

The Brief No One Filed



**A report on the opponents of the Clean Power Plan
by U.S. Senators Sheldon Whitehouse, Harry Reid,
Barbara Boxer, and Edward J. Markey.**

INTEREST OF AMICI CURIAE

This report resembling an *amicus curiae* brief is released by U.S. Senators Sheldon Whitehouse, Harry Reid, Barbara Boxer, and Edward J. Markey in advance of the *State of West Virginia, et.al v. U.S. Environmental Protection Agency* oral argument before the U.S. Court of Appeals for the D.C. Circuit. Senator Whitehouse is a member of the Senate Judiciary and Environment and Public Works Committees, and the lead sponsor of the DISCLOSE Act, which would require outside organizations spending more than \$10,000 on political messaging to disclose their donors.¹ Senator Reid is the Senate Democratic Leader. Senator Boxer is the Ranking Member of the Senate Environment and Public Works Committee, is a member of the Senate Foreign Relations Committee, and is a cosponsor of the DISCLOSE Act. Senator Markey is a member of the Senate Environment and Public Works, Foreign Relations, and Commerce, Science & Transportation Committees, and is a cosponsor of the DISCLOSE Act.

We fully and enthusiastically support the brief submitted on March 31, 2016, with current and former members of Congress in support of the respondents. They submit this additional brief as national political leaders with firsthand exposure to the corrupting influence on our democracy from fossil fuel industry political spending.² As legislators, we wish to share their knowledge and understanding of the connection between the fossil fuel industry's political spending (both open and in secret) and political blockade of any measures to address climate change.

Prominent Republican leaders used to acknowledge that human-made climate change exists and must be addressed. They have changed their tone drastically.³ The change coincided

¹ Democracy Is Strengthened by Casting Light On Spending in Elections Act of 2015, S. 229, 114th Cong. (2015).

² Br. of Members of Cong. and Bipartisan Former Members of Cong. in Supp. of Resp't., No. 1606652.

³ See Jeffrey Toobin, *Republicans United on Climate Change*, The New Yorker, June 9, 2014, available at <http://www.newyorker.com/news/daily-comment/republicans-united-on-climate-change>.

exactly with the Supreme Court’s disastrous decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), which allowed energy interests to exert unlimited influence in Congress.

For example, the Koch brothers’ network has pledged to spend \$750 million to influence federal and state elections in the 2016 cycle.⁴ In 2014, Koch Industries was the 22nd largest emitter of carbon pollution in the United States, responsible for over 28 million metric tons (equivalent to 5.9 million cars).⁵ Americans for Prosperity (AFP), one of the Koch brothers-backed political front groups, warned that if Republicans support a carbon tax or climate regulations, they would “be at a severe disadvantage in the Republican nomination process”;⁶ it would mean their political peril.⁷ The organization bragged of having produced this reversal in Republican position on human-caused climate change: “[We] have done it.”⁸ At the state level, before the Supreme Court’s 2015 stay of the Clean Power Plan, AFP urged state officials to refrain from complying with the rule and to challenge it in court.⁹ In light of the chokehold

⁴ Matea Gold, *Charles Koch Downgrades His Political Network’s Projected 2016 Spending From \$889 Million to \$750 Million*, Wash. Post, Oct. 21, 2015, available at <https://www.washingtonpost.com/news/post-politics/wp/2015/10/21/charles-koch-downgrades-his-political-networks-projected-2016-spending-from-889-million-to-750-million/>.

⁵ Greenhouse 100 Polluters Index (Political Econ. Research Inst. at the U. of Mass.-Amherst), <http://www.peri.umass.edu/greenhouse100/> (last accessed Sept. 15, 2016).

⁶ Coral Davenport, *Why Republicans Keep Telling Everyone They’re Not Scientists*, N.Y. Times, Oct. 30, 2014, at A18, available at <http://www.nytimes.com/2014/10/31/us/why-republicans-keep-telling-everyone-theyre-not-scientists.html>.

⁷ See Coral Davenport, *Heads in the Sand*, The Wire, Dec. 4, 2011, available at <http://www.thewire.com/politics/2011/12/heads-sand/45707/>.

⁸ *Id.*

⁹ See David Fladeboe, *Gov. Scott Walker Is Right to Sue the EPA*, Milwaukee-Wisc. J. Sentinel, Feb. 28, 2015, available at <http://archive.jsonline.com/news/opinion/gov-scott-walker-is-right-to-sue-the-epa-b99452624z1-294458891.html> (“[S]tate lawmakers should pass legislation prohibiting the use of state funds to comply with [the Clean Power Plan] until the lawsuit has been resolved.”); Press Release, Americans for Prosperity, Americans for Prosperity: States Should Push Back Against EPA’s “Clean Power” Overreach, (Aug. 4, 2015), <https://americansforprosperity.org/americans-for-prosperity-states-should-push-back-against-epas-clean-power-overreach/> (“State leaders can and should push back against President Obama’s carbon rule ... That’s why we’re calling on state leaders to avoid submitting an implementation plan until the courts have adjudicated the EPA’s dramatic overreach.”); Press Release, Americans for Prosperity, AFP-FL Applauds Attorney General Bondi (Nov. 6, 2015), <https://americansforprosperity.org/afp-fl-applauds-attorney-general-bondi/> (lauding Florida Attorney General Pam Bondi’s efforts to lead other state attorneys general in challenging the Clean Power Plan); Matt Vespa, *Americans For Prosperity Saved the Taxpayers Billions in 2015*, Townhall.com, Jan. 20, 2016, <http://townhall.com/tipsheet/mattvespa/2016/01/20/americans-for-prosperity-saved-the-taxpayers-billions-in-2015-n2107435> (article by 2013 AFP Breitbart Award winner and Townhall.com associate editor Matt Vespa, endorsing

fossil fuel money has on our legislative branch, we have encouraged the Executive Branch to use its existing authority to take meaningful and lawful actions to address the climate crisis, which promises to severely harm the quality of life of our children and grandchildren and significantly threatens our country, world, and species. Tragically, time after time these efforts are hindered and thwarted as special interests deploy influence and tactics designed to defy the will of the American people.¹⁰

The American public is aware of and alarmed by the massive influx of special interest money and considers this a top problem with elected officials in Washington.¹¹ More than 80% of Americans believe the government cannot be trusted to do what is right most of the time.¹² As active legislators and national leaders, we have a strong interest in restoring the faith of the people in our government and political system. This starts with limiting the ability of massive dirty energy companies, either directly or through their armada of front groups, to stop anything that doesn't serve the fossil fuel industry's financial interests. As such, we respectfully hope that this brief will provide the Court with helpful context in which to evaluate the arguments of groups and political leaders opposed to the Clean Power Plan.

AFP's efforts to encourage states to join a lawsuit challenging the Clean Power Plan); Press Release, Americans for Prosperity, AFP Thanks More than 200 Federal Lawmakers for Amicus Brief Supporting States' Fight for Affordable, Reliable Energy, Feb. 23, 2016, <https://americansforprosperity.org/afp-thanks-more-than-200-federal-lawmakers-for-amicus-brief-supporting-states-fight-for-affordable-reliable-energy/> (applauding federal lawmakers who joined an *amicus* brief to the U.S. Supreme Court in support of a lawsuit by several states challenging the Clean Power Plan. The AFP further noted that it has "consistently been supportive of states' efforts to combat the regulations..."); Freedom Action Network, What Matters, What Matters for Tuesday, March 22, 2016, (Mar. 22, 2016), <http://freedomactionnetwork.com/index.php/2016/03/22/what-matters-for-tuesday-march-22-2016/>.

¹⁰ According to a 2016 election poll conducted by the Associated Press and University of Chicago's NORC Center, 65% of Americans say climate change is a problem the U.S. government should address and 80% say the United States should maintain its commitment under the Paris Agreement, even if other countries do not. Energy Pol'y Inst. at the U. of Chi. & The Associated Press-NORC Cen. for Pub. Affairs Res., Energy and Climate Change in the 2016 Election, Aug. 11-14, 2016, http://www.apnorc.org/PDFs/EnergyClimate/Fact%20Sheets_1%20Summary_Final.pdf.

¹¹ Pew Res. Cent., Beyond Distrust: How Americans View Their Government 74 (Nov. 2015), <http://www.people-press.org/files/2015/11/11-23-2015-Governance-release.pdf> ("The influence of special interest money on elected officials tops the list of named problems," according to Americans.).

¹² *Id.* at 18 ("Only 19% of Americans today say they can trust the government in Washington to do what is right "just about always" (3%) or "most of the time" (16%).").

SUMMARY OF ARGUMENT

Courts routinely consider conflicts of interest when evaluating testimony. The record before the U.S. Court of Appeals for the D.C. Circuit is rife with *amicus curiae* briefs and other arguments substantially funded by the oil, gas and coal industry (the “fossil fuel industry”). We respectfully caution the Court to carefully review not just the substance of the briefs before it, but the interests of those filing those briefs, as it considers this case.

According to a working paper published by the International Monetary Fund, the fossil fuel industry in the United States receives an effective subsidy of nearly \$700 billion per year, which includes failure to account for climate change.¹³ Another way of looking at the stakes is to multiply the per-ton “social cost of carbon” determined by the Office of Management and Budget¹⁴ by the emitted tons of carbon pollution. Again, the figure is hundreds of billions of dollars per year in pollution caused public health passed on to every American.¹⁵ To protect this subsidy—perhaps the biggest subsidy the world has ever seen—the fossil fuel industry has concocted a complex web of climate change denial to block action to curb carbon pollution. The web includes deceptively-named non-profits and fake “think tanks” that propagate phony science, manipulate public opinion, and create an echo chamber of climate science denialism.¹⁶

¹³ International Monetary Fund, Counting the Cost of Energy Subsidies, IMF Survey (July 17, 2015), http://www.imf.org/external/pubs/ft/survey/so/2015/NEW070215A.htm?utm_source=twitterfeed&utm_medium=twitter.

¹⁴ The social cost of carbon (SCC) is a range of estimates of the economic damages that result from one ton of carbon pollution. The SCC includes changes in net agricultural productivity, human health, property damages from increase flood risk, and changes in energy system costs. Interagency Working Grp. on Social Cost of Greenhouse Gases, *U.S. Gov't Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866* (Aug. 2016), available at https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc_tsd_final_clean_8_26_16.pdf.

¹⁵ According to the EPA, the U.S. emitted approximately 6,870 million metric tons of CO₂ and CO₂ equivalents in 2014. Using OMB estimates for the social cost of carbon (central range, 3% discount rate) and applying the Bureau of Labor Statistics inflation calculator to extrapolate the nominal price in 2014, the social cost of carbon was \$40 per ton of emissions. Accordingly, the total cost of emissions was nearly \$275 billion. See, U.S. Evtl. Prot. Agency, EPA 430-R-16-002, U.S. Greenhouse Gas Inventory Rep.: 1990-2014 (April 15, 2016), available at <https://www.epa.gov/sites/production/files/2016-04/documents/us-ghg-inventory-2016-main-text.pdf>; Interagency Working Grp. on Social Cost of Greenhouse Gases, *supra* note 14.

¹⁶ See generally Riley E. Dunlap & Aaron M. McCright, Organized Climate Change Denial, *The Oxford Handbook of Climate Change and Society* 144-160 (Aug. 2011), available at <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199566600.001.0001/oxfordhb-9780199566600-e->

The briefs opposing the Clean Power Plan that some Members of Congress, state politicians, and outside organizations filed in this case may be seen as another expression of this climate denial apparatus.¹⁷ In aggregate, the politician authors of these briefs have received over \$107 million¹⁸ from the fossil fuel industry, and while they are ostensibly elected to represent the interests of their constituents, we regularly see them taking positions that are opposed to conclusions drawn about the effects of climate change by institutions and academics in their own states.

The figure cited above is based only on information that is publicly available. Given the opaque state of campaign finance laws after *Citizens United*, the fossil fuel industry is able to launder and conceal much of its political spending, making it impossible to determine the full extent of its influence. Moreover, this figure only represents actual fossil fuel industry spending, and not fossil fuel industry threats or promises that would never be reported as spending.¹⁹

¹⁰ (subscription required); Robert Brulle, *Institutionalizing Delay: Foundation Funding and the Creation of U.S. Climate Change Counter-Movement Organizations*, *Climatic Change* (2014), available at <http://link.springer.com/article/10.1007%2Fs10584-013-1018-7> (purchase required); Justin Farrell, *Network Structure and Influence of the Climate Change Counter-Movement*, *Nature Climate Change* (2015), available at <http://www.nature.com/nclimate/journal/v6/n4/full/nclimate2875.html> (purchase required); Constantine Boussalis & Travis G. Coan, *Text-Mining the Signals of Climate Change Doubt*, *Global Environmental Change* (Jan. 2016), available at <http://www.sciencedirect.com/science/article/pii/S0959378015300728> (purchase required)

¹⁷ Br. of Members of Cong. as Amici Curiae in Support of Pet'rs., No 1600258.

¹⁸ Since 1989, based on aggregated data from the Center for Responsive Politics and the Center for American Progress Action Fund (including fossil fuel industry contributions to *amici* members of Congress, governors of states in opposition to CPP (except CO and LA), and attorneys general of states suing the Environmental Protection Agency).

¹⁹ A fatal oversight of *Citizens United* was that while it authorized outside organizations to deploy unlimited political spending, it necessarily also authorized these groups to threaten or promise to deploy such spending. The Court failed to understand that those newly unleashed threats and promises were never going to meet the tests of “independence” and “transparency” that the Court surmised would limit corruption. See Transcript of radio broadcast, This American Life, *Take the Money and Run for Office, No. 461*, WBEZ Chi. (Mar. 30, 2012), available at <http://www.thisamericanlife.org/radio-archives/episode/461/transcript> (Norman Ornstein: “I’ve had this tale told to me by a number of lawmakers. You’re sitting in your office and a lobbyist comes in and says, ‘I’m working with Americans for a Better America. And I can’t tell you who’s funding them, but I can tell you they really, really want this amendment in the bill.’ And who knows what they’ll do? They’ve got more money than God.”).

ARGUMENT

I. MEMBER *AMICI* OPPOSING THE CLEAN POWER PLAN RECEIVE SIGNIFICANT POLITICAL CONTRIBUTIONS FROM THE FOSSIL FUEL INDUSTRY

Member *amici* supporting the petitioners have received significant monetary contributions from the fossil fuel industry. This affects their objectivity regarding climate change and the Clean Power Plan.

Based on data collected by the Center for American Progress Action Fund (CAPAF) and the Center for Responsive Politics since 1989, Member *amici* have received over \$40 million in oil, gas, and coal campaign contributions during their collective Congressional careers. The 34 Senators opposing the Clean Power Plan received over \$16 million of these direct contributions. The 171 Representatives opposing the Clean Power Plan received nearly \$24 million. That is just direct spending to candidate campaigns. Fossil fuel-related Political Action Committees (PACs) have contributed over \$42 million to Member *amici* since 1989. PACs have contributed nearly \$12 million to the 34 Senators and nearly \$31 million to the 171 Representatives. In total, the fossil fuel industry's disclosed political spending to Member *amici*, directly and through political front groups, amounts to nearly \$83 million, with approximately \$55 million split among 34 Senators and nearly \$28 million split among 171 Representatives.²⁰

In addition to direct contributions and contributions through PACs, the fossil fuel industry has engaged in substantial secretive, though legal, spending, making it impossible to determine the full extent of the industry's political influence. Certain types of political spending groups, organized under section 501(c) of the tax code, are not required to disclose their donors to the public. While these groups are supposed to be organized exclusively for the purpose of

²⁰ *Most Americans Disagree with Their Congressional Representative on Climate Change*, ThinkProgress, Mar. 8, 2016, <https://thinkprogress.org/most-americans-disagree-with-their-congressional-representative-on-climate-change-95dc0eee7b8f#.vt0tagbes> (data available at: https://docs.google.com/spreadsheets/d/1Q1ED8sFS7Y7IYKKCmi1HNR6odiSvv_mDIZ82hd-jHQU/pubhtml)

advancing social welfare in practice, many spend significant amounts on express advocacy in elections. When these organizations spend money on political advocacy, their donors are not publicly disclosed. As a result, the disclosed political spending outlined above likely represents just the tip of the iceberg when it comes to the fossil fuel industry's electioneering.

II. THE MAJORITY OF MEMBER *AMICI* OPPOSING THE CLEAN POWER PLAN ARE CLIMATE DENIERS WHOSE VIEWS ARE INCONSISTENT WITH THOSE OF CLIMATE SCIENTISTS AND RESEARCHERS IN THEIR HOME STATES

A. The Industry “Playbook”

There is a well-worn “playbook”—passed on from previous campaigns of defending industries from tobacco to lead—to prevent government from regulating harmful products that affect public health: deny the science, question the motives of those calling for change, and exaggerate the costs of taking action.²¹ Today, that playbook is being used by the fossil fuel industry to prevent action to address climate change.

The “apparatus” that perpetuates this playbook includes participants from industry, think tanks, and the media. While seemingly separate, there is considerable exchange and collusion among the groups and individuals involved. Fortunately, there is a growing body of scholarship examining this apparatus. This research reveals over 100 organizations, including trade associations, conservative think tanks, foundations, and public relations firms, in the denial apparatus.²² The reality is that there is hardly any disagreement among scientists over whether or not climate change is occurring: 31 leading national scientific organizations sent a letter to Congress in June stating that human-caused climate change is real, that it poses serious risks to

²¹ See Jocelyn Fong & Jill Fitzsimmons, *The Wall Street Journal: Dismissing Environmental Threats Since 1976*, Media Matters for America (Aug. 2, 2012), <http://mediamatters.org/research/2012/08/02/the-wall-street-journal-dismissing-environmenta/189063>.

²² See generally, Aaron M. McCright & Riley E. Dunlap, *The Politicization of Climate Change and Polarization in the American Public's Views of Global Warming, 2001-2010*, *The Soc. Q.* (Mar. 2011), available at <http://news.msu.edu/media/documents/2011/04/593fe28b-fbc7-4a86-850a-2fe029dbeb41.pdf>; Dunlap & McCright, *supra* note 16; Brulle, *supra* note 16; Farrell, *supra* note 16; Boussalis & Coan, *supra* note 16.

society, and that, in order to address it, we need to substantially reduce greenhouse gas emissions.²³ Hardly any peer-reviewed publication disputes the basic science linking carbon pollution to climate change.²⁴

B. The “Playbook” in Action

CAPAF has identified 135 of the 205 Member *amici* “climate deniers” based on their past statements and voting records.²⁵ Climate deniers reject the vast consensus of peer-reviewed science about the causes and effects of carbon in our atmosphere, often contradicting the research of scientists and institutions in the states they represent on the effects of climate change in their states. Climate deniers also reject the voice of their constituents. A Citizen Cabinet nationwide survey found seven in ten favored the Clean Power Plan, with a larger eight in ten acknowledging the value of the Clean Power Plan for its health benefits.²⁶ We highlight examples from Members of Congress from five states to demonstrate the pernicious effect of the playbook on what elected officials say and do with respect to climate change science.

i. Texas

A Citizen Cabinet survey found 68 percent of registered voters in Texas favor the Clean Power Plan, with 79 percent seeing value in the projected health benefits from reduced air pollution.²⁷ Contrast this with what a few of their state Member *amici* have said regarding

²³ Letter from 31 major scientific organizations to Members of Congress regarding the consensus scientific view of climate change (June 28, 2016), available at <http://www.aaas.org/sites/default/files/06282016.pdf>.

²⁴ See John Cook, et al., Quantifying the Consensus on Anthropogenic Global Warming in the Scientific Literature, *envtl. res. Letters* (2013), available at <http://iopscience.iop.org/article/10.1088/1748-9326/8/2/024024/pdf> (finding that more than 97% of climate abstracts in peer-reviewed scientific literature were in consensus that humans are causing global warming).

²⁵ *Most Americans Disagree with Their Congressional Representative on Climate Change*, ThinkProgress, Mar. 8, 2016, <https://thinkprogress.org/most-americans-disagree-with-their-congressional-representative-on-climate-change-95dc0eee7b8f#.vt0tagbes> (data available at: https://docs.google.com/spreadsheets/d/1Q1ED8sFS7Y7IYKCCmi1HNR6odiSvv_mDIZ82hd-jHQU/pubhtml).

²⁶ *Americans on Clean Power: A Citizen Cabinet Survey Nationwide and in California, Florida, Maryland, New York, Ohio, Oklahoma, Texas and Virginia*, September 2016, http://vop.org/wp-content/uploads/2016/09/EE_Report.pdf.

²⁷ *Id.*

climate change. Texas Senator Ted Cruz has remarked that over “[t]he last 15 years, there has been no recorded warming. Contrary to all the theories that they are expounding, there should have been warming over the last 15 years. It hasn’t happened ... You know, back in the ‘70s—I remember the ‘70s—we were told there was global cooling. And everyone was told global cooling was a really big problem. And then that faded.”²⁸ Texas Representative Louie Gohmert has said, “[a]pparently this climate change was global freezing back in the 1970s. Then global warming and then, when it quit warming, now it’s climate change.”²⁹ Texas Representative Randy Weber said, “I may want to get your cell phone, because if we go through cycles of global warming and then back to global cooling, I need to know when to buy my long coat on sale. I just don’t know how y’all prove those hypotheses going back fifty, hundred, what you might say is thousands if not millions of years, and then postulate those forward.”³⁰

The statements above stand in stark contrast to those made by experts who call Texas home. Texas A&M University’s Department of Atmospheric Sciences’ faculty have adopted the following statement:

- 1) The Earth’s climate is warming, meaning that the temperatures of the lower atmosphere and ocean have been increasing over many decades. Average global surface air temperatures warmed by about 1.5 degrees Fahrenheit between 1880 and 2012;
- 2) It is extremely likely that humans are responsible for more than half of the global warming between 1951 and 2012; and
- 3) Under so-called “business-as-usual” emissions scenarios, additional global-average warming (relative to a 1986 to 2005 baseline) would likely be 2.5 to 7 degrees Fahrenheit by the end of this century.³¹

²⁸ Rebecca Leber, *Climate Denier Ted Cruz Is Poised to Become a Lead Senator on Science*, New Republic, Nov. 6, 2014, <https://newrepublic.com/article/120180/climate-denier-ted-cruz-may-lead-senate-science-subcommittee>.

²⁹ Cheryl Chumley, *Louie Gohmert: Today’s Climate Change was 1970’s Global Freezing*, Wash. Times (May 8, 2014), <http://www.washingtontimes.com/news/2014/may/8/louie-gohmert-todays-climate-change-was-1970s-glob/>.

³⁰ Brad Johnson, *The House Science Committee Is In A State Of Climate Change Denial*, Huffington Post (June 26, 2014), http://www.huffingtonpost.com/2014/06/26/house-science-committee-c_n_5533992.html.

³¹ Texas A&M U., Atmospheric Sciences, Statement on Climate Change, <http://www.met.tamu.edu/about/weather-climate/climate-change-statement/index.html> (last accessed Sept. 21, 2016).

Texas State Climatologist Dr. John Neilson-Gammon, who was appointed by Governor George W. Bush, has concluded that “fossil fuel burning and other activities are the primary cause of the global-scale increase in temperature over the past decades.”³² And Dr. Katharine Hayhoe, climate scientist at Texas Tech, advocates for robust public debate over policy solutions while making clear the science is sound:

We should be arguing about the solutions ... Should we adopt free market solutions or government policies? Should it be done at the local or state level or the federal level? There should be tons of arguments, but political arguments over the science just don't make sense.³³

ii. **Ohio**

A Citizen Cabinet survey found 66 percent of registered voters in Ohio favor the Clean Power Plan, with 77 percent seeing value in the projected health benefits from reduced air pollution.³⁴ Contrast this with what a few of their state Member *amici* have said regarding climate change. Ohio Representative Steve Stivers disagrees that “[m]an-made global warming is scientific fact.”³⁵ Representative Bill Johnson asserted in 2011 that he is “not an alarmist that believes that greenhouse gas emissions coming from the coal industry are causing major problems.”³⁶ Representative Bob Gibbs asserts:

[I]t is clear that science has not been able to document what is happening and if human activity is causing a problem or not. Many scientists are on both sides of this issue and the proponents of climate change have not substantiated their findings based on sound science.³⁷

³² Texas A&M U., Atmospheric Sciences, Office of the State Climatologist, FAQ: Climate change (June 2012), <http://climatexas.tamu.edu/weather-faqs> (last accessed Sept. 21, 2016).

³³ Robin Deehan, *Accolades Keep Coming for Texas Tech Professor, Climate Scientist*, EverythingLubbock.com, May 17, 2016, <http://www.everythinglubbock.com/news/klbk-news/accolades-keep-coming-for-texas-tech-professor-climate-scientist>.

³⁴ *Americans on Clean Power: A Citizen Cabinet Survey Nationwide and in California, Florida, Maryland, New York, Ohio, Oklahoma, Texas and Virginia*, September 2016, http://vop.org/wp-content/uploads/2016/09/EE_Report.pdf.

³⁵ NRDC Action Fund, Congressional Candidates' Views on Clean Energy, Climate Change: OH-15 (Aug. 30, 2010), <http://www.nrdcactionfund.org/updates/congressional-candidates-views-on-clean-energy-climate-change-oh-15.html/>.

³⁶ *Full interview with Rep. Bill Johnson (R-Ohio)*, E&ETV News, June 8, 2011, <http://www.eenews.net/tv/videos/1343/transcript>.

³⁷ League of Women Voters of Athens County, 2010 Voter's Guide, <http://www.seorf.ohiou.edu/~voters/2010primary/VoterGuide-2010.pdf>.

This is contrary to what Dr. Lonnie Thompson, climate scientist at Ohio State University (OSU), has observed:

[T]here is a now a very clear pattern in the scientific evidence documenting that the earth is warming, that warming is due largely to human activity, that warming is causing important changes in climate, and that rapid and potentially catastrophic changes in the near future are very possible. This pattern emerges not, as is so often suggested, simply from computer simulations, but from the weight and balance of the empirical evidence as well.³⁸

As Bryan Mark, Ohio State Climatologist and associate geography professor at OSU, observes, “[w]e have experienced a lot of climate change. People are waking up to this reality that there’s no silver bullet, that people have to come together ... to work this out.”³⁹

iii. **Pennsylvania**

Pennsylvania Representative Lou Barletta claims, “[y]ou know there’s arguments on both sides. I’m not convinced that there’s scientific evidence that proves that. I believe there’s some that can also argue the opposite.”⁴⁰ Senator Pat Toomey echoes this sentiment:

I think the data is pretty clear. There has been an increase in the surface temperature of the planet over the course of the last 100 years or so. I think it’s clear that that has happened. The extent to which that has been caused by human activity I think is not as clear. I think that is still very much disputed and has been debated.⁴¹

Representative Tim Murphy goes so far as to claim, “I think it is dangerous science for Congress to declare climate theory a fact.”⁴²

³⁸ Lonnie G. Thompson, *Climate Change: The Evidence and Our Options*, The Behavior Analyst (2010), available at <http://researchnews.osu.edu/archive/TBA--LTonly.pdf>.

³⁹ Mark Ferenchik, *Ohio State Experts Say Ohio Could Be 10 Degrees Warmer by Century’s End*, The Columbus Dispatch, Dec. 1, 2015, <http://www.dispatch.com/content/stories/local/2015/12/01/climate-change.html>.

⁴⁰ Borys Krawczeniuk, *Despite Varying Views, Kanjorski, Barletta Agree a Lot On Energy Issues*, The Citizens’ Voice, Oct. 17, 2010, <http://citizensvoice.com/news/despite-varying-views-kanjorski-barletta-agree-a-lot-on-energy-issues-1.1050145>.

⁴¹ Brad Johnson, *Pat Toomey: Global Warming Pollution Is ‘Very Much Disputed’* ThinkProgress, Oct. 12, 2010, <https://thinkprogress.org/pat-toomey-global-warming-pollution-is-very-much-disputed-467ab9c54759#.2n0nh4zhh>.

⁴² Brad Johnson, *Committee From Koch Votes to Deny Climate Change*, ThinkProgress, Mar. 15, 2011, <https://thinkprogress.org/committee-from-koch-votes-to-deny-climate-change-8b6efa2ce38d#.vvsj5m4c0>.

Pennsylvania-based climate experts disagree. Pennsylvania’s former Department of Environmental Protection Secretary John Quigley has said that “[t]he entire state will experience the effects of climate disruption Science is showing us that we are not only changing and disrupting our climate significantly, but these changes are occurring alarmingly fast.”⁴³ Dr. Michael Mann of Pennsylvania State University has said that “[t]he overwhelming consensus among climate scientists is that human-caused climate change is happening . . . there is broad agreement among climate scientists not only that climate change is real, but that we must respond to the dangers of a warming planet.”⁴⁴

iv. **Florida**

A Citizen Cabinet survey found 68 percent of registered voters in Florida favor the Clean Power Plan, with 76 percent seeing value in the projected health benefits from reduced air pollution.⁴⁵ Contrast this with what a few of their state Member *amici* have said regarding climate change. At a speaking event in Pensacola, Representative Jeff Miller claimed:

I have scientists that I rely on, the scientists that I rely on say our climate has changed. It wasn’t just a few years ago, what was the problem that existed? It wasn’t global warming, we were gonna all be an ice cube. We’re not ice cubes. Our climate will continue to change because of the way God formed the earth.⁴⁶

⁴³ Susan Phillips, *PA Climate Change Report Warns of Hotter Summers, Destructive Storms, Floods*, National Public Radio, Aug. 27, 2015, <https://stateimpact.npr.org/pennsylvania/2015/08/27/pa-climate-change-report-warns-of-hotter-summer-destructive-storms/>.

⁴⁴ Michael E. Mann, *If You See Something, Say Something*, N.Y. Times, Jan. 17, 2014, http://www.nytimes.com/2014/01/19/opinion/sunday/if-you-see-something-say-something.html?_r=0.

⁴⁵ *Americans on Clean Power: A Citizen Cabinet Survey Nationwide and in California, Florida, Maryland, New York, Ohio, Oklahoma, Texas and Virginia*, September 2016, http://vop.org/wp-content/uploads/2016/09/EE_Report.pdf.

⁴⁶ Andrew Kaczynski, *GOP Congressman: Climate Change From God, Not Man*, BuzzFeed, Aug. 14, 2013, https://www.buzzfeed.com/andrewkaczynski/gop-congressman-climate-change-from-god-not-man?utm_term=.ud0WyZX6Z#.orLz20k60.

At the same event, Representative Miller threatened to “defund the E.P.A.” and denied the scientific consensus on climate change. In a 2014 House Committee on Science, Space, and Technology hearing, Representative Bill Posey argued:

We’ve had climate change since the day the earth was formed, whenever that was, depending upon whatever it is you believe. And we’ll have climate change until the earth implodes, whenever that is Obviously we’ve had global warming for a long time. You can’t have one seamless ice age that encompasses three ice ages. We had to have warming periods between each of those. And so that is a natural phenomenon. Just because we’re alive now, the tectonics plate shifts aren’t going to stop, the hurricanes tsunamis [*sic*] aren’t going to stop, the asteroid strikes aren’t going to stop, they’ve been going on for eons and they’re going to continue to go on for eons.⁴⁷

Senator Marco Rubio said in a 2014 interview on *This Week* to ABC’s Jonathan Karl: “I do not believe that human activity is causing these dramatic changes to our climate the way these scientists are portraying. And I do not believe that the laws that they propose we pass will do anything about it. Except it will destroy our economy.”⁴⁸

Ben Kirtman, a professor of atmospheric science at the University of Miami Rosenstiel School of Marine and Atmospheric Science, notes that people in Florida actually have a fairly sophisticated understanding of climate science. In fact, he argues that we need to respond to the climate change we are already committed to:

There’s a certain amount of climate change that’s going to happen over the next 25 years that no matter what we do on the mitigation time scale, it’s committed. We already made that commitment; we have to respond. We’ve already put that heat into the ocean from our previous fossil fuel burning.⁴⁹

Dr. Harold Wanless, a geologist at the University of Miami, echoes this sentiment: “Everyone wants a nice happy ending. But that’s not reality. We’re in for it. We have really done a job

⁴⁷ Brad Johnson, *At Science Hearing, Rep. Bill Posey (R-Fla.) Argues Global Warming is a ‘Natural Phenomenon’*, Hill Heat, Mar. 26, 2014, <http://www.hillheat.com/articles/2014/03/26/at-science-hearing-rep-bill-posey-r-fla-argues-global-warming-is-a-natural-phenomenon>.

⁴⁸ Marc Caputo, *No, Marco Rubio Didn’t Quite Deny Climate-Change. At Least Not Yet*, Miami Herald Blog, May 11, 2014, <http://miamiherald.typepad.com/nakedpolitics/2014/05/no-marco-rubio-didnt-quite-deny-climate-change-at-least-not-yet.html>.

⁴⁹ Erika Bolstad, *Florida Republicans Demand Climate Change Solutions*, Sc. Am., Mar. 15, 2016, <http://www.scientificamerican.com/article/florida-republicans-demand-climate-change-solutions/>.

warming our ocean, and it's going to pay us back.”⁵⁰ Dr. Mike Heithaus, a marine scientist and Dean of the College of Arts and Sciences at Florida International University, said this: “We’re really standing here at ground zero. There’s just about nowhere else on the planet where there’s more at risk from sea level rise so fast.”⁵¹

In a 2014 letter to Governor Rick Scott, scientists from the University of Florida, Florida A&M, the University of Miami, Florida State University, Florida Atlantic University, the University of South Florida, Eckerd College, and Florida International University wrote, “It is crucial for policymakers to understand that human activity is affecting the composition of the atmosphere which will lead to adverse effects on human economies, health and well being.”⁵² The Florida Climate Institute, a multi-disciplinary network of researchers and centers from nine Florida colleges and universities, states clearly on its website that “[c]limate variability and change pose significant economic, food security, and environmental risks worldwide” and “[d]rought, storms with heavy rain, high winds, flooding, and freeze events cause billions of dollars in losses to the agricultural and natural resources sectors locally in Florida and globally.”⁵³

v. **Oklahoma**

A Citizen Cabinet survey found 68 percent of registered voters in Oklahoma favor the Clean Power Plan, with 74 percent seeing value in the projected health benefits from reduced air

⁵⁰ Laura Parker, *Climate Change Economics*, Nat’l Geographic, Feb. 2015,

<http://ngm.nationalgeographic.com/2015/02/climate-change-economics/parker-text>.

⁵¹ *Senators Descend on Miami Beach to Talk Climate Change*, NBC6, Oct. 9, 2014,

<http://www.nbcmiami.com/news/local/Senators-Descend-on-Miami-Beach-to-Talk-Climate-Change-278719931.html>.

⁵² Letter from 42 climate scientists to Florida Governor Rick Scott regarding the need to find solutions to climate change, Sept. 18, 2014, available at <http://miamiherald.typepad.com/files/scientists-on-climate-science-and-solutions-sept-15th-42-signs1.pdf>.

⁵³ Flor. Climate Inst., About: The Issue, <https://floridaclimateinstitute.org/about/issue> (last accessed September 21, 2016).

pollution.⁵⁴ Contrast this with what a few of their state Member *amici* have said regarding climate change. In a 2013 House floor speech, Representative Jim Bridenstine proclaimed that “global temperatures stopped rising 10 years ago. Global temperature changes, when they exist, correlate with Sun output and ocean cycles.”⁵⁵ Representative Markwayne Mullin stated in a video interview, “I haven’t seen the reports that would get me to believe that anything’s different [with regards to climate change] than the patterns that we had that we’ve gone through through the time of records.”⁵⁶ Senator James Lankford has gone further, stating, “This whole global warming myth will be exposed as what it really is – a way of control more than anything else.”⁵⁷ Senator Jim Inhofe, who calls individuals who understand human-caused climate change “alarmists,” has gone so far as to say, “I really believe it’s the greatest hoax ever perpetrated on the American people.”⁵⁸

Berrien Moore, III, is Dean of the College of Atmospheric and Geographic Sciences at the University of Oklahoma and Director of the National Weather Center. He has been a lead author on an Intergovernmental Panel on Climate Change report. In 2009, Dr. Moore testified before the House Committee on Science and Technology:

On the increasing strength of Earth science, we now can state that global warming is “unequivocal,” but this simply sets the challenge. We need now to develop the capability

⁵⁴ *Americans on Clean Power: A Citizen Cabinet Survey Nationwide and in California, Florida, Maryland, New York, Ohio, Oklahoma, Texas and Virginia*, September 2016, http://vop.org/wp-content/uploads/2016/09/EE_Report.pdf.

⁵⁵ 159 Cong. Rec. H3262 (2013) (statement of Rep. Jim Bridenstine), available at <https://www.congress.gov/crec/2013/06/11/CREC-2013-06-11-house.pdf>.

⁵⁶ Scott Keyes, *VIDEO: Congressman From State Battered by Extreme Weather Denies Existence of Climate Change*, ThinkProgress, Aug. 9, 2013, <https://thinkprogress.org/video-congressman-from-state-battered-by-extreme-weather-denies-existence-of-climate-change-b38e479ca3f7#.frutvgbuu>.

⁵⁷ James Coburn, *5th District Candidates United Against Cap and Trade*, Edmond Sun, Feb. 16, 2010, http://www.edmondsun.com/news/local_news/th-district-candidates-united-against-cap-and-trade/article_caaa9492-952c-55bd-80ff-91d402ed7591.html.

⁵⁸ *Climate Skeptics in Congress*, Politico, July 26, 2013, <http://www.politico.com/gallery/2013/07/climate-skeptics-in-congress/001199-016948.html>.

to monitor and thereby manage greenhouse gas emissions through this century and beyond ... The challenge is growing and will not go away.⁵⁹

Gary McManus, the Oklahoma State Climatologist, prefaces his presentations on climate change with this admonition: “This is the science. It’s up for you to decide what you do with it. You can either ignore it, or you can use it.”⁶⁰ And Oklahoma professors from Oral Roberts University, Southern Nazarene University and the University of Tulsa were among 200 evangelical scientists and academics to sign a 2013 letter to Congress imploring it to address climate change. “All of God’s creation,” they wrote, “is groaning under the weight of our uncontrolled use of fossil fuels The Bible tells us that ‘love does no harm to its neighbor (Romans 13:10), yet the way we live now harms our neighbors, both locally and globally.”⁶¹

Dr. Riley Dunlap, a sociologist at Oklahoma State University who studies environmental politics, asserts society is being misled:

The conservative think tanks are really the spearhead of the conservative assault on climate change. They write books, put out briefings and open editorials, bring in contrarian scientists They are an immense megaphone that amplifies very, very minority voices.⁶²

Dr. Dunlap observes “we’re starting to see the effect of this constant barrage of [climate change] denial penetrating society. There is a constant belittling of climate change.”⁶³ Dr. Dunlap also

⁵⁹ *Opportunities and Challenges for NASA Science Programs before the H. Comm. on Science and Technology Subcomm. on Space and Aeronautics*, 111th Cong. (2009), available at <http://www.hq.nasa.gov/legislative/hearings/2009%20hearings/6-18-09%20Moore.pdf> (statement of Dr. Berrien Moore III, Executive Director, Climate Central).

⁶⁰ Senator Sheldon Whitehouse, *Global Warming Is Real, and We Made It*, Tulsa Magazine, Oct. 30, 2015, http://www.tulsaworld.com/scene/twm/tulsa-magazine-u-s-sen-sheldon-whitehouse-global-warming-is/article_75fa364f-1d2f-585a-ab09-1c57d07bd5a8.html.

⁶¹ Drs. Katharine Hayhoe & Thomas Ackerman, *Climate Change: Evangelical Scientists Say Limbaugh Wrong, Faith and Science Complement One Another*, Christian Post, Aug. 31, 2013, <http://www.christianpost.com/news/climate-change-evangelical-scientists-say-limbaugh-wrong-faith-and-science-compliment-one-another-103470/>.

⁶² Suzanne Goldenberg & Helena Bengtsson, *Secretive Donors Gave U.S. Climate Denial Groups \$125m over Three Years*, The Guardian, June 9, 2015, <https://www.theguardian.com/environment/2015/jun/09/secretive-donors-gave-us-climate-denial-groups-125m-over-three-years>.

⁶³ Ben Block, *U.S. Public Still Unconvinced on Climate Change*, Worldwatch Inst., <http://www.worldwatch.org/node/6300> (last accessed Sept. 14, 2016).

notes these arguments have something in common: “All of these discursive moves, so to speak, are made with one firm, never ending goal, and that is: block action to limit carbon emissions.”⁶⁴

III. OTHER PETITIONERS AND *AMICI* ALSO RECEIVE SIGNIFICANT FUNDING FROM THE FOSSIL FUEL INDUSTRY.

In addition to funneling millions of dollars to thwart climate change legislation at the federal level, the fossil fuel industries engage in significant spending to influence state lawmakers. The fossil fuel industry also channels money to select trade associations to push their anti-science agenda. To add to the subterfuge, the fossil fuel industry has concocted a complex web of front groups, bound together by common funding, shared staff, and false messages, in order to amplify their message. Many of these state politicians, trade associations and front groups are either parties in the Clean Power Plan litigation or weighed-in as *amici*.

A. Petitioners

i. Attorneys General and Governors

From the 27 states currently challenging the Clean Power Plan in court, the CAPAF has identified 24 attorneys general and governors climate deniers based on past statements. According to their research, these state officials received over \$19 million in career contributions from the fossil fuel industry since 2000.⁶⁵

For example, based on documents obtained by the Center for Media and Democracy, Murray Energy Corp. donated \$250,000 to the Republican Attorneys General Association in 2015 and received a closed-door meeting with state prosecutors to discuss the Clean Power

⁶⁴ Stephanie Joyce, *The Four Steps of Climate Change Denial*, Wyo. Pub. Radio, Dec. 4, 2015, <http://insideenergy.org/2015/12/04/four-ways-deniers-sow-doubt-about-climate-change/>.

⁶⁵ *Most Americans Disagree with Their Congressional Representative on Climate Change*, ThinkProgress, Mar. 8, 2016, <https://thinkprogress.org/most-americans-disagree-with-their-congressional-representative-on-climate-change-95dc0eee7b8f#.vt0tagbes> (data available at: https://docs.google.com/spreadsheets/d/1Q1ED8sFS7Y7IYKCCmi1HNR6odiSvv_mDIZ82hd-jHQU/pubhtml).

Plan.⁶⁶ According to Nick Surgey, research director for the Center for Media and Democracy, “It’s no coincidence that GOP attorneys general have mounted an aggressive fight alongside the fossil fuel industry to block the Clean Power Plan. That appears to be exactly what the industry paid for.”⁶⁷ This exemplifies how individual companies and industry groups can work together with like-minded politicians. Other energy companies and trade groups that have given money last year to the Republican Attorneys General Association include Koch Industries, ExxonMobil, Southern Company, the American Coalition for Clean Coal Electricity, and Cloud Peak Energy.⁶⁸

ii. Trade Associations

U.S. Chamber of Commerce: The U.S. Chamber of Commerce (the Chamber), the largest lobbying organization in the country, has used its considerable resources to fight legislation and government action on tobacco and climate change at home and abroad. The sources of the Chamber’s revenue are a tightly-kept secret,⁶⁹ but it has been a relentless opponent of any action to address climate change.⁷⁰ Of the funding that can be tracked, ExxonMobil gave \$2 million to the Chamber over the past two years and has committed to contributing a total of \$5 million by

⁶⁶ Jennifer Dlouhy, *Battered Coal Companies Courted State AGs to Fight Climate Rules*, Bloomberg.com, Sept. 7, 2016, <http://www.bloomberg.com/politics/articles/2016-09-07/battered-coal-companies-courted-state-ags-to-fight-climate-rules>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Carol Leonnig, *Corporate Donors Fuel Chamber of Commerce’s Political Power*, Wash. Post, Oct. 19, 2012, available at https://www.washingtonpost.com/politics/decision2012/corporate-donors-fuel-chamber-of-commerces-political-power/2012/10/18/96ad666a-1943-11e2-bd10-5ff056538b7c_story.html; David Brodwin, *The Chamber’s Secrets*, US News, Oct. 22, 2015, available at <http://www.usnews.com/opinion/economic-intelligence/2015/10/22/who-does-the-us-chamber-of-commerce-really-represent>.

⁷⁰ See *Major Companies Distance Themselves From U.S. Chamber Campaign Against Obama’s Climate Plan*, ThinkProgress, June 3, 2014, https://thinkprogress.org/major-companies-distance-themselves-from-u-s-chamber-campaign-against-obamas-climate-plan-888cfdcfb52b#_ga7bz9x58; Andrew Seifter, *The U.S. Chamber’s Long History of Extreme Opposition to Environmental Safeguards*, League of Conservation Voters, July 24, 2014, <http://www.lcv.org/media/blog/business-as-usual-the-us.html>; Alyssa Katz, *Big Business Declares War On Science: The Secret Story of the Chamber of Commerce’s Battle Against the Environment*, Global Warming Action, Salon, June 28, 2015, http://www.salon.com/2015/06/28/big_business_declares_war_on_science_the_secret_story_of_the_chamber_of_commerces_battle_against_the_environment_global_warming_action/.

2018.⁷¹ Additionally, Freedom Partners Chamber of Commerce, which serves as an identity-scrubbing funnel for the Koch brothers and their allies, provided \$5 million to the U.S. Chamber of Commerce between 2012 and 2014.⁷²

The Chamber's position should be taken with a grain of salt. Not only are its policies on climate change directly at odds with science, public health, public opinion, they are at odds with majority of its board members. Eight Senators recently examined the lobbying positions and actions of the Chamber compared with those of its board members' companies.⁷³ Not one of the 108 Chamber Board members contacted would endorse the U.S. Chamber's lobbying on climate change. The investigation found roughly half of the companies represented on the Chamber's Board have strong, pro-climate action positions that contrast sharply with the Chamber's lobbying activities.⁷⁴

The Center for Responsive Politics, a nonprofit, nonpartisan research group that tracks money spent on elections and lobbying, found that in 2015 alone, the Chamber spent roughly \$85 million on lobbying efforts, more than twice the amount spent by the second-highest organization.⁷⁵ Moreover, the Chamber's lobbying is at odds with its own public position on climate change which supports "efforts to reduce greenhouse gas emissions in the atmosphere"⁷⁶ and leading researchers have documented the Chamber's role in the climate change

⁷¹ ExxonMobil, Public Information and Policy Research, 2015 Worldwide Giving Report – Pub. Info. and Pol. Res. 43-47, <http://cdn.exxonmobil.com/~media/global/files/worldwide-giving/2015-worldwide-contributions-public-policy.pdf>.

⁷² Conservative Transparency, U.S. Chamber of Commerce, http://conservativetransparency.org/org/us-chamber-of-commerce/?og_tot=42&order_by=contribution+DESC&adv=Freedom+Partners&min=&max=&yr1=&yr2=&submit=#grants (last accessed Sept. 19, 2016).

⁷³ Senators Elizabeth Warren, Sheldon Whitehouse, *et al.*, *The U.S. Chamber of Commerce: Out of Step with the American People and Its Members*, available at https://www.iaslc.org/sites/default/files/wysiwyg-assets/us_chamber_of_commerce.pdf.

⁷⁴ *Id.*

⁷⁵ Cent. for Responsible Pol., U.S. Chamber of Commerce, Graph: Annual Lobbying by U.S. Chamber of Commerce, available at <https://www.opensecrets.org/orgs/summary.php?id=D000019798> (select "Lobbying" tab) (last visited Sept. 22, 2016).

⁷⁶ U.S. Chamber of Com., Issue Brief: Five Positions on Energy and the Environment (Aug. 4, 2010), available at <https://www.uschamber.com/issue-brief/five-positions-energy-and-environment>.

countermovement that contributes to the polarization of climate change.⁷⁷ Plainly, there are broad gaps between the Chamber’s stated policies, its Board members’ positions, and its systematic lobbying efforts.

National Association of Manufacturers: The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States. It has been described as a “trade association and corporate front group that has a long history of hiring lobbyists to promote anti-environmental, pro-industry legislation.”⁷⁸ Its intractable position on climate change has alienated its own members. Duke Energy, one of the largest utilities in the country, announced in 2009 that it was terminating its membership with NAM due to the association’s reluctance to address global warming. In a 2009 interview, Duke Chief Executive Officer Jim Rogers said, “We are not renewing our membership in the NAM because in tough times, we want to invest in associations that are pulling in the same direction we are.”⁷⁹ Mr. Rogers added that NAM, the U.S. Chamber of Commerce, and Republicans “ought to roll up their sleeves and get to work on a climate bill, but quite frankly, I don’t see them changing.”⁸⁰

iii. **Front Groups**

Energy and Environment Legal Institute (E&E Legal): E&E Legal is participating in this litigation as a petitioner. The U.S. Court of Appeals for the D.C. Circuit, without explanation, denied an E&E Legal motion to file a supplemental brief in the case opposing the Clean Power Plan.⁸¹ E&E Legal, formerly the American Tradition Institute (ATI), advances what it calls

⁷⁷ See Brulle, *supra* note 16; Farrell, *supra* note 16.

⁷⁸ See Polluterwatch, National Association of Manufacturers, <http://polluterwatch.com/anti-environmental-archive/national-association-of-manufacturers>.

⁷⁹ Amanda Terkel, *Duke Energy Quits The Right-Wing National Association of Manufacturers Over Differences On Climate Policy*, ThinkProgress, May 8, 2009, available at <https://thinkprogress.org/duke-energy-quits-the-right-wing-national-association-of-manufacturers-over-differences-on-climate-c905a0d01a44#.3gf89sfuc>.

⁸⁰ *Id.*

⁸¹ *Energy and Environmental Legal Institute v. United States Environmental Protection Agency*, No. 1064966 (U.S. App. D.C. Mar. 21, 2016) (order denying motion to file supplemental brief).

“free-market environmentalism” using strategic litigation. E&E Legal is an “associate” member of the State Policy Network, which the Center for Media and Democracy’s SourceWatch describes as an “\$83 million right-wing empire” that receives money from a Koch family foundation and the identity-scrubbing Donors Trust and Donors Capital.⁸²

E&E Legal (and ATI before) has made a habit of harassing climate scientists working at public and government-funded institutions by filing state and federal Freedom of Information Act (“FOIA”) requests against scientists at NASA, the University of Virginia, Texas A&M, Texas Tech, the University of Alabama-Huntsville, the University of Delaware, Virginia Commonwealth University, and the University of Arizona, to date. These FOIA requests generally ask for access to the scientists’ e-mails, such as their request of e-mails sent by Dr. Michael Mann in 2011⁸³ or their attempt “to find something embarrassing” in Texas A&M climate scientist Andrew Dessler’s e-mails in 2012.⁸⁴ E&E Legal has requested records of Virginia Commonwealth University population geneticist Rodney Dyer’s use of published climate data and fossil records to reconstruct extinct habitats,⁸⁵ and has made open records requests of two University of Arizona climate scientists, Drs. Malcolm Hughes and Jonathan Overpeck, claiming it needs their documents for a “transparency project.” It claims the two researchers are part of the “scientific-technological elite” that has “successfully corrupted public policy” with respect to “climate alarmism.”⁸⁶ E&E Legal Senior Fellow Chris Horner, who is

⁸² SourceWatch, State Policy Network, http://www.sourcewatch.org/index.php/State_Policy_Network (last accessed Sept. 1, 2016).

⁸³ See Union of Concerned Scientists, Timeline: Legal Harassment of Climate Scientist Michael Mann, <http://www.ucsusa.org/our-work/center-science-and-democracy/protecting-scientists-harassment/va-ag-timeline.html#.V8jeviqrKUI> (last accessed Sept. 1, 2016).

⁸⁴ See Stephanie Paige Ogburn, *Climate Scientists, Facing Skeptics’ Demands for Personal Emails, Learn How to Cope*, ClimateWire (Jan. 21, 2014), available at <http://www.eenews.net/stories/1059993161>.

⁸⁵ See Michael Halpern, *Freedom to Bully*, Union of Concerned Scientists (Feb. 2015), available at <http://www.ucsusa.org/sites/default/files/attach/2015/09/freedom-to-bully-ucs-2015-final.pdf>.

⁸⁶ Press Release, Climate Science Legal Defense Fund, CSLDF Files Legal Brief Supporting Protection of Climate Scientists Against Harassment (Oct. 27, 2015), <http://climatesciencedefensefund.org/2015/10/27/csldf-files-legal-brief-supporting-protection-of-climate-scientists/>.

responsible for many of these requests, has also written two books on why he believes global warming is a hoax. He is also a Senior Fellow at the Competitive Enterprise Institute.⁸⁷

E&E Legal receives significant funding from the fossil fuel industry. For example, Arch Coal made a \$10,000 donation to E&E Legal in 2014, according to documents made public in Arch Coal's bankruptcy case.⁸⁸ This is not the only instance fossil fuel support was eventually revealed through bankruptcy documents. In 2015, the *Wall Street Journal* reported coal company Alpha Natural Resources paid lawyer and noted climate change skeptic Chris Horner \$18,600 before it filed for chapter 11 that summer.⁸⁹ The reality is Horner often casts climate scientists as villains, claiming once on Fox News that White House science advisor Dr. John Holdren is "if not borderline communist – communist."⁹⁰ Most recently, Peabody Coal's 2016 bankruptcy documents reveal they have also contributed to E&E Legal.⁹¹

Competitive Enterprise Institute (CEI): In December, CEI joined 11 co-petitioners, including the Buckeye Institute for Public Policy Solutions in Ohio, the Independence Institute in Colorado, and the Rio Grande Foundation in New Mexico, in suing the EPA over its Clean Power Plan. This Washington, DC-based group has long been outspoken in disputing scientific evidence of human-caused climate change. Between 1985 and 2014, CEI received over \$6 million from Koch-connected, identity-scrubbing Donors Trust and Donors Capital,⁹² in addition

⁸⁷ See Rosalind S. Helderman, *U-Va. Receives New FOIA for Global Warming Documents*, Wash. Post, Jan. 6, 2011, available at http://voices.washingtonpost.com/virginiapolitics/2011/01/university_of_virginia_receive.html.

⁸⁸ Patrick Fitzgerald, *Arch Coal Made \$10,000 Gift to Energy & Environment Legal*, Wall St. J. Bankr. Beat Blog, Mar. 11, 2016, <http://blogs.wsj.com/bankruptcy/2016/03/11/arch-coal-made-10000-gift-to-energy-environment-legal/>.

⁸⁹ Patrick Fitzgerald, *Alpha Natural Discloses Payments to Climate Change Skeptic Chris Horner*, Wall St. J. Bankr. Beat Blog, Oct. 15, 2015, <http://blogs.wsj.com/bankruptcy/2015/10/15/alpha-natural-discloses-payments-to-climate-change-skeptic-chris-horner/>.

⁹⁰ Lee Fang, *Attorney Hounding Climate Scientists is Covertly Funded by Coal Industry*, The Intercept, Aug. 25, 2015, <https://theintercept.com/2015/08/25/chris-horner-coal/>.

⁹¹ See Nick Surgey, *Peabody Coal Bankruptcy Reveals Climate Denial Network Funding*, PRWatch, June 13, 2016, <http://www.prwatch.org/news/2016/06/13114/peabody-coal-bankruptcy-reveals-extensive-funding-climate-denial-network>.

⁹² DeSmog, Competitive Enterprise Institute, <http://www.desmogblog.com/competitive-enterprise-institute> (last accessed Sept. 15, 2016).

to \$1 million directly from Koch family foundations and David Koch, and over \$1.6 million from ExxonMobil. CEI also played a prominent role in misleading the public about the science linking smoking to lung cancer and heart disease. Legal documents have shown that CEI received more than \$800,000 from Philip Morris to launch coordinated media campaigns to attack the Food and Drug Administration's efforts to regulate tobacco.⁹³

B. Amici

i. Pacific Legal Foundation

The Pacific Legal Foundation (PLF) was founded in 1973 with significant assistance from Richard Mellon Scaife, the principal heir to fortunes built by fuel and industry giants including Gulf Oil, US Steel, General Motors and the Koppers chemical company. PLF has received over \$200,000 from ExxonMobil since 1998.⁹⁴

In February, PLF, along with the Texas Public Policy Foundation (TPPF), filed an *Amicus Curiae* brief in opposition to the EPA's Clean Power Plan.⁹⁵ PLF and TPPF jointly represent Morning Star Packing Company, Merit Oil Company, The Logger's Association of Northern California, and Norman Brown. The brief supports Petitioners, comprised of 27 states, industry groups, and national and rural utilities, in opposition to EPA's attempt to regulate carbon pollution.

As an example of the misinformation disseminated by this group, Ted Hadzi-Antich, senior staff attorney with PLF, is quoted in the joint press release for the amicus brief: "Carbon Dioxide is a ubiquitous natural substance essential to life on Earth. It is everywhere and in

⁹³ 162 CONG. REC. S4953-S4993 (daily ed. July 12, 2016) (statement of Sen. Shaheen).

⁹⁴ ExxonSecrets.org, Factsheet: Pacific Legal Foundation, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=60> (last accessed Sept. 19, 2016); ExxonMobil, 2015 Worldwide Giving Report, *supra* note 71.

⁹⁵ Br. of Amici Pac. Legal Found., Tex. Pub. Pol'y Found., Morning Star Packing Co., Merit Oil Co., the Loggers Assoc. of N. Cal, and Norman "Skip" Brown in Sup. of Pet'rs, No.1600421.

everything. By regulating carbon dioxide from electric power plants, EPA is positioning itself to regulate everything, everywhere. Neither the Clean Air Act nor the Constitution permits that.”⁹⁶

ii. **Texas Public Policy Foundation**

The Texas Public Policy Foundation (TPPF) claims to “promote and defend liberty, personal responsibility, and free enterprise” through “academically sound research.” TPPF has received annual funding from the Charles G. Koch Charitable Foundation, Donors Trust and Donors Capital Fund.⁹⁷ TPPF is also a member of the State Policy Network and is listed as a creditor in Peabody Energy’s 2016 bankruptcy filings.⁹⁸

The TPPF has a history of disseminating climate science misinformation. In November 2015, Bud Brigham, Senior Advisor to the Armstrong Center for Energy and the Environment at TPPF, wrote:

CO2 is not pollution, it’s necessary for survival. It greens the earth ... the most recent warming spell, which I’m personally very grateful for, began well before the Industrial Revolution. So it obviously was not initiated by the burning of fossil fuels. Based on the last 18 years of satellite readings, Earth’s temperatures have flattened, despite the fact that CO2 levels continued to rise.⁹⁹

In a June 2016 article in *The Hill*, the Director of TPPF’s Armstrong Center for Energy and the Environment wrote:

Carbon dioxide is also a key ingredient in our food supply How do our national leaders square their public vilification of carbon dioxide with fundamental scientific and economic realities? Such political propaganda has now educated at least two generations of Americans who think carbon is a killer instead of the stuff of life on the earth.¹⁰⁰

⁹⁶ Press Release, Texas Public Policy Foundation, Texas Public Policy Foundation & Pacific Legal Foundation File Amicus Brief on Clean Power Plan (Feb. 23, 2016), http://www.texaspolicy.com/press_release/detail/texas-public-policy-foundation-pacific-legal-foundation-file-amicus-brief-on-clean-power-plan.

⁹⁷ See Conservative Transparency, Texas Public Policy Foundation – Transactions, <http://conservativetransparency.org/recipient/texas-public-policy-foundation/> (last accessed Sept. 2, 2016).

⁹⁸ Surgey, *supra* note 91.

⁹⁹ Posting of Bud Brigham to the Texas Public Policy Foundation Blog, Clean Power Plan Allows Government to Control Our Lives (Nov. 30, 2015), <http://www.texaspolicy.com/blog/detail/clean-power-plan-allows-government-to-control-our-lives>.

¹⁰⁰ Kathleen Hartnett White, *Restrain the Imperial EPA*, *The Hill*, June 17, 2016, <http://thehill.com/blogs/pundits-blog/energy-environment/283931-restrain-the-imperial-epa>.

iii. **Scientists**

In February 2013, 13 scientists filed an *amicus curiae* brief in opposition to the EPA's Clean Power Plan.¹⁰¹ Most of these 13 scientists have gone on record denying the science of climate change, and many have also received funding from the fossil fuel industry. For example:

Joseph S. D'Aleo: D'Aleo is a former Weather Channel meteorologist and former college professor of meteorology at Lyndon State College. D'Aleo was one of 15 climate deniers whose rebuttal to the White House's National Climate Assessment report stated: "As this rebuttal makes clear, the [National Climate Assessment] provides no scientific basis whatsoever for regulating CO2 emissions." It has been shown that D'Aleo receives funding from the Heartland Institute, an organization at the forefront of climate change skepticism in the U.S. notorious for comparing climate scientists to the Unabomber.¹⁰²

Dr. Craig D. Idso: Dr. Idso is the founder, former President, and current Chairman of the Center for the Study of Carbon Dioxide and Global Change. The Center is supported by funds from ExxonMobil and the oil, chemical, and industry fortunes of the Scaife family foundations.¹⁰³ Dr. Idso has also served as the Director of Environmental Science at the Peabody Energy Corporation.¹⁰⁴ Along with renowned climate denier Dr. Fred Singer, Dr. Idso is listed as one of the lead authors of the Heartland Institute's Nongovernmental Panel on Climate Change, a compilation of contrarian science aimed at bashing the UN International Panel on

¹⁰¹ Br. of Amici Curiae Scientists in Supp. of Pet'rs. Supporting Reversal, No. 1600166.

¹⁰² See Dean Kuipers, *Unabomber Billboard Continues to Hurt Heartland Institute*, L.A. Times, May 9, 2012, <http://articles.latimes.com/2012/may/09/local/la-me-gs-unabomber-billboard-continues-to-hurt-heartland-institute-20120509>.

¹⁰³ See Exxonsecrets.org, Factsheet: Center for the Study of Carbon Dioxide and Global Change, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=24> (last accessed Sept. 21, 2016); DeSmog, Scaife Family Foundations, Scaife Foundation Funding Highlights, <http://www.desmogblog.com/scaife-family-foundations> (last accessed Sept. 21, 2016).

¹⁰⁴ Cato Inst., People: Craig D. Idso, <http://www.cato.org/people/craig-d-idso> (last accessed Sept. 22, 2016).

Climate Change. In 2012, the Heartland Institute paid Dr. Idso over \$11,000 a month for his work disputing the general scientific consensus on human-caused climate change.¹⁰⁵

Dr. Anthony R. Lupo: Dr. Lupo is Chair of Atmospheric Sciences at the University of Missouri-Columbia's Soil, Environmental, and Atmospheric Sciences Department.¹⁰⁶ In 2012 it was reported Dr. Lupo received a monthly stipend from the Heartland Institute, which is known for its denial of human-caused climate change.¹⁰⁷ Dr. Lupo is also known to challenge theories that humans are causing global warming: "There's no doubt the climate is changing; that's a given. But the question is: What's causing it? ... There may be a role for man in there somewhere, but how much, I don't know."¹⁰⁸

Dr. S. Fred Singer: Dr. Singer is the founder of the Science and Environmental Policy Project at the Heartland Institute, which focuses on global warming skepticism, and the Nongovernmental Panel on Climate Change, a compilation of contrarian science that bashes the UN International Panel on Climate Change.¹⁰⁹ According to the Center for Media and Democracy's SourceWatch, Dr. Singer has undertaken consulting work to a number of oil companies, including ExxonMobil, Texaco, Shell, Unocal, and the American Gas Association.¹¹⁰ In the documentary film *Merchants of Doubt*, Dr. Singer appears to dismiss the dangers of

¹⁰⁵ The Heartland Institute, 2012 Proposed Budget, Personnel Budget (January 15, 2012), available at <http://www.desmogblog.com/sites/beta.desmogblog.com/files/%281-15-2012%29%202012%20Heartland%20Budget%20%282%29.pdf>.

¹⁰⁶ U. of Mo-Columbia, Tony Lupo, <http://facultycouncil.missouri.edu/members/lupo.html> (last accessed Sept. 14, 2016).

¹⁰⁷ See Janese Silvey, *Professor Details Role as Climate Consultant*, Columbia Daily Tribune, Mar. 5, 2012, http://www.columbiatribune.com/news/education/professor-details-role-as-climate-consultant/article_59653f24-1dbf-5fcb-ac88-4eedfd7a60a0.html.

¹⁰⁸ *Id.*

¹⁰⁹ See Heartland Inst., About Us: Who We Are, S. Fred Singer, <https://www.heartland.org/about-us/who-we-are/s-fred-singer> (last accessed Sept. 14, 2016).

¹¹⁰ See SourceWatch, S. Fred Singer, http://www.sourcewatch.org/index.php/S._Fred_Singer (last accessed Sept. 14, 2016).

secondhand smoke and denies human activity is the main cause of climate change, saying, “It’s all bunk. It’s all bunk.”¹¹¹

iv. **National Black Chamber of Commerce (NBCC)**

The National Black Chamber of Commerce (NBCC) joined the state and local business association’s amicus brief in opposition to the EPA’s Clean Power Plan.¹¹² The organization’s president, Harry C. Alford, wrote about the relationship between the NBCC and fossil fuel funding in 2015:

Recently, a writer from USA Today wanted to know if the National Black Chamber of Commerce receives money from fossil fuel companies (coal, oil, natural gas, petrochemicals, etc.). That is a ‘no brainer’. Of course we do and it is only natural ... fossil fuels have been our economic friend.¹¹³

According to data compiled by ExxonSecrets, the NBCC has received over \$1 million from ExxonMobil since 1998,¹¹⁴ with the corporation’s two recent shareholder reports indicating \$75,000 in 2014¹¹⁵ and 2015.¹¹⁶ Based on available information compiled by the Conservative Transparency Project, the NBCC also received \$75,000 from the American Petroleum Institute between 2000 and 2013.¹¹⁷ The Center for Media and Democracy also reports the NBCC was listed as a creditor in Peabody Energy’s 2016 bankruptcy filings.¹¹⁸

¹¹¹ Suzanne Goldenburg, *Climate Sceptics Attempt to Block Merchants of Doubt Film*, The Guardian, Mar. 11, 2015, <https://www.theguardian.com/environment/2015/mar/11/climate-sceptics-attempt-to-block-merchants-of-doubt-film>.

¹¹² Br, if 166 St. and Local Bus. Assoc. as Amici Curaie in Supp. Of Pet’rs, No. 1600477

¹¹³ See Harry Alford, Fossil Fuels and African Americans – It’s Family!, National Black Chamber of Com. (archived July 31, 2015), available at <https://web.archive.org/web/20150731231104/http://www.nationalbcc.org/news/beyond-the-rhetoric/2428-fossil-fuels-and-african-americans-it-s-family>.

¹¹⁴ ExxonSecrets.org, Factsheet: National Black Chamber of Commerce, <http://www.exxonsecrets.org/html/orgfactsheet.php?id=113> (last accessed Sept. 19, 2016).

¹¹⁵ ExxonMobil, 2014 Worldwide Contributions and Community Investments, <http://cdn.exxonmobil.com/~media/global/files/worldwide-giving/2014-worldwide-contributions-public-policy.pdf>.

¹¹⁶ ExxonMobil, 2015 Worldwide Giving Report, *supra* note 71.

¹¹⁷ DeSmog, National Black Chamber of Commerce, <http://www.desmogblog.com/national-black-chamber-commerce#s14> (last accessed Sept. 19, 2016).

¹¹⁸ Surgey, *supra* note 91.

v. **60Plus Association**

In February, 60Plus Association, along with Federalism in Action, the Hispanic Leadership Fund, the Independent Women’s Forum, the National Taxpayers Union, and Taxpayers Protection Alliance, filed an *Amicus Curiae* brief in opposition to the EPA’s Clean Power Plan. Based on available information compiled by the Conservative Transparency Project, 60Plus Association received over \$44 million from organizations between 2005 and 2014, including nearly \$16 million from Freedom Partners, an identity-scrubbing funnel for the Koch brothers and their allies.¹¹⁹ The Center for Media and Democracy also reports 60Plus Association received \$50,000 in donations from the American Petroleum Institute between 2010 and 2012¹²⁰ as well as an undisclosed amount from Peabody coal based on bankruptcy documents released in 2016.¹²¹

CONCLUSION

Given the breadth of the financial relationship detailed above, we respectfully hope that this report will provide helpful context in which to consider the arguments of political leaders and groups opposed to the Clean Power Plan.

¹¹⁹ DeSmog, 60Plus Association, <http://www.desmogblog.com/60-plus-association#funding> (last accessed Sept. 19, 2016).

¹²⁰ Cent. for Media and Democracy, 60Plus Association, (last accessed Sept. 19, 2016), http://www.sourcewatch.org/index.php/60_Plus_Association#cite_note-30.

¹²¹ Surgey, *supra* note 91.