

In the Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC.; ET AL.,

Petitioners,

v.

COUNTY OF COMMISSIONERS OF BOULDER COUNTY;
ET AL.,

Respondents.

On Writ of Certiorari
to the Supreme Court of Colorado

**BRIEF OF AMICI CURIAE DR. ROBERT BRULLE, DR.
BENJAMIN FRANTA, DR. NAOMI ORESKES, DR.
STEPHAN LEWANDOWSKY, DR. J. TIMMONS ROBERTS,
DR. GEOFFREY SUPRAN, AND THE UNION OF
CONCERNED SCIENTISTS IN SUPPORT OF
RESPONDENTS**

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**STATEMENT OF IDENTITY AND INTEREST
OF *AMICI CURIAE*¹**

Individual *Amici* are scholars and scientists with strong interests, education, and experience in the science of climate change, with particular interest in public information and communication about climate change and how the public and public officials learn about and understand climate change. *Amicus* The Union of Concerned Scientists is a national nonprofit organization that has worked on global warming solutions for over thirty years. The organization's scientists and analysts have developed expertise on a wide range of climate-related issues, including misinformation campaigns conducted by the fossil fuel industry.

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¹ No party's counsel authored the brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person other than amici or their counsel contributed money that was intended to fund preparing or submitting the brief.

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The Union of Concerned Scientists is a national nonprofit organization that uses rigorous, independent science to solve our planet's most pressing problems. The organization combines technical analysis and advocacy to create solutions for a healthy, safe, and sustainable future.

SUMMARY OF THE ARGUMENT

Amici submit this brief because the conduct at the core of the Respondents' complaint is the Petitioners' alleged concealment and denial of the hazards they knew would result from the normal use of their fossil fuel products. Respondents allege not only that Petitioners caused or contributed to demonstrable current or impending localized harms including flooding, wildfire risks, drought impacts and damage to public infrastructure, but that Petitioners knowingly contributed to these harms and actively misrepresented or concealed the risks of their products. This brief offers a fact-intensive historical account of what is known about these claims of Petitioners' alleged fraud and deception and how that body of evidence supports the underlying claims.

The documentary record regarding Petitioners' knowledge of climate change and climate-related harms spans more than a half century. As the documents indicate, Petitioners acquired extensive scientific knowledge regarding the causes and

consequences of anthropogenic climate change, confirmed that knowledge through their own sophisticated research programs, and recognized that continued fossil fuel combustion posed potentially catastrophic risks. The documentary record also demonstrates that Petitioners nevertheless adopted public communications that grossly exaggerated the uncertainty of climate science, downplayed the severe harms caused by fossil fuels, financed third parties to reinforce those messages, portrayed themselves as leaders in addressing climate change, and promoted emerging technologies in ways inconsistent with Petitioners' own internal assessments—all while expanding fossil fuel production. At the same time, Petitioners relied and continue to rely upon climate science to protect their own infrastructure and advance their commercial interests.

Importantly, Respondents are not asking a Colorado court to set national energy policy; rather, they seek only damages for alleged localized injuries suffered within Colorado. Respondents claim that Petitioners misrepresented the risk of climate-related harms and deliberately sought to discredit scientific information related to climate change, contributing to and exacerbating the Respondents' injuries. These claims, well supported by the evidence, are an important part of this case and have yet to be fully adjudicated in Colorado. State courts are well equipped to evaluate such evidence and determine the merit of such allegations.

This Court need not decide whether Respondents will ultimately prevail. Instead, if the petition is not dismissed, it should affirm that Colorado courts have

the authority to hear Colorado-law claims concerning alleged injuries in Colorado. By doing so, the Court would uphold state judicial authority, respect federalism, and ensure that important questions of accountability are resolved through the normal course of litigation.

ARGUMENT

This case arises from state-law claims brought by the City and County of Boulder, Colorado, seeking to recover for injuries allegedly caused by Petitioners' longstanding production, promotion, and marketing of fossil fuel products. Respondents allege that they already have incurred and will continue to incur substantial costs responding to climate-related harms, including damage to public infrastructure, natural resources, and other municipal interests, and that Petitioners' conduct caused or substantially contributed to those injuries.

At this stage, the merits of those claims have not yet been adjudicated. But the documentary record, developed by researchers, journalists, and others over decades, supports Respondents' allegations that Petitioners' conduct was and is dishonest, harmful, and intentional. Internal industry documents show that Petitioners possessed extensive scientific knowledge concerning the relationship between fossil fuel combustion and climate change while simultaneously undertaking concerted efforts to deceive the public about that scientific knowledge. Those same records show that, even as Petitioners publicly questioned the scientific consensus, they privately incorporated climate projections into their

own business planning and infrastructure decisions. Those records further show that Petitioners' deceptive conduct regarding their own efforts to address climate change continues to this day. Taken together, this evidence supports Respondents' allegations that Petitioners knowingly and intentionally engaged in deceptive conduct regarding the risks associated with their products.

I. Petitioners engaged in a decades-long campaign to mislead the public about anthropogenic climate change.

Internal corporate documents demonstrate that, as the scientific evidence linking fossil fuel combustion to climate change became increasingly clear, Petitioners and their industry partners adopted communications strategies designed not to advance scientific understanding but to manufacture uncertainty and block or delay public action.

An internal Exxon memorandum dated August 3, 1988, outlined the company's communications strategy on climate change, less than two months after landmark Congressional testimony by Dr. James Hansen, director of NASA's Goddard Institute for Space Studies, had explained to Congress and the public the high level of scientific certainty about the threat posed by atmospheric carbon dioxide. *Greenhouse Effect and Global Climate Change: Hearing Before the Committee on Energy and Natural Resources, United States Senate, 100th Cong. 39-41 (1988) (statement of James E. Hansen)*. Rather than acknowledging the emerging scientific consensus, Exxon declared that its public position should

“emphasize the uncertainty in scientific conclusions regarding the potential enhanced greenhouse effect.” Memorandum from Exxon spokesperson Joseph M. Carlson to DGL re The Greenhouse Effect, CLIMATEFILES (Aug. 3, 1988), at 7 (hereinafter “Carlson Memo”).² The memorandum reflects a deliberate effort to focus public attention on perceived uncertainty despite mounting scientific evidence.

Over the following decade, Petitioners’ efforts became increasingly coordinated. A 1998 draft *Global Science Communications Action Plan*, prepared by the Global Climate Science Communications Team of the American Petroleum Institute, the oil and gas industry’s leading trade association, expressly sought to shape public perceptions of climate science. The communications team, which included representatives from Exxon, asserted that “[v]ictory will be achieved when [a]verage citizens ‘understand’ (recognize) uncertainties in climate science; [and] recognition of uncertainties becomes part of the ‘conventional wisdom.’” American Petroleum Institute, *Global Climate Science Communications: Action Plan*, CLIMATEFILES (April 3, 1998), at 3.³

To accomplish that objective, the plan proposed identifying, recruiting, and promoting ostensibly independent scientists whose work would emphasize uncertainty in climate science, despite the existence of a broad scientific consensus that anthropogenic

² <http://www.climatefiles.com/exxonmobil/566/>

³ <http://www.climatefiles.com/trade-group/american-petroleum-institute/1998-global-climate-science-communications-team-action-plan/>

greenhouse gas emissions were driving global warming. *Id.* at 4. The strategy was not merely to engage in scientific debate but to promote public skepticism regarding well-established scientific conclusions. The industry's communications strategy therefore served a commercial objective: preserving demand for fossil fuel products by delaying public understanding and acceptance of climate science.

Viewed together, these and numerous additional documents that have come to light to date via litigation, investigative reporting, or congressional investigations and academic studies demonstrate Petitioners' sustained campaign to amplify or mispresent uncertainty, shape public opinion, and ensure a sustained level of fossil fuel production and consumption.

II. Decades before undertaking communications campaigns to sow doubt, Petitioners possessed detailed knowledge of the climate risks associated with their products.

The communications campaign was deceptive because it contradicted Petitioners' own scientific knowledge. Long before publicly emphasizing uncertainty, Petitioners had accumulated extensive evidence—both through their own research and through their participation in the American Petroleum Institute and other industry organizations—that fossil fuel combustion would cause significant and potentially catastrophic changes to the Earth's climate.

The petroleum industry received early warnings at least as far back as 1959, when physicist Edward Teller addressed industry leaders regarding the consequences of increasing atmospheric carbon dioxide. Teller warned that continued reliance on fossil fuels would melt polar ice, inundate coastal cities, and threaten populations around the world, emphasizing that the problem demanded the development of alternative energy sources. Edward Teller, *Energy Patterns of the Future*, 38 *Energy and Man: A Symposium* 53, 58 (1960).

By 1965, those warnings had become even more explicit. Frank Ikard, then president of the American Petroleum Institute, informed the organization's member companies—including Exxon and Suncor's predecessor Sun Oil—that then-President Lyndon Johnson's Science Advisory Committee had concluded continued fossil fuel combustion could produce significant climatic changes by the end of the 20th century. Ikard warned industry leaders the report would generate significant public concern, noting that “there is still time to save the world's peoples from the catastrophic consequence of pollution, but time is running out.” Frank Ikard, *American Petroleum Institute Proceedings 1965: Meeting the Challenges of 1966*, CLIMATEFILES (1965), at 13.⁴

Industry-sponsored scientific research confirmed those mounting concerns. In 1968, the Stanford Research Institute, working under commission from the American Petroleum Institute, acknowledged

⁴ <http://www.climatefiles.com/trade-group/american-petroleum-institute/1965-api-president-meeting-the-challenges-of-1966/>

that rising atmospheric carbon dioxide concentrations would likely increase global temperatures, melt polar ice, raise sea levels, warm the oceans, and produce serious environmental damage on a global scale. The report further concluded that fossil fuel combustion provided the most plausible explanation for the observed increase in atmospheric carbon dioxide. E. Robinson and R.C. Robbins, *Sources, Abundance, and Fate of Gaseous Atmospheric Pollutants*, STANFORD RESEARCH INSTITUTE 3 (1968).⁵

A supplemental Stanford Research Institute report commissioned by the American Petroleum Institute in 1969 reinforced those findings. The report concluded that atmospheric carbon dioxide concentrations were steadily increasing, that approximately ninety percent of that increase resulted from fossil fuel combustion, and that continued fossil fuel use would further accelerate the accumulation of atmospheric carbon dioxide. *Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis*, CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW (2017).⁶ Using then-current fuel consumption patterns, the report projected atmospheric carbon dioxide concentrations of approximately 370 parts per million by the year 2000—a projection that proved remarkably accurate. *Forcings in GISS Climate Model (Fig. A: CO₂ forcing tabular data: Global Mean CO₂ Mixing Ratios (ppm): Observations)*, NASA GODDARD INSTITUTE FOR SPACE STUDIES (last modified

⁵ <https://www.smokeandfumes.org/documents/document16>

⁶ <https://www.ciel.org/wpcontent/uploads/2017/11/Smoke-Fumes-FINAL.pdf>

Feb. 6, 2012).⁷ These findings were circulated to the American Petroleum Institute's member companies, including Petitioners. *Fumes: 1968: Robinson Report, Reprise*, SMOKE & FUMES, 6 (2017).⁸

III. Petitioners understood that continued fossil fuel combustion posed potentially catastrophic risks and required prompt action.

Petitioners' internal research went well beyond recognizing that fossil fuel combustion contributed to climate change. By the late 1970s and early 1980s, ExxonMobil's own scientists had concluded that continued greenhouse gas emissions would produce profound and potentially irreversible consequences for human societies and natural systems, and that decisions regarding fossil fuels could not be postponed much longer.⁹

In 1977 and 1978, senior Exxon scientist James F. Black briefed Exxon management that atmospheric carbon dioxide concentrations were increasing because of fossil fuel combustion and that the resulting greenhouse effect would warm the Earth's climate. Reflecting the scientific consensus emerging at the time, Black warned management that

⁷ <https://data.giss.nasa.gov/modelforce/ghgases/Fig1A.ext.txt>

⁸ <https://www.smokeandfumes.org/fumes/moments/6>

⁹ The following discussion emphasizes the conduct of one of the Petitioners—ExxonMobil Corporation—because more detailed information has come to light so far about that company's actions through investigative reporting, congressional investigations, academic studies, and litigation.

humanity had only a limited “time window of five to ten years before the need for hard decisions regarding changes in energy strategies might become critical.” Memorandum from J.F. Black to Vice President of Exxon’s Research and Engineering Co. F.G. Turpin re The Greenhouse Effect Ref. No: 78PR, EXXON RESEARCH AND ENGINEERING CO. (June 6, 1978).¹⁰

Exxon initially responded by expanding its climate research program. The company assembled teams of scientists, mathematicians, and climate modelers to evaluate the consequences of continued fossil fuel use. By the early 1980s, Exxon had developed climate models that confirmed the conclusions reached by independent academic and government researchers: continued fossil fuel combustion would produce substantial global warming by the middle of the twenty-first century, with potentially catastrophic consequences. G. Supran, S. Rahmstorf, and N. Oreskes, *Assessing ExxonMobil’s Global Warming Projections*, 379 *Science* 1, 5 (2023).

Those conclusions were repeatedly reinforced by Petitioners’ own experts and by leading climate scientists. In 1980, Dr. John Laurmann, a Stanford University researcher, advised the American Petroleum Institute’s task force on the subject that there was “strong empirical evidence” linking climate change to fossil fuel combustion and identified an emerging scientific consensus regarding the likelihood of substantial future warming. American

¹⁰ <http://www.climatefiles.com/exxonmobil/1978-exxon-memo-on-greenhouse-effect-for-exxon-corporation-management-committee/>

Petroleum Institute, *AQ-9 Task Force Meeting Minutes*, INSIDE CLIMATE NEWS (1980), (attachment B, 1–2).¹¹ Laurmann further warned that projected temperature increases could have “major economic consequences” and even “globally catastrophic effects.” *Id.* at attachment B, 5.

Exxon’s internal memoranda echoed those assessments. In 1981, company scientist Henry Shaw projected that a doubling of atmospheric carbon dioxide concentrations would substantially increase global temperatures, disrupt agricultural systems through changes in precipitation, and accelerate melting of the polar ice sheets. Memorandum from Exxon Research & Engineering’s Technology Feasibility Center Manager Henry Shaw to President of Exxon Research and Engineering Co. Edward E. David Jr. re CO₂ Position Statement (May 15, 1981).¹² That same year, Roger Cohen, Director of Exxon’s Theoretical and Mathematical Sciences Laboratory, warned that the threat of climate change would become unmistakable by the year 2000 and that the company’s planning scenario that projected fossil fuel consumption levels to the year 2030 could produce consequences “catastrophic” for a substantial portion of the world’s population. Memorandum from Exxon’s R.W. Cohen to Exxon’s W. Glass, 1 (Aug. 18, 1981).¹³

¹¹ <https://insideclimatenews.org/wp-content/uploads/2015/12/AQ-9-Task-Force-Meeting-1980.pdf>

¹² <https://www.climatefiles.com/exxonmobil/co2-research-program/1981-internal-exxon-co2-position-statement/>

¹³ <http://www.climatefiles.com/exxonmobil/1981-exxon-memo-on-possible-emission-consequences-of-fossil-fuel-consumption/>.

By 1982, Exxon had concluded internally that “a clear scientific consensus” had emerged regarding the climatic effects of increased atmospheric carbon dioxide. Memorandum from Exxon Research & Engineering Co. Director Roger Cohen to Exxon Corp. Office of Science and Technology A.M. Natkin re CO₂ Climate Modeling Research findings (Sept. 2, 1982).¹⁴ Cohen reported that Exxon’s climate models were consistent with the published findings of more sophisticated scientific models and acknowledged unanimous agreement within the scientific community that projected carbon dioxide increases would significantly alter the Earth’s climate. *Id.*

That same year, an internal Exxon corporate primer synthesized the company’s climate research for senior management. The primer recognized that avoiding dangerous warming would require major reductions in fossil fuel combustion and acknowledged concerns that, once the effects of climate change became measurable, they might no longer be reversible. Memorandum from Exxon Environmental Affairs Programs Manager M.B. Glaser to Exxon Management Members re CO₂ “Greenhouse” Effect (Nov. 12, 1982).¹⁵ Absent fossil fuel reduction, Exxon projected that, by the year 2090, atmospheric carbon dioxide concentrations would double, with global temperature increases of 1.3 to 3.1 degrees Celsius by the end of the twenty-first century,

¹⁴ <https://www.climatefiles.com/exxonmobil/1982-exxon-memo-summarizing-climate-modeling-and-co2-greenhouse-effect-research/>

¹⁵ <https://www.climatefiles.com/exxonmobil/1982-memo-to-exxon-management-about-co2-greenhouse-effect/>

and identified potentially catastrophic consequences including significant sea-level rise, melting of the Antarctic ice sheet, severe disruptions to agriculture, and widespread ecological damage. *Id.* at 12-14.

Subsequent scholarship has demonstrated the remarkable accuracy of these internal projections. A 2023 peer-reviewed study by Geoffrey Supran, Stefan Rahmstorf, and Naomi Oreskes concluded that Exxon scientists' internal warming projections made between 1977 and 2003 closely tracked observed temperature increases and were comparable in accuracy to contemporary academic and government climate models. *See* Supran, Rahmstorf, and Oreskes (2023), *supra*.

Thus, by the early 1980s, Exxon and others in the industry had progressed well beyond recognizing that fossil fuel combustion contributed to climate change. Their own research confirmed that continued fossil fuel production and use posed severe and potentially irreversible risks, that meaningful reductions in greenhouse gas emissions would ultimately be necessary, and that delaying action would substantially increase those risks. It was against this backdrop of internal scientific certainty that Petitioners chose to publicly emphasize and misrepresent uncertainty regarding the causes, magnitude, and consequences of climate change.

IV. Petitioners' public statements deliberately contradicted their internal scientific conclusions.

Having concluded through decades of internal research that fossil fuel combustion was driving climate change and that the resulting harms could be severe and irreversible, Petitioners did not communicate those conclusions to the public. Instead, they adopted a communications strategy that misrepresented uncertainty regarding both the causes and consequences of climate change, notwithstanding their own scientific findings.

Petitioners, and industry organizations in which Petitioners played prominent leadership roles, advanced public positions inconsistent with their internal scientific assessments. In 1996, the Global Climate Coalition, a fossil fuel industry front group, published a primer asserting that any human contribution to observed warming was likely “very small” and largely superimposed upon a natural climatic trend. Global Climate Coalition, *Global Climate Coalition: An Overview* (Nov. 1996), at 2.¹⁶ That position stood in contrast not only to Petitioners' own internal research but also to the Global Climate Coalition's own internal draft of the primer, which acknowledged that “the scientific basis for the Greenhouse Effect and the potential impacts of human emissions of greenhouse gases such as CO₂ on climate is well established and cannot be denied.” Memorandum from AIAM Vice President of Technical

¹⁶ <http://www.climatefiles.com/denial-groups/global-climate-coalition-collection/1996-global-climate-coalition-overview/>

Director Gregory J. Dana to AIAM Technical Committee re Global Climate Coalition (GCC) – Primer on Climate Change Science – Final Draft (Jan. 18, 1996), at 5.¹⁷ Before publication, however, the Coalition removed that language, along with its acknowledgment that competing theories failed to “offer convincing arguments against the conventional model of greenhouse gas emission-induced climate change.” *Id.* at 20.

In a 1996 speech before the American Petroleum Institute, Exxon Chairman and Chief Executive Officer Lee Raymond asserted that scientific evidence remained “inconclusive” as to whether human activities affected the global climate. Lee R. Raymond, *Climate change: don’t ignore the facts*, EXXON CORP (1996).¹⁸ A contemporaneous API publication similarly maintained that there was no “conclusive—or even strongly suggestive—scientific evidence” linking human activity to observed changes in sea level, precipitation, surface temperatures, or storm intensity. Sally Brain Gentile et al., *Reinventing Energy: Making the Right Choices*, AMERICAN PETROLEUM INSTITUTE (1996), at 79.¹⁹ The following year, Mobil (now part of ExxonMobil) published a full-page advertorial in *The New York Times* suggesting that factors other than anthropogenic greenhouse gas emissions could be

¹⁷ <http://www.climatefiles.com/denial-groups/global-climate-coalition-collection/global-climate-coalition-draft-primer/>

¹⁸ <https://climateintegrity.org/uploads/deception/1996-Exxon-Global-Warming-Whos-Right.pdf>

¹⁹ <http://www.climatefiles.com/trade-group/american-petroleum-institute/1996-reinventing-energy/>

more significant drivers of climate change. Mobil and ExxonMobil, *Science: what we know and don't know*, NEW YORK TIMES (Nov. 6, 1997).²⁰ Between 1972 and 2004, Mobil and ExxonMobil published a series of advertorials in national newspapers that repeatedly questioned the degree of scientific certainty regarding climate change while minimizing the need for immediate action, notwithstanding their own contemporaneous scientific conclusions. Geoffrey Supran and Naomi Oreskes, *Assessing ExxonMobil's climate change communications (1977–2014)*, 2017 Environ. Res. Lett. 12 084019.²¹

These public statements cannot be understood as reflecting uncertainty within Petitioners' own scientific research. By the time they were made, Petitioners had already spent decades studying climate change, had repeatedly confirmed the conclusions of independent scientists, and had internally acknowledged both the human causes of global warming and the potentially catastrophic consequences of continued fossil fuel combustion.

In these and many other communications, the documentary record therefore supports Respondents' allegation that Petitioners did not merely participate in an ongoing scientific debate but rather adopted public communications that intentionally and misleadingly emphasized uncertainty, downplayed the risks associated with fossil fuel combustion, and discouraged regulatory, consumer, and public

²⁰ <https://www.climatefiles.com/bp/mobil-and-exxonmobil-advertorial-op-ads-1972-2006/>

²¹ <https://iopscience.iop.org/article/10.1088/1748-9326/aa815f>

responses that threatened production of and demand for their products.

As noted above, Exxon scientists internally told senior management in 1982 that there was a “clear scientific consensus” regarding anthropogenic climate change and that major reductions in fossil fuel combustion would ultimately be necessary. Fourteen years later, the company’s Chief Executive Officer publicly stated that the scientific evidence remained “inconclusive” as to whether human activity affected global climate. The juxtaposition of these statements speaks for itself.

V. Even while publicly questioning climate science, Petitioners relied upon that same science to protect and advance their own business interests.

Respondents further allege that, while misrepresenting scientific uncertainty in public communications and opposing policies intended to reduce fossil fuel production or greenhouse gas emissions, Petitioners simultaneously relied upon climate science when designing infrastructure, evaluating long-term investments, managing business risks, and identifying future commercial opportunities.

The documentary record shows that ExxonMobil incorporated projected climate impacts into the engineering of major infrastructure projects decades before publicly acknowledging many of those same risks and impacts. In 1994, for example, companies participating in the Europe methane gas pipeline

project—including Exxon—accounted for projected sea-level rise and increased storm activity associated with climate change when designing a pipeline connecting North Sea production facilities to the German coast. Documents submitted to European regulators acknowledged the likelihood of rising sea levels and more frequent severe storms and incorporated those projections into the project's engineering specifications. A. Lieberman and S. Rust, *Big Oil braced for global warming while it fought regulations*, LOS ANGELES TIMES (Dec. 31, 2015).²² ExxonMobil adopted similar design assumptions in connection with the Sable Offshore Energy Project in Nova Scotia. In 1996, Mobil and Imperial Oil (now part of ExxonMobil) engineered exploration and production facilities to account for projected sea-level rise attributable to global warming over the expected life of the project, expressly assuming a 0.5-meter increase in sea level in their design specifications. *Id.*

Petitioners likewise incorporated climate-related risks into long-term business planning. ExxonMobil applied an internal carbon price when evaluating major capital investments, reflecting the company's recognition that climate change and anticipated carbon regulation posed material business risks. *Energy and Carbon—Managing the Risks*, EXXON MOBIL CORPORATION (2014), at 3-8; *Advancing Climate Solutions: Progress Report*, EXXON MOBIL CORPORATION (2023), at 36-38. ExxonMobil has also acknowledged that stronger storms, flooding, sea-level rise, and other physical consequences of climate change must be considered in the design, operation,

²² <https://graphics.latimes.com/oil-operations/>

and resilience of its facilities, even as it continued expanding refining, petrochemical, and other infrastructure in climate-vulnerable regions. 2024 Advancing Climate Solutions Executive Summary, EXXON MOBIL CORPORATION (Jan. 8, 2024), at 59-65.²³

Respondents further allege that Petitioners relied upon climate science not merely to protect existing assets but also to guide long-term business planning and investment strategy. Internal planning documents evaluated how changing climatic conditions, technological developments, and evolving energy markets would affect long-term business strategy, even while public communications continued to exaggerate and misrepresent the uncertainty regarding the severity, timing, or consequences of climate change. Carlson Memo (Aug. 3, 1988); 2024 Advancing Climate Solutions Executive Summary, *supra*, at 8-15.

VI. Petitioners amplified their public messaging by funding ostensibly independent scientists and organizations that disputed established climate science.

Petitioners' public communications were not limited to their own statements. Having adopted a strategy of misrepresenting and exaggerating the uncertainty regarding climate change, Petitioners also financed outside scientists, trade associations,

²³ <https://corporate.exxonmobil.com/-/media/global/files/advancing-climate-solutions/2024/2024-advancing-climate-solutions-report.pdf>

think tanks, and advocacy organizations to disseminate substantially the same messages while appearing to speak independently. Seth Shulman et al., *Smoke, Mirrors and Hot Air: How ExxonMobil Uses Big Tobacco's Tactics to Manufacture Uncertainty on Climate Science*, UNION OF CONCERNED SCIENTISTS (Jan. 2007).²⁴ Respondents allege that this coordinated use of ostensibly independent third parties broadened the reach and perceived credibility of Petitioners' campaign while obscuring the industry's role in promoting those views.

For example, internal documents from the 1990s show that a Mobil climate expert had concluded that theories attributing recent climate change primarily to variations in solar activity were unpersuasive. Supran, Rahmstorf, and Oreskes (2023), *supra*, at 13-14. Nevertheless, Petitioners and other fossil fuel interests secretly funded Dr. Wei-Hock Soon, whose publications advanced precisely that position. Between 2001 and 2012, Dr. Soon reportedly received more than \$1.2 million from fossil fuel interests while presenting his work as independent research conducted at the Harvard-Smithsonian Center for Astrophysics. Shulman et al. (2007), *supra*, at 14, 36. During that period, Soon allegedly relied almost entirely upon fossil fuel industry grants for his salary and research budget, permitted funders to review manuscripts before publication, and failed to disclose those financial relationships in at least eleven scientific publications. K. Mulvey and S. Shulman, *The Climate Deception Dossiers: Internal Fossil Fuel*

²⁴ <https://www.ucs.org/resources/smoke-mirrors-hot-air>

Industry Memos Reveal Decades of Corporate Disinformation, UNION OF CONCERNED SCIENTISTS (July 2015), at 36.²⁵

Petitioners likewise directed substantial financial support to organizations that publicly questioned or rejected the scientific consensus regarding anthropogenic climate change. Between 1998 and 2019, Exxon reportedly provided at least \$37 million to dozens of organizations that challenged established climate science or opposed policies designed to reduce greenhouse gas emissions. Elliott Negin, *ExxonMobil Claims Shift on Climate But Continues to Fund Climate Deniers*, UNION OF CONCERNED SCIENTISTS (Oct. 22, 2020 at 12:00 PM).²⁶ Several such organizations—including the Advancement of Sound Science Center, the Annapolis Center for Science-Based Public Policy, the Committee for a Constructive Tomorrow, the Frontiers of Freedom Institute, and the Institute for Energy Research—received substantial portions of their funding from Exxon Shulman et al. (2007), *supra*, at 32-33. Exxon-funded scientists likewise occupied advisory or leadership roles within many of these organizations. Dr. Soon, for example, served as a scientific advisor or featured

²⁵ <https://www.ucs.org/sites/default/files/attach/2015/07/The-Climate-Deception-Dossiers.pdf>; *See also* Justin Gillis and John Schwartz, *Deeper Ties to Corporate Cash for Doubtful Climate Researcher*, N.Y. TIMES, (Feb. 21, 2015), <https://www.nytimes.com/2015/02/22/us/ties-to-corporate-cash-for-climate-change-researcher-wei-hock-soon.html>.

²⁶ <https://blog.ucs.org/elliott-negin/exxonmobil-claims-shift-on-climate-continues-to-fund-climate-deniers/>

expert for at least five organizations receiving Exxon support. *Id.*

The role of these third-party organizations was later acknowledged by Exxon itself. In 2021, Keith McCoy, then ExxonMobil’s Senior Director of Federal Relations, stated that the company had “aggressively [fought] against some of the science” through the use of third-party “shadow groups.” Lawrence Carter, *Inside Exxon’s playbook: How America’s biggest oil company continues to oppose action on climate change*, UNEARTHED (June 30, 2021).²⁷

Although Exxon publicly announced in 2007 that it would discontinue funding organizations that denied climate science, Respondents allege that the practice continued. Between 2008 and 2019, Exxon reportedly provided more than \$14 million to think tanks and advocacy organizations that disputed established climate science or advanced positions inconsistent with the company’s own public statements concerning climate policy. Negin (2020), *supra*.²⁸

Statements by Martin Hoffert, an Exxon scientist who co-authored several of the company’s peer-

²⁷ <https://unearthed.greenpeace.org/2021/06/30/exxon-climate-change-undercover/>

²⁸ See also House Committee on Oversight and Accountability Democrats and Senate Committee on the Budget, *Denial, Disinformation, and Doublespeak: Big Oil’s Evolving Efforts to Avoid Accountability for Climate Change: Joint Staff Report*, COMMITTEE ON OVERSIGHT AND REFORM (April 2024), https://www.budget.senate.gov/imo/media/doc/fossil_fuel_report_1.pdf.

reviewed studies on the greenhouse effect, illustrate the divergence between Exxon's internal scientific research and its external communications strategy. Hoffert explained in 2018 that while Exxon scientists were publishing research in the scientific literature confirming that carbon dioxide emissions from fossil fuel combustion would alter Earth's climate, company management was simultaneously supporting organizations and individuals promoting the contrary proposition that the greenhouse effect was a "hoax." Amy Westervelt, *Drilled: The Turn* (Episode 2: interview with Martin Hoffert at 11:07), SPOTIFY (Nov. 15, 2018).²⁹ Testifying before Congress in 2019, Hoffert stated that Exxon was publicly advancing positions that "its own scientists knew were wrong" and that those efforts had substantially delayed public understanding of climate change. *Examining the Oil Industry's Efforts to Suppress the Truth About Climate Change Hearing Before the Subcomm. of Civil Rights and Civil Liberties*, 116th Cong. 116-67 (2019) (statement of Martin Hoffert, at 8).

Juxtaposed with their own internal scientific research, Petitioners' public representations minimizing climate risks and alleged funding of ostensibly independent scientists and advocacy organizations form part of the broader pattern of conduct underlying Respondents' claims. Respondents allege that these activities were designed not merely to participate in public debate, but to undermine public understanding of climate science and preserve production of and demand for Petitioners' fossil fuel products, despite Petitioners'

²⁹ <https://open.spotify.com/show/6zrL0QQWBhlVFsCveE2mtE>

own detailed knowledge of the harms caused by fossil fuels.

VII. As public understanding of climate science increased, Petitioners overstated their efforts to address climate risks while simultaneously expanding fossil fuel production.

As the scientific consensus regarding climate change became more widely accepted, Petitioners' public communications evolved. Rather than continuing to dispute the existence of climate change outright, Petitioners acknowledged that climate change posed risks and represented themselves as responsible participants in efforts to address those risks. Respondents allege, however, that these public representations have been empty, deceptive, and inconsistent with Petitioners' contemporaneous business decisions, which continued to prioritize substantial expansion of fossil fuel production.

Suncor's actions provide a clear illustration of this shift. In a 1997 speech entitled *Responsible Growth: Suncor's Perspective on Global Climate Change*, Chief Executive Officer Rick George acknowledged that action on climate change was necessary because "we can't ignore the scientific consensus that the balance of evidence suggests that there is a discernible influence on the world's climate." Rick George, CEO Suncor Energy, *Responsible Growth: Suncor's Perspective on Global Climate Change*, Address at the

Canadian Club, Vancouver (Oct. 20, 1997).³⁰ Yet that same year Suncor announced “Project Millennium,” a \$2.2 billion expansion of its Fort McMurray oil sands operations intended to increase production capacity to approximately 210,000 barrels per day by 2002. Press Release, *Suncor Plans to Invest \$2.2 Billion in Oil Sands Expansion*, SUNCOR ENERGY (July 31, 1997).³¹ Five years later, the company announced additional expansion through its Firebag and Voyageur projects, projecting that those developments would again more than double the company’s production capacity Rick George, CEO Suncor Energy, *Recognize the Energy Difference*, Remarks at the Suncor Annual General Meeting, Alberta (April 26, 2002).³²

ExxonMobil adopted a similar public posture. In a 2002 *New York Times* advertorial, the company represented that it was “taking action to minimize the risks of climate change.” ExxonMobil advertorial, *Managing greenhouse gas emissions*, N.Y. TIMES (Oct. 3, 2002).³³ ExxonMobil’s 2007 Corporate Citizenship Report similarly acknowledged that climate change posed serious risks to society and asserted that businesses had a responsibility to reduce greenhouse gas emissions, stating that ExxonMobil was fulfilling that responsibility “in

³⁰ <https://web.archive.org/web/19980127145246/http://suncor.com/05speeches/05frame12.html>

³¹ <https://web.archive.org/web/19980216011934/http://www.suncor.com/01about/01frameb.html>

³² https://web.archive.org/web/20020606174742/http://www.suncor.com/bins/content_page.asp?cid=4-18-1004

³³ <https://web.archive.org/web/20060312083458/http://www.exxonmobil.com/corporate/files/corporate/031002.pdf>

several substantive ways.” *2007 Corporate Citizenship Report*, EXXONMOBIL CORP. (April 30, 2008), at 15.³⁴

At the same time, ExxonMobil continued to pursue major investments designed to increase fossil fuel production. In 2009, only two years after publishing its Corporate Citizenship Report, ExxonMobil acquired XTO Energy, making it the nation’s largest producer of methane gas and increasing its domestic gas resources by approximately 45 trillion cubic feet. Jad Mouawad and Clifford Krauss, *In Exxon Deal, Signs of the New Gusher*, NEW YORK TIMES (December 14, 2009).³⁵ The company continued that strategy in 2019 by announcing plans to increase its oil and gas production by approximately twenty-five percent by 2025. *ExxonMobil Gambles on Growth*, THE ECONOMIST (Feb. 9, 2019).³⁶

Respondents allege that these parallel developments are significant. Petitioners publicly represented that they were addressing climate risks through responsible corporate action while simultaneously making long-term investments intended to increase the production and sale of fossil fuels. The documentary record supports Respondents’

³⁴ https://grist.org/wp-content/uploads/2009/07/community_ccr_2007.pdf; See also ExxonMobil advertorial, *Managing greenhouse gas emissions*, *supra*.

³⁵ <https://www.nytimes.com/2009/12/15/business/energy-environment/15exxon.html>

³⁶ <https://www.economist.com/briefing/2019/02/09/exxonmobil-gambles-on-growth>.

allegation that Petitioners' statements regarding their efforts to mitigate climate change cannot be evaluated in isolation from their contemporaneous decisions to expand fossil fuel production.

VIII. Petitioners promoted the potential of emerging technologies as near-term climate solutions despite internally recognizing their severe technological and commercial limitations.

As public concern regarding climate change intensified, Petitioners increasingly emphasized technologies such as carbon capture and storage ("CCS") and algae-based biofuels as evidence that continued fossil fuel production could be reconciled with meaningful reductions in greenhouse gas emissions. Respondents allege that these representations overstated the maturity, scalability, and near-term potential of those technologies and were inconsistent with Petitioners' own internal assessments.

Carbon capture illustrates this pattern. For years, ExxonMobil publicly portrayed itself as an industry leader in carbon capture technology. Company advertisements described ExxonMobil as "a leader in carbon capture" and asserted that it had captured more carbon dioxide than any other company in the world. ExxonMobil television advertisement, *Carbon Capture Technology*, iSPOT (Aug. 8, 2016).³⁷ Public-facing materials likewise represented carbon capture

³⁷ <https://www.ispot.tv/ad/ARR0/exxon-mobil-carbon-capture-technology>

as a technology capable of significantly reducing emissions and playing a major role in addressing climate change. ExxonMobil (@exxonmobil), X, *Carbon capture and storage is the emissions-fighting superhero you may have never heard of. What can it do? Let's find out, in terms we can all understand* (Jan. 6, 2022, at 5:31 PM).³⁸

Internal communications, however, paint a different picture. In a 2017 email, ExxonMobil Senior Scientific Advisor Tim Barckholtz opposed the company's characterization of itself as a "leader in carbon capture," explaining that flagship projects such as LaBarge and Gorgon had "nothing to do with the technology" required to capture carbon dioxide emissions from power plants and other major industrial sources. Email from Tim Barckholtz, ExxonMobil Senior Scientific Advisor to Abigail Rodgers, re Tim record time (carbon capture advertising claims) (Aug. 4, 2017), *Commonwealth v. Exxon Mobil Corp.*, No. 1984CV03333 (Mass. Super. Ct. filed Oct. 24, 2019), at MASS-XOM000343938.

A confidential 2018 planning document similarly projected that carbon capture would remain limited in scale for decades, acknowledging that although carbon capture technologies could contribute to future emissions reductions, their deployment on a global scale would be constrained well into the middle of the century. *Scenario Comparison: Shell Sky and Energy*

³⁸ <https://x.com/exxonmobil/status/1479143581432844288>.

Outlook Scenario D, EXXONMOBIL (April 2, 2018), at slide 11.³⁹

Respondents similarly allege that ExxonMobil overstated the near-term promise of algae-based biofuels. Beginning in 2009, the company launched a widely publicized research initiative promoting algae as a potential low-carbon transportation fuel. Through advertisements, online media, and public statements, ExxonMobil repeatedly suggested that algae biofuels were approaching commercial viability and promoted projections that the company would have the technical capability to produce 10,000 barrels of algae-based fuel per day by 2025. T BRAND STUDIO, *Algae May Be Small—But Its Impact Could Be Big Presented by ExxonMobil* (YouTube, Sept. 25, 2018).⁴⁰

At the same time, ExxonMobil's internal documents reflected significant doubts regarding the feasibility of those public projections. Corporate communications acknowledged that commercial deployment would require investments of some \$9.4 billion. Collin Eaton, *Exxon Scientists Had Doubts About Algae Biofuels. The Oil Giant Touted Them Anyway*, THE WALL STREET JOURNAL (Mar. 31, 2026).⁴¹ Internal presentations to company executives reportedly concluded that the most productive algae strains were producing only a small fraction of the output necessary to achieve the company's publicly

³⁹ <https://perma.cc/TRJ8-NS5F>

⁴⁰ <https://www.youtube.com/watch?v=pWcIx1LFSWk>.

⁴¹ <https://www.wsj.com/business/energy-oil/exxon-algae-biofuels-83c6b302>

announced targets and that the technology remained uneconomical even under optimistic assumptions. *Id.* In subsequent testimony in 2025, ExxonMobil scientist Dr. Joseph Weissman described the company’s publicly announced algae biofuels production target as “completely impossible to achieve” and testified that the representation was “misleading” and “irresponsible” in light of the company’s scientific understanding. Dep. of ExxonMobil scientist Dr. Joseph Weissman (Aug. 5, 2025), *Commonwealth v. ExxonMobil Corp.*, No. 1984CV03333 (Mass. Super. Ct. filed Oct. 24, 2019), at 156-157.

Respondents allege that Petitioners selectively promoted those emerging technologies in ways that conveyed the impression that commercially viable solutions were imminent, while internally recognizing that significant technological, economic, and deployment barriers remained. For instance, from 2009 to 2023, ExxonMobil reportedly spent nearly \$175 million to advertise its Algae Biofuels Program, while reportedly investing just \$350 million in the project itself—a tiny fraction of the \$9 billion experts said was necessary to commercially implement such a project. Amy Westervelt, *Big oil firms touted algae as climate solution. Now all have pulled funding*, THE GUARDIAN (Mar. 17, 2023).⁴²

⁴² <https://www.theguardian.com/environment/2023/mar/17/big-oil-algae-biofuel-funding-cut-exxonmobil>; see also L.D. Merner et al., *Decades of Deceit: The Case Against Major Fossil Fuel Companies for Climate Fraud and Damages*, UNION OF CONCERNED SCIENTISTS (May 2025), <https://www.ucs.org/sites/default/files/2025-05/Decades-of-Deceit-report-f.pdf>, at 34.

Those representations, Respondents contend, helped reassure the public that continued expansion of fossil fuel production was compatible with addressing climate change despite Petitioners' own assessments regarding the limited near-term capacity of those technologies to offset projected emissions.

IX. Petitioners employed many of the same deceptive strategies employed used by the tobacco and lead industries, which have been the subject of extensive litigation.

The claims asserted here by Respondents have substantial precedent in American jurisprudence. For decades, state and federal courts have adjudicated actions alleging that manufacturers possessed substantial internal knowledge regarding the dangers of their products while simultaneously conducting coordinated public campaigns to minimize, obscure, or cast doubt upon those dangers. Tobacco litigation and lead-paint litigation provide two prominent examples.⁴³ In those cases, the plaintiffs alleged that manufacturers emphasized scientific uncertainty despite contrary internal knowledge, promoted alternative explanations for observed harms, financed ostensibly independent organizations and experts to disseminate those messages, and portrayed themselves as responsible corporate actors while continuing to market

⁴³ See, e.g., *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1, 26-28, 852-53 (D.D.C. 2006); *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246, 1256-57 (Fla. 2006); *County of Santa Clara v. Atlantic Richfield Co.*, 40 Cal. Rptr. 3d 313, 325-28 (Ct. App. 2006).

hazardous products. The courts did not regard such allegations as presenting novel legal theories beyond the competence of traditional state law. Rather, they applied familiar doctrines of fraud, public nuisance, consumer protection, and related state-law causes of action to determine whether the alleged misconduct had occurred.

The landmark example is *United States v. Philip Morris USA Inc.*, 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd in relevant part*, 566 F.3d 1095 (D.C. Cir. 2009). After a nine-month bench trial, Judge Gladys Kessler found that the major tobacco companies had violated RICO by engaging in a decades-long scheme to deceive the public concerning the health effects of smoking and the addictiveness of nicotine. The court concluded that the defendants had suppressed contrary research, misrepresented scientific evidence, and deliberately manufactured uncertainty to preserve cigarette sales. Judge Kessler found that the companies had “coordinated their public relations, research,” and litigation activities to create doubt regarding scientific conclusions they internally accepted. *Id.* at 854. The decision remains the leading judicial examination of a coordinated corporate campaign to obscure known product risks.

Similarly, in *People v. ConAgra Grocery Products Company*, 227 Cal. Rptr. 3d 499 (Ct. App. 2017), the California Court of Appeal upheld a public nuisance judgment against manufacturers that had affirmatively promoted lead paint for residential use despite evidence of its dangers. In that case, the court held that traditional state-law nuisance principles were fully capable of addressing widespread public

harms resulting from the deceptive promotion of hazardous products.

Respondents allege that Petitioners adopted precisely such deceptive strategies as those adjudicated in those cases. Internal communications urged that public recognition of uncertainty become part of the “conventional wisdom,” declaring, as noted above, that “[v]ictory will be achieved when average citizens ‘understand’ (recognize) uncertainties in climate science.” American Petroleum Institute, *Global Climate Science Communications: Action Plan*, *supra* at 7. That objective echoes perhaps the most famous internal memorandum in the tobacco litigation, which read: “Doubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the minds of the general public.” *Smoking and Health Proposal*, BROWN & WILLIAMSON TOBACCO CORP. (Aug. 21, 1969), at 3.⁴⁴ Lead industry representatives also insisted that “thorough scientific determination be made before lead is cited as a cause of injury or death,” despite mounting evidence of lead's dangers. *Statement of Felix Edgar Wormser on Behalf of the Lead Industries Association*, THE AMERICAN HERITAGE CENTER, UNIV. OF WY (1966).⁴⁵ Although the products differed, the plaintiffs in both the tobacco and lead paint litigation alleged that the manufacturers employed a common strategy: publicly emphasizing uncertainty while internal knowledge pointed in the opposite direction.

⁴⁴ <https://www.industrydocuments.ucsf.edu/docs/psdw0147/>

⁴⁵ <https://cdn.toxicdocs.org/Gm/Gmb7MbDL4adNQZjXdvJe7bxBV/Gmb7MbDL4adNQZjXdvJe7bxBV.pdf>

The same pattern appears in Petitioners' alleged promotion of alternative explanations for climate change. Respondents allege that Exxon financed efforts to attribute observed global warming primarily to solar variability notwithstanding internal assessments concluding that such "contrarian theories" did not provide convincing explanations. Tobacco companies similarly encouraged the public to consider pollution, airborne contaminants, and genetic predisposition as alternative explanations for lung cancer, asking rhetorically: "Have scientists determined what causes cancer? No." Philip Morris Inc., *Facts About the Smoking Controversy*, The Tobacco Institute (Mar. 1, 1978), at 3.⁴⁶ Lead industry representatives similarly attributed childhood lead poisoning to "slum dwellings and relatively ignorant parents" rather than to lead paint itself. David Rosner and Gerald Markowitz, *"A Problem of Slum Dwellings and Relatively Ignorant Parents": A History of Victim Blaming in the Lead Pigment Industry*, Environmental Justice (2008).⁴⁷ In each instance, the plaintiffs allege that the industry's objective was to divert attention from the hazards associated with the industry's own products. David Michaels, *Doubt Is Their Product: How Industry's Assault on Science Threatens Your Health*, New York: Oxford University Press (2008), 327 pp. ISBN: 978-0-19-530067-3.⁴⁸

⁴⁶ <https://www.industrydocuments.ucsf.edu/docs/jppj0191/>

⁴⁷ <https://journals.sagepub.com/doi/abs/10.1089/env.2008.0538>
(see original document:
<https://cdn.toxicdocs.org/2J/2JGag1gw3vKeD7z2Rwo05BpR6/2JGag1gw3vKeD7z2Rwo05BpR6.pdf>)

⁴⁸ <https://pmc.ncbi.nlm.nih.gov/articles/PMC2685872/>

Each industry also relied heavily upon third-party intermediaries—including trade associations, front groups, and credentialed scientists presented as independent experts—to amplify those themes and lend them an appearance of scientific legitimacy. Respondents allege that the Global Climate Coalition and industry-funded scientists served this function for the fossil fuel industry. The tobacco industry established the Tobacco Industry Research Committee (later Council for Tobacco Research) to combat “the public relations problem” of the tobacco industry. Memorandum from Hill and Knowlton, Inc. to Tobacco Industry Research Committee Chairman T.V. Hartnett re Report of Activities through July 31, 1954 (July 31, 1954), at 3.⁴⁹ The lead industry employed a similar tactic in forming the Lead Industries Association in response to the “rising volume of alarums [sic] about the hazardousness of lead.” Affidavit of Gerald E. Markowitz and David Rosner, *Richard K. Brenner et al. v. American Cyanamid Company, et al.*, Index No. 12596/93, at 35.⁵⁰

The point of these comparisons is not that fossil fuel companies should automatically be treated like tobacco companies or lead-paint manufacturers. It is that the legal system has repeatedly confronted—and state courts have repeatedly adjudicated—allegations that corporations knowingly concealed material scientific information while orchestrating sophisticated campaigns to manufacture public doubt. Respondents allege that Petitioners employed

⁴⁹ <https://www.industrydocuments.ucsf.edu/docs/qfhk0154/>

⁵⁰ <https://cdn.toxicdocs.org/3J/3JZ3xb215ooM7zBm8QM8n01O6/3JZ3xb215ooM7zBm8QM8n01O6.pdf>

many of the same methods here. Whether those allegations can ultimately be proven is a question for trial. But they unquestionably present the type of traditional state-law claims that courts have long resolved in cases involving other industries accused of comparable misconduct.

CONCLUSION

The Colorado courts are well equipped to evaluate Respondents' allegations of deceptive conduct. To the extent that this Court has jurisdiction to review the interlocutory decision below, *Amici* respectfully urge the Court to affirm the judgment of the Colorado Supreme Court.

Respectfully submitted,

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