

# Captive Climate:

Profit-Maximizing Industry Interests  
That Dominate American Politics  
Pose An Existential Threat  
To Our Planet



## Authors

Jessica Bergin  
Samantha Caravello  
Adrienne Mendle  
Jessica Ranucci  
Paul Sutter  
Samuel Wheeler



## Directors

Jon Hanson & Jacob Lipton

## About the Systemic Justice Project

The Systemic Justice Project ("SJP") is a policy innovation collaboration, organized and catalyzed by Harvard Law School students devoted to identifying injustice, designing solutions, promoting awareness, and advocating reforms to policymakers, opinion leaders, and the public.

While targeting specific policy challenges, SJP is devoted to understanding common and systemic sources of injustice by analyzing the historical, cultural, political, economic, and psychological context of particular problems. Toward that end, SJP is committed to collaborating with scholars, lawyers, lawmakers, and citizens and to working with existing institutions in promoting attainable, pragmatic, and lasting policy solutions.

SJP, Griswold 403, Harvard Law School, Cambridge, MA 02138

This paper was first published in June 2015. © 2015 The contents and opinions expressed in this paper are those of the author(s) only.

## Acknowledgements

The authors wish to sincerely thank Professor Richard J. Lazurus, Professor Jody Freeman and U.S. Senator Sheldon Whitehouse for their thoughtful suggestions, encouragement, and inspiration to write this White Paper.

# CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>TERMINOLOGY .....</b>	<b>3</b>
<b>I. The Big Problem.....</b>	<b>5</b>
Climate Science & Anthropogenic Causes of Global Warming .....	5
Effects of a Warming Planet.....	10
Climate Consequences for Humans.....	13
<i>Health and Welfare</i> .....	13
<i>Policy and Governance</i> .....	14
<i>Economic Impact</i> .....	15
<i>Social Justice</i> .....	16
The Mind Sciences .....	17
Americans' Beliefs about Climate Change .....	20
The Anti-Regulatory Ideology .....	24
<b>II. Industry-Funded Climate Science Doubt .....</b>	<b>26</b>
Promoting and Funding Doubt in the Scientific Community .....	26
Manifestation of Doubt among the General Public .....	28
<b>III. Industry-Funded Politics .....</b>	<b>30</b>
Sea Change of <i>Citizens United</i> .....	30
Industry Spending in Federal Elections.....	35
Industry Spending in State and Local Elections.....	39
Attempted Counterweight: Spending by Environmentalists .....	40
Industry Spending in Judicial Elections.....	42
<u>THE SYSTEMIC JUSTICE PROJECT AT HARVARD LAW SCHOOL</u>	
Captive Climate	

#### **IV. Industry-Funded Litigation ..... 46**

Rise of the Supreme Court Bar .....	46
Increasing Role of Amicus Briefs .....	47
Implications for U.S. Law .....	48
Impact on the Court's Climate Change Jurisprudence .....	49

#### **V. Case Study: Chamber of Commerce ..... 53**

Background.....	53
<i>About the Chamber</i> .....	53
<i>The Chamber's Climate Policy</i> .....	55
The Chamber's Public Relations Strategy.....	60
<i>Public Relations Strategies' Origins</i> .....	60
<i>Trade Associations' Role in Public Relations Campaigns</i> .....	61
<i>Trade Associations' Public Relations Tactics</i> .....	63
The Chamber's Political Strategy .....	72
<i>Lobbying</i> .....	73
<i>Elections</i> .....	73
<i>Litigation</i> .....	75

#### **VI. Solutions ..... 77**

Legislation .....	77
<i>Constitutional Amendment to Overturn Citizens United</i> .....	77
<i>Tax Exempt Business Donation Disclosures</i> .....	78
<i>Business Carbon Tax</i> .....	78
Litigation .....	79
<i>RICO Suit</i> .....	79
<i>Misinformation Tort</i> .....	80

<i>Overrule Citizens United</i> .....	82
Private Actions .....	82
<i>Leave the Chamber</i> .....	82
<i>Alterative Business Organization</i> .....	82
<i>Scientific Transparency</i> .....	83
<i>Divestment</i> .....	84
<b>CONCLUSION</b> .....	<b>86</b>
<b>FURTHER READING</b> .....	<b>87</b>
<b>ENDNOTES</b> .....	<b>88</b>

## ***EXECUTIVE SUMMARY***

The planet is facing a big problem: scientists agree that human-caused climate change poses an existential threat to the human species, and humanity has been unable to adequately combat it in any meaningful way. Our collective failure to do so has many causes; this White Paper focuses on the role of profit-maximizing industry interests in forestalling any progress on climate change solutions in America.

This White Paper begins by describing two components of the big problem. First, it describes the realities of the damage climate change will cause our species and planet. Second, it details mechanisms that contribute to our collective failure to stop the impending climate crisis. In this section, we demonstrate how inherent psychological biases make climate change a particularly difficult problem for humans to tackle.

Next, this White Paper illustrates how an energy industry that is incentivized to maximize profit uses its vast resources to exploit public perception and the political system. We focus on three primary mechanisms through which industry is able to stop progress on climate change:

- Industry-funded pseudo-science promotes doubt about the reality of climate change.
- Industry funds have poured into the political system, especially since 2010. These funds dominate federal, state, and local elections for executives and legislators, as well as state judicial elections.
- Industry-funded litigation obstructs climate action by securing favorable decisions in the federal courts..

We then use the U.S. Chamber of Commerce (“the Chamber”) as a case study. The Chamber is the largest lobbying group in the country and is staunchly against progress on climate. The Chamber exercises influence in the three ways described above: it promotes doubt and manipulates public opinion about climate change using an insidious public relations campaign; it spends extraordinary sums to elect pro-business and anti-climate politicians; and it is a premier litigator with influence over Supreme Court decisions.

Finally, the White Paper offers a host of steps forward. These are not “solutions” to climate change; they are intermediate measures that

can and should be taken to alleviate the most detrimental impacts of industry groups in the American system. This, in turn, will allow a more free and fair public, participatory, and democratic political process, which represents our best hope of combatting the existential threat that climate change poses to the human species.

## ***TERMINOLOGY***

**Anthropogenic:** Caused by human activity.

**Astroturfing:** The industry practice of campaigning to influence a policy issue that affects its profit-maximization goals. These campaigns mimic traditional grassroots campaign strategies, obscure the industry's role in the campaign, and seek to manipulate the public into believing and joining the cause that benefits the industry.

**Climate change:** Changes to the earth's climate, including but not limited to increased temperatures, caused by increased greenhouse gases in the earth's atmosphere; generally used synonymously with "global warming."

**Creating doubt:** The process by which industry actors invent or manipulate the significance of flaws in conclusive scientific research—which is often so technically complex that the public is unlikely to evaluate it for itself—so as to undermine the impact of that research and protect industry's profit-maximization goals.

**Dark money:** Funding received from undisclosed corporate and individual donors by political action committees or other politically motivated organizations; this money is then spent by that organization to influence political outcomes.

**Dispositionism:** A belief that people make choices based on internal characteristics, such as their values or abilities, rather than based on external factors that influence their behavior.

**Front group:** An organization that purports to represent an independent interest in advocating for a policy result but is actually covertly sponsored by an actor with a stake in the a

**Global warming:** The observed and projected increase in average global temperature over the past several decades and in the decades to come, generally attributed to the presence of increased greenhouse gases in the atmosphere.

**Greenhouse gas:** Gases in the earth's atmosphere, including water vapor, methane, and carbon dioxide, which retain heat from the sun.

**Greenhouse effect:** The atmospheric process by which a sufficient concentration of greenhouse gases in the earth's atmosphere absorb

and re-emit energy received from the sun, thereby warming the lower atmosphere and earth's surface.

**Heuristics:** The “mental shortcuts” used by the human brain to make decisions or solve problems when facing large amounts of complex information.

**Motivated reasoning:** The human tendency to interweave emotion and facts whereby people form and cling to false beliefs, despite overwhelming evidence disputing those beliefs.

**Politicization bias:** The human tendency to discount information that disputes an individual's political preferences.

**Positive feedback:** The process by which the occurrence of one global warming effect increases the rate or likelihood of other future global warming effects. For example, because water absorbs more solar energy than ice, as global warming causes polar ice caps to melt, the resulting water absorbs more heat than the ice cap would have, thereby increasing the earth's warming rate.

**Self-serving bias:** The human tendency to attribute one's successes to internal factors while attributing failures to external factors outside of one's control.

**Third party technique:** The method by which public relations firms use third party organizations, such as trade associations or front groups, that appear to be independent or neutral to spread their public relations campaigns.

**Trade association:** An organization comprised of and funded by corporations that represents those corporations' common interests in protecting that business or industry. It includes business associations and industry trade groups.

## ***I. The Big Problem***

Our planet is facing a problem of catastrophic and unprecedented scale: impending climate changes threaten to disrupt its natural processes and devastate its inhabitants. As this section describes, humans are responsible for this problem and have failed to take sufficient action to prevent it.

First, this section provides background on climate and human-caused global warming. Next, this section shows the effects that increased temperatures will have on the planet and on the human species. These changes will affect the biological health and political and economic stability of communities and countries, while exacerbating existing resource disparities.

This section then demonstrates that inherent human psychological biases make it difficult to take any action to solve the climate crisis, and surveys current American attitudes on climate change as an example of these biases at work.

## **Climate Science & Anthropogenic Causes of Global Warming**

The earth's atmosphere is made up of many gases, including "greenhouse gases," which absorb and re-emit energy from the sun in a process called the "greenhouse effect." Greenhouse gases include water vapor, methane, and carbon dioxide. The greenhouse effect is critical for the existence of life on Earth: if the concentration of greenhouse gases in the atmosphere is too low and no heat is trapped, the Earth cannot maintain a temperature warm enough for life. But, if the concentration of greenhouse gases is too high, too much heat is trapped under the earth's thickened atmosphere, and global temperature can rise to dangerous levels.<sup>1</sup>

For millions of years, the levels of greenhouse gases in the earth's atmosphere provided ideal conditions for life to thrive. But today humans are increasing the carbon dioxide levels in the atmosphere by burning coal, oil, and natural gas (collectively referred to as "fossil fuels") to power our homes, cars, and cities. Extracting and burning these fuels, we release carbon that has been stored beneath the earth's surface for millions of years. This carbon output is so great that although there are natural processes that re-capture atmospheric carbon dioxide, such as photosynthesis, they cannot occur at rates fast enough to match the amount of carbon dioxide we are pumping into the atmosphere. Other natural cooling processes, such as

**The earth's  
temperature has  
risen .68 degrees  
Celsius.**

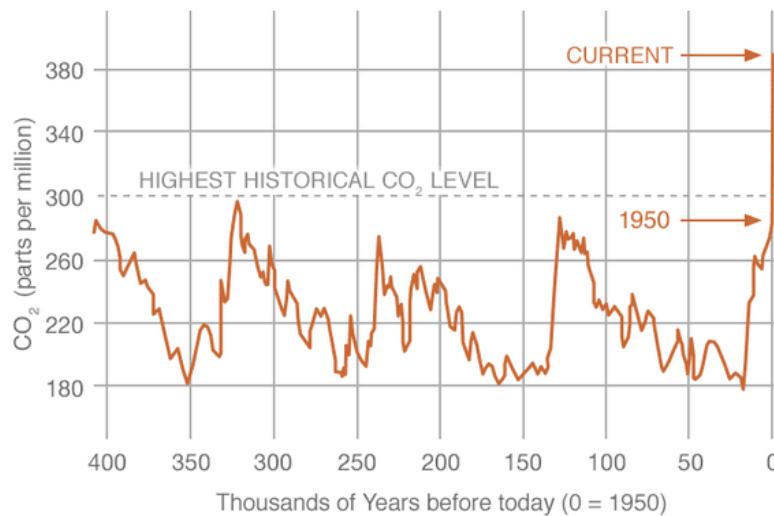
volcanic activity, also cannot counteract our massive carbon output. These greenhouse gas emissions are causing Earth's temperature to rise.<sup>2</sup>

Scientists have observed an increase in the concentration of atmospheric carbon dioxide and a rise in average global temperature. As of March 2015, the carbon dioxide concentration in the atmosphere was 400.06 parts per million ("ppm"), up from about 300 ppm in 1950. As of January 2014, the earth's temperature has risen .68 degrees Celsius from its temperature in 1951-1980.

Figure 1: Concentrations of Carbon Dioxide Over the Past 400,000 Years<sup>3</sup>

**PROXY (INDIRECT) MEASUREMENTS**

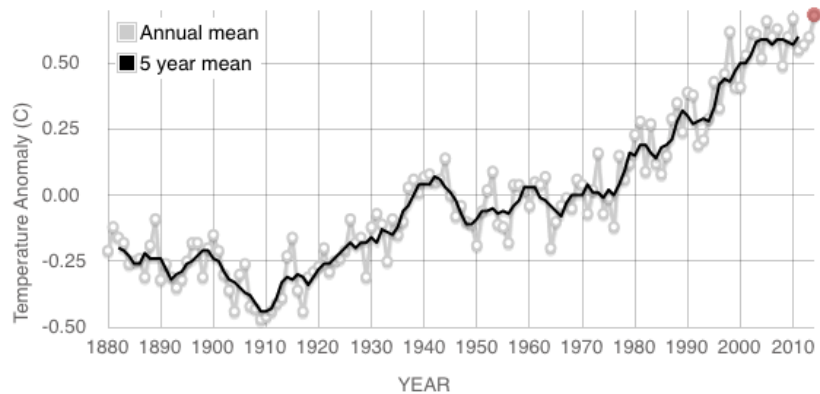
Data source: Reconstruction from ice cores.  
Credit: NOAA



Source: NASA.

Figure 2: Change in Global Surface Temperature as Compared to the 1951-1980 Average<sup>4</sup>

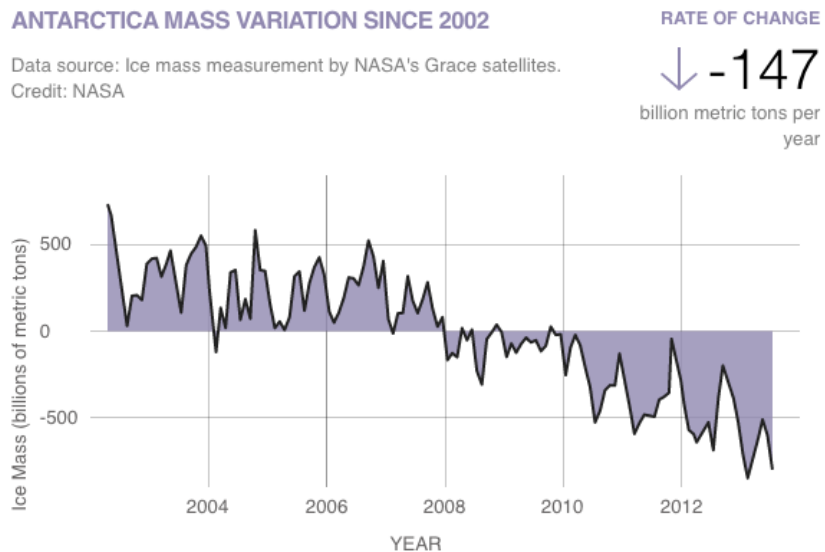
Data source: NASA's Goddard Institute for Space Studies (GISS).  
Credit: NASA/GISS



Source: NASA.

In addition to the changing temperature and carbon dioxide concentration, there are other natural indicators that reveal the Earth is warming. Snow cover in North America is decreasing, and polar ice caps have been melting. Scientists have observed a dramatic decrease in the ice mass of Antarctica and Greenland.<sup>5</sup>

Figure 3: The Declining Ice Mass of Antarctica<sup>6</sup>



Source: NASA.

<http://hlssjournals.wpengine.com/wp-content/uploads/2016/10/Figure-3.png>

Figure 4: Greenland Mass Variation<sup>7</sup>

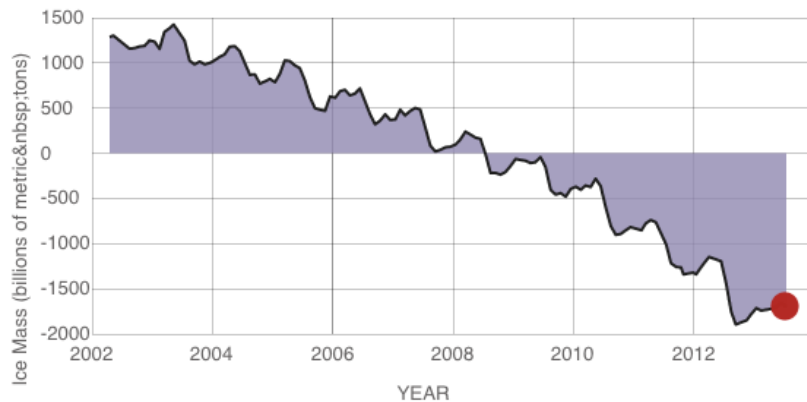
#### GREENLAND MASS VARIATION SINCE 2002

Data source: Ice mass measurement by NASA's Grace satellites.  
Credit: NASA

RATE OF CHANGE

↓ -258

billion metric tons per  
year



**65.91-millimeter  
rise in sea levels.**

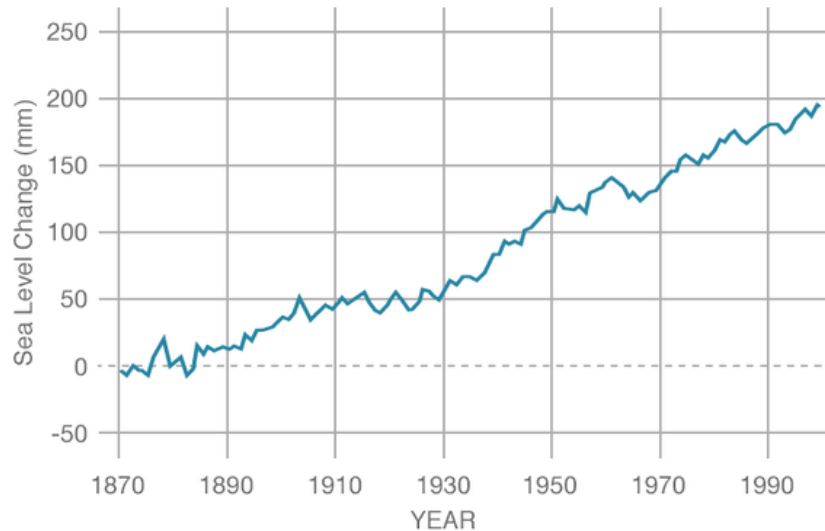
Source: NASA.

Global warming causes sea levels to rise as land-based ice melts, and ocean water expands as it warms. As of June 2015, scientists have observed a 65.91-millimeter rise in sea levels.<sup>8</sup>

Figure 5: Changes in Sea Level Since 1870<sup>9</sup>

**GROUND DATA: 1870-2000**

Data source: Coastal tide gauge records.  
Credit: CSIRO



Source: NASA.

As mentioned, non-anthropogenic processes, like photosynthesis and volcanic eruptions, also affect global climate. These particular processes tend to have a cooling effect, but other natural mechanisms can have a more complicated effect on climate, such as variations in solar activity.

In the past, some scientists have argued that solar variations, rather than greenhouse gas emissions, are the main drivers of climate change.<sup>10</sup> The sun's output changes cyclically over time – there are certain periods in which the sun radiates more intensely than others. Generally, this has to do with the cycle of sunspots on the sun's surface – the more sunspots, the cooler the sun's temperature, and vice versa. Sunspots increase and decrease over a cycle of eleven years<sup>11</sup>. Predictably, periods of more intense solar radiation (fewer sunspots) have a warming effect on the earth, and periods of less intense solar radiation (more sunspots) may cause the Earth to cool.

These scientists are overstating the link between solar activity and climate change. Comparisons between solar activity and the rise in global temperature indicate that variations in solar activity alone cannot account for the earth's rise in global mean temperature. In its Fourth Assessment, the Intergovernmental Panel on Climate Change

**The dramatic rate  
of global warming  
is unprecedented  
in the last 1300  
years.**

used a number of models to test various theories of climate change. One of the models calculated the changes in global temperature that would have been observed over the last century if only non-anthropogenic processes (volcanic activity, solar output, etc.) were driving climate change. The model did not include the increase in greenhouse gas emissions (i.e., anthropogenic sources of carbon) that occurred during this time. The model correctly predicted the global average temperatures observed in the first half of the 20<sup>th</sup> century, but did not accurately account for temperatures observed in the second half of the century. Only when modelers added the increase in human-caused greenhouse gas emissions did the model's predictions match scientists' observations.<sup>12</sup> The model's findings confirm what scientists have known for some time: human activity has had a dramatic impact on the planet's climate.

The dramatic rate of global warming is unprecedented in the last 1300 years.<sup>13</sup> This underscores the scientific community's conclusion: the current warming trend is not a result of natural processes.

### **Effects of a Warming Planet**

Rising temperatures will cause drastic, long-term changes to our planet. Rising ocean temperatures will cause polar ice caps to melt. As the ice caps melt, sea levels will rise, and many coastal land areas will be flooded or submerged.<sup>14</sup>

Figure 6: Map of Predicted Sea Level Changes in North America



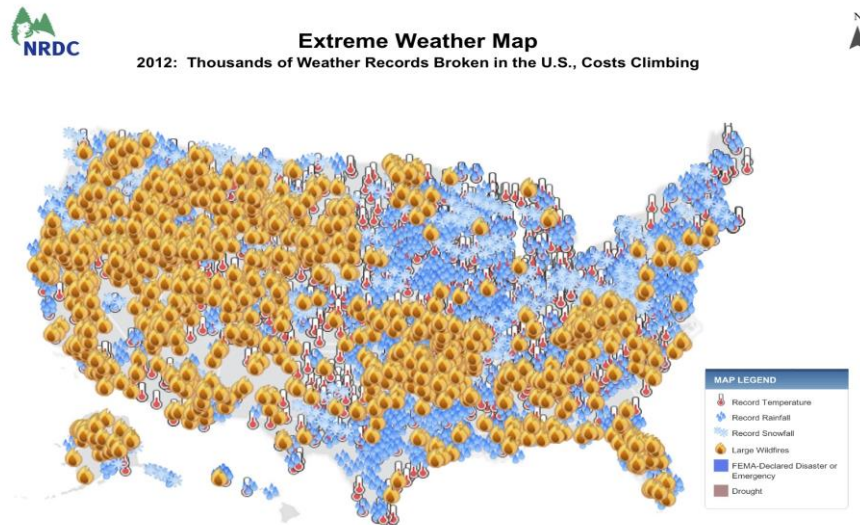
Source: National Geographic<sup>15</sup>

Additionally, rising ocean temperatures will cause major changes in global weather patterns. Variations in ocean water temperature determine the planet's system of ocean currents, which are responsible for stabilizing and maintaining long-term regional climate patterns. For example, the transatlantic current keeps warm water flowing past Europe, so that its temperature remains habitable. Warmer ocean temperatures combined with the influx in cold water from melting land ice will disturb the density and temperature distribution within our oceans, causing the ocean currents to change, and drastically altering Europe's climate.<sup>16</sup> As the ocean currents change, so too will climate and weather around the world.

Scientists do not know exactly how the ocean currents will change, and therefore they cannot reliably predict how the weather around the world will change.<sup>17</sup> At the very least, they know that weather will become more extreme—more intense drought and heat in some areas, stronger storms and intense cold fronts in others.<sup>18</sup>

Scientists have been observing many record-breaking storms, heat events, fires, and floods in recent years. The ongoing 2015 drought in California provides an example of this trend towards extreme weather. California is naturally prone to dry spells due to its short rainy season. Scientists believe that climate change may have affected the amount of precipitation California has received during this particular drought cycle: the greater frequency of hot days increased evaporation, further drying out California's already parched land.<sup>19</sup> Additionally, the northeastern United States was brought to a standstill in early 2015, as historic snowfall highlighted the shortcomings of the infrastructure in many metropolitan locations.<sup>20</sup> The map below illustrates the number of record-breaking weather events in the United States in 2012:

Figure 7: Map of 2012 Extreme Weather Events



Source: NRDC<sup>21</sup>

Global warming is also changing the composition of our oceans through ocean acidification. Oceans are a major carbon reservoir, absorbing approximately one quarter of the carbon dioxide released into the atmosphere.<sup>22</sup> Thus, if the amount of carbon dioxide in the atmosphere increases, the amount of carbon dioxide in the oceans increases. When oceans absorb carbon dioxide, chemical reactions lower their pH level. This makes them more acidic and reduces their concentrations of calcium carbonate minerals, which are essential for organisms such as coral and certain plankton to build their skeletons and shells.<sup>23</sup> These organisms play a crucial role in ocean ecosystems because they occupy the bottom of the ocean food chain—as such, the survival of many other ocean species depends on their continued abundance. Ocean acidification poses a stark threat to marine life.

Compounding all of these harmful impacts is the fact that many of the global warming effects we are currently seeing, such as polar ice melt, increase the rate of warming we will see in the future. This is referred to as positive feedback, and the melting of polar ice is involved in two particularly strong positive feedback loops.

The first such feedback loop is triggered by the melting of the polar ice itself. Ice has a higher albedo—a measure of how much solar energy is reflected from a surface—than water.<sup>24</sup> When there is more ice cover, more energy is reflected away from the surface of the earth, and less

energy is absorbed. Because water absorbs more solar energy than ice does, surfaces covered by water cause more heat to be retained and more warming to occur.<sup>25</sup> Thus, as warmer ocean temperatures convert land ice into water, even more solar energy will be absorbed, causing ocean temperatures to rise at ever greater rates.

The second positive feedback loop is the melting of the permafrost in Alaska, parts of Canada, and other northern countries. Permafrost refers to a thick layer of soil that remains frozen during the entire year. The permafrost contains a huge amount of carbon—twice as much as is currently in the atmosphere.<sup>26</sup> As the permafrost melts, carbon is released into the atmosphere, and, as we know, more atmospheric carbon means more global warming. These feedback loops underscore the need to act quickly on climate change, before the momentum of the warming becomes too great to overcome.<sup>27</sup>

## **Climate Consequences for Humans**

### ***Health and Welfare***

The havoc climate change will wreak on the environment also poses serious threats to human health and welfare. First, as polar ice caps melt and sea levels rise, many coastal and low-lying lands will flood. Many of these flood zones are heavily populated, and rising sea levels will force the displacement of millions of people.

Additionally, the change in climate, and particularly extreme and unknown weather patterns, will heavily affect agriculture. California's drought has forced its Governor to issue mandatory water restrictions for the first time in the state's history.<sup>28</sup> Most of these restrictions concern residential and recreational water use, but if the drought worsens, the breadth of the restrictions may grow. Over three quarters of water use in California is for agriculture,<sup>29</sup> and California grows over a quarter of the nation's produce.<sup>30</sup> Restrictions on agricultural water use could potentially reduce, or at least make much more expensive, the country's food supply.<sup>31</sup>

Climate change will also cause a rise in disease vectors. An increase in temperature and humidity around the world will cause the ranges hospitable to various disease vectors to expand, causing more people to become infected with diseases like malaria, dengue, and West Nile virus.<sup>32</sup>

But climate change and increased weather events will have a greater impact on human health than just an increase in vector-borne disease. As people are forced out of low-lying coastal areas, displaced populations may crowd into cities—and this increase in crowding may lead to the increased spread of communicable diseases. Further, heat waves which already kill thousands of people every year will increase in severity and frequency, leading to a higher death toll. Storms, floods, and fires similarly threaten human life. These weather events, even when not resulting in death, cause many injuries and destroy homes, roads, stores, and other important (and expensive) buildings and structures.<sup>33</sup>

Finally, the increase in extreme weather events will impede productivity and livability of cities around the world. Boston's historic winter of 2015 illustrated this problem quite vividly—the city ground to a halt when its schools, universities, and workplaces closed because the heavy snowfall made safe driving conditions impossible and public transportation inoperable. Similar decreases in productivity are possible as a result of extreme heat, which may limit outdoor work and travel.<sup>34</sup>

### ***Policy and Governance***

As illustrated above, climate change threatens the health and existence of individuals, communities, cities and infrastructure. As a result, climate change will impose significant burdens on governing bodies worldwide.

Storms, floods, snowfall, fires, and other serious weather events will test cities' infrastructure and highlight its shortcomings.<sup>35</sup> Governments will have to invest in roads, public transportation, and improved clean-up efforts that can stand up to an onslaught of increasingly destructive weather.

The California drought, discussed above, demonstrates the challenges climate change poses for our governing bodies. Managing scarce resources requires governments to make difficult judgments that may be hard for constituents to accept. The implementation and enforcement of these management strategies require money, courage, and effective cooperation, as do efforts to shape policies so that resources are managed more responsibly in the future.

And, as rising sea levels threaten coastal areas, millions of people face displacement. Governments around the world will have to make plans for displacement, and make it feasible for all communities to relocate.

### ***Economic Impact***

Given the predicted effects on human health and welfare, climate change has the potential to have a significant impact on the global economy. One recent report asked:

What are the economic consequences of . . . [climate change]? Rising sea levels, increased flooding, and more frequent and intense coastal storms damage capital that must be rebuilt. Changing yields impact the financial health of both agricultural producers and farming communities. Climate-driven changes in mortality rates shape overall labor supply, and temperature influences the productivity of that labor. Higher energy prices reduce real household income and raise business costs. Changes in crime rates impact property values and public expenditures on police and other security services.<sup>36</sup>

Economists predict that climate change could decrease global GDP by up to 10%—which, based on current global GDP, is the equivalent of \$7 *trillion*.<sup>37</sup> Moreover, climate change has the potential to create catastrophic, unquantifiable risks that demand a risk premium. One report explains that “Even the best available climate models do not predict climate change that may result from reaching critical thresholds (often referred to as tipping points) beyond which abrupt and irreversible changes to the climate system may occur.”<sup>38</sup> In other words, because we do not have a way to measure the most catastrophic potential risks of climate change, we should place a high value on the potential uncertainties arising from it.

Many economists have concluded that the uncertain costs of climate change demand immediate action. Gernot Wagner and Martin Weitzman write that “[t]he higher the chance of these catastrophes, the more we ought to seek out the climate-equivalent of risk-free government bonds: avoiding carbon emissions in the first place.”<sup>39</sup>

It is important to note that the distributive consequences of these economic effects are alarming. The agricultural industry in many developing countries is particularly at risk. This impact cannot be offset by continued growth of technology and service-based industries in developed countries. As one economist explained, “[i]f

**Climate change  
will make  
existing  
inequalities in  
access to food,  
housing, and  
healthcare more  
dramatic and  
entrenched.**

the global food supply suffers from climate change, boosting GDP by building more iPhones won't do much for those who are starving."<sup>40</sup> In sum, climate change will certainly slow economic growth and has the potential to create catastrophic economic consequences that will have particularly drastic consequences for the world's poor.

### ***Social Justice***

The health and economic impacts of climate change will make existing inequalities in access to food, housing, and healthcare more dramatic and entrenched. If we care about inequality, we must deal with challenges posed by climate change.

A stable water supply is necessary in order to produce fruit, vegetables, dairy, and meat. As mentioned above, as droughts, fires, and other weather events affect major agricultural areas, food supply may become scarcer and more expensive. Food insecurity is already a pervasive problem in the United States where millions of people lack access to nutritious food because of price and unavailability. Threats to the food supply will raise prices, making healthy options even more cost prohibitive. Food will become more scarce, making it less available, especially to those communities whose access to good food is already limited.<sup>41</sup>

Additionally, as mentioned above, the flooding of populated coastal areas due to rising sea levels will force many people to relocate. If governments do not adequately invest in displacement plans, the burden of relocating will fall entirely on individuals and families. Assuming such a situation arises, the ability to secure housing in a different location will vary based on financial resources and the amount of time that may be devoted to securing housing and employment elsewhere. The ability to relocate will pose a much greater burden on the poor, further exacerbating existing inequalities in income and resources.

Finally, climate change will worsen health disparities across races, classes, and geographic regions. The illness and injuries associated with climate change described above will affect individuals differently depending on their ability to secure adequate healthcare. If policymakers are unable to secure meaningful access for all individuals, then individuals' ability to access medical treatment will depend greatly on their wealth. Thus, people with fewer financial resources, already at higher risk of being in poor health, will have less access to medical treatment as climate change increases healthcare

costs. This will only increase the discrepancies in health outcomes across these social metrics.<sup>42</sup>

## **The Mind Sciences**

Psychologists have recognized that people sometimes fail to make the reasonable choices we would expect them to make due to implicit motivations and cognitive limitations on human judgment and choice.<sup>43</sup> Public opinion and national policy debates concerning climate change are shaped by those biases and how certain actors are able to take advantage of human cognitive limitations and manipulate opinions and beliefs. Here we will discuss a few of the cognitive processes that affect human judgment and perception.

***Motivated Reasoning:*** One of the toughest challenges concerning public education on climate change is motivated reasoning, which refers to the human tendency to conform assessments of information to some desired goal or conclusion other than accuracy.<sup>44</sup> People interweave emotion and facts and cling to false beliefs, despite overwhelming evidence of their falsity.<sup>45</sup> Rather than searching rationally for information that either confirms or disproves a particular initial belief about a topic, motivated reasoning causes people to credit any information that already confirms their initial beliefs while discrediting any information that might undermine or contradict their pre-formed beliefs. Motivated reasoning is not unique to the climate change problem. Psychological studies have shown its influence on individuals' beliefs concerning evolution, capital punishment, whether the Iraq War was justified, and many other issues.<sup>46</sup> In order to overcome this powerful human tendency, some academics have proposed that scientists and policymakers present solutions in a way that does not challenge deeply held emotional beliefs concerning highly salient or divisive issues. For example, Yale Professor Dan Kahan and his colleagues have shown that political conservatives are more likely to believe that climate change is a real issue when they are told that scientists recommend a shift toward nuclear energy as opposed to being told that scientists recommend steep reductions in pollution.<sup>47</sup>

***Self-Serving Bias:*** Another obstacle to meaningful climate change policy is the self-serving bias, which is the human tendency to attribute one's successes to dispositional factors controlled by the individual while attributing failures to situational factors outside of one's control. For example, when Americans are told that China is the world's largest consumer of energy, Americans are actually more

**Politicization of an  
issue makes it  
less likely that the  
human mind can  
process  
information  
objectively.**

willing to believe that humans are the cause of climate change than when Americans are told that the United States is the greatest user of energy per-capita.<sup>48</sup> (The same effect has also been shown to hold true for Chinese citizens when they are told the inverse information.)<sup>49</sup> The self-serving bias contributes to two distinct problems. Depending upon how people are presented with facts concerning energy usage, people are either more likely to believe that humans are *not* the primary cause of climate change *or* they are more willing to believe that humans are the primary cause but that there is nothing that their own nation or they as individuals can do about it.

***Politicization Bias:*** Recent studies by psychologists and political scientists have demonstrated that facts, particularly when offered in a political context, do not necessarily have the power to change people's minds or move them to the other side of an issue. A study conducted by Professors Brendan Nyhan and Jason Reifler found that misinformed people do not change their minds when they are presented with facts that contradict their previously held beliefs.<sup>50</sup> The study also found that the tendency towards entrenchment was more marked when the people involved in the study were political partisans.<sup>51</sup> Compounding this problem is the fact that misinformed people tend to have the strongest political beliefs.<sup>52</sup> Part of the problem seems to be the sheer tonnage of information in twenty-first century America; given the amount of good information and misinformation circulating on television and on the internet, "it's never been easier for people to be wrong, and at the same time feel more certain that they're right."<sup>53</sup>

Perhaps the most discouraging finding comes from a Yale University study conducted by Professor Dan Kahan and his colleagues. In that study, the researchers provided subjects with a math problem and asked them to find an answer. The control group was given a basic problem, and an experimental group was given a problem relating to the efficacy of a new gun control regulation. Subjects who identified as conservative or as strongly in support of Second Amendment rights performed markedly worse on the math problem than the control group and their more liberal counterparts.<sup>54</sup> The takeaway from the study was relatively clear: politicization of an issue makes it less likely that the human mind can process information objectively. Thus, making climate change a political issue may be making the problem worse.

***Availability and Representative Heuristics:*** In order to process the vast amount of information with which people are confronted, the

human brain relies on mental shortcuts, called “heuristics,” to make decisions, sometimes leading to outcomes that are inconsistent with rational choice.<sup>55</sup> Two such heuristics may be interfering with human motivation to take action on climate change: the representativeness and availability heuristics.

The representativeness heuristic demonstrates that it is easier for the human brain to discern cause and effect if the two seem logically connected.<sup>56</sup> Climate change involves complex scientific phenomena and is the result of multiple actions by various actors over a long period of time. This makes it very difficult to connect cause and effect in the climate context. It is not easy to see the causal connection between forgetting to turn the lights off before leaving the house and a prolonged drought halfway across the world. This makes it easier for the brain to discount an individual’s actions as not connected to climate change at all.

Second, the availability heuristic describes the tendency to assess the likelihood of an event happening based on how easy it is to imagine.<sup>57</sup> The effects of climate change are difficult to imagine—the worst effects will happen in the distant future, and they will take place across the globe rather than each effect being spatially tethered to each individual’s own actions. Climate change may instead be processed through an “unavailability heuristic,” a mirror image of the availability heuristic, that leads the brain to conclude that events that are difficult to imagine occurring are in fact less likely to occur.<sup>58</sup> This heuristic allows people to relax into their false belief that climate change is not happening.

A recent *Nature* study provides evidence of the availability heuristic at work.<sup>59</sup> The study sought to uncover the psychological processes behind the “local warming effect,” in which people’s judgments about climate change can depend on whether the weather that day seems warmer or colder than usual.<sup>60</sup> Based on their analysis, the authors suggested that “unusually warm or cold weather conditions may increase the availability of other unusual warm or cold temperature events in memory, changing estimates of the frequency of such events, and thereby affecting respondents’ global warming attitudes.”<sup>61</sup> While warm days may raise concern about climate change, the local warming effect also risks lending climate change skeptics the ability to point to uncharacteristically colder weather as evidence that climate change is not occurring. The study notes that this occurred during the Washington, D.C. “snowpocalypse” of 2010.<sup>62</sup>

**Sixty-three percent of Americans believe that “global warming is happening.”**

**A plurality of Americans (48%) believes that humans are mostly to blame for climate change.**

## **Americans' Beliefs about Climate Change**

Attitudes of Americans demonstrate these psychological biases at work. Most Americans (including most Republicans and most Christians) believe that climate change is happening. However, fewer believe that it is an urgent problem or that it is caused by humans. This discontinuity can be, at least in part, accounted for by the psychological biases identified above: the magnitude, complicated causation, and urgency of the climate crisis make it difficult to comprehend.

**General Beliefs:** Because climate change is often portrayed as a polarizing issue in the media and in political debates, one might reasonably believe that Americans are equally divided in their belief about whether climate change is actually occurring. However, extensive polling from the Yale Project on Climate Communication shows that as of 2014, 63% of Americans believe that “global warming is happening,”<sup>63</sup> while only 18% believe that it is not happening.<sup>64</sup> This ranges from a low in West Virginia (54% belief and 24% non-belief that climate change is occurring), to a high in Hawaii (75% belief and 10% non-belief) and the District of Columbia (81% belief and 5% non-belief).<sup>65</sup> These rates of belief and non-belief have held remarkably steady for the past seven years.

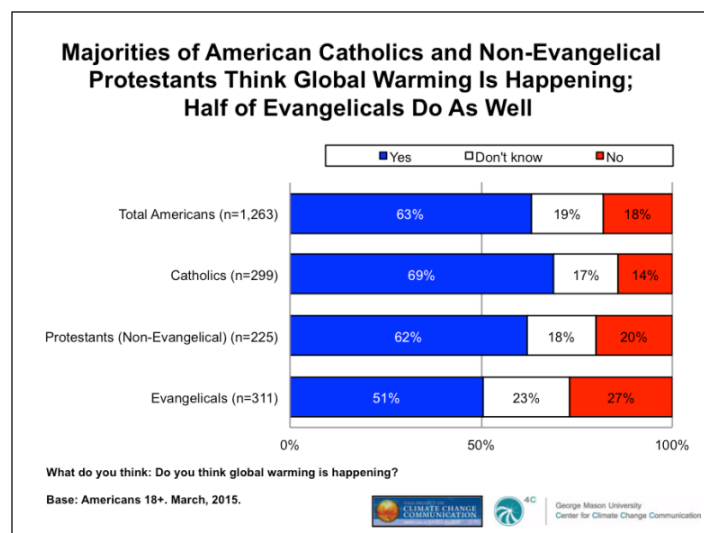
However, Americans are more divided when asked whether “global warming is caused mostly by human activities” or by “mostly natural changes.”<sup>66</sup> Overall, a plurality of Americans (48%) believes that humans are mostly to blame for climate change, while 35% of Americans disagree and 17% are unsure.<sup>67</sup>

Like beliefs about climate change generally, this varies from state to state, with the “bluest” states most likely to believe in human causation of climate change, and the “reddest” states least likely to believe in human causation.<sup>68</sup> Still, in every state more people believe global warming is mainly caused by human activities than believe natural changes are responsible.<sup>69</sup> This ranges from a low in Wyoming (42% belief in human causation versus 41% belief in natural causation) to a high in Hawaii (58% belief in human causation versus 27% belief in natural causation) and the District of Columbia (61% belief in human causation versus 21% belief in natural causation).<sup>70</sup> Interestingly, one major outlier in the red/blue divide on this question is Florida. Perhaps it is because climate change’s effects will likely be especially dramatic in the Sunshine State, but Floridians’ belief in human causation is significantly higher than other similarly “purple” states (50% belief in human causation vs. 34% belief in natural causation).<sup>71</sup>

**Partisanship:** Because the media often depicts climate change as a partisan issue,<sup>72</sup> one might suspect that most Republicans do not believe climate change is happening. While it is true that Democrats and Democratic-leaning independents are more likely to believe in climate change, a majority of Republicans and Republican-leaning independents *also* believe that it is occurring (52% belief versus 26% non-belief).<sup>73</sup> Furthermore, an *overwhelming majority* (77%) of Republicans believe that the United States should use more renewable energy—such as wind, solar, and geothermal—as we move toward the future.<sup>74</sup> In addition, Republicans believe that clean energy provides multiple benefits for American society. These include energy independence (66%), saving resources for our children and grandchildren (57%), and providing a better life for our children and grandchildren (52%).<sup>75</sup> Republicans believe by more than a two-to-one margin that the United States should take action to reduce fossil fuel use.<sup>76</sup>

**Christianity:** Much like the general public at large, most Christians also believe that climate change is occurring.<sup>77</sup> As Figure 8 shows, this is true for Catholics (69% versus 14%), non-evangelical Protestants (62% versus 20%), and evangelical Protestants (51% versus 27%).

Figure 8: Christian Beliefs about Climate Change<sup>78</sup>

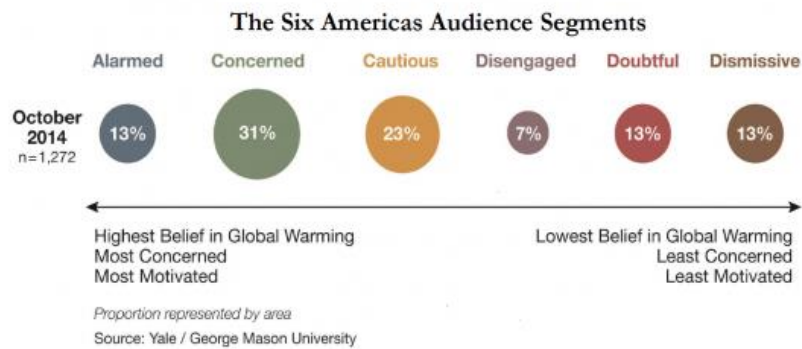


Furthermore, Christians believe that the United States should limit reliance on coal and other fossil fuels, even if that means higher electricity costs overall. Again, this holds for Catholics (74%), non-evangelical Protestants (70%), and evangelical Protestants (60%).<sup>79</sup> Importantly, majorities across the Christian faith believe that God prefers people to “protect” the creation, rather than simply “rule over

nature.” Catholics (42% versus 12%), mainline Protestants (37% versus 9%) and evangelical Protestants (49% versus 18%) all agree.<sup>80</sup>

**Urgency:** Although belief in climate change is surprisingly strong across geography, partisanship, and religion in the United States, Americans vary on how urgent they believe the problem is. As Figure 9 shows, the Yale Study on Climate Communication divides the nation into six categories: Alarmed (13%), Concerned (31%), Cautious (23%), Disengaged (7%), Doubtful (13%), and Dismissive (26%).

Figure 9: The Six Americas<sup>81</sup>



The study defines the “Alarmed” as those who “are very certain global warming is happening, understand that it is human-caused and harmful, and strongly support societal action to reduce the threat. They discuss the issue more often, seek more information about it, and are more likely to act as global warming opinion leaders than the other segments.”<sup>82</sup> People who are “Concerned”:

[A]re moderately certain that global warming is happening, harmful and human-caused; they tend to view global warming as a threat to other nations and future generations, but not as a personal threat or a threat to their own community. They support societal action on climate change, but are unlikely to have engaged in political activism.<sup>83</sup>

People who are “Cautious” “are likely to believe that climate change is real, but they aren't certain, and many are uncertain about the cause. They are less worried than the Concerned, and view global warming as a distant threat, if any.”<sup>84</sup> The “Cautious” are the last group on the spectrum that believe climate change is more-than-likely happening.

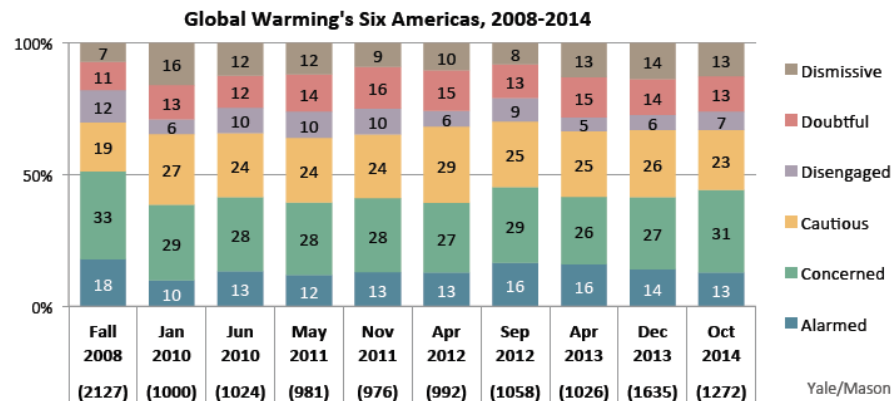
Next, “Disengaged” Americans “have given the issue of global warming little to no thought. They have no strongly held beliefs about

**Nearly universal agreement among scientists, with 97% agreeing that climate change is happening and that it is caused by human actions, the vast majority of average citizens still believe that there is at least some legitimate debate.**

global warming, know little about it, and do not view it as having any personal relevance.”<sup>85</sup> The final two groups believe that climate change is more-than-likely *not* happening. The “Doubtful” “are uncertain whether global warming is occurring or not, but believe that if it is happening, it is attributable to natural causes, not human activities.”<sup>86</sup> They tend to be politically conservative and to hold traditional religious views,<sup>87</sup> although as noted above, most religious Christians still believe in global warming. Finally, the “Dismissive” “are certain that global warming is not happening. Many regard the issue as a hoax and are strongly opposed to action to reduce the threat.”<sup>88</sup>

As Figure 10 shows, the size of each group has stayed relatively stable over the past seven years.

Figure 10: The Six Americas Over Time<sup>89</sup>



Furthermore, the six groups trust different sources for their information about climate change. The “Alarmed” and “Concerned” are much more likely to trust scientific or governmental sources such as climate scientists, environmental organizations, the Center for Disease Control, the World Health Organization, the Environmental Protection Agency, and local public health departments.<sup>90</sup> Members of the “Alarmed” and “Concerned” groups are much more likely to trust friends and family, military leaders, and religious leaders.<sup>91</sup> This suggests that if one goal is to move people along the spectrum toward believing in the dangers of climate change, we cannot rely solely on the government or the scientific community.

**Views on Scientific Consensus:** Although there is nearly universal agreement among scientists, with 97% agreeing that climate change is happening and that it is caused by human actions, the vast majority of average citizens still believe that there is at least some legitimate debate in the scientific community concerning human-caused climate

change.<sup>92</sup> However, once people are made aware of the near universal scientific consensus, people are more likely to believe that climate change is real, that it is caused by humans, and that actions should be taken to curb its affects.<sup>93</sup> There are a few ways to increase average citizens' understanding of the scientific consensus. One study states that the more frequently people are told of the scientific consensus, the more likely they are to believe and remember it.<sup>94</sup> Additionally, people are more likely to retain this information if they are presented with the numbers *numerically* rather than verbally.<sup>95</sup> Another method of conveying scientific consensus is the "estimate and reveal" method, which is to first have people estimate the degree of scientific consensus, and only then "reveal" that it is actually 97%.<sup>96</sup>

***The Language of Climate Change:*** Scientists and academics prefer the term "climate change" rather than "global warming" to describe the overall phenomenon of changes in Earth's climate due to rising atmospheric carbon dioxide levels.<sup>97</sup> The term "climate change" encapsulates all of the deleterious effects of rising atmospheric carbon dioxide, rather than simply the slight (but steady) increase in the Earth's average temperature.<sup>98</sup> But the mass media and most Americans generally use the term "global warming."<sup>99</sup> The term "global warming" brings greater certainty that the phenomenon is happening, greater understanding that humans are the primary cause, more intense worry about the issue, a greater sense of personal threat, and higher rates of demanding policy action on the issue.<sup>100</sup> This presents a question of whether scientists should continue using the term "climate change," or if there are merits to using the term "global warming," which already has greater understanding and urgency in the public.

## **The Anti-Regulatory Ideology**

American perceptions of climate change present a puzzle: how can so many people be concerned about this problem, but continue to elect politicians that do not act to stop it? In addition to inherent psychological biases, a powerful anti-regulatory ideology (which itself exploits psychological biases) plays a role in shaping American opposition to climate change policy.

This ideology dominates the American legal and political landscape and can be summed up in six simple words: "Markets are Good; Regulation is Bad."<sup>101</sup> Though it rose to prominence in the 1980s, this ideology has origins from much earlier in the twentieth century. The conceptual framework of anti-regulation is often attributed to

Friedrich von Hayek, a midcentury economist whose most famous work, *The Road to Serfdom*, was first published immediately following World War II.<sup>102</sup> Hayek drew a parallel between the regulatory state that had boomed in America during the war and the fascist states that had been America's enemies. Hayek argued that in both cases government action curtailed individual freedom. He suggested that government regulation would inevitably lead to tyranny and dictatorial oppression.<sup>103</sup>

Hayek's ideas gained prominence when Milton Friedman and other members of the "Chicago School of Economics" built upon it. This generation of economists believed that the problems of regulation stood in stark contrast to the "magic" of free markets. Friedman and his colleagues argued that unregulated markets provide a low-cost and effective solution to some of the country's largest problems.<sup>104</sup>

When President Ronald Reagan took office, the country shifted toward an economic and regulatory policy strongly influenced by Friedman.<sup>105</sup> It rejected government regulation in favor of policies rooted in the free market. In some areas, such as prisons and schools, this meant a shift toward privatization of public goods. In other areas, such as airlines and electricity generation, this meant a shift away from government intervention in favor of a so-called competitive market. This idea continued to be the dominant policymaking ideology of the late twentieth and early twenty-first centuries, and was explicitly promoted by Presidents Bill Clinton and George W. Bush.<sup>106</sup>

The modern anti-regulatory ideology rests on two interrelated premises. First, as promulgated by Friedman, markets can be an effective tool for solving problems. In short, markets are good. Second, even well-intentioned regulators will be ineffective at intervening in markets—so it is best to let the market determine social outcomes. Or, in short, regulation is bad. A theory of regulatory capture partly underlies this belief. Regulatory capture is the theory that individual government regulators will be subject to pressure from the regulated entities (such as coal companies or big banks) and so regulation will be designed and operated primarily for industry, rather than for the public interest.<sup>107</sup>

This anti-regulatory ideology has shaped the climate change discourse. First, industry groups oppose environmental regulation at all costs. For example, a recent U.S. Chamber of Commerce report decried a "[b]arrage of ill-conceived regulations coming out of the

Environmental Protection Agency (EPA) aimed at strangling the coal industry.”<sup>108</sup> Second, when solutions to tackle climate change are nevertheless considered, the most politically feasible solutions are market-based, such as cap and trade or clean energy tax credits.

The power of this anti-regulatory ideology can be seen in the fact that it still dominates the climate change discourse even though its theoretical underpinnings are completely ill-equipped to deal with this problem. The anti-regulatory ideology is premised on the idea that the free market, if left to its own devices, will be able to provide an effective solution to a problem. Even if markets are often good mechanisms for allocating some resources, there are exceptions to that general rule, and it is implausible that climate change will be solved by Friedman’s “magic” markets because it is fundamentally a problem of market failure. Climate change, and pollution generally, are examples of the classic problem of “externalized costs”: because pollution is “free” to polluters but costly to society as a whole, the free market creates more pollution than is optimal, and society rather than polluters bears the costs.

## ***II. Industry-Funded Climate Science Doubt***

As detailed above, the majority of Americans believe climate change is real, but very few believe there is scientific consensus about the reality and causes of climate change. This error can be explained, at least in part, by an intentional and well-funded effort by industry groups to promote doubt about climate science. Historians Naomi Oreskes and Eric Conway refer to the peddlers of this misinformation as “merchants of doubt.”<sup>109</sup> This effort is particularly effective because it capitalizes on the cognitive biases discussed earlier in this paper. This section explores how industry-funded science promotes a false story of scientific doubt, and how this doubt has manifested in the general public and prevented action on climate change.

### **Promoting and Funding Doubt in the Scientific Community**

Conservative think tanks, such as the Cato Institute, often distort routine analytic scientific methods to encourage skepticism of the data used to prove the existence of global warming. For example, the National Oceanic and Atmospheric Administration (“NOAA”) and National Aeronautics and Space Administration (“NASA”), when analyzing global temperatures to determine warming patterns, adjust

the data to account for variations in temperatures that are not related to climate, such as changes in observation locations and methods. NOAA and NASA disclose all adjustments, and the end result is often a more conservative description of warming trends. However, climate skeptics, including those at the Cato Institute, distort this practice, implying that NOAA and NASA's adjustments mean the evidence supporting climate change is manufactured and inaccurate.<sup>110</sup>

The fossil fuel industry benefits from scientific research that downplays the link between human activity and global warming. Even though such findings represent the minority of research, the very existence of skeptical scientists allows the fossil fuel industry to maintain that the scientific community has not reached a consensus on anthropogenic climate change. The industry creates doubt among the general public by magnifying the extent to which scientists disagree about man-made climate change. Disturbingly, they also create the very scientific disagreement that they later exploit.

Conservative groups like the Cato Institute have no compunction about relying on research funded by the fossil fuel industry, and instead question the reliability of government-funded climate research. Ironically, in questioning government research, conservative groups assert that government-funded research is biased in favor of the government's position on climate change.<sup>111</sup> While it is good practice to understand research funding sources, conservative groups are not similarly skeptical of scientific research funded by the fossil fuel industry. Instead, the Cato Institute argues that scientists funded by the industry are actually more reliable, because their climate stance is so disfavored by the scientific community.<sup>112</sup> This is a perversion of the scientific process designed to capitalize on a scientifically illiterate populace already prone to doubt and skepticism.

***Dr. Willie Soon and the Harvard-Smithsonian Center for Astrophysics:*** The research of Dr. Willie Soon, a scientist at the Harvard Smithsonian Center for Astrophysics, provides an example of this tactic. Documents released in February 2015 revealed that Soon received over \$1.2 million from the fossil fuel industry in the last decade, including funding from the American Petroleum Institute and ExxonMobil.<sup>113</sup> Soon published many papers skeptical of anthropogenically-caused climate change during this time, but he did not fully disclose his funding sources in at least eleven of these papers.<sup>114</sup> Politicians skeptical of climate change, as well as the fossil fuel industry, have cited Soon's research in support of their opposition to legislation and regulation mandating a reduction in greenhouse gas

emissions.<sup>115</sup> Soon's research has helped the fossil fuel industry plant the seeds of doubt to escape stringent regulations, facilitating the continued emission of millions of tons of greenhouse gases.

However, the problem isn't just isolated bad actors like Dr. Soon. It is also an institutional problem. Soon's affiliation with the prestigious Harvard-Smithsonian Center conferred on him a certain level of credibility and legitimacy that amplified his voice among politicians and the public. The Center also benefitted from the deep pockets of Soon's funders, and should exercise more diligence about enforcing full disclosure practices among its scientists.

**The problem isn't  
just isolated bad  
actors like Dr. Soon.  
It is also an  
institutional  
problem.**

### **Manifestation of Doubt among the General Public**

Given the human mind's tendency toward motivated reasoning, self-serving bias, and other cognitive limitations discussed above, it only takes a small injection of doubt into society to slow progress on stopping climate change. As the tobacco industry did years before, fossil fuel companies pay economists, scientists, and public relations experts to introduce doubt into the climate change dialogue.<sup>116</sup> This has been occurring since at least the 1970s.<sup>117</sup> By 1989, the George C. Marshall Institute—an anti-environmental right-wing think tank—was convincing the Bush Administration that the consistent rise in the average global temperature had nothing to do with atmospheric carbon dioxide, but actually was caused by fluctuations in sun spots.<sup>118</sup> Meanwhile, Dr. Fred Singer—a scientist funded by the oil industry—attempted to mislead the public into believing that many of the early climate change researchers had changed their minds on the topic.<sup>119</sup>

Once sown, these seeds of doubt quickly began to influence public policy debates. For example, Congressman Dana Rohrabacher sought to reduce climate research funding by one-third in 1995, referring to global warming as "trendy science . . . rather than good science."<sup>120</sup> Even in 2007, U.S. Vice President Dick Cheney asserted that, "[t]here does not appear to be a consensus" among the scientific community, a statement that was, and remains, certainly untrue.<sup>121</sup> Although the media in 2015 appears to finally be turning the corner in its coverage of climate change, a study of stories from 1988 through 2002 found that 53% of stories presented climate change proponents and deniers on equal footing, while another 35% noted the scientific consensus but still gave equal space for the deniers. As Naomi Oreskes and Eric Conway state in *Merchants of Doubt*,

This divergence between the state of the science and how it was presented in the major media helped make it easy for our government to do nothing about global warming. [Prominent and respected environmental advocate] Gus Speth had thought in 1988 that there was real momentum toward taking action. By the mid-1990s, that policy momentum had not just fizzled; it had evaporated. In July 1997, three months before the Kyoto Protocol was finalized, U.S. senators Robert Byrd and Charles Hagel introduced a resolution blocking its adoption. Byrd-Hagel passed the Senate by a vote of 97-0. Scientifically, global warming was an established fact. Politically, global warming was dead.<sup>122</sup>

### ***III. Industry-Funded Politics***

In addition to spending money to promote doubt about climate science, corporate America—and the fossil fuel industry in particular—has spent an unprecedented amount of money in the past five years in an attempt to influence, impact, or outright buy elected public servants.

The corporate money currently flooding federal, state, and local elections is one clear impediment to the United States coming together to take real, meaningful action on climate change. The shadowy nexus of business leaders, corporations, political action committees (“PACs”), and what are technically nonprofit organizations has dramatically altered the political playing field in pursuit of an anti-environmental, anti-regulatory agenda minimizing any chance that the nation’s elected officials will act on climate change.

This section details the dramatic changes that have happened in campaign financing practice as a result of the Supreme Court’s decision in *Citizens United*. It demonstrates how the fossil fuel industry has spent decisive sums of money in many elections at the federal, state, and local levels—including elections for executives, legislators, and judges.

#### ***Sea Change of *Citizens United****

In order to examine the widespread and pernicious effect of energy-sector spending in politics and government, one first must understand the sea change that occurred in American politics in the aftermath of the 2010 Supreme Court decision *Citizens United v. FEC*.<sup>123</sup> The case involved a challenge to section 203 of the Bipartisan Campaign Reform Act, which specifically prohibited corporations and unions from spending money on “electioneering communications.”<sup>124</sup> An electioneering communication is “any broadcast, cable, or satellite communication” that “refers to a clearly identified candidate for Federal office” and is made “within 30 days of a primary or 60 days of a general election.”<sup>125</sup> The plaintiff in the case was Citizens United, a nonprofit corporation that created and released a documentary called *Hillary: The Movie*, a film intensely critical of then-Senator and presidential candidate Hillary Clinton. The group purchased advertising time to promote the film and planned to air the documentary on cable sometime before the presidential elections. Anticipating that this strategy was, in fact, a clear violation of section

203, *Citizens United* sought a declaratory judgment that section 203 was an unconstitutional restriction on its First Amendment rights.<sup>126</sup>

Writing for a five to four majority, Justice Anthony Kennedy held that section 203 was unconstitutional, and that the corporate and union ban on financing electioneering communications violated the First Amendment right to free speech by government “censorship to control thought.”<sup>127</sup> Justice Kennedy declared that the First Amendment does not distinguish between different types of speakers and concluded that “[t]he First Amendment confirms the freedom to think for ourselves.”<sup>128</sup> Perhaps sensing the impending paradigm shift in favor of corporate interests, Chief Justice John Roberts added in concurrence that “[t]he First Amendment protects more than just the individual on a soapbox and the lonely pamphleteer.”<sup>129</sup>

In addition to striking down of section 203, the Court also defined the limits of congressional oversight of federal elections. Specifically, Justice Kennedy narrowed the Court’s definition of political corruption to “quid pro quo” corruption, which is something that looks a lot like straightforward bribery.<sup>130</sup> Thus, unless a fact-finder can point to something specific that a donor received in exchange for a particular contribution—a congressional earmark, an ambassadorship, a government contract—that donor can spend unlimited amounts of money for a specific candidate without ever implicating the court’s narrow conception of corruption.<sup>131</sup>

But Justice Kennedy’s analysis ignores the nuances often present in political corruption, instead contemplating the type of ham-fisted agreements more generally used by Saturday morning cartoon villains. Justice Kennedy concluded “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”<sup>132</sup> Despite conceding that such donors may possess “influence,” over elected officials, Justice Kennedy maintained that such influence “does not mean that those officials are corrupt.”<sup>133</sup> This may have been the most important part of the decision; prior to *Citizens United*, major donors faced at least the theoretical possibility that their support could constitute criminal corruption under some circumstances. After *Citizens United*, however, the only spending that constitutes corruption, and is therefore subject to congressional regulation, is overt or quid pro quo bribery.

*Citizens United* gave corporations the ability to spend directly on what are essentially campaign advertisements. However, the landscape of spending in American politics is, in practice, significantly more

**“Independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”**

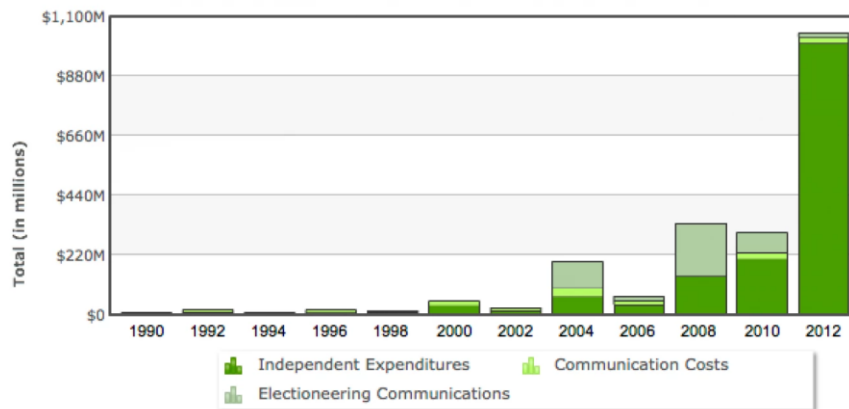
**Corporations are not only permitted to spend unlimited amounts of their shareholders' money on campaign advertisements, they can also give unlimited amounts of money to outside groups to do their spending for them.**

complicated than a cadre of rich captains of industry writing checks to advertising and television production firms. Subsequent federal cases have more fully defined that landscape, tilting it even further in favor of corporations and corporate interests.

Most significantly, in *SpeechNow.org v. FEC*,<sup>134</sup> the U.S. Court of Appeals for the D.C. Circuit considered whether laws imposing restrictions on the amount that corporations could give to "independent expenditure-only groups" violated the First Amendment. Applying *Citizens United*, Chief Judge David Sentelle concluded that "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption. The Court has effectively held that there is no corrupting 'quid' for which a candidate might in exchange offer a corrupt 'quo.'"<sup>135</sup> After *SpeechNow.org*, corporations are not only permitted to spend unlimited amounts of their shareholders' money on campaign advertisements, they can also give unlimited amounts of money to outside groups to do their spending for them. This adds an additional, opaque layer to political spending.

It is difficult to overstate the impact of *Citizens United* and its progeny. The effects began almost immediately. In 2010, the very first major election after the decision, outside groups spent \$294 million on congressional elections.<sup>136</sup> Two years later, the increase in spending by groups other than candidates and party committees continued to be clear: spending through the first week of March 2012 was 234% of the spending through the first week of March 2008, and 628% of the spending of that same week in 2004.<sup>137</sup> 2012 also featured at least thirty-six House and Senate races in which outside groups spent more money than both candidates combined.<sup>138</sup> The trend occurred in the presidential election as well: more than \$1 billion was spent in 2012 by outside groups via independent expenditure.<sup>139</sup> Put simply, since *Citizens United* the amount of spending in politics has risen dramatically and quickly. This can be seen in the following chart, prepared in January 2014. While the jump in 2012 is obvious, the less ostentatious jump between the 2006 and 2010 midterm elections is also remarkable.

Figure 11: Corporate Money in Federal Election Cycles<sup>140</sup>



**It is difficult  
to overstate  
the impact of  
*Citizens  
United* and its  
progeny.**

Even more troubling, of the \$1 billion spent in 2012, more than \$400 million came from “dark money” groups that do not disclose their donors.<sup>141</sup> Exorbitant spending by dark money groups was one of the inevitable consequences of *Citizens United* and subsequent cases. Understanding how dark money can be used to shape and manipulate the political process is essential to understanding the way in which political spending has harmed efforts to curb climate change. It is actually quite simple, as Andrew Prokop explains:

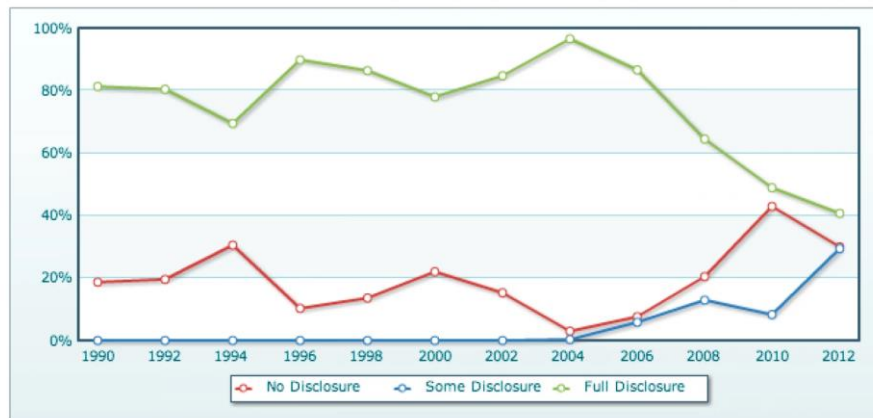
Suppose there is an oil baron, CEO of Once-ler Industries, who wants to defeat Senator Lorax in the next election. Under current law, the best thing for the CEO to do is to set up a political action committee named something like The Lorax is Stupid (TLS). The CEO can then channel unlimited money from Once-ler Industries into TLS to be used for political purposes. Here the CEO has a choice. TLS can act directly, taking out attack ads against Senator Lorax. However, if the CEO chose that course of action, TLS would have to disclose its donor, Once-ler Industries, and this might degrade the company in the eyes of the Brown Bar-ba-loot, Humming-Fish, and Swomee-Swan communities. So instead, the CEO can transfer money from TLS into a *different* political action committee; let’s call it Citizens Against the Lorax (CAL). The CEO can then transfer money from TLS to CAL and let CAL run attack ads against the Lorax. Once TLS, the only tangible link to Once-ler Industries becomes a donor, it no longer has to disclose Once-ler Industries as its source of funding. While CAL will have to disclose TLS as a donor, no one will know who initially funded TLS. The CEO and Once-ler Industries can therefore play a

massive and possibly decisive role in the election without anyone noticing the involvement.<sup>142</sup>

This is just one trick to hide donor information. Another strategy, popularized by Karl Rove's Crossroads GPS, is to simply refuse to register as a political action committee and instead register as a 501(c)(4), technically a "social welfare organization."<sup>143</sup> Unlike PACs, 501(c)(4) organizations do not have to disclose their donors.<sup>144</sup> While the IRS does require that these organizations do something other than partisan politics, running a few issue-ads that do not refer to politics or any specific candidate can easily satisfy this requirement.<sup>145</sup> It is clear that donors prefer this arrangement; while Rove's Crossroads GPS operated both a traditional PAC and a 501(c)(4), 80% of donations to the group in 2012 went to the 501(c)(4) organization.<sup>146</sup>

The result of these developments has been a plunge in disclosure of campaign spending occurring simultaneously with an explosion of outside expenditures. In 2014, a Republican-controlled Senate was elected "on the greatest wave of secret, special interest money ever raised in a congressional election."<sup>147</sup> Senator McConnell, for example, benefited from \$23 million in outside dark money, with one group, the Kentucky Opportunity Coalition, spending \$7.6 million.<sup>148</sup> While the Kentucky Opportunity Coalition was not required to disclose donors, it was run by a man who worked on the two previous McConnell campaigns, prompting the *New York Times* editorial board to quip "[y]ou can bet, however, that the senator knows exactly to whom he owes an enormous favor."<sup>149</sup> As with many of the problems with American democracy in the 21st century, the senior senator from Kentucky is merely representative of the larger issue: nationwide since *Citizens United*, disclosure of political spending is falling rapidly.<sup>150</sup>

Figure 12: Political Spending Disclosure 1990-2012<sup>151</sup>



**“The Court overlooks the fact that the right to do something also includes the right to threaten to do something.”**

More perniciously, these decisions have allowed corporations to influence the political process in ways that can never be captured on an IRS or FEC disclosure sheet. As Senator Sheldon Whitehouse noted in a March 2015 speech at Harvard Law School, “The Court overlooks the fact that the right to do something also includes the right to threaten to do something.”<sup>152</sup> Elected officials now know that at any moment they might be challenged by a staggering onslaught of money spent by unidentified corporate interests. The most likely result of this constant threat is that elected officials tailor their behavior and decisions to the people and interests they know or suspect will fund their campaigns or their opponents’ campaigns. Even if it is possible for an individual politician to resist this ever-present temptation, elected officials must still operate in a world where money is more politically important than ever before. It is perhaps for this reason that President Obama attended more than 300 fundraisers in his first term, nearly twice as many as either of his two predecessors totaled in their first term.<sup>153</sup>

## Industry Spending in Federal Elections

**The Koch Brothers:** Before analyzing the sheer extent of the energy sector’s political spending, it is useful to contemplate the identity of the individuals behind the PACs. Two individuals crucial to this story are David and Charles Koch. While they have been turned into conservative celebrity icons and all-purpose liberal villains since 2010, the Koch brothers are actually representative of the individuals across the country spending vast sums of money to pursue a broad anti-regulatory agenda and slow any real progress on climate change. The Koch brothers stand at the forefront of a group of business leaders and corporations that have engaged in a systematic effort to influence and

**One single subsidiary of Koch Industries is responsible for nearly 5% of total U.S. emissions, and the annual carbon footprint of Koch Industries is 300 million tons per year.**

buy elections, often putting the loosening or elimination of environmental regulations at the top of their priority list.

David and Charles Koch sit at the head of both the second richest family in America and the second largest private company in the United States, Koch Industries.<sup>154</sup> Koch Industries was founded in 1925 and quickly ascended to prominence after discovering a more efficient way to turn crude oil into gasoline.<sup>155</sup> Today, each the brothers are worth more than \$40 billion each.<sup>156</sup> Koch Industries has significant oil and gas operations worldwide. As of 2011, one single subsidiary of Koch Industries is responsible for nearly 5% of total U.S. emissions, and the annual carbon footprint of Koch Industries is 300 million tons per year.<sup>157</sup> This staggering level of success makes it is easy to understand why David and Charles Koch have a significant incentive to try to influence and, if they can manage it, dictate, U.S. energy and environmental policy.

In pursuit of that goal, the Koch brothers are, in more than one way, at the head of energy sector spending in American politics. For one, the Koch Industries PAC is the largest oil and gas sector contributor to federal candidates, outpacing both ExxonMobil and Chevron in terms of direct corporate spending.<sup>158</sup> More importantly, the Koch brothers have created a shadowy donor network that is currently spending unprecedented amounts of money in federal elections. The network is comprised of a few hundred donors who, at semiannual retreats organized by the Kochs, channel their money through approximately a dozen limited liability corporations, most of which are set up so that they do not have to disclose their donors.<sup>159</sup> These organizations pass money back and forth throughout each election cycle, making it almost impossible to track the origin of any given ad or expenditure. The largest of these groups by far is the Freedom Partners Chamber of Commerce, which, in its first year, raised \$256 million, a number that represented, as it noted on its tax filing “significantly more revenue than was expected.”<sup>160</sup>

Over the course of the past two major federal election cycles, this network has become arguably the most powerful and influential actor in American politics. In the 2012 elections, the Koch network spent approximately \$400 million through its subsidiary groups.<sup>161</sup> To put that number in perspective, it is only a few million dollars shy of the amount that the Republican National Committee (“RNC”), the main spending arm of the Republican Party, spent during the same cycle.<sup>162</sup> It eclipses the \$325 million spent by Rove’s Crossroads GPS and is roughly equivalent to the sum spent by every labor union in America

**“For that kind of money you could buy yourself a president. Oh, right. That’s the point.”**

**Without counting contributions to outside groups, the fossil-fuel industry spent \$721 million in direct spending during the 2014 election cycle.**

combined during the same period.<sup>163</sup> This exorbitant spending continued into 2014, when the aforementioned Koch-backed group, Freedom Partners Chamber of Commerce, on its own spent \$290 million on advertisements, nearly \$100 million more than the RNC’s \$188 million.<sup>164</sup>

All of these figures, however, are miniscule in comparison to the Koch brothers’ stated goal for the 2016 presidential election cycle. According to leaked documents and interviews with Koch network insiders, the brothers plan to raise \$889 million to be spent during the 2016 presidential election cycle.<sup>165</sup> This figure is more than twice the amount spent by the RNC in 2012 and comes close to the amount spent by each of the presidential campaigns in 2012.<sup>166</sup> As Republic strategist Mark McKinnon remarked, “[f]or that kind of money you could buy yourself a president. Oh, right. That’s the point.”<sup>167</sup>

The Koch brothers are by no means the only actors within the energy sector trying to buy and influence federal elections. As of September 2012, two full months before the conclusion of the 2012 presidential election, fossil-fuel industry “estimated spending on television ads . . . exceeded \$153 million.”<sup>168</sup> This number nearly tripled the \$41 million spent by clean-energy advocates in the same time period and represented a complete reversal from the 2008 election, when environmental groups outspent the fossil fuel sector on television by almost \$50 million.<sup>169</sup> While it is certainly possible that the shift was a genuine reaction to administration policies, a more cynical hypothesis is that *Citizens United’s* removal of the threat of sanctions was the driving force behind the splurge. Things got worse in 2014. Without counting contributions to outside groups, the fossil-fuel industry spent \$721 million in direct spending during the 2014 election cycle.<sup>170</sup> Of that number “\$64 million went directly to candidates and political parties,” \$163 million went to political ads, and the remaining \$500 million went to lobbyists in Washington D.C.<sup>171</sup> Again, this figure does not include contributions made to outside groups, so this is likely just a fraction of the total amount spent throughout the 2014 cycle by the energy industry.

When asked about the wisdom or fairness of a small group of people exerting such disproportionate influence on the political process, business leaders and corporate spokespeople routinely cite First Amendment considerations and protections to justify their actions. For instance, in response to a question about the propriety of the exorbitant spending, Koch Industries spokesperson Robert Tappan replied, “Koch’s involvement in political and public policy activities is

at the core of fundamental liberties protected by the First Amendment of the United States Constitution.”<sup>172</sup>

**Return on Investment:** When we follow the money, it is clear that this group of donors is pursuing an anti-regulatory, pro-business agenda that discourages the government from seeking bold solutions to climate change. Steve Miller, the former president of the American Coalition for Clean Coal Electricity, acknowledged that the purpose of his organization’s spending was to influence elected officials to support advantageous energy policy when he stated that “[t]he stakes are high . . . . Our goal is to assure that whoever is elected will have seen a groundswell for coal in swing states.”<sup>173</sup> Benjamin Cole, spokesman for the American Energy Alliance, cited an Obama administration policy, which he characterized as “a de facto embargo on energy production on American lands and shores” as the impetus for his group spending \$7 million in 2012.<sup>174</sup> He added that the president’s actions were “irresponsible and overzealous.”<sup>175</sup> According to Amy Myers Jaffe of the Rice University energy program, this spending is “a campaign about the E.P.A., how the president responds to a major accident, and it’s about do we or don’t we lease on federal lands.”<sup>176</sup>

These groups are not spending all of this money for nothing, and the energy sector campaign financiers’ motives come into stark relief when one examines the results they obtained. Upon securing the Republican majority in the Senate that would soon make him Senate Majority Leader, Mitch McConnell told the *Lexington Herald-Leader* that his first priority was “to try to do whatever I can to get the EPA reigned in.”<sup>177</sup> He said that he felt a “deep responsibility” to stop the EPA’s forthcoming plan to regulate carbon emissions at coal-burning plants.<sup>178</sup> The Center for American Progress attributes several anti-environmental legislative provisions to the effective spending and lobbying of the energy industry, including a legislative rider allowing strip-mining for coal in Montana, the transfer of several sacred Native American sites to an Australian mining company, and multiple anti-environmental provisions added into the enormous \$1.1 trillion “Cromnibus” bill.<sup>179</sup>

**Keystone XL Pipeline:** Perhaps the best example of this corporate-legislative bargain came in the congressional debate surrounding the Keystone XL Pipeline, a proposed 1,779 mile pipeline that would serve to transport oil from tar sands in Alberta, Canada to the Gulf of Mexico. The project was expected to cost \$5.4 billion and became a focal point of the climate change debate.<sup>180</sup> The Alberta tar sands are

particularly controversial because extracting oil from that particular formation is extremely difficult and costly, requiring 17% more energy than conventional oil and leaving behind waste byproducts that are acutely hazardous to wildlife.<sup>181</sup> The Keystone XL pipeline would have transported about 830,000 barrels per day of tar sands oil from Canada to the United States, caused the tar sands to be mined more quickly, and generally led to a boost in consumption of some of the most costly energy in the world.<sup>182</sup> While President Obama eventually vetoed the bill authorizing the pipeline, it passed the Senate in January 2015 by a margin of sixty-two to thirty-six. The sixty-two Senators who voted for passage received, on average, \$570,034 in campaign contributions from the oil and gas industry, while the thirty-six who voted against authorization received only \$78,641 on average.<sup>183</sup> Although the partisan divide over the issue may explain some of the disparity—since 1990, 79% of oil and gas industry donations have gone to Republicans—the nine Democrats who voted for authorization of the pipeline also averaged much higher overall contributions than the Democrats who voted no.<sup>184</sup>

## **Industry Spending in State and Local Elections**

While it is tempting, given the overwhelming magnitude of the numbers involved, to focus exclusively on energy-sector spending in federal elections, it is important to remember that energy companies also spend significant amounts of money to influence state and local elections.<sup>185</sup> The fossil fuel industry arguably has a better chance of exerting influence in these local races, for numerous reasons. First, these elections tend to be smaller, with fewer voters and less funding. A dollar goes a lot further in a race for the Pennsylvania State House of Representatives than in a contest for the U.S. House of Representatives. Moreover, each state sets its own finance rules for state and local elections; in some states, therefore, corporations face even fewer hurdles than the few left in place at the federal level after *Citizens United*.<sup>186</sup> Finally, energy companies have a lot to gain by influencing politics at the state and local level, as many environmental issues involve questions of state law such as land use, property rights, and private nuisance law.<sup>187</sup>

***Richmond, California:*** Perhaps the best example of the energy sector meddling in state and local politics occurred in the fall of 2012 in a relatively small city called Richmond, California, population 107,000.<sup>188</sup> Richmond is a San Francisco Bay Area community that happens to be home to one of Chevron's two west coast refineries.<sup>189</sup> That refinery is the largest greenhouse gas emitter in California.<sup>190</sup>

Richmond is almost a company town: Chevron is both the largest taxpayer and the largest employer in Richmond.<sup>191</sup>

Since 2008, the Richmond City Council and City Government have been controlled by a coalition of progressive lawmakers who have clashed repeatedly with Chevron.<sup>192</sup> The ugliest incident occurred when Chevron threatened to leave Richmond altogether after then-Mayor Gayle McLaughlin tried to raise Chevron's local taxes, citing alarming rates of asthma, heart disease, and cancer in the neighborhoods impacted by refinery pollution.<sup>193</sup> Tensions between Chevron and the Richmond government reached an all-time high after a 2012 refinery fire that left thousands of Richmond citizens seeking medical treatment.<sup>194</sup>

After continually wrestling with the Richmond city government, Chevron spent a total of \$3.1 million in the 2014 municipal elections, contributing to the mayoral race and a handful of city council races in an attempt to quite literally buy the town government.<sup>195</sup> Chevron made use of several San Francisco professional political consulting and public relations firms that ran "a phalanx of campaign committees."<sup>196</sup> In response, the progressive, grass-roots coalition opposing Chevron deployed an almost exclusively volunteer organization and spent only a fraction of the money Chevron spent.<sup>197</sup> For example, Tom Butts, the progressive candidate for mayor, spent just \$22,000 in his campaign for the seat.<sup>198</sup> In a rare victory over moneyed corporate interests, Tom Butts and the entire progressive coalition won at the polls in November, resulting in a city government in which pro-environment officials hold the mayor's office and six of seven seats on the city council.<sup>199</sup>

### **Attempted Counterweight: Spending by Environmentalists**

It would be disingenuous to suggest that the energy sector and its supporters are the only ones spending money in federal, state, and local elections to influence climate policy. Environmental groups also contribute to candidates and political activism, and 2014 marked their most concerted effort to date to use vast sums of money and the political process to move government—and public opinion—toward making progress on climate change.<sup>200</sup> The most notable member of this coalition was Tom Steyer, a billionaire hedge fund manager and environmental activist. Steyer poured \$74 million of his own money into his PAC, NextGen Climate Action, with the express goal of making climate change a priority in the minds of the electorate and federal elected officials.<sup>201</sup> NextGen was joined by the League of

**The result of the massive spending from the left was complete, utter failure.**

**“When liberals spend money on elections, they generally do so because they care only about the issue. When energy companies spend money on judicial or legislative elections, they see a return on investment.”**

Conservation voters, which spent \$25 million in 2014 to help defend the Democratic Senate majority and support environmentally friendly candidates.<sup>202</sup> In total, 2014 marked the largest ever investment into federal electoral politics by environmental organizations.<sup>203</sup> It is worth noting, however, that this sum is only a small fraction of fossil fuel industry spending.<sup>204</sup>

The result of the massive spending from the left was complete, utter failure, at least when compared to the counterweight on the right.<sup>205</sup> Taken as a whole, the midterm elections were a massive win for the Republican Party, which gained control of the Senate and picked up seats in the House of Representatives.<sup>206</sup> While swings to the party not currently occupying the White House are common during midterm elections, the environmentalists did not perform well even in their targeted races. For instance, NextGen was heavily invested in seven states: the Senate races in Iowa, New Hampshire, Michigan and Colorado, and the gubernatorial races in Maine, Florida, and Pennsylvania.<sup>207</sup> Of those, only three were elected. Perhaps the worst loss of the cycle came in the race for the Iowa Senate seat, where NextGen spent \$2.3 million on behalf of Congressman Bruce Braley, a man who would go on to lose by 9% and soon thereafter leave the state of Iowa altogether.<sup>208</sup> Adding insult to injury, a Pew Research Center poll conducted during the election showed that climate change and the environment ranked eighth out of eleven issues of importance to the American voter.<sup>209</sup>

It is also worth noting that, in terms of spending on politics, liberals and environmentalists will always be at a disadvantage. The reason is motivation. Tom Steyer spent money in the 2014 election because he believes the Earth is in peril, that climate change is a real problem, and that America must start to reverse the trends as soon as it possibly can. On the other hand, David and Charles Koch spent money in the 2014 election because it is profitable for their businesses to operate in the loosest regulatory environment possible. As Senator Whitehouse remarked, “When liberals spend money on elections, they generally do so because they care only about the issue. When energy companies spend money on judicial or legislative elections, they see a return on investment.”<sup>210</sup>

It is clear that both liberals and conservatives have decided that the political process and the electoral arena are appropriate—or at least advantageous—venues to have policy battles about climate change, energy policy, and governmental regulation. It is tempting to believe that the problem is simply a tilted playing field, that politics would not

be an impediment to addressing climate change if environmental activists and liberal political operatives could somehow match the overwhelming force on the right.

However, the very act of politicizing climate change and the environment may make it significantly less likely that U.S. policymakers will ever reach any consensus—as discussed above, politicization bias has demonstrated that politicization of an issue makes it less likely that the human mind can process information objectively. Thus, by investing in politics and making climate change a political issue, well-meaning liberal environmentalists may be exacerbating the problem.

### **Industry Spending in Judicial Elections**

Just as industry groups spend heavily to influence candidates for legislative and executive office, spending for judicial elections by industry groups is very common and has increased significantly in recent years due to a relaxation of regulations.

***Republican Party of Minnesota v. White***: The most serious threat to how state judicial elections operate is the fallout from the *Citizens United* decision. However, to fully comprehend how judicial elections slow progress on climate change, one also must understand the Supreme Court's 2002 decision in *Republican Party of Minnesota v. White*.<sup>211</sup> Minnesota is one of many states that elects its supreme court justices. Traditionally, candidates for judicial office in Minnesota ran primarily on their records as lawyers and/or experience as judges. The Minnesota Code of Judicial Conduct prohibited judicial candidates from making speeches or producing advertisements during the election campaign about how they might rule or their opinions certain legal or political issues.<sup>212</sup> The Republican Party of Minnesota challenged this rule, and in 2002, the Supreme Court of the United States struck it down as violating the First Amendment of the U.S. Constitution.<sup>213</sup> Writing for a conservative 5–4 majority, Justice Antonin Scalia stated that Minnesota's rule failed the "strict-scrutiny test to establish this proposition (that campaign statements are uniquely destructive of openmindedness) on which the validity of the [Code of Judicial Conduct rule] rests."<sup>214</sup> The decision threw open the doors to permit any and all statements to be made concerning state judicial elections. In conjunction with *Citizens United*, this decision radically altered state judicial elections.

**Fallout from Citizens United:** While people often focus heavily on *Citizens United's* effect on presidential and congressional elections, the decision has also completely transformed spending in state judicial elections. About three-quarters of states use some form of election to either select or retain their judges.<sup>215</sup> Since *Citizens United*, corporate and business spending in these elections has been unlimited. As the Center for American Progress states:

In state courts across our country, corporate special interests are donating money to the campaigns of judges who interpret the law in a manner that benefits their contributors rather than citizens seeking justice. . . . With money playing such a large role in judicial elections, the interest groups with the most money increasingly have an advantage. In courtrooms across our country, big corporations and other special interests are tilting the playing field in their favor. . . . Big business is tightening its grip on our courts. Instead of serving as a last resort for Americans seeking justice, judges are bending the law to satisfy the concerns of their corporate donors.<sup>216</sup>

Since *Citizens United*, the percentage of money in state judicial elections spent by outside groups has increased: interest groups spent \$15.4 million on state supreme court races in 2011–12, 50% higher than the previous record set in 2003–04.<sup>217</sup> This matters greatly because as outside spending increases, campaigns for both liberal and conservative judicial candidates shift toward advertisements focusing on opponents' policy positions, whether they accuse opponents of being "soft on crime" or call into question their records on energy and the environment.<sup>218</sup>

These advertisements and campaign spending have led to a crisis of confidence in state courts. About 90% of voters and even 80% of state court judges believe that outside forces and/or special interest groups seek to purchase influence by spending in judicial elections.<sup>219</sup> Furthermore, more than three-quarters of citizens and nearly half of judges believe that they are succeeding.<sup>220</sup> Former Mississippi Supreme Court Justice Oliver Diaz, Jr.—defeated for reelection in 2008 by pro-business candidate Randy "Bubba" Pierce—stated, "Judges who are running for reelection do keep in mind what the next ad is going to look like."<sup>221</sup>

**Caperton v. A.T. Massey Coal Co.:** The recent runaway spending on state judicial elections makes it seem as though corporations or wealthy individuals can simply purchase a judgeship. That is exactly

what happened in West Virginia in 2004. In August of 2002, a West Virginia jury found A.T. Massey Coal Company liable for fraudulent dealing, concealment, and tortious interference, awarding plaintiff Hugh Caperton and his mining company \$50 million.<sup>222</sup> As the case worked its way through the appeals process, Massey Coal CEO Don Blankenship decided to try to influence a West Virginia Supreme Court election by spending money to defeat an incumbent justice.<sup>223</sup> After donating the statutory maximum (\$1,000) to the challenger's campaign, Blankenship created a PAC called "And For The Sake Of The Kids."<sup>224</sup> Using this PAC, Blankenship spent \$3 million on the campaign, resulting in a victory for his candidate.<sup>225</sup> When the case reached the West Virginia Supreme Court, Caperton filed a motion for that justice to recuse himself. After denying the recusal motion, the justice at issue was the deciding vote in overturning the trial court's verdict.<sup>226</sup>

Caperton then appealed the justice's refusal to recuse himself to the U.S. Supreme Court as a violation of due process under the Fourteenth Amendment. Siding with the Supreme Court's four liberal justices, Justice Anthony Kennedy found that the failure to recuse was, indeed, a due process violation, stating:

We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent. The inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.<sup>227</sup>

The case was then remanded to the West Virginia Supreme Court to be re-heard without the justice bankrolled by Massey.<sup>228</sup>

Although *Caperton* provides some hope of a limit to the corporate ability to influence state courts, it is worth noting that the case was decided a year before *Citizens United*. One of the essential elements of *Caperton* was the obvious link between Massey CEO Don Blankenship and the newly elected state supreme court justice. However, as money becomes easier to disguise and hide in a post-*Citizens United* world, that causal link between funders and candidates will become harder to prove.

***Williams-Yulee v. Florida Bar***: The recently-announced Supreme Court decision in *Williams-Yulee v. Florida Bar*<sup>229</sup> contains another hint of optimism. Chief Justice John Roberts, writing for the court majority, upheld under strict scrutiny review a Florida law that prohibited elected judges from personally soliciting donations. However, by emphasizing that the law must pass strict scrutiny review, the Court reaffirmed the *Citizens United* notion that our government can do very little to regulate spending in elections. The Court took pains to emphasize the narrow scope of the law and the minimal restrictions it places on free speech.<sup>230</sup> Most alarmingly, the opinion averred that public confidence in the integrity of the judiciary does not have an analogous role in the executive or legislative branches, stating that

the role of judges differs from the role of politicians . . . . Politicians are expected to be appropriately responsive to the preferences of their supporters. . . . The same is not true of judges. In deciding cases, a judge is not to follow the preferences of his supporters, or provide any special consideration to his campaign donors.<sup>231</sup>

**In October Term 2013, half of the sixty-seven cases heard by the Supreme Court were argued by lawyers from just five law firms.**

**“Business can pay for the best counsel money can buy. The average citizen cannot . . . That’s just a reality.”**

## ***IV. Industry-Funded Litigation***

Corporate influence is exerted in the federal courts as well, though through less direct channels than the buying of state judges. Industry groups have been very successful at influencing federal courts and their legal reasoning. This section will describe these efforts and outcomes. It suggests that the establishment of a group of increasingly active repeat industry-backed players has given anti-climate regulation interests influence with the federal courts that adds a further barrier to action on climate change.

### **Rise of the Supreme Court Bar**

Over the past three decades, a private Supreme Court bar of elite attorneys has emerged, with prestigious law firms in various major cities establishing practice groups dedicated to litigation before the Court.<sup>232</sup> In October Term 2013, half of the sixty-seven cases heard by the Supreme Court were argued by lawyers from just five law firms.<sup>233</sup> A dozen private-sector attorneys argued two or more cases that term, and some argued four or more cases.<sup>234</sup> The significance of this trend, according to Professor Richard Lazarus, is that the new bar appears to be affecting the identity of cases the Court hears, shifting its docket to “topics more responsive to the concern of private business.”<sup>235</sup> The new bar also affects the Court’s rulings on the merits, because better advocates are more persuasive and more likely to influence the language and breadth of the Court’s opinions.<sup>236</sup>

A Reuters investigation conducted “exclusive interviews” with eight of the nine sitting Justices (Chief Justice John Roberts declined to be interviewed), and reported that “most embrace the specialty Supreme Court bar.”<sup>237</sup> The investigation found that although the Court typically grants just 5% of the petitions for certiorari filed by private attorneys, that figure jumps to 21% for members of the elite bar.<sup>238</sup> Justice Anthony Kennedy is quoted as saying these attorneys “basically are just a step ahead of [the Court] in identifying the cases that [the Court] will take a look at.”<sup>239</sup>

Since almost exclusively business interests can afford to hire these prestigious attorneys, there is a “corporate tilt [to] the specialist bar that dominates the docket.”<sup>240</sup> As Justice Ruth Bader Ginsburg told Reuters, “Business can pay for the best counsel money can buy. The average citizen cannot. . . . That’s just a reality.”<sup>241</sup> Law firms with prominent Supreme Court practices may decline to take certain cases, including those on behalf of environmental organizations, due to

concerns about conflicts of interest with the firms' other clients.<sup>242</sup> As Lazarus writes, this disparity in representation is concerning because "[t]he public should expect that the Court will devote its limited resources to address the legal issues that are truly the most important for the nation rather than those legal issues important to those who can secure representation of their interests by the Supreme Court bar."<sup>243</sup>

## **Increasing Role of Amicus Briefs**

If the losing party in a case wishes to challenge a lower court's decision, it can file a petition asking the Supreme Court to hear its case. This is called a petition for certiorari, and the Court only grants about one petition for every hundred it receives.<sup>244</sup> A person or group who is not a party to the case but has an interest in the outcome and wishes to inform the Court of its perspective on the issue can file what is called an amicus curiae, or "friend of the court," brief.<sup>245</sup>

Though amicus curiae briefs are not required, the past few decades have seen a dramatic increase in the number that are filed in support of and in opposition to petitions for certiorari. This has led to a now-common understanding that amicus support is essential to demonstrate to the Court that a legal question merits its review.<sup>246</sup> For example, the total number of certiorari-stage amicus briefs filed grew by 35% from 2009 to 2012, and the number of groups filing them grew by 65%.<sup>247</sup>

The identity of the organizations that have been most aggressively filing amicus briefs demonstrates the role of corporate influence on the Court. In a 2013 analysis of certiorari-stage amicus activity at the Supreme Court posted on *SCOTUSblog*, Adam Chandler compiled a list of the most frequent Supreme Court certiorari-stage amicus filers from 2009 to 2012, and compared that list with one created based on identical criteria for the years 2004 to 2007.<sup>248</sup> The U.S. Chamber of Commerce tops the 2009 to 2012 list, with fifty-four certiorari-stage amicus briefs filed.<sup>249</sup> A number of other anti-regulatory, pro-business groups such as the Pacific Legal Foundation and the Mountain States Legal Foundation remained on the list from Chandler's 2007 assessment, and all seven of the organizations making the top list for the first time in 2013 (including the Cato Institute, which increased from two briefs filed in 2004 to 2007 to thirty filed in 2009 to 2012) are ideologically conservative.<sup>250</sup> Meanwhile, equivalent liberal groups do not appear on the list at all.<sup>251</sup>

**Figure 13: Organizations Filing the Most Certiorari-Stage Amicus Briefs.<sup>252</sup>**

Rank		Party	Briefs		Grant %	
1	1	Chamber of Commerce of the United States of America	54	55	32.0%	26.0%
2	2	National Association of Criminal Defense Lawyers	41	33	25.6%	31.3%
3	4	Pacific Legal Foundation	37	25	20.0%	28.0%
4	--	Cato Institute	30	2	22.2%	--
5	3	Washington Legal Foundation	29	26	24.0%	39.1%
6	--	Center for Constitutional Jurisprudence	21	1	30.0%	--
6	--	DRI - The Voice of the Defense Bar	21	0	23.8%	--
8	5	National Association of Manufacturers	19	23	5.6%	31.6%
9	--	National Federation of Independent Business	16	4	26.7%	--
10	8	International Municipal Lawyers Association	15	10	7.7%	30.0%
11	15	AARP	13	8	10.0%	25.0%
11	11	Pharmaceutical Research and Manufacturers of America	13	9	23.1%	25.0%
13	--	Allied Educational Foundation	10	6	28.6%	--
13	--	American Bankers Association	10	5	11.1%	--
13	--	American Center for Law and Justice	10	3	10.0%	--
13	8	Mountain States Legal Foundation	10	10	50.0%	22.2%

Figures in white are from Chandler's 2009–12 assessment; figures in gray are from 2004–07.

## Implications for U.S. Law

These trends of the rise of the elite Supreme Court bar and the increase in the use of amicus briefs in Supreme Court litigation arguably have a significant effect on the Court's docket and thus on the shape of U.S. law. At the most basic level, this is simply because the Justices and, more importantly, their law clerks—recent law school graduates who assist the Justices with legal research and writing—have limited time to spend reviewing certiorari petitions. The Justices and clerks have therefore come to rely on the presence of an established Supreme Court advocate's name on a petition or amicus brief as a signal for the significance of the issue presented and its credibility as a question that needs to be decided.<sup>253</sup> With this subtle influencing power, these advocates have been able to "persuade the Court to enter into areas of law of interest to the regulated community to correct what business perceives as problematic legal doctrine."<sup>254</sup> Amicus briefs also matter when the Court has decided to grant a petition and is considering the case itself: "Eighty-eight percent of former Supreme Court law clerks interviewed in one study acknowledged that they read more carefully and gave more initial weight to merits amicus briefs filed by attorneys . . . considered experts in Supreme Court advocacy."<sup>255</sup>

And these groups are not shy about proclaiming their amicus-driven influence with the Court. The website for the Cato Institute's amicus program boasts that "[o]f the 15 times the Court sided with Cato,

**The Supreme Court granted certiorari in four environmental cases that would not have been likely to receive review absent the elite attorney names associated with them.**

seven of those were unanimous, showing that even the liberal justices have little tolerance for our era of excessively overreaching government” and that Cato was “the only organization to support the constitutionally correct outcome in . . . [the affirmative action, same-sex marriage, and Voting Rights Act] cases, demonstrating that the libertarian view of the Constitution is truly a third way that is not represented by the two predominant parties.”<sup>256</sup>

Professor Lazarus took a close look at the Supreme Court bar’s “capture” of the Court’s docket with respect to environmental law cases in a 2009 article in the *Yale Law Journal Online*.<sup>257</sup> Focusing on October Term 2008, Lazarus discovered that the Supreme Court granted certiorari in four environmental cases that would not have been likely to receive review absent the elite attorney names associated with them.<sup>258</sup> In two of those cases, industry parties were intervenors in the lower courts who succeeded in convincing the Court to hear appeals from U.S. Court of Appeals decisions, despite the losing federal agency below opposing the Court’s grant of review.<sup>259</sup> The other two cases “raised legal issues of diminishing practical significance [that] the Court [had] declined to hear for decades.”<sup>260</sup> In all four cases, the Supreme Court overturned an appeals court’s decision that had been in favor of environmental interests.<sup>261</sup> Had industry not persuaded the Supreme Court to hear and ultimately overturn those decisions, the pro-environment outcome would have stayed in effect.

### **Impact on the Court’s Climate Change Jurisprudence**

The influence that industry parties have developed with the Court is important in the context of climate change regulation, because the bulk of current U.S. action on climate change is being taken through regulations promulgated by the EPA under President Obama’s executive authority under the Clean Air Act,<sup>262</sup> and these rules are inevitably challenged in federal court.

In October Term 2013, industry groups faced off against the EPA in the Court’s blockbuster greenhouse gas case, *Utility Air Regulatory Group v. EPA* (“UARG”),<sup>263</sup> which considered whether the EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered emissions permitting requirements for new and modified major stationary sources regulated under the Clean Air Act’s Prevention of Significant Deterioration (“PSD”) program.<sup>264</sup> Essentially, what was at stake was whether the EPA could regulate new power plants based on their greenhouse gas emissions alone.

**“Unmistakable  
warnings to the  
EPA about not  
overstepping its  
regulatory  
authority.”**

Industry had challenged the EPA's regulations in the D.C. Circuit Court of Appeals, which unequivocally found in EPA's favor.<sup>265</sup> Petitioners, including the U.S. Chamber of Commerce, asked the Supreme Court to review and reverse the decision. Other industry groups, including the Washington Legal Foundation and Mountain States Legal Foundation filed amicus briefs in support of certiorari,<sup>266</sup> and the Pacific Legal Foundation filed its own petition for certiorari,<sup>267</sup> which was denied by the Court.<sup>268</sup>

During the case itself, the Pacific Legal Foundation then joined the Washington Legal Foundation and Mountain States Legal Foundation as amici in support of petitioners whose petitions were granted, and the Center for Constitutional Jurisprudence filed an amicus brief in support of petitioners as well.<sup>269</sup> These organizations are, of course, all players on Adam Chandler's "Sweet Sixteen" certiorari filers list.<sup>270</sup>

When the Court decided *UARG*, it did so in a way that allowed both sides to claim at least some victory. Although the court struck down some aspects of the EPA's regulations, the EPA expected that this ruling would still allow it to regulate 83% of stationary-source greenhouse gas emissions, and that it would be foregoing regulation of only 3% of emissions by not regulating sources based on their greenhouse gas emissions alone.<sup>271</sup>

The victory for the fossil fuel industry in *UARG* was in part the scaling back of EPA's regulations that were actually before the Court in that case, but it was also the language Justice Antonin Scalia used in his majority opinion, which Professor Jody Freeman describes as "laced with the legal equivalent of improvised explosive devices" and containing "unmistakable warnings to the EPA about not overstepping its regulatory authority."<sup>272</sup> The Court's language, which accused the EPA of adopting an interpretation that would "bring about an enormous and transformative expansion in [the Agency's] regulatory authority without clear congressional authorization" and giving itself "unheralded power to regulate 'a significant portion of the American economy,'"<sup>273</sup> came at a critical time, as the EPA had just proposed its rule to regulate greenhouse gas emissions from existing stationary sources.<sup>274</sup> Professor Freeman believes this language to be "an unmistakable warning shot across EPA's bow."<sup>275</sup>

Pro-business, anti-regulatory interests helped lead the Court to this decision and its language. This does not mean the Court is in the pockets of industry or otherwise unable to come to an independent, legally-reasoned conclusion. Rather it is meant to suggest that the

**Framing used by  
pro-business,  
anti-regulatory  
interests does  
seem to affect  
the Court's  
reasoning.**

framing used by pro-business, anti-regulatory interests does seem to affect the Court's reasoning. For example, in the *UARG* petitioners' joint reply brief to the Supreme Court, they claimed that EPA's rule would grant the Agency "regulatory authority over the energy and operational efficiency of every significant GHG emitter in the United States . . . [including] deciding whether a factory used optimally efficient light bulbs in the cafeteria."<sup>276</sup> This idea concerned the Chief Justice, who at oral argument questioned Solicitor General Donald Verrilli about the differences between regulating greenhouse gases and other air pollutants.<sup>277</sup> The Chief Justice asked Solicitor Verrilli if EPA's regulation of greenhouse gases is "[t]he same sort of thing as with, for domestic uses, the energy efficient light bulbs?"<sup>278</sup> Solicitor Verrilli responded that he "really [does not] think this is about light bulbs," and the Chief Justice countered that his "point is it relates to energy consumption as opposed to particulate emission."<sup>279</sup>

As with Justice Scalia's language in the majority opinion, the framing of the greenhouse gas regulation debate on display here is important as the EPA continues to use its regulatory authority to combat climate change. Professor Ann Carlson and Megan Herzog argue that the fate of these new regulations, known as the Clean Power Plan, is likely to be affected by the contextual lens through which the Court views them.<sup>280</sup> The Court will be less likely to uphold the Clean Power Plan if it views it as an economy-disrupting power grab on the part of the EPA.<sup>281</sup> If pro-business, anti-regulatory litigants can successfully present these rules as permitting the EPA to regulate every detail of Americans' lives down to the smallest, most intrusive dictation of what light bulbs they use at work—and maybe even at home!—they will have a powerful weapon that may convince the Court to prevent the EPA from regulating greenhouse gas emissions effectively.

Legal challenges to the Clean Power Plan have already begun, and the cast of petitioners is all too familiar. In 2014, coal company Murray Energy Corporation initiated a lawsuit challenging the EPA's regulatory authority.<sup>282</sup> The Chamber of Commerce and the National Association of Manufacturers, both top players in Supreme Court certiorari-stage amicus filing, were amici in support of Murray Energy.<sup>283</sup> The National Federation of Independent Businesses, also a top certiorari-stage filer, intervened on behalf of the petitioner.<sup>284</sup> This particular challenge was unusual, as the parties sought to have the Clean Power Plan blocked as beyond the scope of EPA's regulatory authority before the Plan was even finalized. The court of appeals dismissed the case for this reason in June 2015,<sup>285</sup> but there will surely be additional challenges as the EPA continues to regulate greenhouse

gases in response to the climate crisis and business interests continue their efforts to stifle such progress.

**In terms of political influence, with respect to the course of legislation and government action, the American business executive is truly the “forgotten man.”**

## ***V. Case Study: Chamber of Commerce***

The U.S. Chamber of Commerce (“Chamber”) illustrates how a single organization can have a tremendous impact on climate change policy in the United States. This case study provides background information about the Chamber, describes its position on climate change, and demonstrates how the Chamber influences climate change policy by promoting doubt in climate science, coordinating public relations campaigns to manipulate public opinion, influencing judicial and legislative elections, and litigating against environmental regulation.

### **Background**

The Chamber is one of the largest and most politically influential business associations in the country. A business association is an organization of corporations across different industries that form to benefit the business community as a whole. Generally, business associations are funded through dues payments from individual corporate members. The association aggregates those funds and spends them in strategic ways to promote its goals.

### ***About the Chamber***

**History:** While these associations have long been in existence, their power over the political process grew significantly in the final decades of the twentieth century. The Chamber is an example of an association that grew in prominence and power during this period. The Chamber’s rise was the result of an intentional effort to control the American political system and—more insidiously—to control the academic institutions that business leaders astutely realized played a significant role in creating political ideology. In 1971, then-corporate lawyer and soon-to-be Supreme Court Justice Louis Powell wrote a memorandum to the Chamber entitled “Attack on American Free Enterprise System.” The memo argued that “the American economic system is under broad attack” by advocacy groups on the left.<sup>286</sup> The memo provided a road map for the Chamber to reinvigorate the “American free enterprise system” by building a presence on college campuses, a media strategy, and widespread participation in the political system. Powell wrote:

[F]ew elements of American society today have as little influence in government as the American businessman, the corporation, or even the millions of corporate stockholders. . . . One does not exaggerate to say that, in terms of political

influence, with respect to the course of legislation and government action, the American business executive is truly the “forgotten man.”<sup>287</sup>

After Powell’s memo, the Chamber, following his prescriptions, grew significantly in membership and influence, becoming one of the most influential political organizations in the country.

**Ideology:** Today, the Chamber remains focused on promoting “free enterprise.” The Chamber’s ideology is rooted in the dominant “markets are good, regulation is bad” framework that often advantages business interests. This ideology is well-summarized in a recent Chamber report on energy, which argues that “regulations have cost jobs by inflicting significant compliance costs that divert resources away from more productive uses, harming and even destroying entire industries, and creating such complexity that they discourage business expansion and job creation.”<sup>288</sup> The Chamber recently released policy priorities for 2015, claiming that their overarching goal is to “help revitalize the American economy, create jobs, spur growth, and lift incomes.”<sup>289</sup>

**Structure:** Today, the Chamber has approximately 300,000 members.<sup>290</sup> In addition, the Chamber is affiliated with approximately 2,000 state and local chambers of commerce that represent, in total, three million businesses across the United States.<sup>291</sup> The Chamber often claims to have three million members, despite only having a distant affiliation with the majority of those businesses.<sup>292</sup>

Although the Chamber’s membership is broad, its policies are made by a small number of members on sixteen issue-specific policy committees. The membership rolls of these committees are not public, the process for participation is not clear, and recorded votes are rare.<sup>293</sup> There is some speculation that these policy committees are dominated by large corporations.<sup>294</sup>

In addition to its policy committees, the Chamber has three internal sub-entities that play an important role in promoting its climate change policy: the U.S. Chamber Institute for Legal Reform, the U.S. Chamber Litigation Center, and the Institute for 21st Century Energy. The Institute for Legal Reform was established in 1998 to promote reform of the tort system (as the Institute describes it, “to address the country’s litigation explosion”).<sup>295</sup> However, its scope has expanded significantly beyond the original focus on tort law, and now it is used as a vehicle to promote a variety of policies for legal reform. The U.S.

**“Regulations have cost jobs by inflicting significant compliance costs that divert resources away from more productive uses, harming and even destroying entire industries, and creating such complexity that they discourage business expansion and job creation.”**

**In 2012, more than half of all contributions to the Chamber came from just sixty-four donors.**

Chamber Litigation Center supports the Institute for Legal Reform's work by filing lawsuits and amicus briefs.<sup>296</sup> It is a powerful player in the Supreme Court and has a strong track record of success in cases in which it is involved.<sup>297</sup> The Institute for 21st Century Energy is another sub-section of the Chamber that specifically focuses on energy policy.

**Funding:** The Chamber is funded through membership dues, but also receives a large number of voluntary contributions and grants to fund its work. In recent years, the Chamber has received donations totaling almost \$200 million per year.<sup>298</sup> As a 501(c)(6) organization, the Chamber is required to report all donations in amounts over \$5,000, but it is not required to publicly disclose the names of the donors.<sup>299</sup> The Chamber strongly opposes mandatory or voluntary disclosure of its funding sources.<sup>300</sup> As a result, little information is available about the identities of the primary funders of the Chamber. However, it is clear that the Chamber is largely funded by a very small number of individuals—a far cry from the three million businesses that it often purports to represent. In 2012, more than half of all contributions to the Chamber came from just sixty-four donors, and nearly two-thirds of contributions to the Institute for Legal Reform came from just twenty-one donors.<sup>301</sup>

### ***The Chamber's Climate Policy***

**Energy Policy:** The Chamber spends significant resources promoting energy policy but rarely makes explicit the connection between its policy goals and climate change. "Energy and the Environment," one of the Chamber's strategic policy goals for 2015, has six components:

- "Continue to strongly support efforts to improve energy efficiency and develop clean energy alternatives, which will help the nation further reduce greenhouse gas emissions.
- Any comprehensive legislative solution must not harm the economy, recognize that the problem is international in scope, and aggressively promote new technologies and efficiency. Protecting our economy and the environment for future generations are mutually achievable goals.
- Support a comprehensive international agreement on climate change that has the widest possible participation.

**In its seventy-two pages, the report contains the word climate three times: in reference to “a tough economic climate,” “a proper climate for R&D in the private sector,” and “the current fiscal climate.”**

- Oppose the EPA’s efforts to regulate greenhouse gases under the existing Clean Air Act, including the endangerment finding.
- Champion efforts by industry to develop energy efficient and low emissions technologies and export them to the developing world, where the bulk of new greenhouse gas emissions are expected to occur.
- Ensure that large emerging economies share responsibility for addressing climate change.”<sup>302</sup>

These policy priorities seek to undermine many of the key gains made by environmental advocates under the Obama administration—for example the fourth point of the plan includes a commitment to challenging the EPA’s “endangerment finding,” which is the the EPA’S determination that greenhouse gasses endanger human health or welfare, and which has been upheld by the D.C. Circuit and the Supreme Court.<sup>303</sup> The priorities also seem designed to distract from options for real progress, for example by emphasizing the role of other countires rather than focusing on what the United States can do to combat climate change.

The Chamber aggressively pushes policies that it characterizes as energy policy without acknowledging the large impact that those policies will have on climate change. For example, the Chamber’s Institute for 21st Century Energy recently released a seventy-two page report that lays out the Chamber’s energy policy.<sup>304</sup> While referring to the United States as the “Saudi Arabia of coal,”<sup>305</sup> the report focuses on the benefits of traditional fossil fuels, new technologies like hydraulic fracturing (“fracking”), and horizontal drilling.<sup>306</sup> True to the broader ideological position of the Chamber, its energy policy is firmly anti-regulation and pro-market. Its energy report decries “regulatory overreach” and complains of a recent “barrage of ill-conceived regulations coming out of the Environmental Protection Agency (EPA) aimed at strangling the coal industry.”<sup>307</sup> This report ignores the implications of energy policy for climate change. In its seventy-two pages, the report contains the word climate three times: in reference to “a tough economic climate,” “a proper climate for R&D in the private sector,” and “the current fiscal climate.”<sup>308</sup> In sum, the Chamber proffers an energy policy that has severe consequences for the environment and climate change without acknowledging these potentially destructive impacts.

**The Chamber's  
energy policy  
does not  
represent the  
best interest of  
the business  
community as  
a whole.**

The Chamber's promotion of anti-regulatory energy policy is particularly frustrating given its claims to represent the broader business community consisting of three million businesses across the United States. The Chamber's energy policy does not represent the best interest of the business community as a whole. A recently released report from the independent organization Rhodium Group demonstrates in great detail how climate change will have a direct negative impact on entire sectors of the U.S. economy.<sup>309</sup> This report projects that costs of climate change by the end of the twenty-first century could be as high as: \$50 billion in the agricultural sector, \$150 billion in the labor market, \$41 billion in mortality costs due to poor health outcomes, \$12 billion from crime, \$87 billion in energy, and \$27 billion in coastal communities.<sup>310</sup> The report summarizes that:

At the upper bound of our estimates . . . late century *likely* combined direct costs at a national level are 1.4% to 5.7% of economic output . . . For Florida, the most at-risk state, combined *likely* direct costs rise to 10.1% to 24% of state economic output. . . . [N]ote that because we are taking an enumerative approach and many known impacts are not quantified, the numbers presented in this chapter should not be viewed as a comprehensive portrait of all economic costs and benefits . . . .<sup>311</sup>

In short, quantitative evidence suggests that climate change poses a real threat to the American economy. Given this, the Chamber's current policies seem directly antithetical to the business interests of many of the members that it purports to represent.

***Promoting Doubt in Climate Science:*** The Chamber has taken significant action to take promote doubt about whether climate change is harmful, the extent to which climate change is proven, and whether climate change can be attributed to human causes.

The Chamber has a history of disputing whether climate change is happening and whether it is caused by humans. In 2001, a senior Chamber executive stated in a CNN television appearance that "there's no link between greenhouse gases and human activity."<sup>312</sup> In 2008, the Chamber's president circulated a memo that suggested that a "cooling trend" mandated renewed scientific inquiry into the science behind global warming.<sup>313</sup> In 2008 and 2009, the Chamber's nonprofit affiliate named books by climate change deniers among its "top ten recommended books of the year."<sup>314</sup> In comments and litigation materials, the Chamber has consistently disputed the underlying

sources of the science surrounding climate change. In one recent amicus brief, the Chamber argued that the “EPA professes to be 99 percent certain that anthropogenic emissions are mostly responsible for [rising temperatures], but the record does not remotely support this level of certainty.”<sup>315</sup>

The Chamber continues to publicly deny the centrality of man-made causes of climate change despite widespread scientific evidence that humans are responsible. In a 2014 U.S. Senate Foreign Relations Committee hearing, Senator Bob Menendez of New Jersey questioned Karen Harbert, President of the Chamber’s Institute for 21st Century Energy, about climate change. Their conversation included the following exchange:<sup>316</sup>

Sen. Menendez: [Does the Chamber] agree that climate change is real and is caused by humans?

Ms. Harbert: The Chamber has a long record on climate. And here’s what it is. Number one, we support addressing our environment in things that work. . . . We want to be in favor of things that work, technologies that work. That put Americans back to work. We strongly believe in improving the environment while also protecting the economy.

Sen. Menendez: That was not responsive to my question. I asked a very simple question. Does the Chamber believe that climate change is real and caused by humans? Yes or no?

Ms. Harbert: We believe that we should be doing everything in our power to address the environment.

Sen. Menendez: That’s great. But is climate change—is it real?

Ms. Harbert: The climate is warming, without a doubt.

Sen. Menendez: So climate change is real. Is it caused by humans?

Ms. Harbert: And the other part of that answer is: is it warming as much as some of my colleagues on this panel have predicted in the past? And the answer is no.

Sen. Menendez: I'm going to get to that too. But you have to give me your answer. Is it caused by humans?

Ms. Harbert: It is caused by lots of different things, and you can't say that climate change is only caused by humans.

Incredibly, the Chamber has gone so far as to argue in litigation that even some of the largest effects of climate change might be beneficial to human health and welfare. In a petition to the EPA relating to its endangerment finding for greenhouse gas emissions, the Chamber stated:

The [EPA] Administrator has thus ignored analyses that show that a warming of even 3°C in the next 100 years would, on balance, be beneficial to humans because the reduction of wintertime mortality/morbidity would be several times larger than the increase in summertime heat stress related mortality/morbidity.<sup>317</sup>

**Backlash:** The Chamber's aggressive efforts to promote doubt about the science of human-caused climate change have not gone unnoticed. In 2009 the Chamber came out against global warming legislation pending in Congress and also challenged the EPA sufficiency finding that global warming was a hazard to human health.<sup>318</sup> The results were remarkable. Pacific Gas & Electric, Exelon and PNM Resources, all public utility companies, announced that they were withdrawing from the Chamber due to its climate change policy.<sup>319</sup> Nike also expressed displeasure by withdrawing from the Chamber's Board but remained a Chamber member in order to "advocate for more aggressive climate change strategy internally."<sup>320</sup> Perhaps most notably, Apple withdrew from the Chamber entirely, saying in a statement: "Apple supports regulating greenhouse gas emissions, and it is frustrating to find the Chamber at odds with us in this effort."<sup>321</sup>

Recent developments suggest that this movement away from the Chamber still has momentum. In 2011, the Seattle Chamber of Commerce ended its affiliation with the U.S. Chamber due to the

same dispute over climate change denial.<sup>322</sup> Skanska, a global construction and development company, left the Chamber in July 2013.<sup>323</sup> Skanska severely criticized the Chamber on its way out, stating, “the Chamber has chosen to support a group of businesses who care more about protecting the status quo.”<sup>324</sup>

## **The Chamber’s Public Relations Strategy**

The Chamber’s position on climate change is aligned with, and likely driven by, fossil fuel corporations’ interests. The Chamber, fossil fuel corporations, and other fossil fuel trade associations use public relations strategies to influence public opinion on climate change and prevent regulations that might undermine the industry’s profit-maximization goals.

## ***The Origins of the Public Relations Strategies***

Industries linked to fossil fuels were among the first to use public relations firms in the United States.<sup>325</sup> At the beginning of the twentieth century, the coal mining industry hired public relations pioneer Ivy Lee to protect the industry’s image during a coal mining strike.<sup>326</sup> Later that same year, Lee launched campaigns to sway public opinion on the image of railroad companies after a high-profile train crash.<sup>327</sup>

These “[c]orporations gradually began to realize the importance of combatting hostility and courting public favor.”<sup>328</sup> They quickly learned that public relations strategies can be used not only to sell products, but also to influence public opinion and create a more favorable environment for businesses.<sup>329</sup>

Public relations campaigns utilize knowledge about human behavior to influence the public.<sup>330</sup> The father of public relations, Edward Bernays, used knowledge about sociology and psychology that he had learned from his uncle Sigmund Freud to “turn[ ] others’ theoretical musings on ordinary people’s openness to images and emotional appeals into a series of handbooks explaining how to manipulate the public mind in pursuit of corporate or political goals.”<sup>331</sup> Bernays contributed the “spin” tactic to modern public relations, whereby public relations campaigns seek to “intentionally manipul[at] public opinion in support of one’s product, services, ideas, or issues without regard for truth or reality.”<sup>332</sup>

**Manipulate the  
public mind in  
pursuit of  
corporate or  
political goals.**

## ***The Role of Trade Associations in Public Relations Campaigns***

Corporate interests invest enormous resources into public relations campaigns because influencing public opinion benefits their profit-maximizing interests. There are two ways in which businesses use public relations to maximize profit. First, single businesses engage in product-specific advertising campaigns to benefit their individual interests in profiting from selling those products. Second, businesses fund trade or business associations such as the Chamber, which coordinate public relation campaigns that advantage the entire industry.<sup>333</sup> Businesses rely on these trade associations to pursue the industry-wide interest in fostering a marketplace favorable to selling products. Corporations fund trade associations to engage in these public relations campaigns because, in addition to enabling corporations to pool their resources in pursuit of shared interests, business and trade associations supply anonymity and legitimacy while eliminating accountability.

Anonymity is valuable because public relations campaigns often engage in dubious practices that might harm a business's reputation. Corporations with anonymity are able to influence their target constituencies without being held accountable for morally and legally questionable actions. In describing Koch Industries' founders, who invest hundreds of millions of dollars in swaying public opinion and elections, Republican campaign consultant Mortimer Zuckerman emphasizes the benefits of this anonymity in declaring that "[t]o call them under the radar is an understatement. They are underground!"<sup>334</sup> This absence of transparency undermines accountability and dilutes public outrage at unethical activities because no one can identify the appropriate object of that anger.

Additionally, support from trade associations facilitates an illusion that the industry's goals are legitimate in several ways. First, trade association sponsorship creates an illusion that third party, independent organizations agree with the profit-maximization goals of an individual business. Yet, this is merely an illusion. Trade associations support a corporation's goals because that corporation pays trade associations to support its goals. In the public relations industry, this tactic is referred to as "third party technique." For example, when Koch Industries pursues a pro-oil campaign, it is apparent that the fossil fuel corporation is acting in pursuit of its own economic interest.<sup>335</sup> However, when the Chamber advocates on behalf of Koch Industries and other fossil fuel corporations, the public

is more likely to view the Chamber's perspective as neutral and unbiased.

Second, trade associations appear legitimate because they hire "experts," conduct "research," and foster "grassroots" support. However, although these activities receive legitimating titles, trade associations fund these activities in pursuit of industry's economic interests and produce biased results. Finally, trade associations can obscure their biases better than individual corporations can because trade associations are not required to identify their members. In sum, the trade association adds a veil between interested corporate actors and desired outcomes. It thereby dilutes public accountability and creates an illusion that the outcome has credible support from disinterested third parties.

Trade associations are "determined to fight regulations and boost profits of their members" and, as a result, "have spent heavily to influence how the public perceives policies that affect everything from the air we breathe to the beverages we drink."<sup>336</sup> Trade associations invest enormous resources into public relations campaigns because doing so yields enormous returns. Between 2008 and 2012 trade associations paid more than \$1.2 billion to top public relations firms.<sup>337</sup> Most public relations funding went into energy and natural resource campaigns.<sup>338</sup> Even this figure likely underestimates trade association spending on public relations because trade associations are only required to disclose the five contractors of any kind that receive the most funding from them.<sup>339</sup> Over this five year period, the Chamber spent more than \$173.5 million contracting with public relations firms.<sup>340</sup> In 2010 and 2012, all five of the Chamber's highest-grossing contractors were public relations firms.<sup>341</sup> Edelman was the top grossing U.S. public relations firm, earning \$346.8 million from trade associations, largely thanks to the American Petroleum Institute, which paid Edelman \$327 million during those five years.<sup>342</sup>

This data also demonstrates a shift away from lobbying and towards funding public relations campaigns. For example, in 2012, the American Petroleum Institute paid four public relations firms \$85.5 million yet spent a mere \$7 million on federal lobbying efforts.<sup>343</sup> Trade associations have shifted to focusing on public relations for good reason. While lobbying firms must disclose their clients and how much they are paid, public relations firms do not have to disclose similar information.<sup>344</sup> In addition, trade associations recognize that manipulating the public's perspective is highly profitable and therefore worth this enormous resource investment.

## ***The Public Relations Tactics of Trade Associations***

Modern public relations campaigns target all aspects of American public life to influence public opinion.<sup>345</sup> As discussed above, in 1971, then-future Supreme Court Justice Powell suggested that the Chamber engage in this comprehensive public relations strategy.<sup>346</sup> Powell explained that the Chamber was well-suited to coordinate industry-wide public relations campaigns because “[i]t enjoys a strategic position, with a fine reputation and a broad base of support.”<sup>347</sup> He concluded that “[i]t is time for American business—which has demonstrated the greatest capacity in all history to produce and to influence consumer decisions—to apply their great talents vigorously to the preservation of the system itself.”<sup>348</sup>

Since Powell wrote this memorandum, the Chamber and various trade associations have coordinated effective public relations campaigns that target all aspects of public life in pursuit of industry interests. Below, this section considers several tactics used by the Chamber and trade associations, including the American Petroleum Institute, to influence public opinion and profit-maximize.

***Fake News:*** While public relations firms are increasingly well-funded and influential, the journalism industry is vanishing rapidly.<sup>349</sup> As the Center for Public Integrity reports, “not only are PR professionals outnumbering journalists by a ratio of 4.6 to 1, but the salary gap between the two occupations has grown to almost \$20,000 per year.”<sup>350</sup> Journalism is essential to a democratic society because it informs the public about important issues and events, facilitates policy discussions, and monitors those in power to hold them accountable for their actions.<sup>351</sup>

Public relations firms and trade associations have recognized the decline in journalism as an opportunity to profit by controlling public perception of events and policy. Stepping in to fill journalism’s vacancy, businesses tilt the public dialogue in favor of their own interests, often without disclosing that they are involved in the dialogue at all. This is detrimental to a democratic society.

Trade associations participate in the journalism industry to manipulate public opinion by hiring television spokespeople, inserting advertisements into news broadcasts, funding news networks, donating to journalism schools, censoring news reports, ghost-writing news reports, and countless other tactics. Often, business associations engage in these tactics without disclosing their

involvement. Below, this section analyzes one such tactic used by the Chamber: covertly running pro-business regional newspapers in locations hostile to business interests.

The Chamber owns several regional newspapers published both online and in print.<sup>352</sup> Their stated goal is keeping their regional constituencies informed about state tort litigation.<sup>353</sup> In particular, these newspapers aim to undermine tort lawsuits that impose tort liability detrimental to businesses' profitability.<sup>354</sup>

The Chamber does not make its ownership of these newspapers readily apparent to their readers. The Chamber's ownership interests are disclosed to readers in two ways: (1) when the newspaper publishes an article that mentions the Chamber by name,<sup>355</sup> and (2) in the the "About Us" section of papers' websites—but not on the homepages.<sup>356</sup> Each newspaper's Facebook and Twitter page make no mention of the Chamber's ownership.<sup>357</sup>

According to the newspapers' publisher Brian Timpone, the Chamber's ownership has no impact on the newspapers impartiality.<sup>358</sup> He claims that "our stories are as straight and objective as any stories in America. Just because the owners of the paper have an agenda doesn't mean that the content can't be fair."<sup>359</sup> However, there are many reasons to be skeptical of Timpone's claim. As Texas attorney Brent Coon explained to NPR about the Chamber's *Southeast Texas Record*:

Why would they create a newspaper [and] give it away for free? They do it because they know they send this message out: 'Lawsuits are bad; there are frivolous lawsuits; the jury system has run amok and has to be fixed.' When you hear their rhetoric over and over again, the more they say it and the more different ways they communicate that message, the more the public is likely to believe it.<sup>360</sup>

Thus, although the Chamber and its publishers purport to be presenting unbiased news, as legal publication Main Justice's editor-in-chief, Mary Jacoby, explains, "it's true that they have real news and they have real reporters, but they're writing it from an agenda and trying to underline certain ideas that they have."<sup>361</sup>

Specifically, the U.S. Chamber Institute for Legal Reform, the branch that owns these newspapers, seeks to encourage tort reform because tort liability undermines business profit-maximization.<sup>362</sup> In pursuing this mission, the Institute for Legal Reform selected the newspapers'

**They're writing it  
from an agenda  
and trying to  
underline certain  
ideas that they  
have.**

locations based on its annual survey of state liability systems.<sup>363</sup> This survey measures how “fair and reasonable the states’ tort liability systems are perceived to be by *U.S. businesses*.”<sup>364</sup> The Chamber placed the newspapers in the locations perceived to be most hostile to business.<sup>365</sup> The American Tort Reform Foundation, a notoriously pro-business advocacy group that targets plaintiff-friendly state courts, similarly ranks these regions as among the most hostile to businesses in its annual Judicial Hellholes survey.<sup>366</sup> The 2014 to 2015 top seven Judicial Hellholes include West Virginia, Louisiana, and Madison County, Illinois—all locations where the Chamber publishes its newspaper.<sup>367</sup>

Although the newspapers focus on tort reform, these newspapers also serve as a platform for the Chamber to espouse its views on fossil fuel regulations and manipulate the public debate on climate change. The Chamber has published countless articles attacking the EPA’s regulations.<sup>368</sup> In addition, the Chamber publishes opinion articles written by politicians funded by the fossil fuel industry or fossil fuel industry executives. For example, the Chamber published “Their View: Domestic Energy Keeps American Economy Afloat” by West Virginia State Representative John O’Neal.<sup>369</sup> In this article, O’Neal claims that President Obama’s plan to “rais[e] taxes on energy is not a smart policy decision.”<sup>370</sup> In its *Louisiana Record*, the Chamber published an article written by Don Briggs, President of the Louisiana Oil and Gas Association, in which Briggs attacks President Barack Obama’s carbon emission regulations.<sup>371</sup> In publishing these news stories attacking efforts to slow or stop climate change, the Chamber never mentions its ownership interest or bias in obtaining a particular outcome. Thus, the Chamber uses biased “news” masquerading as journalism in specially selected areas to promote its pro-business agenda of seeking to escape tort liability and prevent progress on climate change.

**Education:** Education is a prime target in public relations. Public relations tactics targeting the classroom provide an opportunity for corporations to manipulate students’ foundational perspectives and beliefs that inform their future policy views.<sup>372</sup>

The Chamber partners with educational institutions, such as Scholastic, Inc., to develop and distribute curriculum that promotes its interests.<sup>373</sup> Scholastic’s InSchool division works with industry to develop educational materials for “behavioral change, pro-social, cause marketing, brand awareness, and consumer loyalty programs.”<sup>374</sup> Scholastic then supplies teachers with this industry-sponsored curriculum free-of-charge.<sup>375</sup> Yet, as Director of the

**The group providing students a platform to learn about and debate energy policy clearly has its own strong biases and profit motives.**

Campaign for Commercial-Free Childhood, Dr. Susan Linn, explains, “[d]istributing corporate PR disguised as teaching materials undermines learning and is one of the most insidious forms of in-school commercialism.”<sup>376</sup>

The fossil fuel industry has not been shy in making use of this opportunity to influence public opinion. The Chamber partnered with Scholastic to produce “Shedding Light on Energy,” a graphing skills lesson plan for children in fifth through eighth grades.<sup>377</sup> The Chamber’s Institute for 21st Century Energy was responsible for producing the material. The Institute for 21st Century Energy is the same Chamber division that coordinated the Chamber’s campaign in support of the Keystone XL Pipeline. In the lesson plan, the Institute for 21st Century Energy’s President and CEO, Karen Harbert, invites teachers to use the lesson plan to “empower [their] students to join the national conversation about America’s energy future.”<sup>378</sup> However, this invitation is unsettling because the Chamber has a huge stake in the outcome of this national debate. As mentioned above, in 2014, Harbert testified before the U.S. Senate Foreign Relations Committee.<sup>379</sup> In her testimony she claimed that “it is clearly in the national interest that TransCanada’s Keystone XL (KXL) pipeline project proceeds.”<sup>380</sup> Thus, the group providing students a platform to learn about and debate energy policy clearly has its own strong biases and profit motives.

In the lesson packet, the Chamber invites teachers to share worksheets on electricity and transportation with students.<sup>381</sup> These worksheets contain graphs detailing the fossil fuels used to generate electricity and facilitate transportation in the United States. The Chamber informs students that “[t]he development of cars, trucks, and airplanes in the past century has radically changed our lives.”<sup>382</sup> In fact, the Chamber explains, petroleum is a “vital energy source” and “[m]any people feel as though they couldn’t live without their cars.”<sup>383</sup> Two charts emphasize that the United States produces nearly two billion barrels of oil annually, while it imports more than three billion barrels of oil from foreign countries.<sup>384</sup> According to data provided in the worksheet, Canada is the leading foreign source of oil imported into the United States.<sup>385</sup>

It is no accident that these charts highlight information central to the Institute for 21st Century Energy’s policy goals, which include expanding oil production in the United States and Canada via the Keystone XL Pipeline and the Energy East project.<sup>386</sup> As Harbert explained to the U.S. Senate Committee on Foreign Relations, the

Chamber believes that the United States should produce more oil domestically and increase foreign oil imported from “important and reliable trading partner” Canada.<sup>387</sup>

After taking students through these worksheets, the lesson plan suggests wrap-up questions that unmistakably favor the Chamber’s anti-regulatory policy agenda. The Chamber suggests that teachers ask students: “What do you think could happen if one of our energy sources was suddenly unavailable[?]”<sup>388</sup> It suggests teachers provide “government curb on production” as a possible reason why energy might become unavailable.<sup>389</sup> Having framed the question by emphasizing that fossil fuels are important, engrained in our way of life, and can be produced in the United States, the Chamber suggests that government regulations threaten students’ way of life. Yet, the Chamber conveniently fails to mention the overwhelming scientific consensus that burning fossil fuels poses an enormous threat to the students’ way of life and this earth’s continued vitality. The material is much more geared toward its unstated propaganda objective of teaching students that America is dependent on and benefits from fossil fuels than toward its stated objective of teaching graphing skills.

In a similar campaign, Scholastic partnered with the American Coal Foundation to produce “The United States of Energy.”<sup>390</sup> Like the Chamber’s campaign, this educational curriculum touts coal’s benefits without disclosing any of coal’s negative consequences.<sup>391</sup> After coming under severe criticism for permitting corporate sponsors to influence its lesson plans, “Scholastic withdrew the coal materials and said it would review all InSchool programs.”<sup>392</sup> However, in spite of this scandal and promises of reforms, Scholastic continues to partner with industry, albeit to a lesser extent, in producing educational material distributed across the nation.<sup>393</sup>

For example, Scholastic’s website currently features an energy-conservation program titled “The Power of Green” sponsored by Consolidated Edison.<sup>394</sup> Consolidated Edison is “one of the nation’s largest investor-owned energy companies.”<sup>395</sup> It profits by burning and distributing fossil fuels to produce electricity and gas.<sup>396</sup> The Power of Green encourages students to make responsible choices by avoiding activities that contribute to climate change.<sup>397</sup> However, while it teaches students that they should choose to take individual actions that reduce carbon emissions, Consolidated Edison obscures its own role in profiting from accelerating climate change by burning fossil fuels.<sup>398</sup> A “Green IQ” quiz asks students questions about choices that students make in their daily lives that impact the

**Shifting  
responsibility for  
climate change  
onto consumers  
rather than onto  
the corporate  
interests that  
profit from fossil  
fuel  
consumption.**

environment.<sup>399</sup> For example, it informs students that “taking a warm shower” “saves the most energy” compared to taking a hot shower, hot bath, or warm bath.<sup>400</sup>

Although the exercises in *The Power of Green* emphasize conservation, they fail to mention the fossil fuel industry’s role in causing climate change. Under the guise of promoting energy conservation, this curriculum serves the fossil fuel industry’s profit interests. It does this by highlighting society’s dependence on fossil fuels and shifting responsibility for climate change onto consumers rather than onto the corporate interests that profit from fossil fuel consumption.

For trade associations, these education-focused partnerships are an opportunity to wrap the trade association’s perspective in public education’s legitimacy. Children presume that the facts they are taught in school are reliable, trustworthy, and unbiased. When the fossil fuel industry teaches children that fossil fuels are beneficial and necessary without informing children about fossil fuel’s harmful consequences, children presume that these are “facts.” They then take these “lessons” with them for the rest of their lives and rely on them in developing policy perspectives.

***Grassroots “Astroturfing” Campaigns:*** Corporations devote vast resources to public relations campaigns that resemble citizen movements, while “mask[ing] their motives by putting it under the guise of a grassroots movement.”<sup>401</sup> Traditional grassroots movements are orchestrated by concerned citizens who are independently motivated to join together to advance a shared cause. By definition, they are not centrally organized. Astroturfing is the term used to describe industry efforts that mimic these grassroots campaign strategies to manipulate the public into joining a manufactured cause that benefits industry’s profit-maximization goals.<sup>402</sup> Thus, “[w]hether by using misinformation or literally paying people to buy their hamburgers, astroturfing is used to generate publicity and sway public opinion, all while the people orchestrating the movement act like they had nothing to do with it.”<sup>403</sup>

Corporations either directly engage in astroturfing activities or hire “front groups” to participate in the types of activities that traditional grassroots organizations would use to foster support and build a movement.<sup>404</sup> These activities include creating websites, distributing information (and misinformation), developing communication materials, establishing social media platforms, training protestors,

**This is a  
grassroots  
citizens'  
movement  
brought to you  
by a bunch of oil  
billionaires.**

hosting rallies and events, filming commercials, and coordinating political advocacy.<sup>405</sup> The difference between a genuine grassroots movement and astroturfing is that astroturf movement activities are orchestrated and funded by the industry. Furthermore, corporations do not disclose their financial ties to these movements because individuals are more likely to participate in the movement if they believe it has genuine, unbiased support.<sup>406</sup> As former Senior White House Advisor David Axelrod put it, “[w]hat they don’t say is that, in part, this is a grassroots citizens’ movement brought to you by a bunch of oil billionaires.”<sup>407</sup>

Often, public relations firms employ front groups as part of their astroturfing campaigns. These front groups, like trade associations themselves, resemble neutral third parties advocating for the cause. They are not. Public relations firms hire or create front groups because they produce an illusion of legitimate support for a profitable policy result while obfuscating accountability and transparency. The Partnership to Fuel America is an example of one of these astroturfing campaigns run by front groups.<sup>408</sup> Launched in November of 2011, the campaign purports to be run by local Nebraskans in support of the Keystone XL Pipeline. However, it was actually created by the Chamber’s Institute for 21st Century Energy<sup>409</sup> and is run by Public Affairs Company, a Minnesota-based lobbying firm.<sup>410</sup>

The American Petroleum Institute coordinates with the Chamber in orchestrating astroturfing campaigns that support the fossil fuel industry.<sup>411</sup> A leaked email memorandum written by the American Petroleum Institute’s President, Jack Gerard, describes “Energy Citizen” rallies that it planned to host in twenty states to create an illusion that citizens support the American Petroleum Institute’s energy policies.<sup>412</sup> It implores American Petroleum Institute member corporations to encourage their employees, “vendors, suppliers, contractors, retirees, and others who have an interest in our success” to attend the rallies because it “is essential to achieving the participation level that Senators cannot ignore.”<sup>413</sup> The document states that the American Petroleum Institute hired a public relations firm to coordinate this astroturfing campaign on its behalf.<sup>414</sup> The American Petroleum Institute describes the firm as “a highly experienced events management company that has produced successful rallies for presidential campaigns, corporations and interest groups.”<sup>415</sup>

**Targeting and Tracking:** Beyond simply putting an infrastructure in place to support a simulated grassroots movement, public relations

**Public  
relations firms  
target citizens  
to join the  
astroturf  
movement and  
track their  
progress in  
adopting the  
movement's  
tenets.**

firms target citizens to join the astroturf movement and track their progress in adopting the movement's tenets. Leaked documents from the top-grossing American public relations firm, Edelman, provide a window into how public relations firms run these campaigns.<sup>416</sup> These documents demonstrate that Edelman used targeting and tracking in its astroturfing campaigns to build support for TransCanada's Keystone XL Pipeline and Energy East projects.<sup>417</sup> The leaked documents disprove claims made by Edelman's CEO, Richard Edelman, that his firm "do[es] not work with astroturf groups."<sup>418</sup>

In a document titled "Grassroots Advocacy Vision Document," Edelman details its plans to use astroturfing strategies.<sup>419</sup> It explains that it will mimic astroturfing strategies employed by the American Petroleum Institute, stating that "API has been using digital grassroots tools to organize and mobilize industry employees and other concerned Americans since 2007."<sup>420</sup> The astroturfing campaign has two components: (1) targeting supporters to recruit to the campaign, and (2) tracking those supporters to make sure that they become champions of TransCanada's cause.

Edelman's East Energy campaign recommends first targeting individuals to "recruit and engage" and then "mobiliz[ing] those supporters to take action on behalf of the project to influence policymakers, regulators, and opinion elites."<sup>421</sup> Its public relations strategy depends on cultivating and coordinating supporters strategically to make the best possible use of that support.<sup>422</sup> Edelman's documents suggest that "third-party voices must also be identified, recruited and heard to build an echo chamber of aligned voices" in government, think tanks, media, and academia.<sup>423</sup>

Beyond targeting influential voices, Edelman explains that TransCanada must also recruit ordinary citizens to join its movement. This begins with "identifying logical supporters"<sup>424</sup> by evaluating "what types of individuals or groups would be most likely to support and/or benefit from development of Energy East and . . . leading them to join our coalition."<sup>425</sup> Edelman suggests targeting vendors, shippers, and suppliers who benefit from the pipeline, union workers in the areas affected by the pipeline, end-user customers, TransCanada employees, and TransCanada shareholders.<sup>426</sup> The goal is to create an army of 35,000 supporters by 2014 that "provide[s] us with a rich base of advocates who passionately understand and support our cause and are willing — more often than not — to do what's asked of them."<sup>427</sup> After targeting an individual to "recruit . . . to affirmatively join our cause," the campaign "provide[s] enough

**A rich base of advocates who passionately understand and support our cause and are willing — more often than not — to do what's asked of them.**

**Every grassroots advocate record will be tagged and tracked.**

informational and emotional appeals to engage him or her and solidify that individual's commitment to our cause."<sup>428</sup> Having fully converted someone into an issue activist, Edelman can then "mobilize that individual to take an action when requested."<sup>429</sup>

Second, Edelman explains that it must "track and monitor how individuals behave" because "not every advocate will do everything we ask of him or her, and not every advocate will have the willingness or ability to become a true champion."<sup>430</sup> For those who resist Edelman's manipulation tactics, Edelman uses its "Multiplier CRM technology" to engage in "individual behaviour tracking, allowing us to be more precise and targeted with the requests put in front of a given individual."<sup>431</sup>

Multiplier CRM is a customer relationship management technology created by Salesforce.com to collect and analyze data received from consumers.<sup>432</sup> It performs a function much like the data collection tools used by retailers to identify customer preferences and target customers with advertisements suited to those preferences.<sup>433</sup> However, Edelman does not use the Multiplier platform to sell products; it uses it to manipulate citizen targets into supporting its profit-maximizing policy campaign.<sup>434</sup> As Edelman explains, "Multiplier allows us to synthesize data from every element of our campaigns into intelligence that helps us surface insights for more effective outreach. . . . and drill down into the data to compare results."<sup>435</sup> Using data collected and stored in the Multiplier Platform, "[e]very grassroots advocate record will be tagged and tracked based on how/where they were recruited, which message stream they responded to and how they perform over time. These metrics will enable us both to tailor outbound communications to user preferences and to enhance future recruitment efforts."<sup>436</sup>

Shortly after these Edelman documents were leaked, TransCanada fired Edelman.<sup>437</sup> Edelman released a statement that it "stand[s] by [its] strategy. . . . It was both ethical and moral, and any suggestion to the contrary is untrue."<sup>438</sup> TransCanada has denied using many of the tactics recommended in the documents.<sup>439</sup> Acknowledging the leaked documents, TransCanada spokesman Shawn Howard explained that TransCanada has "not implemented all of the recommendations in the document"<sup>440</sup> but has "moved forward with implementing certain components of the strategy."<sup>441</sup>

## The Chamber's Political Strategy

As demonstrated below, the Chamber is one of the country's largest spenders on politics. It spends this money at all levels—lobbying for (or, more often, against) regulations and legislation and in elections for legislators and judges. Many groups spend money in politics, but there are two reasons why the Chamber's actions are *particularly* important in the political system as it relates to climate change: size and cover. The Chamber is key to the climate change debate because of the extent of its power. In 2012, the Chamber spent \$136 million on lobbying—more than any other entity in the country.<sup>442</sup> In the second quarter of 2013, the Chamber hit a landmark, becoming the organization to spend more than \$1 billion on its total lobbying since Center for Responsive Politics tracking began in 1998.<sup>443</sup>

The Chamber's influence does not come from size alone. The secrecy of the Chamber's contribution sources and membership structure allow it to play an especially strong role in providing cover for the industry.<sup>444</sup> The Chamber is able to promote messages that are too politically unpopular for its members, individual businesses worried about their brands, to support. Thomas Donohue, the president of the Chamber since 1997, once explained this process:

We're the reinsurance industry for individual industry associations and state chambers of commerce and people of that nature. . . . [when t]hey can't move forward, they can't move back, or maybe they're being overrun, and they'll come to us and say, 'Can we collect our reinsurance?' . . . and then we build coalitions and go out and help them.<sup>445</sup>

**“Give them all the  
deniability they  
need.”**

He stated that his aim was to “give them all the deniability they need.”<sup>446</sup> This dynamic is playing out in climate change: companies are reluctant to report that they have any involvement with the Chamber's climate change policy. In 2014, when the CDP (an international not-for-profit organization formerly known as the Carbon Disclosure Project) administered its annual climate reporting questionnaire, it asked companies about their climate-related political activities.<sup>447</sup> Of the thirty-two companies on the Chamber's board that responded to the questionnaire publicly, only one acknowledged its seat on the board.<sup>448</sup>

## ***Lobbying***

The Chamber has strongly opposed any legislative action on climate change. It has been a vocal opponent of all types of climate change policy, including market-based solutions such as cap and trade.<sup>449</sup> At the same time, it has spent its lobbying resources to support policies that promote using traditional fossil fuels; for example, in recent years it has been a strong supporter of the Keystone XL pipeline.<sup>450</sup>

A significant amount of the Chamber's resources are devoted to opposing EPA's proposals to combat climate change. Resistance to the EPA by the Chamber has reached an extreme—almost farcical—level. For example, in May 2014, the Chamber released a report that estimated the cost of new climate change regulations on industry at an enormous \$51 billion per year, but this report was issued before the final version of those regulations had even been released—as the report noted, “the exact form the existing plant rule might take has been subject to a great deal of speculation.”<sup>451</sup>

The Chamber is in the midst of a subtler campaign against the EPA. Its Institute for Legal Reform has taken an interesting and innovative approach to attacking the EPA's regulations. It has begun campaigning against an allegedly widespread EPA practice that it calls “sue and settle.” According to the Chamber, environmental groups often sue the EPA for refusing to regulate and then are able to negotiate a favorable court-enforced settlement, which allows the EPA to perform the work of regulating without public input or accountability.<sup>452</sup> However, empirical evidence does not support this broad assertion: a Government Accountability Office report requested by members of Congress aligned with the Chamber found that “[t]he effect of settlements in deadline suits on the EPA's rulemaking priorities is limited.”<sup>453</sup>

## ***Elections***

***Candidates for Elected Office:*** The Chamber has long been involved in funding candidates for office, but since the 2010 Supreme Court decision in *Citizens United*, the Chamber has had more flexibility to spend money in elections. The Chamber was the largest overall spender in the 2014 congressional elections among outside groups that do not disclose their contributors, spending approximately \$32 million. It was also the biggest spender of undisclosed money in twenty-eight of the thirty-five congressional races in which it was involved in during the 2014 elections.<sup>454</sup>

**We're clearly  
engaged in  
hand-to-hand  
combat, and  
we've got to step  
it up if we're  
going to survive.**

This spending has been largely, but not entirely, directed toward Republicans. In 2010, the Chamber spent \$9 million on forty Republican candidates for the U.S. House of Representatives and \$2 million backing eleven Democratic candidates.<sup>455</sup> However, in 2014, the Chamber did not spend any money supporting Democrats. Nearly all of its 2014 spending went to supporting Republicans or opposing Democrats, while a small portion was spent on opposing Republicans in primary races.<sup>456</sup>

Like other powerful spenders, the Chamber's influence over elections through spending begets additional power: it can benefit from a mere threat of exercising that power, without spending a dime.<sup>457</sup> It appears that the Chamber uses the threat of spending to coerce moderate Democrats to support its energy position. This may account for the Chamber's decision to refrain from supporting Republican candidates in the 2014 Senate races in Louisiana and Arkansas who were imposing incumbent moderate Democrats Mary Landrieu and Mark Pryor, both of whom supported many of the Chamber's energy policies during their campaigns.<sup>458</sup>

**Judicial Elections:** In the early 2000s, the Chamber was very vocal about its spending in judicial elections. The Chamber highlighted the fact that candidates it supported won in twenty-one of twenty-four judicial elections in eight states.<sup>459</sup> In 2002, the Chamber's president, Tom Donohue, explained that the Chamber's involvement in judicial elections was related to its efforts to transform the legal system as a whole:

Our approach is simple—implement a multi-front strategy of challenging these unscrupulous trial lawyers every time they poke their head out of the ground. . . . On the political front, we're going to get involved in key state Supreme Court and attorney general races as part of our effort to elect pro-legal reform judicial candidates. . . . We're clearly engaged in hand-to-hand combat, and we've got to step it up if we're going to survive.<sup>460</sup>

The Chamber, through the Institute for Legal Reform, has attempted influence appointed state judges as well, as discussed earlier in this paper. The Chamber released a report called "Promoting 'Merit' in Merit Selection."<sup>461</sup> The report's first sentence reads that "[t]he quality of justice in our state courts is of critical importance to the entire business community,"<sup>462</sup> underscoring the Chamber's position.

## ***Litigation***

The growing influence of the Chamber over federal courts is no accident: as discussed above, the Powell Memorandum highlighted the courts as “a vast area of opportunity for the Chamber [of Commerce],” urging the Chamber to obtain a “highly competent staff of lawyers,” and to engage nationally-renowned attorneys to appear as amicus counsel before the Supreme Court.<sup>463</sup>

Six years later, in 1977, the Chamber heeded Justice Powell’s advice, establishing the U.S. Chamber Litigation Center, a nonprofit affiliate of the Chamber that files lawsuits and amicus curiae briefs on its behalf and has become “the equivalent of a boutique law firm at [the Chamber’s] headquarters.”<sup>464</sup> Through the work of the Litigation Center, the Chamber has had success at influencing federal courts and their thinking.

The Chamber, through its ligating arm, is involved in a significant amount of high-profile, high-stakes litigation. The Chamber prides itself on its ability to influence litigation outcomes; the Litigation Center’s website maintains a list of favorable press quotes proclaiming its influence in litigation.<sup>465</sup> Sometimes, the Chamber itself is a party to litigation. The Chamber has been especially active as a party challenging the EPA’s regulations on greenhouse gases. In 2009, it formally challenged EPA’s endangerment finding,<sup>466</sup> and it was a party in the 2014 Supreme Court case *Utility Air Regulatory Group v. EPA*.<sup>467</sup> In other cases, the Chamber is not a party, but it files an amicus brief or provides other support to one of the litigants. The Chamber filed more certiorari-stage amicus briefs in the Supreme Court than any other organization between 2009 and 2012.<sup>468</sup>

The Chamber has been an incredibly successful litigant in the Roberts Court. According to the Constitutional Accountability Center, the Chamber has had an overall success rate of 70% since President Bush appointed Chief Justice Roberts and Justice Alito to the Court in 2005 and 2006, respectively.<sup>469</sup>

Just as the Chamber champions the agenda of the fossil fuel industry over the best interests of the public by obstructing progress on climate change, it takes positions on other environmental issues that similarly promote the interests of large businesses. For example, the Chamber filed an amicus brief on behalf of BP arguing that small business owners who had suffered damage in the 2010 *Deepwater Horizon* oil spill should not be able to recover.<sup>470</sup> As their litigation funding and

support remains robust, the Chamber is advocating to cut off funding to small businesses and nonprofits who do not have enough capital to fund large-scale litigation. The Chamber has begun arguing third-party litigation funding should be barred: that plaintiffs should not be allowed to finance litigation in hopes of a return on investment. It proffers a neutral reason, which is that this funding structure will alter incentives for lawyers and clients leading to an outcome contrary to the client's best interests. But this position seems quite self-serving—the Chamber has means to finance litigation, and the plaintiffs do not.

471

**The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process.**

## ***VI. Solutions***

Below, we offer a number of steps that can be taken by legislators, advocates, and private parties to curtail the influence of the energy industry in setting climate change policy.

A comprehensive, global, long-term effort is needed to stop or even to slow climate change; these solutions will not solve that problem. The solutions listed below are intermediate measures that must be taken in order to alleviate the political standstill and set the stage to act comprehensively on climate. These solutions will help to achieve a more free and fair democratic process, which is our best hope of coming together to combat the threat of climate change.

### **Legislation**

There are a number of ways Congress could pass legislation to curb America's reliance on fossil fuels. However, because the fossil fuel industry and business associations like the Chamber have united in opposition against all climate legislation, most legislative fixes will not be feasible in the immediate future.

The political standstill in Washington has led many to discount legislative solutions to climate change problem—after all, the legislature is part of the problem. However, there are a number of ways the legislature can stop the problem of industry influence; we describe three below.

### ***Constitutional Amendment to Overturn Citizens United***

One way to diminish corporate, industry, and the Chamber's ability to slow progress on climate change is to overturn *Citizens United*, which has opened the doors to the free flow of corporate money into American politics. As Justice Stevens wrote in dissent:

Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take

measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.<sup>472</sup>

This decision could be overturned by constitutional amendment. Senator Bernie Sanders has proposed such an amendment each session of Congress since *Citizens United* was decided.<sup>473</sup> This solution is difficult, considering the constitutional requirement that amendments be supported by two-thirds of each house of Congress and ratified by thirty-eight states. However, it may represent the best effort at getting at the root problem of industry's political influence.

### ***Tax Exempt Business Donation Disclosures***

A more politically feasible legislative solution that targets the influence of money in politics is to impose stronger donation disclosure requirements for tax-exempt organizations. These disclosure requirements could help to improve transparency in the political process and could be a partial solution to some of the political problems around climate change. Many types of tax-exempt organizations are not required to disclose the names of their donors, including business associations incorporated under 501(c)(6), like the Chamber, and 501(c)(4) "social welfare organizations," such as Karl Rove's Crossroads GPS.<sup>474</sup>

If organizations like the Chamber and Crossroads GPS are required to disclose their donors, corporations will be less able to use these organizations for political cover. This will diminish their power in two ways. First, the political power of these organizations will be diminished when the public realizes how few people they represent. The Chamber, for example, purports to represent three million businesses but in fact receives half its donations from just a few dozen people. If the donor list was made public, it would help the general population better understand whose interest the Chamber serves. Second, requiring disclosure promote accountability by allowing the public to hold donors responsible for actions of the organizations.

### ***Business Carbon Tax***

Many people have given up hope that there is any possibility of passing legislation that will actually address climate change in the current Congress. However, one forthcoming piece of legislation from Senator Sheldon Whitehouse (D-RI) provides an intriguing option.<sup>475</sup>

Senator Whitehouse intends to offer a bill that would create a carbon tax, but would link the carbon tax increase with general corporate tax reductions.<sup>476</sup> Senator Whitehouse's plan is to force a wedge between energy-intensive companies (such as oil and coal companies) and energy-efficient companies (such as retail and technology firms).<sup>477</sup> His plan is to offer tax-cuts to an overwhelming majority of businesses in such a way that actually spurs the business community to support a carbon tax, rather than oppose it.<sup>478</sup> In this way, the tax highlights and attempts to exploit the disconnect between the high-emissions industry and what is good for the business community as a whole.

Senator Whitehouse has asserted that this tax will also benefit workers: the revenue earned from the carbon tax may also allow for a reduction in employers' contribution to the payroll tax and an increase in the earned income tax credit.<sup>479</sup>

## **Litigation**

While legislative solutions require a cooperative Congress, litigation does not. Below, we highlight three litigation strategies that could alleviate industry influence in the political system.

### ***RICO Suit***

One litigation-based solution to hold businesses and trade associations liable for promoting false science and manipulating the climate change debate would be to bring a lawsuit against them under the Racketeer Influenced and Corrupt Organizations Act ("RICO").<sup>480</sup> RICO was enacted in 1970 to target organized crime operations,<sup>481</sup> but it has come to be used in a wide variety of situations, with claims most frequently premised on allegations that the defendant engaged in a pattern of "racketeering" activity, usually based on predicate acts of mail or wire fraud.<sup>482</sup>

In 1999, the U.S. Department of Justice initiated a RICO lawsuit against tobacco companies, alleging that they violated the Act by "joining together in a decades-long conspiracy to deceive the American public about the health effects and addictiveness of smoking cigarettes."<sup>483</sup> Among other claims, the government alleged that the companies: fraudulently denied that smoking causes cancer and emphysema and that secondhand smoke causes lung cancer; fraudulently claimed that light and low tar cigarettes are less harmful than regular cigarettes; and "concealed evidence and destroyed documents to hide the dangers of smoking and protect themselves in

litigation.”<sup>484</sup> The tobacco companies lost in the U.S. District Court for the District of Columbia, which held that they had maintained an illegal racketeering enterprise.<sup>485</sup> In 2009, the D.C. Circuit Court of Appeals upheld this finding of liability.<sup>486</sup>

A RICO case against the fossil fuel industry and trade associations would use the tobacco case as a model. Specific claims could include: fraudulently denying the connection between fossil fuel use and a changing global climate, with all of the resulting adverse health and weather effects; fraudulently presenting technologies such as carbon capture and storage or fracking as solutions to the climate problem, despite the fact that such technologies can be just as emission-intensive—and therefore harmful to the planet—as traditional fossil fuel extraction; and concealing evidence about the dangers of climate change to alter public opinion and avoid liability in litigation. For remedies, a RICO suit would seek injunctions prohibiting defendants from making false and misleading statements in the future and requiring them to make disclosures correcting past misleading statements.<sup>487</sup>

Given the various problems discussed throughout this paper, it would likely be difficult to get the federal government to bring this type of case against the fossil fuel industry and its supporters; however, perhaps a group of progressive states who have been injured by industry’s misinformation campaign, such as coastal states experiencing sea-level rise, would have the political capital to bring a RICO lawsuit.

### ***Misinformation Tort***

Another litigation strategy to combat the numerous ways in which fossil fuel corporations spread misinformation would be to advance a legal theory based on a misinformation tort. The fossil fuel industry uses business associations, trade associations, and third party organizations to obscure its own involvement in opposing meaningful climate change regulation. In addition to harming our planet, this practice undermines accountability and creates a false aura of legitimacy. In addition, trade associations are extremely powerful organizations that enable corporate actors to pool enormous resources in pursuit of their own benefit. Using these associations, corporations are able to profit substantially from carbon emissions, halt attempts to meaningfully address climate change, and cause immeasurable harm to millions of people.

A misinformation tort would hold corporations liable for using trade associations and other third party organizations to pursue profit-maximization goals by dubious tactics. Third party organizations, like the Chamber, are too often able to manipulate public opinion, the democratic process, and the justice system to their benefit and society's detriment. The misinformation tort would prohibit using these third party organizations to intentionally deceive or manipulate public opinion on climate change policy. It would hold corporations or third party organizations employed by corporations liable for covertly attempting to manipulate public opinion by spreading misinformation. This would reduce their ability to wield their immense power to pursue their self-interested goals without accountability.

Accomplishing this litigation solution would significantly reduce corporations' abilities to both pool their tremendous resources and act with anonymity. However, it may be difficult to accomplish this solution in our current legal system, which permits these behaviors to influence judicial outcomes. It thus enables corporations to take these manipulative actions in ways that may prevent this meaningful litigation solution from taking effect.

For example, the Chamber filed an amicus brief to influence the outcome in *Native Village of Kivalina v. ExxonMobil Corporation*.<sup>488</sup> In this case, a small Alaskan coastal town sued twenty-two fossil fuel corporations, including ExxonMobil, BP, Chevron, and ConocoPhillips, in federal court alleging that they conspired to misinform the public regarding climate science.<sup>489</sup> Kivalina is a barrier island on the Chukchi Sea threatened by dangerous sea waves as climate change causes nearby Arctic sea ice to melt.<sup>490</sup> Among other things, the lawsuit asserted that these fossil fuel corporations should not be able to use front groups or industry business associations to spread misinformation about climate change.<sup>491</sup> The Chamber's amicus brief argued that Kivalina's claim was not suited for the judiciary but instead should be resolved in the political branches.<sup>492</sup>

Without reaching the merits, the Ninth Circuit held that federal courts could not use federal common law to recognize a misinformation tort because the Clean Air Act displaces federal common law.<sup>493</sup> Although this case was unsuccessful in the Ninth Circuit, it does not foreclose a successful misinformation tort lawsuit in state court or a different federal court of appeals.

## ***Overrule Citizens United***

Because *Citizens United* was a constitutional decision, the only court that can overrule it is the Supreme Court. To accomplish this, either Congress or a state would need to pass a statute that contravenes the *Citizens United* ruling, and the Supreme Court would need to be willing to revisit their past decision.

The current makeup of the Supreme Court makes this outcome extremely unlikely, but it is not altogether impossible if the makeup of the court changes in the future.

## ***Private Actions***

In addition to legislation and litigation, there are a number of powerful actions that can be taken by private parties that could decrease the influence of industry groups. Below, we highlight four such alternatives.

## ***Leave the Chamber***

It might be easier to find solutions to climate change if businesses acted in their long-term interest and left the Chamber of Commerce. While this may seem unlikely, there are a few documented instances of businesses, including big names such as Nike and Apple, eschewing the Chamber because of its policies on climate change and the environment. This strategy has significant limitations, including the collective action problems surrounding a mass exodus from the Chamber of Commerce. The Chamber still claims to have more than 3 million members, most of which are small businesses.<sup>494</sup> Given the divergent interests of so many individual businesses, it may prove impossible to organize a full-scale withdrawal. However, if leaders like Apple and Nike are at the forefront, it is possible to imagine a successful movement away from the Chamber of Commerce.

## ***Alternative Business Organization***

One possible solution to the problems posed by organized interests like the Chamber is for private individuals or corporations to promote a non-ideological alternative business association. An organization with a similar mission was recently started by a well-resourced, bipartisan trio: Tom Steyer, who made billions from hedge funds, Hank Paulson, the former CEO of Goldman Sachs and Treasury Secretary, and Michael Bloomberg, former Mayor of New York. Their

group, Risky Business “focuses on quantifying and publicizing the economic risks from the impacts of a changing climate.”<sup>495</sup> Risky Business recently commissioned a report by an independent economic research firm to demonstrate the devastating economic impact of climate change.<sup>496</sup>

Risky Business, or another similar organization, could take this mission a step farther to organize businesses together to create a political movement to solve climate change. The leaders of Risky Business understand the threat that climate change poses to the American economy—and the report that they have commissioned includes detailed information explaining exactly how this will happen. These business leaders could organize businesses to support sensible climate change policy. In contrast to organizations like the Chamber that primarily support energy interests, this alternative business organization could serve the interest of businesses in a wide variety of sectors that would be affected negatively by the changing climate.

### ***Scientific Transparency***

Stricter disclosure and transparency rules about the funding of scientific work should be adopted by the fossil fuel industry, as well as by scientists, journals, and research institutions.<sup>497</sup> This is inspired by letters sent by Senators Whitehouse, Markey, and Boxer to fossil fuel companies asking them to disclose any climate-related research they have funded over the last ten years. The Senators sent the letter after Dr. Willie Soon’s connections to the fossil fuel industry were revealed.

This is admittedly a small measure, but Dr. Soon’s case shows how important disclosure can be. Dr. Soon’s failure to fully disclose his funding sources allowed him to publish research skeptical of human-caused climate change for a decade, and this was not detected by the journals in which he published nor the Harvard-Smithsonian Center for Astrophysics. Some of the journals in which Dr. Soon published his papers did not have disclosure policies, and many of the journals that have such policies were regrettably lax in enforcing them. The Harvard-Smithsonian Center also failed to monitor and enforce disclosure of Dr. Soon’s funding sources. Ideally, stricter disclosure requirements that involve all complicit parties, and not just scientists and the industries that fund them, will create more checks throughout the entire research and publication process. At the very least, citizens, politicians, and other scientists should know the source of funding for research that purports to help them understand politically salient and potentially controversial topics.

Stricter transparency requirements have been criticized as being threatening to academic and scientific freedom. This is no minor concern, and we do not promote this solution with the goal of stifling scientific debate. However, our support of strict transparency requirements is rooted in the belief that such measures would result in more, not less, information being made available to policy makers and citizens alike, and that such a measure is necessary to begin to reduce the distorting influence of money in science.

### ***Divestment***

Another tactic to counter the power that fossil fuel companies have over America's institutions is divestment, which is the decision of private wealth owners to "withhold their capital—for example, by selling stock market-listed shares, private equities or debt—from] firms seen to be engaged in a reprehensible activity."<sup>498</sup> Past targets of divestment campaigns include tobacco and corporations in apartheid in South Africa.<sup>499</sup> The theory of change behind fossil fuel divestment starts from the premise that if it is morally wrong to destroy the planet through climate change, then it is morally wrong to profit from that destruction.<sup>500</sup> Making that belief clear by pulling investments from fossil fuel companies can turn them into pariahs. As Ansar, Caldecott, and Tilbury have written: "the stigmatisation process, which the fossil fuel divestment campaign has now triggered, poses the most far-reaching threat [(compared with any other effect of divestment)] to fossil fuel companies and the vast energy value chain."<sup>501</sup>

The fossil fuel divestment movement began on college campuses and gathered momentum from there, with churches and city governments joining the campaign and voting to stop investing in fossil fuel companies.<sup>502</sup> The industry seems to be threatened: earlier this year, it created the website DivestmentFacts.com, backed by the Independent Petroleum Association of America, which is "the leading, national upstream trade association representing oil and natural gas producers that drill 95 percent of the nation's oil and natural gas wells."<sup>503</sup> The site claims to be "part of a broader outreach campaign dedicated to educating the public and institutions alike on the facts about divestment,"<sup>504</sup> and it provides links to a study by a professor at the University of Chicago Law School concluding that fossil fuel divestment will be costly for universities' endowments.<sup>505</sup> The fossil fuel industry, again, masquerades the promotion of its own interests as unbiased information.



## ***CONCLUSION***

Climate change poses an existential threat to humans and to the planet at a whole. The big problem of climate change is twofold: first, scientists agree that climate change could destroy our planet and our species and, second, humans have so far been unable to take any meaningful steps to fix it. This paper has focused on one cause: an industry that profits from greenhouses gases that cause climate change uses those profits to influence everyone it can: the scientific community, the public, legislators, judges, and courts.

Stopping this pernicious influence of industry groups is not going to save the planet. But if we cannot stop the influence of these groups, there is little hope that the United States will take any affirmative steps towards stopping or slowing the changes in our climate. And absent the United States' involvement, any global movement or agreement to reduce emissions is unlikely.

Steps to end the influence of the fossil fuel industry in politics are needed—and needed now. The future hangs in the balance.

## ***FURTHER READING***

*Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

NAOMI ORESKES & ERIK M. CONWAY, *MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS OBSCURED THE TRUTH ON ISSUES FROM TOBACCO SMOKE TO GLOBAL WARMING*, (Bloomsbury Press 2011).

## ENDNOTES

---

<sup>1</sup> See *A Blanket Around the Earth*, NASA GLOBAL CLIMATE CHANGE, <http://climate.nasa.gov/causes/> (last visited Sept. 26, 2015).

<sup>2</sup> *Climate Change: Basic Information*, U.S. ENVTL. PROTECTION AGENCY, <http://www.epa.gov/climatechange/basics/> (last visited Sept. 26, 2015).

<sup>3</sup> *Vital Signs: Carbon Dioxide*, NASA GLOBAL CLIMATE CHANGE, <http://climate.nasa.gov/vital-signs/carbon-dioxide/> (last visited Sept. 26, 2015).

<sup>4</sup> *Vital Signs: Global Temperature*, NASA GLOBAL CLIMATE CHANGE, <http://climate.nasa.gov/vital-signs/global-temperature/> (last visited Sept. 26, 2015).

<sup>5</sup> *Vital Signs: Land Ice*, NASA GLOBAL CLIMATE CHANGE, <http://climate.nasa.gov/vital-signs/land-ice/> (last visited Oct. 12, 2015).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Vital Signs: Sea Level*, NASA GLOBAL CLIMATE CHANGE, <http://climate.nasa.gov/vital-signs/sea-level/> (last visited Oct. 12, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> *Causes*, NASA GLOBAL CLIMATE CHANGE, <http://climate.nasa.gov/causes/> (last visited Oct. 12, 2015).

<sup>11</sup> *How Does the Sun Affect Our Climate?*, UNION OF CONCERNED SCIENTISTS, [http://www.ucsusa.org/global\\_warming/science\\_and\\_impacts/science/effect-of-sun-on-climate-faq.html#.VUP6jdNVikp](http://www.ucsusa.org/global_warming/science_and_impacts/science/effect-of-sun-on-climate-faq.html#.VUP6jdNVikp) (last visited Oct. 12, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007—SYNTHESIS REPORT: SUMMARY FOR POLICYMAKERS 2 (2007), [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr\\_spm.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr_spm.pdf).

<sup>14</sup> See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014—IMPACTS, ADAPTATION, AND VULNERABILITY 17 (2014), [https://www.ipcc.ch/pdf/assessment-report/ar5/wg2/ar5\\_wgII\\_spm\\_en.pdf](https://www.ipcc.ch/pdf/assessment-report/ar5/wg2/ar5_wgII_spm_en.pdf) [hereinafter IPCC, IMPACTS, ADAPTATION, AND VULNERABILITY].

<sup>15</sup> *If All the Ice Melted*, NAT'L GEOGRAPHIC, <http://ngm.nationalgeographic.com/2013/09/rising-seas/if-ice-melted-map> (last visited Oct. 12, 2015).

<sup>16</sup> Chris Mooney, *Global Warming Is Now Slowing Down the Circulation of the Oceans—With Potentially Dire Consequences*, WASH. POST (Mar. 23, 2015), <http://www.washingtonpost.com/news/energy-environment/wp/2015/03/23/global-warming-is-now-slowing-down-the-circulation-of-the-oceans-with-potentially-dire-consequences/>.

<sup>17</sup> See generally IPCC, IMPACTS, ADAPTATION, AND VULNERABILITY, *supra* note 14, [http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5\\_Chapter11\\_FINAL.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter11_FINAL.pdf) (last visited May 2, 2015).

- 
- <sup>18</sup> *Effects*, NASA GLOBAL CLIMATE CHANGE, <http://climate.nasa.gov/effects/> (last visited Oct. 12, 2015)..
- <sup>19</sup> Henry Fountain, *California Drought Is Worsened by Global Warming, Scientists Say*, N.Y. TIMES (Apr. 1, 2015), <http://www.nytimes.com/2015/04/02/science/california-drought-is-worsened-by-global-warming-scientists-say.html>.
- <sup>20</sup> See, e.g., Aneri Pattani, *Walsh Calls for T to Close for Weekend Snowstorm*, BOS. GLOBE (Feb. 12, 2015), <http://www.bostonglobe.com/metro/2015/02/12/downed-light-pole-causing-backups-with-red-line-buses/yAoCcycyqCake1AaB1hW8H/story.html>; Tom McCarthy, *State of Emergency Across North-East as Blizzard Prepares to Wallop Coast—As It Happened*, THE GUARDIAN (Jan. 26, 2015), <http://www.theguardian.com/us-news/live/2015/jan/26/north-east-winter-storm-noreaster-snow-live>.
- <sup>21</sup> *Extreme Weather Map 2012*, NAT. RESOURCES DEF. COUNCIL <http://www.nrdc.org/health/extremeweather/> (last visited Oct. 12, 2015).
- <sup>22</sup> *Ocean Acidification: The Other Carbon Dioxide Problem*, NOAA PAC. MARINE ENVTL. LABORATORY, <http://www.pmel.noaa.gov/co2/story/Ocean+Acidification> (last visited Oct. 12, 2015).
- <sup>23</sup> *What is Ocean Acidification?*, NOAA PAC. MARINE ENVTL. LABORATORY, <http://www.pmel.noaa.gov/co2/story/What+is+Ocean+Acidification%3F> (last visited Oct. 12, 2015).
- <sup>24</sup> *Thermodynamics: Albedo*, NAT'L SNOW & ICE DATA CTR., <https://nsidc.org/cryosphere/seaice/processes/albedo.html> (last visited Oct. 12, 2015).
- <sup>25</sup> *Environment: Climate*, NAT'L SNOW & ICE DATA CTR., [https://nsidc.org/cryosphere/seaice/environment/global\\_climate.html](https://nsidc.org/cryosphere/seaice/environment/global_climate.html) (last visited Oct. 12, 2015).
- <sup>26</sup> *Thawing of Permafrost Expected to Cause Significant Additional Global Warming, Not Yet Accounted for in Climate Predictions*, UNITED NATIONS ENV'T PROGRAMME (Nov. 27, 2015), <http://www.unep.org/newscentre/default.aspx?DocumentID=2698&ArticleID=9338>.
- <sup>27</sup> *Methane and Frozen Ground*, NAT'L SNOW & ICE DATA CTR., <https://nsidc.org/cryosphere/frozenground/methane.html> (last visited Oct. 12, 2015).
- <sup>28</sup> Adam Nagourney, *California Imposes First Mandatory Water Restrictions to Deal With Drought*, N.Y. TIMES (Apr. 1, 2015), <http://www.nytimes.com/2015/04/02/us/california-imposes-first-ever-water-restrictions-to-deal-with-drought.html>.
- <sup>29</sup> Michael B. Marois, *California Mandatory Water Restrictions Pit Crops Versus Lawns*, BLOOMBERGBUSINESS (Apr. 21, 2015, 5:00 AM), <http://www.bloomberg.com/news/articles/2015-04-21/california-mandatory-water-restrictions-pit-crops-versus-lawns>.

---

<sup>30</sup> *California's Central Valley*, USGS CAL. WATER SCI. CTR., <http://ca.water.usgs.gov/projects/central-valley/about-central-valley.html> (last visited Oct. 12, 2015).

<sup>31</sup> Press Release, Univ. of Cal. Davis, Drought Impact Study: California Agriculture Faces Greatest Water Loss Ever Seen (July 15, 2014), [http://news.ucdavis.edu/search/news\\_detail.lasso?id=10978](http://news.ucdavis.edu/search/news_detail.lasso?id=10978); *Climate Change: The Unseen Force Behind Rising Food Prices?*, WORLDWATCH INSTITUTE, <http://www.worldwatch.org/node/5434>, (last visited Oct. 12, 2015).

<sup>32</sup> *All About Climate Change and Vectorborne Diseases*, WORLD HEALTH ORG.: W. PAC. REGION, [http://www.wpro.who.int/mvp/climate\\_change/en/](http://www.wpro.who.int/mvp/climate_change/en/) (last visited Oct. 12, 2015).

<sup>33</sup> IPCC, IMPACTS, ADAPTATION, AND VULNERABILITY, *supra* note 14, at 555, [http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap8\\_FINAL.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap8_FINAL.pdf).

<sup>34</sup> IPCC, IMPACTS, ADAPTATION, AND VULNERABILITY, *supra* note 14, at 731–32, [http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap11\\_FINAL.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap11_FINAL.pdf).

<sup>35</sup> *See generally id.*

<sup>36</sup> RHODIUM GROUP, AMERICAN CLIMATE PROSPECTUS: ECONOMIC RISKS IN THE UNITED STATES 98 (2014), [http://rhg.com/wp-content/uploads/2014/10/AmericanClimateProspectus\\_v1.2.pdf](http://rhg.com/wp-content/uploads/2014/10/AmericanClimateProspectus_v1.2.pdf).

<sup>37</sup> GERNOT WAGNER & MARTIN L. WEITZMAN, CLIMATE SHOCK: THE ECONOMIC CONSEQUENCES OF A HOTTER PLANET 61 (2015).

<sup>38</sup> RHODIUM GROUP, *supra* note 36, at 5.

<sup>39</sup> WAGNER & WEITZMAN, *supra* note 37, at 73.

<sup>40</sup> *Id.* at 64.

<sup>41</sup> IPCC, IMPACTS, ADAPTATION, AND VULNERABILITY, *supra* note 14, at 17–18, [http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/ar5\\_wgII\\_spm\\_en.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/ar5_wgII_spm_en.pdf).

<sup>42</sup> *See* IPCC, IMPACTS, ADAPTATION, AND VULNERABILITY, *supra* note 14, at 796–97, [http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap13\\_FINAL.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg2/WGIIAR5-Chap13_FINAL.pdf).

<sup>43</sup> Jeffrey J. Rachlinski, *The Psychology of Global Climate Change*, 2000 U. ILL. L. REV. 299, 303–04 (2000).

<sup>44</sup> *See* Dan M. Kahan, *Ideology, Motivated Reasoning, and Cognitive Reflection*, 8 JUDGMENT & DECISION MAKING 407, 408 (2013).

<sup>45</sup> Chris Mooney, *The Science of Why We Don't Believe Science*, MOTHER JONES (May/June 2011), <http://www.motherjones.com/politics/2011/03/denial-science-chris-mooney>.

<sup>46</sup> *Id.*

<sup>47</sup> Dan M. Kahan et al., *The Second National Risk and Culture Study: Making Sense of—and Making Progress in—the American Culture War of Fact 5-6* (GWU Legal Studies, Research Paper No. 370, 2007) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1017189](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017189).

<sup>48</sup> Peter H. Kriss et al., *Behind the Veil of Ignorance: Self-Serving Bias in Climate Change Negotiation*, 8 ENV'T & DEV. POL'Y 202, 202–03 (2011).

---

<sup>49</sup> *Id.*

<sup>50</sup> Brendan Nyhan & Jason Reifler, *When Corrections Fail: The Persistence of Political Misperceptions*, 32 POL. BEHAV. 314 (2010) [hereinafter *When Corrections Fail*]; see also Brendan Nyhan & Jason Reifler, *The Roles of Information Deficits and Identity Threat in the Prevalence of Misperceptions* (June 22, 2015), <http://www.dartmouth.edu/~nyhan/opening-political-mind.pdf>.

<sup>51</sup> *When Corrections Fail*, *supra* note 50, at 315

<sup>52</sup> Joe Keohane, *How Facts Backfire*, THE BOS. GLOBE (July 11, 2010), [http://www.boston.com/bostonglobe/ideas/articles/2010/07/11/how\\_facts\\_backfire/](http://www.boston.com/bostonglobe/ideas/articles/2010/07/11/how_facts_backfire/).

<sup>53</sup> *Id.*

<sup>54</sup> See generally Dan M. Kahan et al., *Motivated Numeracy and Enlightened Self-Government*, (Yale Law Sch., Public Law Working Paper No. 307, 2013), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2319992](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2319992).

<sup>55</sup> Rachlinksi, *supra* note 43, at 303–04.

<sup>56</sup> Richard J. Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, 94 CORNELL L. REV. 1153, 1178 (2009).

<sup>57</sup> *Id.* at 1176.

<sup>58</sup> *Id.* at 1176–77.

<sup>59</sup> Lisa Zaval et al., *How Warm Days Increase Belief in Global Warming*, 4 NATURE CLIMATE CHANGE 143, 143 (2014).

<sup>60</sup> See *id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 146.

<sup>63</sup> *Yale Climate Opinion Maps*, YALE PROJECT ON CLIMATE CHANGE COMM., <http://environment.yale.edu/poe/v2014/> (last visited Nov. 14, 2015).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See, e.g., Tom Cohen, *5 Reasons Why Climate Change is Back in the News*, CNN (Feb. 18, 2014, 7:39 PM), <http://www.cnn.com/2014/02/18/politics/climate-change-5-things>.

<sup>73</sup> EDWARD MAIBACH ET AL., YALE PROJECT ON CLIMATE CHANGE COMM., A NATIONAL SURVEY OF REPUBLICANS AND REPUBLICAN-LEANING INDEPENDENTS ON ENERGY AND CLIMATE CHANGE 3 (2015).

---

<sup>74</sup> *Id.* at 5.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 3.

<sup>77</sup> ANTHONY LEISEROWITZ ET AL., YALE PROJECT ON CLIMATE CHANGE COMM., CLIMATE CHANGE IN THE AMERICAN CHRISTIAN MIND 4 (2015).

<sup>78</sup> *Id.* at 10.

<sup>79</sup> *Id.* at 31.

<sup>80</sup> *Id.* at 25.

<sup>81</sup> CONNIE ROSER-RENOUF ET AL., YALE PROJECT ON CLIMATE CHANGE COMM., GLOBAL WARMING'S SIX AMERICAS, OCTOBER 2014: PERCEPTIONS OF THE HEALTH CONSEQUENCES OF GLOBAL WARMING AND UPDATE ON KEY BELIEFS 7 (2014).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 8.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 37–38.

<sup>91</sup> *Id.*

<sup>92</sup> Teresa A. Myers et al., *Simple Messages Help Set the Record Straight About Scientific Agreement on Human-Caused Climate Change: The Results of Two Experiments* 10 PLOS ONE, no. 3, 2015, at 2; Global Warming CCAM March 2015, YALE PROJECT ON CLIMATE CHANGE COMMUNICATION, <http://environment.yale.edu/climate-communication/article/simple-messages-increase-understanding-of-the-climate-change-consensus/> (last visited Nov. 29, 2015).

<sup>93</sup> *See id.*

<sup>94</sup> *Id.* at 14–15.

<sup>95</sup> *Id.* at 3–4, 15.

<sup>96</sup> *Id.* at 13.

<sup>97</sup> ANTHONY LEISEROWITZ, ET AL., YALE PROJECT ON CLIMATE CHANGE COMM., WHAT'S IN A NAME? GLOBAL WARMING VS. CLIMATE CHANGE 6 (2014).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 7, 9.

<sup>100</sup> *Id.* at 27–28.

---

<sup>101</sup> See Ronald Chen & Jon Hanson, *The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 11 (2004).

<sup>102</sup> FRIEDRICH A. HAYEK, *THE ROAD TO SERFDOM* 10 (Univ. of Chi. Press, 50th anniversary ed. 1944).

<sup>103</sup> See *id.* at 12.

<sup>104</sup> Chen & Hanson, *supra* note 101, at 13–16.

<sup>105</sup> See *id.*

<sup>106</sup> See *id.* at 18–19.

<sup>107</sup> Ernesto Dal Bó, *Regulatory Capture: A Review*, 22 OXFORD REV. ECON. POL'Y 203, 204 (2006) (describing George Stigler's theory of regulatory capture).

<sup>108</sup> INST. FOR 21ST CENTURY ENERGY, U.S. CHAMBER OF COMMERCE, *ENERGY WORKS FOR US: SOLUTIONS FOR SECURING AMERICA'S ENERGY FUTURE* 4 (2014), [http://www.energyxxi.org/sites/default/files/file-tool/Energy\\_Works\\_For\\_US.pdf](http://www.energyxxi.org/sites/default/files/file-tool/Energy_Works_For_US.pdf).

<sup>109</sup> See generally NAOMI ORESKES & ERIK M. CONWAY, *MERCHANTS OF DOUBT* (2011).

<sup>110</sup> Denise Robbins, *Climate Denial Food Chain: Conservative Media Run With Baseless Climate Science Conspiracy Theory*, MEDIA MATTERS (Feb. 10, 2015, 2:07 PM), <http://mediamatters.org/research/2015/02/10/climate-denial-food-chain-conservative-media-ru/202469>; see also Denise Robbins, *Right-Wing Media Desperately Smear Scientists To Defend Climate Deniers' Virtue*, MEDIA MATTERS (May 1, 2015, 3:26 PM) [hereinafter Robbins, *Right-Wing Media*], <http://mediamatters.org/blog/2015/05/01/right-wing-media-desperately-smear-scientists-t/203489>; George Avery, *Scientific Misconduct: The Manipulation of Evidence for Political Advocacy in Health Care and Climate Policy* (Cato Institute, Briefing Paper No. 117, 2010), <http://object.cato.org/sites/cato.org/files/pubs/pdf/bp117.pdf>.

<sup>111</sup> Robbins, *Right-Wing Media*, *supra* note 110.

<sup>112</sup> See generally David E. Wojick & Patrick J. Michaels, *Is the Government Buying Science or Support? A Framework Analysis of Federal Funding-Induced Biases* (Cato Institute, Working Paper No. 29, 2015), <http://object.cato.org/sites/cato.org/files/pubs/pdf/working-paper-29.pdf> (analyzing potential bias in climate research funded by the federal government).

<sup>113</sup> Suzanne Goldenberg, *Work of prominent climate change denier was funded by energy industry*, THE GUARDIAN (Feb. 21, 2015, 4:32 PM), <http://www.theguardian.com/environment/2015/feb/21/climate-change-denier-willie-soon-funded-energy-industry>; see also Soon Emails, <https://www.documentcloud.org/documents/1667906-soon-emails.html#document/p40> (last visited Nov. 15, 2015) (website with Willie Soon's correspondence revealing funding by fossil fuel industry).

<sup>114</sup> Justin Gillis & John Schwartz, *Deeper Ties to Corporate Cash for Doubtful Climate Researcher*, N.Y. TIMES (Feb. 21, 2015), <http://www.nytimes.com/2015/02/22/us/ties-to-corporate-cash-for-climate-change-researcher.html> (last visited Nov. 15, 2015).

---

<sup>115</sup> *Id.*

<sup>116</sup> See generally ORESKES & CONWAY, *supra* note 109, at 169–215.

<sup>117</sup> *Id.* at 174.

<sup>118</sup> *Id.* at 186–187.

<sup>119</sup> *Id.* at 190–197.

<sup>120</sup> *Id.* at 213.

<sup>121</sup> *Id.* at 213.

<sup>122</sup> *Id.* at 215. Interestingly, Chuck Hagel has since reversed his position on the need to act on climate change. In 2014, as Secretary of Defense, he stated, “From my perspective, within the portfolio that I have responsibility for—security of this country—climate change presents security issues for us . . . . This is critically important that we pay attention to this.” Jennifer Bendery, *Chuck Hagel: We Should Worry About Climate Change Like We Worry About ISIS*, HUFFINGTON POST (Oct. 30, 2014, 12:59 PM), [http://www.huffingtonpost.com/2014/10/29/chuck-hagel-climate-change\\_n\\_6068922.html](http://www.huffingtonpost.com/2014/10/29/chuck-hagel-climate-change_n_6068922.html).

<sup>123</sup> 558 U.S. 310 (2010).

<sup>124</sup> *Id.* at 320–21.

<sup>125</sup> *Id.* at 321.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 356.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 373 (Roberts, C.J., concurring).

<sup>130</sup> *Id.* at 356–57 (majority opinion).

<sup>131</sup> Federal limits still regulate the amount of money any individual—corporate or otherwise—can directly contribute to a candidate for federal office. See: *Contribution Limits for 2015-2016 Federal Elections*, FED. ELECTION COMMISSION, <http://www.fec.gov/pages/brochures/contriblimitschart.htm> (last visited Nov. 15, 2015).

<sup>132</sup> *Citizens United*, 558 U.S. at 357.

<sup>133</sup> *Id.* at 359.

<sup>134</sup> 599 F.3d 686 (D.C. Cir. 2010).

<sup>135</sup> *Id.* at 694–95.

<sup>136</sup> Mimi Murray Digby Marziani, *Money in Politics After Citizens United: Troubling Trends & Possible Solutions*, BRENNAN CTR. FOR JUSTICE (Apr. 18, 2012), <https://www.brennancenter.org/analysis/money-politics-after-citizens-united-troubling-trends-possible-solutions>.

<sup>137</sup> Richard L. Hansen, *The Numbers Don’t Lie*, SLATE (Mar. 9, 2012, 2:56 PM), [http://www.slate.com/articles/news\\_and\\_politics/politics/2012/03/the\\_supreme\\_court\\_s\\_citizens\\_united\\_decision\\_has\\_led\\_to\\_an\\_explosion\\_of\\_campaign\\_spending.html#correction](http://www.slate.com/articles/news_and_politics/politics/2012/03/the_supreme_court_s_citizens_united_decision_has_led_to_an_explosion_of_campaign_spending.html#correction).

- 
- <sup>138</sup> Andrew Mayersohn, *Four Years After Citizens United: The Fallout*, OPENSECRETS.ORG (Jan. 21, 2014, 7:55 AM), <http://www.opensecrets.org/news/2014/01/four-years-after-citizens-united-the-fallout/>.
- <sup>139</sup> Ian Vandewalker, *The Consequences of 'Citizens United'*, MSNBC (Jan. 20, 2014), <http://www.msnbc.com/msnbc/the-consequences-citizens-united>.
- <sup>140</sup> Chris Cillizza, *How Citizens United Changed Politics, in 7 Charts*, WASH. POST (Jan. 22, 2014), <http://www.washingtonpost.com/blogs/the-fix/wp/2014/01/21/how-citizens-united-changed-politics-in-6-charts/>.
- <sup>141</sup> Vandewalker, *supra* note 139.
- <sup>142</sup> See generally Andrew Prokop, *Everything You Need to Know About Super PACs and Dark Money*, VOX (Feb. 9, 2015), <http://www.vox.com/cards/super-pacs-dark-money/-whats-the-controversy-over-citizens-united>.
- <sup>143</sup> Peter Overby, *Group Behind Election Ads Weighs in on Tax Deal*, NPR (Dec. 14, 2010, 3:00 PM), <http://www.npr.org/2010/12/14/132060878/Conservative-Group-Wades-Into-Tax-Debate>.
- <sup>144</sup> *Id.*
- <sup>145</sup> *Id.*
- <sup>146</sup> Vandewalker, *supra* note 139.
- <sup>147</sup> Editorial, *Dark Money Helped Win the Senate*, N.Y. TIMES (Nov. 8, 2014), <http://www.nytimes.com/2014/11/09/opinion/sunday/dark-money-helped-win-the-senate.html>.
- <sup>148</sup> *Id.*
- <sup>149</sup> *Id.*
- <sup>150</sup> Cillizza, *supra* note 140.
- <sup>151</sup> *Id.*
- <sup>152</sup> Senator Sheldon Whitehouse, Address before the Harvard Law School American Constitution Society (Mar. 30, 2015).
- <sup>153</sup> Cillizza, *supra* note 140.
- <sup>154</sup> Luisa Kroll, *America's Richest Families: 185 Clans with Billion Dollar Fortunes*, FORBES, (July 8, 2014, 8:00 AM), <http://www.forbes.com/sites/luisakroll/2014/07/08/Americas-richest-families-185-clans-with-billion-dollar-fortunes/>; #2 *Koch Industries*, FORBES <http://www.forbes.com/companies/koch-industries> (last visited Nov. 15, 2015).
- <sup>155</sup> CHARLES G. KOCH, THE SCIENCE OF SUCCESS: HOW MARKET BASED MANAGEMENT BUILT THE WORLD'S LARGEST PRIVATE COMPANY 6 (2007).
- <sup>156</sup> Kenneth P. Vogel, *The Kochs Put a Price on 2016: \$889 Million*, POLITICO (Jan. 26, 2015, 10:54 PM), [www.politico.com/story/2015/01/koch-2016-spending-goal-114604.html](http://www.politico.com/story/2015/01/koch-2016-spending-goal-114604.html).
- <sup>157</sup> Brad Johnson, *Koch Industries: The 100-Million Ton Carbon Gorilla*, THINKPROGRESS (Jan. 30, 2011, 3:40 PM), <http://www.thinkprogress.org/climate/2011/01/30/174290/koch-carbon-footprint>.

---

<sup>158</sup> *Oil & Gas: PAC contributions to Federal Candidates*, OPENSECRETS.ORG, <http://www.opensecrets.org/pacs/industry/php?txt=ED1&cycle=2014> (last visited Oct. 15, 2015).

<sup>159</sup> Matea Gold, *Koch-Backed Political Network, Built to Shield Donors, Raised \$400 Million in 2012 Elections*, WASH. POST (Jan. 5, 2014), [http://www.washingtonpost.com/politics/koch-backed-political-network-built-to-shield-donors-raised-400-million-in-2012-elections/2014/01/05/9e7cfd9a-719b-11e3-9389-09ef9944065e\\_story.html](http://www.washingtonpost.com/politics/koch-backed-political-network-built-to-shield-donors-raised-400-million-in-2012-elections/2014/01/05/9e7cfd9a-719b-11e3-9389-09ef9944065e_story.html).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> The RNC spent \$404 million in 2012. Vogel, *supra* note 155.

<sup>163</sup> Gold, *supra* note 159.

<sup>164</sup> Vogel, *supra* note 156.

<sup>165</sup> *Id.*

<sup>166</sup> Jeremy Ashkenas et al., *The 2012 Money Race: Compare the Candidates*, N.Y. TIMES, <http://elections.nytimes.com/2012/campaign-finance> (last visited Nov. 15, 2015).

<sup>167</sup> Vogel, *supra* note 156.

<sup>168</sup> Eric Lipton & Clifford Krauss, *Fossil Fuel Industry Ads Dominate TV Campaign*, N.Y. TIMES (Sept. 13, 2012), [http://www.nytimes.com/2012/09/14/us/politics/fossil-fuel-industry-opens-wallet-to-defeat-obama.html?\\_r=0](http://www.nytimes.com/2012/09/14/us/politics/fossil-fuel-industry-opens-wallet-to-defeat-obama.html?_r=0).

<sup>169</sup> *Id.*

<sup>170</sup> Lindsay Abrams, *The Fossil Fuel Industry Spent an Insane Amount of Money Influencing the Midterm Elections*, SALON (Dec. 23, 2014, 11:05 AM), [www.salon.com/2014/12/23/the\\_fossil\\_fuel\\_industry\\_spent\\_an\\_insane\\_amount\\_of\\_money\\_influencing\\_the\\_midterm\\_elections](http://www.salon.com/2014/12/23/the_fossil_fuel_industry_spent_an_insane_amount_of_money_influencing_the_midterm_elections).

<sup>171</sup> *Id.*

<sup>172</sup> Gold, *supra* note 159.

<sup>173</sup> Lipton & Krauss, *supra* note 168.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Sam Youngman, *Kentucky's McConnell Reflects After Reaching the Top*, LEXINGTON HERALD-LEADER (Nov. 6, 2014), <http://www.kentucky.com/2014/11/06/3525294/kentuckys-mcconnell-reflects-after.html>.

<sup>178</sup> *See id.*

<sup>179</sup> Clair Moser & Matt Lee-Ashley, *The Fossil-Fuel Industry Spent Big to Set the Anti-Environment Agenda of the Next Congress*, CTR. FOR AM. PROGRESS (Dec. 22, 2014), <http://www.americanprogress.org/issues/green/news/2014/12/22/103667/the-fossil-fuel-industry-spent-big-to-set-the-anti-environment-agenda-of-the-next-congress>. See also Reid Wilson, Jewell 'Profoundly Disappointed by Land Exchange

---

at *Sacred Native American Sites*, WASH. POST (Dec. 6, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp2014/12/06/jewell-profoundly-disappointed-by-land-exchange-at-sacred-native-american-sites>. Those provisions include a reduction in funding for the Environmental Protection Agency, a prohibition against regulating light bulb efficiency, and a restriction on the listing of certain species as “endangered” or “threatened” under the Endangered Species Act.

<sup>180</sup> *Keystone Senate Yea Votes: Seven Times More Oil & Gas Money*, OPENSECRETS.ORG (Jan. 29, 2015), <http://www.opensecrets.org/news/2015/01/keystone-senate-yea-votes-seven-times-more-oil-gas-money/>.

<sup>181</sup> Ryan Lizza, *The President and the Pipeline*, NEW YORKER (Sept. 16, 2013), <http://www.newyorker.com/magazine/2013/09/16/the-president-and-the-pipeline>.

<sup>182</sup> *Id.*

<sup>183</sup> *Keystone Senate Yea Votes: Seven Times More Oil & Gas Money*, *supra* note 180.

<sup>184</sup> *Id.*

<sup>185</sup> For example, the natural gas industry spent nearly \$50 million in Pennsylvania state politics from 2007–2014. Lauren Townsend, *Marcellus Money: Natural Gas Industry has spent \$49 million to influence PA elected officials since 2007*, CONSERVATION VOTERS OF PA. (NOV. 13, 2014, 12:07 PM), <http://www.conservationpa.org/marcellus-money-natural-gas-industry-has-spent-49-million-to-influence-pa-elected-officials-since-2007>.

<sup>186</sup> *See generally State Campaign Finance Laws*, CAMPAIGN FIN. INST.<http://www.cfinst.org/law/states.aspx> (last visited Nov. 15, 2015).

<sup>187</sup> *See generally* Christopher Bateman, *A Colossal Fracking Mess*, VANITY FAIR (June 2010), <http://www.vanityfair.com/news/2010/06/fracking-in-pennsylvania-201006>.

<sup>188</sup> Richard Gonzales, *Chevron Spends Big, and Loses Big, in a City Council Race*, NPR (Nov. 5, 2014, 9:06 PM), <http://www.npr.org/blogs/the-two-way/2014/11/05/361875792/chevron-spends-big-and-loses-big-in-a-city-council-race>.

<sup>189</sup> *Id.*

<sup>190</sup> Richard Gonzales, *Chevron Threatens to Leave Longtime Home*, NPR (Dec. 28, 2009, 3:14 PM), <http://www.npr.org/templates/story/story.php?storyId=121974899>.

<sup>191</sup> Gonzales, *supra* note 188.

<sup>192</sup> *Id.*

<sup>193</sup> Gonzales, *supra* note 190.

<sup>194</sup> *See* Madeline Ostrander, *Richmond: The Little Town That Beat Big Oil*, AL JAZEERA AM. (Nov. 7, 2014, 3:00 PM), <http://america.aljazeera.com/blogs/scrutineer/2014/11/7/richmond-chevronelectionmoney.html>.

<sup>195</sup> Robert Rogers, *Big Money Politics Suffers Big Blow in Richmond as Chevron Spending Backfires*, CONTRA COSTA TIMES (Nov. 5, 2014, 4:20 PM),

---

[http://www.contracostatimes.com/west-county-times/ci\\_26874555/big-money-politics-suffers-big-blow-richmond-chevron](http://www.contracostatimes.com/west-county-times/ci_26874555/big-money-politics-suffers-big-blow-richmond-chevron).

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Ciara Torres-Spelliscy, *Why Is Chevron Spending Millions on a Municipal Election?*, BRENNAN CTR FOR JUSTICE (Oct. 21, 2014), <https://www.brennancenter.org/blog/why-chevron-spending-millions-municipal-election>.

<sup>199</sup> Rogers, *supra* note 195.

<sup>200</sup> Josh Voorhees, *How Green Was My Election*, SLATE (Nov. 3, 2014, 9:15 PM), [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/11/tom\\_steyer\\_spend\\_57\\_million\\_to\\_get\\_voters\\_to\\_care\\_about\\_climate\\_change\\_it.single.html](http://www.slate.com/articles/news_and_politics/politics/2014/11/tom_steyer_spend_57_million_to_get_voters_to_care_about_climate_change_it.single.html).

<sup>201</sup> Kate Sheppard, *Tom Steyer Claims Success in Very Expensive Effort to Make Climate Change a 'Wedge Issue'*, HUFFINGTON POST (Nov. 6, 2014, 11:59 AM), [http://www.huffingtonpost.com/2014/11/05/steyer-climate-election\\_n\\_6104858.html](http://www.huffingtonpost.com/2014/11/05/steyer-climate-election_n_6104858.html).

<sup>202</sup> Voorhees, *supra* note 200.

<sup>203</sup> *Id.*

<sup>204</sup> Abrams, *supra* note 170.

<sup>205</sup> Leigh Ann Caldwell, *Climate Change PAC Dusts Off, Looks to 2016*, NBC NEWS (Nov. 7, 2014, 1:24 PM), <http://www.nbcnews.com/politics/elections/climate-change-pac-dusts-looks-2016-n243676>.

<sup>206</sup> *See generally* 2014 Midterm Election: Interactive Map, USA TODAY <http://www.usatoday.com/pages/interactives/elections-results-2014> (last visited Nov. 15, 2015).

<sup>207</sup> Sheppard, *supra* note 201.

<sup>208</sup> Voorhees, *supra* note 200.

<sup>209</sup> *Wide Partisan Differences Over the Issues That Matter in 2014*, PEW RES. CTR. (Sept. 12, 2014), <http://www.people-press.org/2014/09/12/wide-partisan-differences-over-the-issues-that-matter-in-2014>.

<sup>210</sup> Senator Sheldon Whitehouse, Address before the Harvard Law School American Constitution Society (Mar. 30, 2015).

<sup>211</sup> 536 U.S. 765 (2002).

<sup>212</sup> *Id.* at 768.

<sup>213</sup> *Id.* at 788.

<sup>214</sup> *Id.* at 781.

<sup>215</sup> FACT SHEET ON JUDICIAL SELECTION METHODS IN THE STATES, AM. BAR ASS'N, [http://www.americanbar.org/content/dam/aba/migrated/leadership/fact\\_sheet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/leadership/fact_sheet.authcheckdam.pdf).

---

<sup>216</sup> BILLY CORRIHER, CTR. FOR AM. PROGRESS, BIG BUSINESS TAKING OVER STATE SUPREME COURTS 1–2, 5 (2012), <https://cdn.americanprogress.org/wp-content/uploads/2012/08/StateCourtsReport.pdf>.

<sup>217</sup> ALICIA BANNNON ET AL., BRENNAN CTR. FOR JUSTICE, THE NEW POLITICS OF JUDICIAL ELECTIONS 2011–12 at 3–4 (2013), <http://www.brennancenter.org/sites/default/files/publications/New%20Politics%20of%20Judicial%20Elections%202012.pdf>.

<sup>218</sup> BILLY CORRIHER, CTR. FOR AM. PROGRESS, CRIMINALS AND CAMPAIGN CASH 5 (2013), <https://cdn.americanprogress.org/wp-content/uploads/2013/10/CampaignCriminalCash-6.pdf>.

<sup>219</sup> JOANNA SHEPHERD, AM. CONSTITUTION SOC'Y FOR LAW AND POL'Y, JUSTICE AT RISK: AN EMPIRICAL ANALYSIS OF CAMPAIGN CONTRIBUTIONS AND JUDICIAL DECISIONS 1 (2013), [http://www.acslaw.org/ACS%20Justice%20at%20Risk%20\(FINAL\)%206\\_10\\_13.pdf](http://www.acslaw.org/ACS%20Justice%20at%20Risk%20(FINAL)%206_10_13.pdf).

<sup>220</sup> *Id.*

<sup>221</sup> CORRIHER, *supra* note 218, at 15.

<sup>222</sup> Caperton v. A.T. Massey Coal Co., Inc., 556 US 868, 872 (2009).

<sup>223</sup> *Id.* at 873.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at 874.

<sup>227</sup> *Id.* at 884.

<sup>228</sup> *Id.* at 889–90. Although Caperton had originally lost 3–2 before the West Virginia Supreme Court, when the case was heard again on remand in 2009, he lost by a vote of 4–1. Caperton v. A.T. Massey Coal Co., Inc., 225 W. Va. 128, 690 S.E.2d 322 (2009).

<sup>229</sup> 135 S. Ct. 1656 (2015).

<sup>230</sup> *E.g., id.* at 1665–66.

<sup>231</sup> *Id.* at 1667.

<sup>232</sup> Richard J. Lazarus, *Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar*, 96 GEO. L.J. 1487, 1497–1501 (2008).

<sup>233</sup> Tony Mauro, *Who's Getting Work at the Supreme Court*, THE AMERICAN LAWYER (Oct. 24, 2014), <http://www.americanlawyer.com/id=1202671042550/Whos-Getting-the-Work-at-the-Supreme-Court?slreturn=20150229152405>.

<sup>234</sup> *Id.*

<sup>235</sup> Lazarus, *supra* note 232, at 1522.

<sup>236</sup> *See id.*

<sup>237</sup> Joan Biskupic, Janet Roberts & John Shiffman, *At America's Court of Last Resort, Handful of Lawyers Now Dominates the Docket*, REUTERS (Dec. 8, 2014),

---

<http://www.reuters.com/article/2014/12/08/us-scotus-elites-special-report-idUSKBN0JMoZX20141208>.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> John Shiffman, Janet Roberts & Joan Biskupic, *Elite Law Firms Spin Gold from Getting Cases Before Supreme Court*, REUTERS (Dec. 8, 2014), <http://www.reuters.com/article/2014/12/08/us-scotus-firms-specialreport-idUSKBN0JM10O20141208>.

<sup>243</sup> Richard J. Lazarus, *Docket Capture at the High Court*, 199 YALE L.J. ONLINE 89, 90–91 (2009).

<sup>244</sup> *Glossary of Legal Terms*, SCOTUSBLOG, <http://www.scotusblog.com/reference/educational-resources/glossary-of-legal-terms/> (last visited Nov. 15, 2015).

<sup>245</sup> *Id.*

<sup>246</sup> Lazarus, *supra* note 232, at 1513.

<sup>247</sup> Adam Chandler, *Cert.-stage amicus "all stars": Where are they now?*, SCOTUSBLOG (Apr. 4, 2013, 3:00pm), <http://www.scotusblog.com/2013/04/cert-stage-amicus-all-stars-where-are-they-now/>.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> Chandler, *supra* note 247.

<sup>253</sup> Lazarus, *supra* note 232, at 1523–26.

<sup>254</sup> *Id.* at 1532.

<sup>255</sup> *Id.* at 1542.

<sup>256</sup> *The Effectiveness of Cato's Center for Constitutional Studies at the Supreme Court*, CATO INSTITUTE, <http://www.cato.org/about/cato-amicus-program> (last visited Apr. 4, 2015). This website and these quotes refer to Cato's merits-stage amicus briefing, but the page also acknowledges its cert.-stage activities, noting that "[s]ince 2009, Cato has filed 51 amicus briefs supporting certiorari. Of those that have been already decided (as of this writing, nine cases are still pending), 12 were granted cert, or 28 percent." *Id.*

<sup>257</sup> Lazarus, *supra* note 243, at 91.

<sup>258</sup> *See id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.* at 92.

- 
- <sup>261</sup> Adam Liptak, *Environment Groups Find Less Support on Court*, N.Y. TIMES (July 3, 2009), <http://www.nytimes.com/2009/07/04/us/04scotus.html>.
- <sup>262</sup> Coral Davenport, *Obama to Take Action to Slash Pollution*, N.Y. TIMES (June 1, 2014), <http://www.nytimes.com/2014/06/02/us/politics/epa-to-seek-30-percent-cut-in-carbon-emissions.html>.
- <sup>263</sup> 134 S. Ct. 2427 (2014).
- <sup>264</sup> Util. Air Regulatory Group v. EPA, 134 S. Ct. 418 (2013) (mem.).
- <sup>265</sup> Coal. for Responsible Regulation v. EPA, 684 F.3d 102, 113–14 (D.C. Cir. 2012).
- <sup>266</sup> Brief of Washington Legal Foundation as Amicus Curiae in Support of Petitioner, UARG, 134 S. Ct. 2427 (No. 12-1145), 2013 WL 1792486; Amicus Curiae Brief of Mountain States Legal Foundation in Support of Petitioners, Chamber of Commerce of the United States of Am. v. EPA, No. 12-1272, 2013 WL 2352592 (U.S. May 24, 2013).
- <sup>267</sup> Petition for Writ of Certiorari, Pac. Legal Found. v. EPA, No. 12-1153, 2013 WL 1177276 (U.S. Mar. 20, 2013).
- <sup>268</sup> Pac. Legal Found. v. EPA, 134 S. Ct. 418 (2013) (mem.).
- <sup>269</sup> Brief Amicus Curiae of Pacific Legal Foundation et al. in Support of Petitioners, UARG, 134 S. Ct. 2427 (No. 12-1146); Brief of Amicus Curiae Washington Legal Foundation in Support of Reversal, UARG, 134 S. Ct. 2427 (No. 12-1146), 2013 WL 6673694; Amicus Curiae Brief of Mountain States Legal Foundation in Support of Petitioners, UARG, 134 S. Ct. 2427 (No. 12-1146), 2013 WL 6673704; Brief of Amicus Curiae Center for Constitutional Jurisprudence in Support of Petitioners, 134 S. Ct. 2427 (No. 12-1146), 2013 WL 7150251.
- <sup>270</sup> Chandler, *supra* note 247.
- <sup>271</sup> UARG, 134 S. Ct. at 2438–39.
- <sup>272</sup> Jody Freeman, *Why I Worry About UARG*, 39 HARV. ENVTL. L. REV. 9–10 (2015).
- <sup>273</sup> UARG, 134 S. Ct. at 2444 (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159 (2000)).
- <sup>274</sup> Freeman, *supra* note 272, at 10–11.
- <sup>275</sup> *Id.* at 11.
- <sup>276</sup> Joint Reply Brief of Petitioners in Nos. 12-1248, 12-1254, 12-1268, and 12-1272 at 14, UARG, 134 S. Ct. 2427 (No. 12-1146), 2014 WL 632086 at \*14.
- <sup>277</sup> Transcript of Oral Argument at 50, UARG, 134 S. Ct. 2427 (No. 12-1146).
- <sup>278</sup> *Id.* at 51.
- <sup>279</sup> *Id.*
- <sup>280</sup> Ann E. Carlson & Megan M. Herzog, *Text in Context: The Fate of Emergent Climate Regulation After UARG and EME Homer*, 39 HARV. ENVTL. L. REV. 23, 25 (2015).
- <sup>281</sup> *Id.*
- <sup>282</sup> In re Murray Energy Corp., 788 F.3d 330 (D.C. Cir. 2015).

---

<sup>283</sup> Brief of Amici Curiae Trade Associations in Support of Petitioners, *In re Murray Energy Corp.*, 788 F.3d 330 (Nos. 14-1112, 12-1151).

<sup>284</sup> Brief for Intervenor-Petitioners National Federation of Independent Businesses and Utility Air Regulatory Group, *In re Murray Energy Corp.*, 788 F.3d 330 (Nos. 14-1112, 12-1151).

<sup>285</sup> *In re Murray Energy Corp.*, 788 F.3d at 333–34.

<sup>286</sup> Memorandum from Lewis F. Powell, Jr., to Eugene B. Sydnor, Jr., Chairman, Educ. Comm., U.S. Chamber of Commerce 1 (Aug. 23, 1971) [hereinafter Powell Memorandum], <http://law2.wlu.edu/deptimages/Powell%20Archives/PowellMemorandumTypescript.pdf>.

<sup>287</sup> *Id.* at 24–25.

<sup>288</sup> INST. FOR 21ST CENTURY ENERGY, *supra* note 108, at 52.

<sup>289</sup> U.S. CHAMBER OF COMMERCE, U.S. CHAMBER POLICY PRIORITIES FOR 2015: THE JOBS, GROWTH, AND OPPORTUNITY AGENDA 7 (2015), [https://www.uschamber.com/sites/default/files/2015\\_policy\\_priorities\\_-\\_january\\_2015.pdf](https://www.uschamber.com/sites/default/files/2015_policy_priorities_-_january_2015.pdf).

<sup>290</sup> See Josh Harkinson, *US Chamber Shrinks Membership 90%*, MOTHER JONES (Oct. 14, 2009, 12:33 PM), <http://www.motherjones.com/mojo/2009/10/us-chamber-caves-membership-numbers>.

<sup>291</sup> *About the U.S. Chamber*, U.S. CHAMBER OF COMMERCE, <https://www.uschamber.com/about-us/about-us-chamber> (last visited Nov. 16, 2015).

<sup>292</sup> See Harkinson, *supra* note 290.

<sup>293</sup> See *The Chamber of Secrets*, ECONOMIST (Apr. 21, 2012), <http://www.economist.com/node/21553020>.

<sup>294</sup> *Id.*

<sup>295</sup> *Lawsuit Abuse Impact*, U.S. CHAMBER INST. FOR LEGAL REFORM, <http://www.instituteforlegalreform.com/issues/lawsuit-abuse-impact> (last visited Nov. 16, 2015).

<sup>296</sup> *About*, U.S. CHAMBER LITIG. CTR., <http://www.chamberlitigation.com/about> (last visited Nov. 16, 2015).

<sup>297</sup> Tom Donnelly, *The U.S. Chamber of Commerce Continues its Winning Ways*, CONST. ACCOUNTABILITY CTR. (June 30, 2014), <http://theusconstitution.org/text-history/2753/us-chamber-commerce-continues-its-winning-ways>.

<sup>298</sup> See *The Chamber of Secrets*, *supra* note 293; PUB. CITIZEN, THE GILDED CHAMBER 3 (2014), <http://www.citizen.org/documents/us-chamber-of-commerce-funders-dominated-by-large-corporations-report.pdf>.

<sup>299</sup> See ADAM RAPPAPORT, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, THE DARK MONEY DEBATE 3 (2014), [http://www.citizensforethics.org/page/-/PDFs/General%20CREW/Reforming\\_IRS\\_501c\\_Treatment\\_CREW\\_1\\_2014.pdf?no\\_cdn=1](http://www.citizensforethics.org/page/-/PDFs/General%20CREW/Reforming_IRS_501c_Treatment_CREW_1_2014.pdf?no_cdn=1).

---

<sup>300</sup> PUBLIC CITIZEN, U.S. CHAMBER OF COMMERCE PUMPS MILLIONS INTO ELECTIONS 2 (2012), <http://www.citizen.org/documents/us-chamber-spends-millions-in-elections-report.pdf>.

<sup>301</sup> PUB. CITIZEN, *supra* note 298, at 4–5, 9.

<sup>302</sup> U.S. CHAMBER OF COMMERCE, *supra* note 289, at 7.

<sup>303</sup> Coal. for Responsible Regulation v. EPA, 684 F.3d 102 (D.C. Cir. 2012) (upholding endangerment finding for greenhouse gasses); Util. Air Regulatory Grp. v. EPA, 134 S. Ct. 2427 (2014) (declining to review portion of D.C. Circuit opinion that upheld the EPA endangerment finding for GHGs).

<sup>304</sup> INST. FOR 21ST CENTURY ENERGY, *supra* note 108.

<sup>305</sup> *Id.* at 3.

<sup>306</sup> *Id.*

<sup>307</sup> *Id.* at 4.

<sup>308</sup> *Id.* at 38–39, 43.

<sup>309</sup> See generally RHODIUM GROUP, AMERICAN CLIMATE PROSPECTUS: ECONOMIC RISKS IN THE UNITED STATES (2014), [http://rhg.com/wp-content/uploads/2014/10/AmericanClimateProspectus\\_v1.2.pdf](http://rhg.com/wp-content/uploads/2014/10/AmericanClimateProspectus_v1.2.pdf).

<sup>310</sup> *Id.* at 101–112.

<sup>311</sup> *Id.* at 116.

<sup>312</sup> Shaun Goho, *The U.S. Chamber: A Record of Obstruction on Climate Action*, YALE ENVIRONMENT 360 (Feb. 23, 2010), [http://e360.yale.edu/feature/the\\_us\\_chamber\\_a\\_record\\_of\\_obstruction\\_on\\_climate\\_action/2246/](http://e360.yale.edu/feature/the_us_chamber_a_record_of_obstruction_on_climate_action/2246/)

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> GRETCHEN GOLDMAN & PAUL ROGERSON, UNION FOR CONCERNED SCIENTISTS, ASSESSING TRADE AND BUSINESS GROUPS' POSITIONS ON CLIMATE CHANGE 5 (2013) (quoting joint comments filed by U.S. Chamber of Commerce and other parties on EPA's Endangerment Finding), <http://www.ucsusa.org/sites/default/files/legacy/assets/documents/center-for-science-and-democracy/trade-and-business-groups-climate-change.pdf>.

<sup>316</sup> See Senator Menendez NJ, *Chairman Menendez Asks Chamber's Harbart About Human-Caused Climate Change*, YOUTUBE (Mar. 13, 2014), <https://www.youtube.com/watch?v=24aMRP9LTQw>.

<sup>317</sup> Chamber of Commerce of the United States of America, Petition of the Chamber of Commerce of the United States of America for EPA to Conduct its Endangerment Finding Proceeding on the Record Using Administrative Procedure Act §§ 556 and 557 (June 23, 2009), [https://www.uschamber.com/sites/default/files/legacy/comments/090623\\_epa\\_petition.pdf](https://www.uschamber.com/sites/default/files/legacy/comments/090623_epa_petition.pdf).

<sup>318</sup> Michael Burnham, *Another Utility Leaves U.S. Chamber Over Climate Policy*, N.Y. TIMES (Sept. 25, 2009), <http://www.nytimes.com/gwire/2009/09/25/25greenwire-another-utility-leaves-us-chamber-over-climate-policy>

---

<sup>319</sup> *Id.*; Shahien Nasiripour, *Another Company May Leave Chamber of Commerce over Extreme Position on Climate Change*, HUFFINGTON POST (May 25, 2011, 2:20 PM), [http://www.huffingtonpost.com/2009/10/13/another-company-may-leave\\_n\\_319782.html](http://www.huffingtonpost.com/2009/10/13/another-company-may-leave_n_319782.html).

<sup>320</sup> Matthew Preusch, *Nike Leaves U.S. Chamber of Commerce over Climate Policy*, THE OREGONIAN (Sept. 30, 2009, 10:52 AM), [http://www.oregonlive.com/environment/index.ssf/2009/09/nike\\_leaves\\_us\\_chamber\\_of\\_comm.html](http://www.oregonlive.com/environment/index.ssf/2009/09/nike_leaves_us_chamber_of_comm.html).

<sup>321</sup> David A. Farenthold, *Apple Leaves U.S. Chamber over Its Climate Position*, WASH. POST (Oct. 6, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/05/AR2009100502744.html>.

<sup>322</sup> See Burt Helm, *Climate Change's Bottom Line*, N.Y. TIMES (Jan. 31, 2015), [http://www.nytimes.com/2015/02/01/business/energy-environment/climate-changes-bottom-line.html?\\_r=0](http://www.nytimes.com/2015/02/01/business/energy-environment/climate-changes-bottom-line.html?_r=0).

<sup>323</sup> Joseph N. DiStefano, *Giant Builder Quits US Chamber in Green-Building Struggle*, PHIL. INQUIRER, (Oct. 17, 2013, 3:18 PM), <http://www.philly.com/philly/blogs/inq-phillydeals/Giant-builder-quits-US-Chamber-in-green-building-row.html>.

<sup>324</sup> *Id.*

<sup>325</sup> See SCOTT M. CUTLIP, *THE UNSEEN POWER: PUBLIC RELATIONS: A HISTORY* 1 (1994); *Rise of the Image Men*, ECONOMIST (Dec. 16, 2010, 11:04 AM), <http://www.economist.com/node/17722733> ("Only since the early 20th century, and Lee's campaigns for the coal and rail bosses, has there been a recognisable PR industry dedicated to shaping the representation of clients in the media.").

<sup>326</sup> See *Rise of the Image Men*, *supra* note 325.

<sup>327</sup> See *id.*

<sup>328</sup> CUTLIP, *supra* note 325, at 2.

<sup>329</sup> See *id.* at 7–8 (explaining that public relations strategies were used "to influence legislation and regulation [as] can be seen in the history of the railroads in the 1900s" which "employed the Publicity Bureau to wage a national propaganda campaign").

<sup>330</sup> See Edward L. Bernays, *The Engineering of Consent*, 250 ANNALS AM. ACAD. POL. & SOC. SCI. 113 (1947).

<sup>331</sup> Edward L. Bernays, *Manipulating Public Opinion: The Why and the How*, 33 AM. J. SOC. 938 (1928); *Rise of the Image Men*, *supra* note 325.

<sup>332</sup> DON BATES, INST. FOR PUB. REL., "MINI-ME HISTORY": PUBLIC RELATIONS FROM THE DAWN OF CIVILIZATION 13 (2006), [http://www.instituteforpr.org/wp-content/uploads/MiniMe\\_HistoryOfPR1.pdf](http://www.instituteforpr.org/wp-content/uploads/MiniMe_HistoryOfPR1.pdf).

<sup>333</sup> See Powell Memorandum, *supra* note 286.

<sup>334</sup> Jane Mayer, *Covert Operations*, THE NEW YORKER (Aug. 30, 2010), <http://www.newyorker.com/magazine/2010/08/30/covert-operations>.

---

<sup>335</sup> *Id.* (“In a study released this spring, the University of Massachusetts at Amherst’s Political Economy Research Institute named Koch Industries one of the top ten air polluters in the United States. And Greenpeace issued a report identifying the company as a ‘kingpin of climate science denial.’”).

<sup>336</sup> Erin Quinn, *Who Needs Lobbyists? See What Big Business Spends to Win American Minds*, CTR. FOR PUB. INTEGRITY (Jan. 17, 2015, 9:08 AM), <http://www.publicintegrity.org/2015/01/15/16596/who-needs-lobbyists-see-what-big-business-spends-win-american-minds>.

<sup>337</sup> *See id.*

<sup>338</sup> *See id.*

<sup>339</sup> *See id.* (“While not a complete accounting of spending, the analysis provides a glimpse into just how important the public relations industry is to groups seeking to influence public policy.”).

<sup>340</sup> *See id.*

<sup>341</sup> *See id.*

<sup>342</sup> *See id.*

<sup>343</sup> *See id.*

<sup>344</sup> *See id.*

<sup>345</sup> *See* CUTLIP, *supra* note 325, at 7 (explaining that similar tactics were used when public relations first emerged as “a coordinated plan for reaching the general public through newspapers, magazines, streetcar advertisements, posters, and painted signs”).

<sup>346</sup> *See* Powell Memorandum, *supra* note 286.

<sup>347</sup> *Id.*

<sup>348</sup> *Id.*

<sup>349</sup> *See* Quinn, *supra* note 336.

<sup>350</sup> *Id.*

<sup>351</sup> *See* Herbert J. Gans, *Journalism for Democracy*, NIEMANLAB (Feb. 1, 2013, 11:00 AM), <http://www.niemanlab.org/2013/02/journalism-for-democracy/>.

<sup>352</sup> *About Us*, LEGALNEWSLINE.COM, <http://legalnewsline.com/> (last visited Nov. 21, 2015) (“Legal Newsline is owned by the U.S. Chamber Institute for Legal Reform”); U.S. CHAMBER INST. FOR LEGAL REFORM, RESTORING BALANCE ENSURING JUSTICE, [http://www.instituteforlegalreform.com/uploads/sites/1/ILR13052-overview\\_brch\\_WEB\\_FINAL.pdf](http://www.instituteforlegalreform.com/uploads/sites/1/ILR13052-overview_brch_WEB_FINAL.pdf) (“Our seven publications include three weekly newspapers—the *Madison/St. Clair Record* (Illinois), the *West Virginia Record*, and

---

the *Southeast Texas Record*—as well as four online channels—LegalNewsline.com, the *Louisiana Record*, the *Pennsylvania Record*, and the *Cook County Record* (Illinois).”).

<sup>353</sup> See Laura McGann, *Using the Power of Publishing to Influence: The U.S. Chamber of Commerce’s Entry into the News Biz*, NIEMANLAB (Oct. 22, 2010, 12:00 PM), <http://www.niemanlab.org/2010/10/using-the-power-of-publishing-to-influence-the-u-s-chamber-of-commerces-entry-into-the-news-biz/>.

<sup>354</sup> See *id.* (describing the Chamber’s network of local publications (print and online) that focus on legal issues in areas where business interests have been critical of the decisions of local courts”); Wade Goodwyn, *Texas Newspaper Accused of Tort-Reform Bias*, NPR (May 2, 2007, 1:00 PM), <http://www.npr.org/templates/story/story.php?storyId=9958273> (quoting Texas attorney Brent Coon describing the *Southeast Texas Record* as “‘This newspaper—I hate to even call it a newspaper; it’s a propaganda sheet . . . The front page had a big article on the tort tax. They had a big article talking about how everybody pays more for everything as a result of awarding damages in personal injury lawsuits.’”).

<sup>355</sup> See McGann, *supra* note 353; Lauren Kirchner, *U.S. Corporate Interest and the Chamber of Secrets*, COLUM. JOURNALISM REV. (Oct. 22, 2010), [http://www.cjr.org/the\\_kicker/us\\_corporate\\_interest\\_and\\_the.php](http://www.cjr.org/the_kicker/us_corporate_interest_and_the.php).

<sup>356</sup> See, e.g., *About Us*, W. VA. REC., <http://wvrecord.com/about/170888-by-way-of-introduction> (last visited Nov. 21, 2015).

<sup>357</sup> See generally West Virginia Record, *Timeline*, FACEBOOK.COM, <https://www.facebook.com/WVRecord> (last visited Nov. 21, 2015); Louisiana Record, *Timeline*, FACEBOOK.COM, <https://www.facebook.com/pages/The-Louisiana-Record/377247662301741> (last visited Nov. 21, 2015); Southeast Texas Record, *Timeline*, FACEBOOK.COM, <https://www.facebook.com/pages/Southeast-Texas-Record/312087222175938> (last visited Nov. 21, 2015); Madison-St. Clair Record, *Timeline*, FACEBOOK.COM, <https://www.facebook.com/pages/MadisonSt-Clair-Record/164779816968453> (last visited Nov. 21, 2015); Legal Newsline, *Timeline*, FACEBOOK.COM, [https://www.facebook.com/pages/Legal-Newsline/299588323424419?sk=info&tab=page\\_info](https://www.facebook.com/pages/Legal-Newsline/299588323424419?sk=info&tab=page_info) (last visited Nov. 21, 2015).

<sup>358</sup> See Goodwyn, *supra* note 354.

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> McGann, *supra* note 353.

<sup>362</sup> See U.S. CHAMBER INST. FOR LEGAL REFORM, *supra* note 352; McGann, *supra* note 353 (“[T]he Institute’s reporters are covering civil cases with large settlements and other tort reform-related news—and working for news outlets set up in some of the nation’s most tort-friendly jurisdictions.”).

<sup>363</sup> See *About Us*, LOUISIANARECORD.COM, <http://louisianarecord.com/about> (“This year, Louisiana’s courts were ranked among the most unfair in the nation,

---

according to a survey (Harris Interactive) of top corporate lawyers and business executives.”).

<sup>364</sup> See U.S. CHAMBER INST. FOR LEGAL REFORM, LAWSUIT CLIMATE: 2012 STATE LIABILITY SYSTEMS SURVEY RANKING THE STATES 1 (2012), [http://www.instituteforlegalreform.com/uploads/sites/1/Lawsuit\\_Climate\\_Report\\_2012.pdf](http://www.instituteforlegalreform.com/uploads/sites/1/Lawsuit_Climate_Report_2012.pdf) (emphasis added).

<sup>365</sup> See *id.* at 3, 9, 14 (explaining that the worst local jurisdictions include Chicago/Cook County, Illinois and southeast Texas, while the worst states include West Virginia, Louisiana, and Pennsylvania—all locations where the Chamber runs its newspapers).

<sup>366</sup> AM. TORT REFORM FOUND., JUDICIAL HELLHOLES 2014–2015 (2014), <http://www.judicialhellholes.org/wp-content/uploads/2014/12/JudicialHellholes-2014.pdf>.

<sup>367</sup> See *id.* at 4.

<sup>368</sup> See, e.g., Michael Tremoglie, *American Petroleum Institute Concerned About EPA Refinery Rules*, SETEXASRECORD.COM (Feb 20, 2012, 7:00 AM), <http://setexasrecord.com/news/241972-american-petroleum-institute-concerned-about-epa-refinery-rules>; Jessica M. Karmasek, *Manufacturers, Business Groups Challenge EPA Debarment Ruling*, SETEXASRECORD.COM (Dec. 5, 2013, 12:47 PM), <http://setexasrecord.com/news/292411-manufacturers-business-groups-challenge-epa-debarment-ruling>.

<sup>369</sup> See John O’Neal, *THEIR VIEW: Domestic Energy Keeps the American Economy Afloat*, W. VA. REC. (July 26, 2012, 5:10 AM), <http://wvrecord.com/arguments/245618-their-view-domestic-energy-keeps-the-american-economy-afloat>.

<sup>370</sup> *Id.*

<sup>371</sup> See Don Briggs, *New Climate Change Policy, Same Ole’ Agenda*, LOUISIANA RECORD.COM (June 27, 2013, 6:06 PM), <http://louisianarecord.com/arguments/s-4665-their-view/252971-new-climate-change-policy-same-ole-agenda>.

<sup>372</sup> See Quinn, *supra* note 336 (quoting president of the Public Affairs Council, Doug Pinkham, as saying that “[i]n the world we live in now . . . if you have an issue that is visual and has a compelling narrative, we’re better off spending more resources on trying to educate the public”).

<sup>373</sup> See Tamar Lewin, *Children’s Publisher Backing Off Its Corporate Ties*, N.Y. TIMES (July 31, 2011), [http://www.nytimes.com/2011/08/01/education/01scholastic.html?\\_r=5&ref=education](http://www.nytimes.com/2011/08/01/education/01scholastic.html?_r=5&ref=education).

<sup>374</sup> See *About Scholastic: Scholastic InSchool*, SCHOLASTIC, <http://www.scholastic.com/aboutscholastic/scholasticinschool.htm> (last visited May 6, 2015).

---

<sup>375</sup> Lewin, *supra* note 373.

<sup>376</sup> *Victory! Scholastic Agrees to Stop Using Fossil-Fuel Company Sponsored Materials in Classrooms*, THE U.S. CHAMBER DOESN'T SPEAK FOR ME (Aug. 2, 2011, 12:45 AM), <http://chamber.350.org/2011/08/victory-scholastic-agrees-to-stop-using-fossil-fuel-company-sponsored-materials-in-classrooms/>.

<sup>377</sup> SCHOLASTIC & U.S. CHAMBER OF COMMERCE INST. FOR 21ST CENTURY ENERGY, *SHEDDING LIGHT ON ENERGY* (2010), [http://www.politico.com/static/PPM169\\_ei-oct-lessons-wkshts.html](http://www.politico.com/static/PPM169_ei-oct-lessons-wkshts.html).

<sup>378</sup> *Id.* at 2.

<sup>379</sup> *Keystone XL and the National Interest Determination: Hearing Before the S. Comm. on Foreign Relations*, 113th Cong. (2014) [hereinafter Harbert Testimony], [http://www.foreign.senate.gov/imo/media/doc/Harbert\\_Testimony.pdf](http://www.foreign.senate.gov/imo/media/doc/Harbert_Testimony.pdf) (testimony of Hon. Karen A. Harbert, President & CEO of U.S. Chamber of Commerce Institute for 21st Century Energy).

<sup>380</sup> *Id.*

<sup>381</sup> *See* SCHOLASTIC & U.S. CHAMBER OF COMMERCE INST. FOR 21ST CENTURY ENERGY, *supra* note 377.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> *See id.*

<sup>385</sup> *See id.*

<sup>386</sup> *See* Harbert Testimony, *supra* note 379 ("Stable, long-term energy supplies from Canada are critical to U.S. energy security at a time when global supplies are often found in geopolitically unstable regions of the world and production from once-reliable sources is slowing."); *id.* ("[C]onstruction of TransCanada's Keystone XL pipeline will help us lower our energy security risk while also realizing the economic and energy security benefits of Canadian and U.S. resources.").

<sup>387</sup> *Id.*

<sup>388</sup> SCHOLASTIC & U.S. CHAMBER INSTITUTE FOR LEGAL REFORM, *supra* note 377.

<sup>389</sup> *Id.*

<sup>390</sup> *See* Lewin, *supra* note 373; Connor Gibson, *Victory for Coal-Free Education*, POLLUTERWATCH (May 16, 2011, 1:51 PM), <http://www.polluterwatch.com/category/freetagging/united-states-energy>.

---

<sup>391</sup> See Lewin, *supra* note 373 (“The lesson packet, paid for by the American Coal Foundation, talked about the benefits of coal without mentioning controversial topics like toxic waste, mining or greenhouse gases.”).

<sup>392</sup> *Id.*

<sup>393</sup> See, e.g., *id.* (explaining that Scholastic campaigns including “All About Eggs,” a campaign sponsored by the Egg Board, was not cancelled).

<sup>394</sup> *The Power of Green*, SCHOLASTIC, <http://www.scholastic.com/powerofgreen/> (last visited Nov. 21, 2015).

<sup>395</sup> Consolidated Edison, *About Con Edison*, CONEDISON, <http://www.coned.com/aboutus/> (last visited Nov. 21, 2015).

<sup>396</sup> See *id.*

<sup>397</sup> *The Power of Green*, *supra* note 394.

<sup>398</sup> See *id.*

<sup>399</sup> See *id.*

<sup>400</sup> SCHOLASTIC & CONSOL. EDISON, WHAT’S YOUR GREEN IQ? ANSWER KEY, [http://www.scholastic.com/powerofgreen/pdfs/WhatsYourGreenIQ\\_AnswerKey.pdf](http://www.scholastic.com/powerofgreen/pdfs/WhatsYourGreenIQ_AnswerKey.pdf).

<sup>401</sup> Eric Goldscheim, *10 Fake Grassroots Movements Started By Corporations to Sway Your Opinion*, BUS. INSIDER (Sept. 30, 2011, 4:26 PM), <http://www.businessinsider.com/astroturfing-grassroots-movements-2011-9>.

<sup>402</sup> Brian Merchant, *The Program Big Oil’s PR Firm Uses to ‘Convert Average Citizens’*, VICE (Nov. 18, 2014, 5:00 PM), [http://motherboard.vice.com/read/a-top-pr-firm-promised-big-oil-software-that-can-convert-average-citizens?trk\\_source=recommended](http://motherboard.vice.com/read/a-top-pr-firm-promised-big-oil-software-that-can-convert-average-citizens?trk_source=recommended) (“Astroturfing is the increasingly popular tactic wherein corporations sponsor front groups or manufacture the appearance of grassroots support to simulate a genuine social movement that is rallying for goals in line with their profit motive.”); Goldscheim, *supra* note 401; Mayer, *supra* note 334 (describing an Americans for Prosperity summit called “Texas Defending the American Dream” advertised “as a populist uprising against vested corporate power”).

<sup>403</sup> Goldscheim, *supra* note 401.

<sup>404</sup> Merchant, *supra* note 402.

<sup>405</sup> See *id.*

<sup>406</sup> For example, McDonald’s paid 1,000 employees to line up the night before their Japanese stores opened to create the appearance that there was widespread excitement about the next day’s introduction of the Quarter Pounder to the McDonald’s menu. See Goldscheim, *supra* note 401.

---

<sup>407</sup> Mayer, *supra* note 334.

<sup>408</sup> *Energy Institute Launches "Partnership to Fuel America" to Support North American Development*, U.S. CHAMBER OF COMMERCE INST. FOR 21ST CENTURY ENERGY, <http://www.energyxxi.org/partnership-to-fuel-america> (last visited Nov. 23, 2015).

<sup>409</sup> This is the same U.S. Chamber of Commerce division responsible for the "Shedding Light on Energy" curriculum produced in collaboration with Scholastic. SCHOLASTIC & U.S. CHAMBER OF COMMERCE INST. FOR 21ST CENTURY ENERGY, *supra* note 377.

<sup>410</sup> Lee Fang, *U.S. Chamber Sets Up Fake Grassroots Group in Favor of Keystone XL*, THE U.S. CHAMBER DOESN'T SPEAK FOR ME (Sept. 8, 2011, 5:30 PM), <http://chamber.350.org/2011/09/u-s-chamber-sets-up-fake-grassroots-group-in-favor-of-keystone-xl/>.

<sup>411</sup> Letter from Phil Radford, Exec. Dir., Greenpeace US, to Jack Gerard, President and CEO, Am. Petroleum Inst. (Aug. 12, 2009) [hereinafter Letter from Phil Radford], <http://www.desmogblog.com/sites/beta.desmogblog.com/files/GP%20API%20letter%20August%202009-1.pdf> (enclosing American Petroleum Institute "Energy Citizen" memorandum).

<sup>412</sup> *See id.*; Kevin Grandia, *Oil Lobby's "Energy Citizens" Astroturf Campaign Exposed*, HUFFINGTON POST (May 25, 2011, 1:50 PM), [http://www.huffingtonpost.com/kevin-grandia/leaked-memo---oil-lobbys\\_b\\_259149.html](http://www.huffingtonpost.com/kevin-grandia/leaked-memo---oil-lobbys_b_259149.html).

<sup>413</sup> Letter from Phil Radford, *supra* note 411.

<sup>414</sup> *See id.*

<sup>415</sup> Steven Mufson, *Jack Gerard, the Force Majeure Behind Big Oil*, WASH. POST (Apr. 7, 2012), [http://www.washingtonpost.com/business/economy/jack-gerard-the-force-majeure-behind-big-oil/2012/04/06/gIQA1hjCoS\\_story.html](http://www.washingtonpost.com/business/economy/jack-gerard-the-force-majeure-behind-big-oil/2012/04/06/gIQA1hjCoS_story.html).

<sup>416</sup> *See* Quinn, *supra* note 336. For links to all five leaked Edelman documents, see Brendan DeMelle, *Edelman's TransCanada Astroturf Documents Expose Oil Industry's Broad Attack on Public Interest* (Nov. 17, 2014), <http://www.desmog.ca/2014/11/17/edelman-transcanada-astroturf-documents-expose-oil-industry-s-broader-attack-public-interest> (last visited May 7, 2015).

<sup>417</sup> Suzanne Goldenberg, *Revealed: Keystone Company's PR Blitz to Safeguard Its Backup Plan*, GUARDIAN (Nov. 18, 2014, 12:01 AM), <http://www.theguardian.com/environment/2014/nov/18/revealed-keystone-companys-pr-blitz-to-safeguard-its-backup-plan>.

<sup>418</sup> *See* Merchant, *supra* note 402; Margo McDiarmid, *Energy East Pipeline 'Advocates' Targeted in TransCanada PR Move*, CBCNEWS (Nov. 18, 2014, 7:27 AM), <http://www.cbc.ca/news/politics/energy-east-pipeline-advocates-targeted-in-transcanada-pr-move-1.2838383>.

---

<sup>419</sup> EDELMAN, GRASSROOTS ADVOCACY VISION DOCUMENT 12 (2014), <https://www.documentcloud.org/documents/1362369-tc-energy-east-grassroots-advocacy-vision-document.html>.

<sup>420</sup> *See id.* at 5.

<sup>421</sup> *See id.* at 9.

<sup>422</sup> Goldenberg, *supra* note 417 (“It is critical to play offence . . . We are running a perpetual campaign.”).

<sup>423</sup> McDiarmid, *supra* note 418.

<sup>424</sup> EDELMAN, *supra* note 419, at 9.

<sup>425</sup> *See id.*

<sup>426</sup> *See id.* at 9–11.

<sup>427</sup> McDiarmid, *supra* note 418.

<sup>428</sup> EDELMAN, *supra* note 419, at 12.

<sup>429</sup> *See id.*

<sup>430</sup> *See id.*

<sup>431</sup> *See id.* at 15.

<sup>432</sup> SALESFORCE, [http://www.salesforce.com/homepage/index-h.jsp?r=X&s\\_tnt=84519:1:0](http://www.salesforce.com/homepage/index-h.jsp?r=X&s_tnt=84519:1:0) (last visited Nov. 25, 2015).

<sup>433</sup> *See* Merchant, *supra* note 402.

<sup>434</sup> EDELMAN, *supra* note 419, at 18 (explaining Edelman’s Multiplier platform “include[s] a robust databased back-end for collecting and storing information about advocates.”).

<sup>435</sup> *See id.*

<sup>436</sup> EDELMAN, DIGITAL GRASSROOTS ADVOCACY IMPLEMENTATION PLAN 8 (2014), <https://s3.amazonaws.com/s3.documentcloud.org/documents/1362368/tc-energy-east-grassroots-advocacy.pdf> (last visited May 6, 2015).

<sup>437</sup> Ian Austen, *TransCanada Cuts Ties with Edelman over Energy East Communications Plan*, N.Y. TIMES (Nov. 26, 2014), [http://www.nytimes.com/2014/11/27/business/transcanada-cuts-ties-with-edelman-over-energy-east-communications-plan.html?\\_r=0](http://www.nytimes.com/2014/11/27/business/transcanada-cuts-ties-with-edelman-over-energy-east-communications-plan.html?_r=0).

<sup>438</sup> *See id.*

<sup>439</sup> *See* Quinn, *supra* note 336.

---

<sup>440</sup> McDiarmid, *supra* note 418.

<sup>441</sup> Goldenberg, *supra* note 417.

<sup>442</sup> *Top Spenders 2012*, OPENSECRETS.ORG, <http://www.opensecrets.org/lobby/top.php?indexType=s&showYear=2012> (last visited Nov. 25, 2015).

<sup>443</sup> David Steinbach, *Billion Dollar Baby: U.S. Chamber is First to Hit Lobbying Milestone*, OPENSECRETS.ORG (July 23, 2013), <http://www.opensecrets.org/news/2013/07/billion-dollar-baby-us-chamber-is-first-to-hit-lobbying-milestone/>.

<sup>444</sup> For an analysis of how this can occur, see Miriam Seifter, *States as Interest Groups in the Administrative Process*, 100 VA. L. REV. 953, 989 (2014), and Lee Drutman, *Trade Associations, the Collective Action Dilemma, and the Problem of Cohesion*, in INTEREST GROUP POLITICS 74, 85 (Allan J. Cigler & Burdett A. Loomis eds., 8th ed. 2012).

<sup>445</sup> James Verini, *Show Him the Money*, WASH. MONTHLY (July/Aug. 2010), <http://www.washingtonmonthly.com/features/2010/1007.verini.html>.

<sup>446</sup> *See id.*

<sup>447</sup> GRETCHEN GOLDMAN & CHRISTINA CARLSON, CTR. FOR SCI. AND DEMOCRACY AT THE UNION OF CONCERNED SCIENTISTS, *TRICKS OF THE TRADE: HOW COMPANIES ANONYMOUSLY INFLUENCE CLIMATE POLICY THROUGH THEIR BUSINESS AND TRADE ASSOCIATIONS* 2 (2014), <http://www.ucsusa.org/sites/default/files/legacy/assets/documents/center-for-science-and-democracy/tricks-of-the-trade.pdf>

<sup>448</sup> *Id.* at 5.

<sup>449</sup> John M. Broder, *House Passes Bill to Address Threat of Climate Change*, N.Y. TIMES (June 26, 2009), [http://www.nytimes.com/2009/06/27/us/politics/27climate.html?\\_r=2&hp&](http://www.nytimes.com/2009/06/27/us/politics/27climate.html?_r=2&hp&).

<sup>450</sup> *U.S. Chamber Statement on Congressional Action to Approve Keystone XL Pipeline*, INST. FOR 21<sup>ST</sup> CENTURY ENERGY (Nov. 13, 2014), <http://www.energyxxi.org/us-chamber-statement-congressional-action-approve-keystone-xl-pipeline>.

<sup>451</sup> INST. FOR 21<sup>ST</sup> CENTURY ENERGY, U.S. CHAMBER OF COMMERCE, *ASSESSING THE IMPACT OF POTENTIAL NEW CARBON REGULATIONS IN THE UNITED STATES* 2 (2014), available at [http://www.energyxxi.org/sites/default/files/file-tool/Assessing\\_the\\_Impact\\_of\\_Potential\\_New\\_Carbon\\_Regulations\\_in\\_the\\_United\\_States.pdf](http://www.energyxxi.org/sites/default/files/file-tool/Assessing_the_Impact_of_Potential_New_Carbon_Regulations_in_the_United_States.pdf).

<sup>452</sup> *See generally* U.S. CHAMBER OF COMMERCE, *SUE AND SETTLE: REGULATING BEHIND CLOSED DOORS* (2013), <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREPORT-Final.pdf>.

<sup>453</sup> *See generally* U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-34, *IMPACT OF DEADLINE SUITS ON EPA'S RULEMAKING IS LIMITED* (2014), <http://www.gao.gov/assets/670/667533.pdf>. For a response to the argument that environmental settlements undercut the Administrative Procedure Act, see

---

generally Courtney R. McVean & Justin R. Pidot, *Environmental Settlements and Administrative Law*, 39 HARV. ENVTL. L. REV. 191 (2015).

<sup>454</sup> PUBLIC CITIZEN, THE DARK SIDE OF CITIZENS UNITED 4 (2014), <http://www.citizen.org/documents/us-chamber-of-commerce-dark-money-spending-report.pdf>.

<sup>455</sup> *The Chamber of Secrets*, *supra* note 293.

<sup>456</sup> *See generally* PUBLIC CITIZEN, *supra* note 454.

<sup>457</sup> *See generally* SILENCING SCIENCE, COMMON CAUSE (2014), <http://www.commoncause.org/issues/money-in-politics/fighting-big-money/amend-us/silencing-science.pdf>.

<sup>458</sup> PUBLIC CITIZEN, *supra* note 454, at 4, 6.

<sup>459</sup> Robert Lenzner & Matthew Miller, *Buying Justice*, FORBES. (July 21, 2003, 12:00 AM), <http://www.forbes.com/forbes/2003/0721/064.html>.

<sup>460</sup> BRENNAN CTR. FOR JUSTICE, JUSTICE AT STAKE CAMPAIGN & NAT'L INST. ON MONEY IN STATE POLITICS, THE NEW POLITICS OF JUDICIAL ELECTIONS 2000-2009 40 (Aug. 2010), [http://www.justiceatstake.org/media/cms/JASNPJEDecadeONLINE\\_8E7FD3FEB83E3.pdf](http://www.justiceatstake.org/media/cms/JASNPJEDecadeONLINE_8E7FD3FEB83E3.pdf).

<sup>461</sup> U.S. CHAMBER INST. FOR LEGAL REFORM, PROMOTING 'MERIT' IN MERIT SELECTION (Oct. 2009), <http://www.instituteforlegalreform.com/uploads/sites/1/meritselectionbooklet.pdf>.

<sup>462</sup> *Id.* at 1.

<sup>463</sup> Powell Memorandum, *supra* note 286, at 26–27; see also Jeffrey Rosen, Supreme Court Inc., N.Y. TIMES (Mar. 16, 2008), <http://www.nytimes.com/2008/03/16/magazine/16supremet.html?pagewanted=all>.

<sup>464</sup> Rosen, *supra* note 463; *About*, *supra* note 296.

<sup>465</sup> *About*, *supra* note 296.

<sup>466</sup> Goho, *supra* note 312.

<sup>467</sup> 134 S. Ct. 2427 (2014).

<sup>468</sup> Chandler, *supra* note 247.

<sup>469</sup> Donnelly, *supra* note 297.

<sup>470</sup> Motion for Leave to File Amicus Curiae Brief and Brief for Amici Curiae the Chamber of Commerce of the United States of America et al. in Support of Petitioners, BP Expl. & Prod. Inc. v. Lake Eugenie Land & Dev., Inc., 135 S. Ct. 754 (2014) (No. 14-123), <http://www.chamberlitigation.com/sites/default/files/scotus/files/2014/U.S.%20Chamber%20Amicus%20Brief%20--%20BP%20Exploration%20and%20Production%20v.%20Lake%20Eugenie%20Land%20and%20Development%20%28U.S.%20Supreme%20Court%29.pdf> (cert. denied Dec. 8, 2014).

---

<sup>471</sup> *Third Party Litigation Funding (TPLF)*, U.S. CHAMBER INST. FOR LEGAL REFORM, <http://www.instituteforlegalreform.com/issues/third-party-litigation-funding> (last visited Nov. 26, 2015).

<sup>472</sup> *Citizens United v. Fed. Election Comm’n.*, 558 U.S. 310, 394 (2010) (Stevens, J., dissenting).

<sup>473</sup> Press Release, Bernie Sanders, U.S. Sen. for Vt., Constitutional Amendment Sponsors Renew Push to Undo Citizens United (Mar. 12, 2013), <http://www.sanders.senate.gov/newsroom/press-releases/constitutional-amendment-sponsors-renew-push-to-undo-citizens-united>.

<sup>474</sup> See ADAM RAPPAPORT, *supra* note 299, at 3.

<sup>475</sup> Senator Sheldon Whitehouse, Address before the Harvard Law School American Constitution Society (Mar. 30, 2015).

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*

<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> 18 U.S.C. §§ 1961–68 (2012). The authors would like to credit Senator Sheldon Whitehouse for providing us with this idea.

<sup>481</sup> Nathan Koppel, *They Call it RICO, and It Is Sweeping*, WALL ST. J. (Jan. 20, 2011, 5:14 PM), <http://www.wsj.com/articles/SB10001424052748704881304576094110829882704>.

<sup>482</sup> JOHN J. HAMILL ET AL., JENNER & BLOCK, RICO: A GUIDE TO CIVIL RICO LITIGATION IN FEDERAL COURTS 5 (2014), *available at* <https://jenner.com/library/publications/12740>.

<sup>483</sup> *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1105–06 (D.C. Cir. 2009).

<sup>484</sup> *Id.* at 1106.

<sup>485</sup> *Id.* at 1108.

<sup>486</sup> *Id.* at 1105.

<sup>487</sup> The courts approved analogous remedies in the tobacco company litigation. *Id.* at 1136, 1138.

<sup>488</sup> See Brief for U.S. Chamber of Commerce et al. as Amici Curiae Supporting Defendants-Appellees, *Native Village of Kivalina v. ExxonMobil*, 696 F.3d 849, 849 (9th Cir. 2010) (No. 09-17490), 2010 WL 3299986, at \*3 [hereinafter Chamber Kivalina Brief].

<sup>489</sup> See *Kivalina*, 696 F.3d at 849.

<sup>490</sup> See *id.* at 853. See also Chris Mooney, *The Remote Alaskan Village That Needs to Be Relocated Due to Climate Change*, WASH. POST (Feb. 24, 2015), <http://www.washingtonpost.com/news/energy-environment/wp/2015/02/24/the-remote-alaskan-village-that-needs-to-be-relocated-due-to-climate-change/>; Annie Minoff, *Legal Battle Ends, But Seas Continue to Rise in Kivalina, Alaska*, SCIENCEFRIDAY (Feb. 20, 2015), [http://www.sciencefriday.com/segment/02/20/2015/legal-battle-ends-but-seas-](http://www.sciencefriday.com/segment/02/20/2015/legal-battle-ends-but-seas-continue-to-rise-in-kivalina-alaska)

---

continue-to-rise-in-kivalina-alaska.html (“[S]cientists estimate the island will be underwater by 2025.”).

<sup>491</sup> See *Kivalina*, 696 F.3d at 854 (“Kivalina’s complaint also charged the Energy Producers with acting in concert to create, contribute to, and maintain global warming and with conspiring to mislead the public about the science of global warming.”).

<sup>492</sup> See Chamber *Kivalina* Brief, *supra* note 490, at \*3.

<sup>493</sup> See *Kivalina*, 696 F.3d at 858 (“[T]he Supreme Court has held that federal common law addressing domestic greenhouse gas emissions has been displaced by Congressional action.”).

<sup>494</sup> Farenthold, *supra* note 321.

<sup>495</sup> *About the Project*, RISKY BUSINESS, <http://riskybusiness.org/about/> (last visited Nov. 26, 2015).

<sup>496</sup> RISKY BUS. PROJECT, RISKY BUSINESS: THE ECONOMIC RISKS OF CLIMATE CHANGE IN THE UNITED STATES (2014), [http://riskybusiness.org/uploads/files/RiskyBusiness\\_Report\\_WEB\\_09\\_08\\_14.pdf](http://riskybusiness.org/uploads/files/RiskyBusiness_Report_WEB_09_08_14.pdf); see also Helm, *supra* note 322.

<sup>497</sup> Press Release, Ed Markey, U.S. Sen. for Mass., Markey, Boxer, Whitehouse Query Fossil Fuel Companies, Climate Denial Organizations on Science Funding (Feb. 25, 2015), <http://www.markey.senate.gov/news/press-releases/markey-boxer-whitehouse-query-fossil-fuel-companies-climate-denial-organizations-on-science-funding>.

<sup>498</sup> ATIF ANSAR, BEN CALDECOTT & JAMES TILBURY, UNIV. OF OXFORD SMITH SCH. OF ENTER. & THE ENV’T, STRANDED ASSETS AND THE FOSSIL FUEL DIVESTMENT CAMPAIGN: WHAT DOES DIVESTMENT MEAN FOR THE VALUATION OF FOSSIL FUEL ASSETS? 9 (2013), <http://www.smithschool.ox.ac.uk/research/stranded-assets/SAP-divestment-report-final.pdf>.

<sup>499</sup> *Id.*

<sup>500</sup> Bill McKibben, *The Case for Fossil-Fuel Divestment*, ROLLING STONE (Feb. 22, 2013), <http://www.rollingstone.com/politics/news/the-case-for-fossil-fuel-divestment-20130222>.

<sup>501</sup> ANSAR ET AL., *supra* note 498, at 13 (2013).

<sup>502</sup> McKibben, *supra* note 500; *Divestment Commitments*, FOSSIL FREE, <http://gofossilfree.org/commitments/> (last visited May 4, 2015).

<sup>503</sup> *About*, DIVESTMENTFACTS.COM, <http://divestmentfacts.com/about/> (last visited May 4, 2015).

<sup>504</sup> *Id.*

---

<sup>505</sup> *The Facts*, DIVESTMENTFACTS.COM, <http://divestmentfacts.com/the-facts/> (last visited May 4, 2015). Professor Fischel's study, op-ed, and a related fact sheet are the only resources provided on the "Facts" page of the website.