Virgin Islands, none Republican, to criminalize skepticism about the supposedly "settled" conclusions of climate science [...] The attorney general of the Virgin Islands accuses ExxonMobil of criminal misrepresentation regarding climate change. This, even though before the U.S. government in 2009 first issued an endangerment finding regarding greenhouse gases, ExxonMobil favored a carbon tax to mitigate climate consequences of those gases." (April 22, 2016)

**Jon Entine**

**Columnist, *New York Post***

"The Columbia project serves as a warning: A premier university hires an activist to run its J-school. It partners with an activist online Web site to target an energy company previously savaged by its new dean in his book. The effort is funded by foundations whose role as fossil-fuel critics was hidden from readers. In the end, the journalists themselves wind up playing defense." (March 1, 2016)