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12 *Application for admission pro hac vice to be filed*

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14 Competitive Enterprise Institute

CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
NOV 08 2018

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

17 COMPETITIVE ENTERPRISE INSTITUTE,
18
19 Petitioner,

20 v.

21 THE REGENTS OF THE UNIVERSITY OF
22 CALIFORNIA, AND DOES 1 - 30,

23 Respondents.

24) Case No. 18 ST CP 02832
25)
26) VERIFIED PETITION FOR
27) PEREMPTORY WRIT OF MANDATE
28) AND WRIT OF MANDATE ORDERING
COMPLIANCE WITH THE
CALIFORNIA PUBLIC RECORDS ACT
Gov. Code §§ 6250, et seq.
Code Civ. Proc. §§ 1085, et seq.

29 Petitioner Competitive Enterprise Institute, alleges the following with personal knowledge as
30 to its own status, condition and acts and on information and belief as to all other matters.

31 INTRODUCTION

32 1. By this petition and pursuant to Code of Civil Procedure §§1085 et seq. and
33 Government Code §§6250 et seq., Competitive Enterprise Institute (“Petitioner”) seeks a writ of
34 mandate directing the Regents and/or their *de facto* custodian of records for the University of

1 California at Los Angeles Law School (“UCLA” or “the University”) to comply with the California
2 Public Records Act (“CPRA”).

3 2. In February 2018, Petitioner requested records concerning the University’s work with
4 private outside parties including law enforcement to develop theories of litigation against, and
5 pursue as targets of investigation, perceived opponents of a political and policy agenda shared by
6 these outside parties and certain faculty (the “February CPRA Request”).

7 3. Public records already obtained from other institutions affirm the University’s role,
8 through its faculty’s role in their official UCLA capacities, in this effort led by activist groups and
9 the Attorney General of New York. This role has included participating in “secret” briefings by this
10 campaign for “prospective funders” in pursuit of “potential state causes of action against major
11 carbon producers”, which is the subject of great media and public interest due to the controversial
12 origin of - and collaboration involved in - these investigations.

13 4. After first waiting five weeks to unnecessarily confirm that Petitioner had in fact
14 made this request, the University then engaged in a further series of delays, pushing off its promised
15 response dates a couple months at a time, for now well over six months.

16 5. In May 2018 Petitioner filed a second request (the “May CPRA Request” and, jointly
17 with the February CPRA Request, the “CPRA Requests”), in response to which Respondent has
18 proceeded in the same manner as above, repeatedly postponing by months the estimated date by
19 which it would respond.

20 6. Respondent has produced no records, no response asserting that any one or more
21 exemptions purportedly allows Respondent to withhold any or all of the records requested in the
22 CPRA Requests nor any indication it is in fact processing the CPRA Requests consistent with
23 Respondent’s legal obligation under California’s Public Records Act.

24 7. Petitioner therefore seeks relief under California Government Code § 6259. The
25 Court should issue a writ of mandate commanding the University to comply with the CPRA and
26 release the public records sought by Petitioner in the CPRA Requests.
27
28

PARTIES

1
2 8. Petitioner Competitive Enterprise Institute (“CEI”) is a nonprofit research and public
3 policy organization incorporated in Washington, DC. CEI is dedicated to advancing responsible
4 regulation and, in particular, economically sustainable environmental and energy policy. CEI’s
5 programs include analysis, publication, and a transparency initiative seeking public records relating
6 to environmental and energy policy and how policymakers use public resources. CEI also has found
7 itself the target of an attorney general subpoena as part of the larger collaboration that has been
8 exposed between universities, pressure groups, plaintiffs’ attorneys and state and territorial attorneys
9 general. The resulting campaign has targeted more than 100 research and advocacy groups, scientists
10 and other private parties and entities.¹

11 9. Respondent Regents of the University of California (Regents) is, and at all times
12 mentioned herein was, an agency of the California state government, that operates law schools
13 including the UCLA School of Law in Los Angeles. Petitioner is informed and believes that
14 Respondent Regents are responsible for maintaining the agency records described herein and that
15 they have the authority to release the records.

16 10. Petitioner is ignorant of the true names and capacities of respondents sued herein as
17 Does 1-30, and therefore sues these defendants by such fictitious names. Petitioner will amend this
18 complaint to allege their true names and capacities when these are ascertained. Petitioner is informed
19 and believes and thereon alleges that each of the fictitiously named respondents is responsible in
20 some manner for the occurrences herein alleged, and that Petitioner’s damages as herein alleged
21 were proximately caused by the conduct of such fictitiously named respondents.

JURISDICTION AND VENUE

22
23 11. This Court has jurisdiction pursuant to Government Code sections 6258 and 6259,
24 Code of Civil Procedure sections 1060 and 1085, and Article VI, section 10 of the California
25 Constitution.

26
27 ¹ See, e.g., Valerie Richardson, “Exxon climate change dissent subpoena sweeps up more than 100 U.S. institutions”,
28 Washington Times, May 3, 2016, <https://www.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-communications/>; Walter Olson, “Massachusetts AG to Exxon: hand over your communications with think tanks”, [overlawyered.com](https://www.overlawyered.com/2016/06/massachusetts-ag-exxon-hand-communications-think-tanks/), June 16, 2016, <https://www.overlawyered.com/2016/06/massachusetts-ag-exxon-hand-communications-think-tanks/>.

1 of legislative efforts to impose the “climate” agenda, the summary of which stated, *inter alia*, “State
2 attorneys general can also subpoena documents, raising the possibility that a single sympathetic state
3 attorney general might have substantial success in bringing key internal documents to light. In
4 addition, lawyers at the workshop noted that even grand juries convened by a district attorney could
5 result in significant document discovery.”³ Pawa has previously suggested that this campaign to use
6 the courts this way is in response to the failure to impose that policy agenda through the democratic
7 process.⁴

8 17. Dr. Peter Frumhoff is Director of Science and Policy and Chief Climate Scientist at
9 the Union of Concerned Scientists (UCS), an advocacy organization focused on climate change and
10 environmental policy. Public records show he emailed an activist academic on July 31, 2015,
11 arguing against pursuing political opponents through federal racketeering law but noting that he was
12 instead working on “state (e.g. AG) action” against “the fossil fuel industry” in which the academic
13 might have a role.⁵ Public records from other state attorneys general confirm Frumhoff worked with
14 them on such matters, including but not limited to briefing attorney general participants prior to their
15 March 29, 2016 press conference,⁶ including “Attorneys General Eric Schneiderman of New York
16 and William Sorrell of Vermont ...George Jepsen of Connecticut, Brian E. Frosh of Maryland,
17 Maura Healey of Massachusetts, and Claude Walker of the US Virgin Islands... along with former
18 Vice President and leading climate activist Al Gore, and representatives from a total of 17 state
19 attorneys general offices”,⁷ including California’s Office of Attorney General.⁸

20 ³ Climate Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco*
21 *Control* 11 (Oct. 2012), <http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf>
(Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies).

22 ⁴ Zoe Carpenter, *The Government May Already Have the Law It Needs to Beat Big Oil*, *The Nation* (July 15, 2015),
23 <https://www.thenation.com/article/the-government-may-already-have-the-law-it-needs-to-beat-big-oil/> (quoting Pawa, in
an article advocating RICO actions against fossil fuel companies: “Legislation is going nowhere, so litigation could
potentially play an important role.”)

24 ⁵ July 31, 2016, email from UCS’s Frumhoff to Maibach, copying UCS’s Nancy Cole and Alden Meyer and their outside
PR advisor Aaron Huertas; Subject: FW: Senator Whitehouse’s call for a RICO investigation of the fossil fuel industry.
Obtained from George Mason University.

25 ⁶ Higgins, *supra*, note 10 (“In addition to Pawa, the attorneys general and their staffs heard a private presentation from
26 Peter Frumhoff, director of science and policy at the Union of Concerned Scientists.”); Wade, *supra*, note 10 (noting
Frumhoff’s involvement at the meeting).

27 ⁷ Press Release, “ATTORNEY GENERAL HERRING JOINS COLLEAGUES FROM 17 STATES TO ANNOUNCE
28 COALITION TO CURB CLIMATE CHANGE”, March 29, 2016, [https://oag.state.va.us/media-center/news-
releases/725-march-29-2016-attorney-general-herring-joins-colleagues-from-17-states-to-announce-coalition-to-curb-
climate-change](https://oag.state.va.us/media-center/news-releases/725-march-29-2016-attorney-general-herring-joins-colleagues-from-17-states-to-announce-coalition-to-curb-climate-change)

1 18. Public records obtained from one public university and a state attorney general's
2 office show that both Pawa and Frumhoff participated in what one presenter called, at least twice, a
3 "secret meeting"⁹ with "prospective funders"¹⁰ at Harvard Law School which is central to the
4 records requests at issue in this matter. For this fundraiser/briefing, senior attorneys from numerous
5 state attorneys general offices flew in to address "potential state causes of action against major
6 carbon producers"¹¹. It was secret enough that the Vermont Office of Attorney General litigated to
7 withhold the agenda-under implausible claims of privilege-for a year and a half before being
8 compelled by a court¹² to release the lineup for what turned out to have been an attorneys general-
9 assisted fundraiser with participation by UCLA.¹³

10 19. Email correspondence obtained in open records productions from several state
11 attorneys general offices in 2016-2018 describe the event as:

- 12 • "a secret meeting";
- 13 • designed "to inform thinking that is already underway in state AG offices around the
14 country regarding legal accountability for harm arising from greenhouse gas
15 emissions";¹⁴

16
17 ⁸ "We also have staff representing other attorneys general from across the country including Kamala Harris of
California", video of 3/29/26 press conference at 1:14 - 1:21 ,
https://www.youtube.com/watch?time_continue=80&v=hd4Udhnha2A.

18 ⁹ "I will be showing this Monday at a secret meeting at Harvard that I'll tell you about next time we chat. very [sic]
exciting!" April 22, 2016, email from Oregon State University Professor Philip Mote to unknown party, Subject:
19 [REDACTED], and "I'm actually also planning to show this in a secret meeting next Monday—will tell you sometime."
April 20, 2016, Philip Mote email to unknown party, Subject: [REDACTED]. Both obtained from Oregon State
20 University on March 29, 2018, in response to January 9, 2018 Public Records Act request.

21 ¹⁰ "We will have as small number of climate science colleagues, as well as prospective funders, at the meeting." March
14, 2016, email from Frumhoff to Mote; Subject: invitation to Harvard Law School—UCS convening. Obtained under
same PRA request cited in FN 10, *supra*.

22 ¹¹ "Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers:
Scientific, Legal, and Historical Perspectives." Obtained in Energy & Environment Legal Institute v. Attorney General,
23 Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017.

24 ¹² Document 143-Bates 834-835 This document shall be produced. It is a draft agenda for a meeting of attorneys and
others evidently on general subject areas and interests "co-organized" by Harvard Law School and the Union of
Concerned Scientists. Any claim of privilege is too remote and no apparent prejudice will result from production. That
25 segments of the meeting have delved into confidential matters is insufficient to show that the draft agenda also is.J.
Teachout, Decision, The State's Motion for Summary Judgment, Superior Court of the State of Vermont, 349-16-9 Wnc,
26 December 6, 2017.

27 ¹³ "3:20-4:20 State Causes of Action: Consumer protection claims: UCLA...Panel discussion (30 min) (additional
participants TBD)". "Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major
Carbon Producers: Scientific, Legal, and Historical Perspectives."

28 ¹⁴ 2/22/2016 emails from Goho to Connecticut OAG's Matthew Levine, and Illinois OAG's James Gignac, Subject:
Invitation to event at Harvard Law School.

- 1 • “[A] private event for staff from state attorney general offices;”¹⁵
- 2 • “[T]he “carbon producer accountability convening;””¹⁶
- 3 • for “prospective funders”; and
- 4 • A “climate science and legal theory meeting.”¹⁷

5 20. The agenda included UCLA to discuss possible “Consumer protection claims” which
6 the plaintiffs lawyers, pressure groups and/or attorneys general present might bring.

7 21. A document produced by Oregon State University, which employs one of the
8 presenters and did in fact respond to open records requests for relevant documents, is an email from
9 UCS’s Peter Frumhoff to Oregon State Professor Phil Mote inviting Mote to present along with, *e.g.*,
10 UCLA faculty, “We will have as small number of climate science colleagues, as well as prospective
11 funders, at the meeting.”¹⁸

12 22. Subsequent to this, the University and particularly the two faculty whose
13 correspondence on this matter is the subject of this action, officially hosted a similarly themed (if
14 non-"secret") event, also co-hosted by UCS.¹⁹

15 23. All of the records requested fall within the definition of public record set forth in the
16 CPRA. Gov. Code § 6252(e).

17 24. The University has produced no records or provided any indication it is in fact
18 processing either request.

19 **B. The University Refuses To Disclose Public Records**

20 25. On February 5, 2018, the University acknowledged the February CPRA Request
21 made earlier that day, assigning it the tracking # 2018-5367 and promising an initial response by
22 February 15, 2018. On February 15, 2018, the University wrote, “The purpose of this letter is to

23 _____
24 ¹⁵ *Ibid.*
25 ¹⁶ April 7, 2016 email from Shaun Goho to bcc: list, Subject: Logistics for April 25 Convening at HLS.
26 ¹⁷ March 17, 2016 email from Shaun Goho to bcc: list, Subject: SAVE THE DATE — HLS/UCS Meeting on April 25,
27 2016, obtained from IL OAG.
28 ¹⁸ “We will have as small number of climate science colleagues, as well as prospective funders, at the meeting.” March
14, 2016, email from Frumhoff to Mote; Subject: invitation to Harvard University—UCS convening. Obtained under
same PRA request cited in FN 9, *supra*.
¹⁹ Holding Fossil Fuel Companies Liable for Climate Change Harms in California: Law, Science, and Justice, January
25, 2018, <https://law.ucla.edu/centers/environmental-law/emmett-institute-on-climate-change-and-the-environment/events/4065/2018/1/25/Holding-Fossil-Fuel-Companies-Liable-for-Climate-Change-Harms-in-California-c--Law-Science-and-Justice---Keynote-Remarks-by-Bill-McKibben/>.

1 confirm that UCLA Information Practices (IP) continues to work on your public records request
2 dated February 5, 2018, herein enclosed. As allowed pursuant to Cal. Gov't Code Section 6253(c),
3 we require additional time to respond to your request, due to the following circumstance(s): The
4 need to search for and collect the requested records from field facilities or other establishments that
5 are separate from the office processing the request.”

6 26. Five weeks following this acknowledgement, on March 13, 2018 the University asked
7 for confirmation regarding Petitioner's February CPRA Request, specifically “UCLA seeks
8 confirmation that you are, in fact, seeking correspondence that both contains the term Harvard and
9 relates to the April 25, 2016 briefing at Harvard.” Petitioner responded that same day by letter
10 reiterating the request which noted “Public records show that Professor Horowitz participated in an
11 April 25, 2016 briefing at Harvard Law School on “Potential Causes of Action Against Major
12 Carbon Producers: Scientific, Legal and Historical Perspectives”, attended by other academics,
13 environmentalist pressure group activists, private attorneys and public employees of various state
14 attorney general offices”, citing again to the request’s language, “We seek correspondence relating
15 to this trip, presentation, and other assistance provided Prof. Horowitz and/or her colleague Ms.
16 Carlson to the extent this information was produced or received using University resources.”

17 27. The University apparently understood the request upon this reiteration of what
18 Petitioner wrote the first time, as Petitioner has not heard from the University since except for serial
19 postponements. Specifically, Respondent’s February 5, 2018 letter closed, “IP [UCLA Information
20 Practices] will respond to your request no later than the close of business on March 1, 2018 with an
21 estimated date that responsive documents will be made available.”

22 28. On March 1, 2018, IP wrote “with the estimated date that responsive documents will
23 be made available to you, which is April 27, 2018.”

24 29. On April 27, 2018, IP wrote, *in toto*, “We apologize, but the review process has not
25 yet been completed on the attached Public Records Act request of yours, and so we must revise the
26 estimate availability date to July 20, 2018. Your patience is very much appreciated.”

27 30. On July 20, 2018, IP wrote “Although we had previously provided you with an
28 estimated availability date of July 20, 2018, we need to revise this date as the review process has not

1 yet been completed. We expect to provide our response by August 31, 2018. We thank you for your
2 continued patience.”

3 31. On August 31, 2018, IP wrote, *in toto*, “Please accept our sincere apologies, but the
4 review process has not yet been completed on your attached Public Records Act request, so we must
5 revise the estimated availability date to November 30, 2018. We very much appreciate your
6 patience.”

7 32. As to Petitioner’s May CPRA Request, Respondent acknowledged the request,
8 assigning it PRR # 18-5666. On May 31, 2018, Respondent wrote, in pertinent part, “IP will respond
9 to your request no later than the close of business on June 14, 2018 with an estimated date that
10 responsive documents will be made available.”

11 33. On June 14, 2018, IP wrote, in pertinent part, “as promised in our letter to you of May
12 31, 2018, we are now able to provide you with the estimated date that responsive documents will be
13 made available to you, which is August 31, 2018.”

14 34. On August 31, 2018, IP wrote, *in toto*, “Please accept our sincere apologies, but the
15 review process has not yet been completed on your attached Public Records Act request, so we must
16 revise the estimated availability date to November 30, 2018. We very much appreciate your
17 patience.”

18 35. The CPRA declares that “access to information concerning the conduct of the
19 people's business is a fundamental and necessary right of every person in this state.” Gov. Code §
20 6250. The CPRA’s emphasis on open government is enshrined in the California Constitution, which
21 provides: “The people have the right of access to information concerning the conduct of the people's
22 business, and, therefore, ... the writings of public officials and agencies shall be open to public
23 scrutiny.” Cal. Const., art. I, § 3(b)(1). As the California Supreme Court has explained, “[p]ublic
24 access laws serve a crucial function. Openness in government is essential to the functioning of a
25 democracy. ‘Implicit in the democratic process is the notion that government should be accountable
26 for its actions. In order to verify accountability, individuals must have access to government files.
27 Such access permits checks against the arbitrary exercise of official power and secrecy in the
28

1 political process.” *City of San Jose v. Super. Ct.*, 2 Cal.5th 608, 615 (2017) (quoting *Int’l Fed’n of*
2 *Prof’l and Techn. Eng’rs v. Super. Ct.*, 42 Cal.4th 319, 328-29 (2007)).

3 36. The “CPRA establishes a basic rule requiring disclosure of public records upon
4 request. In general, it creates ‘a presumptive right of access to any record created or maintained by a
5 public agency that relates in any way to the business of the public agency.” *City of San Jose*, 2
6 Cal.5th at 616 (2017) (citation omitted).

7 37. Cal. Govt. Code § 6257 requires defendants to “make the records promptly
8 available...” The CRPA establishes an expedited procedure for judicial review of a public agency’s
9 failure to comply with its obligation to disclosure public records. Gov. Code §§ 6258 (providing that
10 any person may seek a writ of mandate to enforce the CPRA, and directing that “[t]he times for
11 responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with
12 the object of securing a decision as to these matters at the earliest possible time.”); 6259(a)
13 (providing for in-camera review of withheld public records). And “[i]f the court finds that the public
14 official’s decision to refuse disclosure is not justified . . . , he or she shall order the public official to
15 make the record public.” Gov. Code § 6259(b).

16 38. The subject matter of any responsive records withheld in this matter is of great public
17 interest. It is all the more so given the apparent confluence of publicly funded universities as
18 strategists and advisors for political activists and the donor class on the one hand, and senior law
19 enforcement on the other hand, in developing an investigation into political opponents on an issue
20 that is inherently a political one.²⁰ This confluence has been demonstrated, for example, by records
21 released and privilege logs in open-records requests and litigation in other states (specifically
22 Vermont²¹ and New York²²), and from numerous other state attorneys general offices that produced

23 ²⁰ See FN 4, *supra*; see also, e.g., *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 871–77 (N.D. Cal.
24 2009), *aff’d*, 696 F.3d 849 (9th Cir. 2012), dismissing a previous suit against ExxonMobil brought by Pawa. “The suit
25 was dismissed by a U.S. district court in 2009 on the grounds that regulating greenhouse gas emissions is “a political
26 rather than a legal issue that needs to be resolved by Congress and the executive branch rather than the courts.” Climate
Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control*, at p.
12.

27 ²¹ See, e.g., Docket No. 349-6-16 Wncv, *Energy & Environment Legal vs. Attorney General of Vermont*; Docket No.
558-9-16 Wncv, *Energy & Environment Legal vs. Attorney General of Vermont*; Docket No. 450-8-17 Wncv, *Energy &*
Environment Legal vs. Attorney General of Vermont.

28 ²² See, e.g., *Free Market Environmental Law Clinic et al. v. The Attorney General of New York*, Index. No. 101759/2016;
Energy & Environment Legal Institute v. The Attorney General of New York, Index No.101678/2016.

1 records without requiring litigation including but not limited to California, Connecticut, Illinois,
2 Washington State, and from Oregon State University.

3 39. The University has not justified its refusal to produce responsive public records, but
4 has merely serially delayed responding, with no indication it is in fact processing the requests.

5 40. Petitioner was at all times herein mentioned ready to tender the appropriate fees to
6 cover respondent agency's costs in providing copies of the aforementioned records, and made as
7 much clear in its requests.

8 41. Respondent has not provided Petitioner with access to or copies of the
9 aforementioned records. Respondents' failure to provide the records lacks any legal justification.

10 42. Petitioner is informed and believes that it has exhausted all administrative remedies
11 provided by Respondent agency.

12 43. Petitioner has no adequate remedies at law in that the records are unique and
13 monetary damages will not compensate Petitioner for denial of access to the information which
14 Petitioner is seeking. Moreover, Cal. Govt. Code § 6258 expressly provides for the declaratory and
15 injunctive relief sought by Petitioner.

16 44. Cal. Govt. Code § 6259 provides for recovery of Petitioner attorneys' fees. Petitioner
17 has incurred reasonable attorney's fees in an amount to be determined later.

18 **FIRST CLAIM FOR RELIEF**

19 **(For Violation of the CPRA and Cal. Const., art. I, § 3(b)(1))**

20 45. Petitioner incorporates here by reference paragraphs 1 through 44, *supra*, as if fully
21 set forth herein.

22 46. Respondent's refusal promptly to disclose public records responsive to the CPRA
23 Requests, including the prompt assertion of any one or more exemptions purportedly allowing
24 Respondent to withhold any or all of the records requested in the CPRA Requests, violates the
25 CPRA and Article 3, subdivision (b) of the California Constitution.
26
27
28

PRAYER FOR RELIEF

Wherefore, Petitioner prays for the following relief:

1. That the Court issue a peremptory writ of mandate (a) declaring (i) that Respondent has been, and remains, in violation of the CPRA's requirement that Respondent promptly disclose public records responsive to the CPRA Requests, including the prompt assertion of any one or more exemptions purportedly allowing Respondent to withhold any or all of the records requested in the CPRA Requests and (ii) that by reason of Respondent's prolonged, deliberate and unjustified failure to timely respond to the CPRA Requests, Respondent has waived, and may not assert, any exemption that is for the benefit of Respondent as opposed to the protection of the privacy or other rights of a person other than Respondent and (b) directing Respondent, subject to any legitimate withholdings based on exemptions properly asserted for the protection of the privacy or other rights of a person other than Respondent, to make public all records responsive to the CPRA Requests within fifteen days of the Court's order.

2. That Petitioner be awarded attorneys' fees and costs under Government Code section 6259(d) and any other applicable law, and all further relief to which Petitioner may be justly entitled.

Dated: November 6, 2018

JAMES K.T. HUNTER

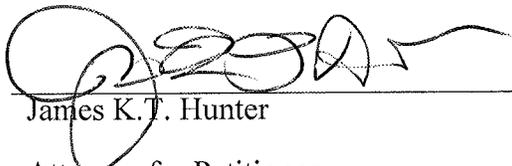
By: 
James K.T. Hunter
Attorney for Petitioner,
Competitive Enterprise Institute

EXHIBIT 1

1500 I Street, NW, 7th Floor
Washington, DC 20005
202 331 0640

202 331 0610
202 331 0640



REQUEST UNDER CALIFORNIA'S PUBLIC RECORDS ACT

February 5, 2018

Records Management & Information Practices
10920 Wilshire Boulevard
Suite 530
Los Angeles, CA 90024-6541

BY ELECTRONIC MAIL — records@ucla.edu

UCLA Records Management Officer,

On behalf of the Competitive Enterprise Institute (CEI), a non-profit public policy institute in Washington, DC and pursuant to the California Government Code §§ 6250 *et. seq.*, please provide us within 10 business days copies of certain described *information*, as follows:

I. copies of all correspondence and its accompanying information¹, including also any attachments, that were sent by, sent to (including copying, whether as cc: or bcc:) or otherwise were received or are possessed by UCLA School of Law's **Cara Horowitz**, and/or **Ann Carlson**, dated from **March 1, 2016 to April 30, 2016**, inclusive, which are also:

- a) to or from Shaun Goho, *and/or*
- b) which use any of the following terms, *anywhere* in the correspondence be it the to, from, cc, bcc, and/or Subject fields and/or body of the email: i) Harvard, ii) Pawa, iii) Frumhoff, iv) UCS, v) Eubanks, and/or vi) CIEL (these terms are not case sensitive).

¹ This includes public records, and associated public information, see discussion of Data Delivery Standards, *infra*.

EXHIBIT A square icon containing a smaller square, used to denote an exhibit.

1510 I Street, NW, 7th Floor
Washington, DC 20035
cei.org

202 331 1010 ext
202 331 0640 fax



Public records show that Professor Horowitz participated in an April 25, 2016 briefing at Harvard Law School on “Potential Causes of Action Against Major Carbon Producers: Scientific, Legal and Historical Perspectives”, attended by other academics, environmentalist pressure group activists, private attorneys and public employees of various state attorney general offices. The agenda listed the participating UCLA faculty in their capacity as UCLA faculty. Other participants blogged about the event, with one publishing, in relevant part, “We were joined by a superb set of panelists, including ...Cara Horowitz, co-director of the Emmett Center on Climate Change and the Environment at UCLA Law School”. We seek correspondence relating to this trip, presentation, and other assistance provided Prof. Horowitz and/or her colleague Ms. Carlson to the extent this information was produced or received using University resources.

II. Similarly, UCLA held a followup event, moderated by Ms. Horowitz with the participation of Prof. Carlson specifically as “Shirley Shapiro professor of environmental law, and inaugural faculty director of the Emmett Institute on Climate Change and the Environment, UCLA School of Law” (not as an industry consultant). We also seek correspondence relating to this event, specifically from or to (whether as to, cc or bcc), or using, *anywhere* in the correspondence be it the to, from, cc, bcc, Subject fields or body of the email: a) **Frumhoff**, b) **McKibben**, c) **Kimmell**, d) **Union of Concerned Scientists**, and/or e) **UCS** (including but not limited to in e.g., @ucsusa.org).

Records responsive to *this* request will be dated during a now-month period **December 1, 2017 through January 31, 2018, inclusive**. Again, we seek entire email “threads” containing



any record responsive to this request regardless whether any part of that thread falls outside the search parameter.

Please consider as responsive entire email “threads” containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters.

We request records on the University’s system, e.g., its backend logs, not those which survive on a faculty member’s own machine or account.

We do not demand your Office produce requested information in any particular form, instead we request records in their native form, with specific reference to the **U.S. Securities and Exchange Commission Data Delivery Standards**.² The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, “Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. (*Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.*) (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique

² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

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metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your Office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, *and* accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

In the context of our experience with responsive agencies taking the effort to physically print, then (often, poorly) scan *electronic* mail into (typically, non-searchable) PDF files, we note that production of electronic records necessitates no such additional time, effort or other resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.



We understand we owe the office the cost of material, required to satisfy this request. We agree to pay legitimate expenses up to \$150.00. If you estimate costs will exceed that please notify us immediately and break down the expected costs.

The undersigned do not seek the information for a commercial purpose. CEI is organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization. As such, it has no commercial interest possible in these records.

Also, CEI is a media organization, which the federal government has already acknowledged is the case for purposes of the federal FOIA.³

As such, we request a waiver of any fees involved, as release of these records is in the public interest and the Office is permitted to and does exercise discretion in waiving or reducing fees on that basis.

The campaign in which Profs. Carlson and Horowitz have involved themselves and the School using, and were invited to participate and is listed as participating in the Harvard event on the basis of, their UCLA credential⁴, is the subject of intense public, media, congressional oversight and now judicial interest — which is indeed a principal objective of the campaign.⁵ It

³ See e.g., Department of the Treasury FOIA Nos. 2012-08-053, 2012-08-054.

⁴ See attached public record obtained from the Vermont Office of Attorney General, after judicial determination in December that this public record is not conceivably subject to any privilege.

⁵ See, e.g., John O'Brien, "Exxon Prepares To Sue California Cities, Says They Contradict Themselves On Climate Change", *Forbes*, January 8, 2018, <https://www.forbes.com/sites/legalnewsline/2018/01/08/exxon-prepares-to-sue-california-cities-say-they-contradict-themselves-on-climate-change/amp/>; Andrew Scurria, "California Municipalities' Debt Disclosures Contrast With Climate Warnings", *Wall Street Journal*, January 8, 2018, <https://www.wsj.com/articles/california-municipalities-debt-disclosures-contrast-with-climate-warnings-1515456551>; see also <https://www.courthousenews.com/wp-content/uploads/2018/01/ExxonDepositions.pdf>.

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involves third-parties and plainly no relevant privilege with the exception of possible personal contact information if that information is not already posted on the websites of various participating universities, pressure groups and the like. The requested information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with government activities on this critical subject, or as the United States Supreme Court once noted in the context of the federal FOIA, what their government, which under open records laws includes publicly funded academic institutions, is up to.

If you have any questions please do not hesitate to contact me. We look forward to your timely response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Horner". The signature is written in a cursive, slightly slanted style.

Christopher C. Horner
Senior Fellow, CEI
1310 L Street, NW, 7th Floor
Washington D.C. 20007
chris.horner@cei.org
202.262.4458

EXHIBIT 2

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REQUEST UNDER CALIFORNIA'S PUBLIC RECORDS ACT

May 21, 2018

Records Management & Information Practices
10920 Wilshire Boulevard
Suite 530
Los Angeles, CA 90024-6541

BY ELECTRONIC MAIL — records@ucla.edu

UCLA Records Management Officer,

On behalf of the Competitive Enterprise Institute (CEI), a non-profit public policy institute in Washington, DC and pursuant to the California Government Code §§ 6250 *et. seq.*, please provide us within 10 business days copies of all correspondence and its accompanying information¹, including also any attachments, that were sent by, sent to (including copying, whether as cc: or bcc:) or otherwise were received or are possessed by UCLA School of Law's **Cara Horowitz**, and/or **Ann Carlson**, dated from **May 1, 2016** through the date you process this request, inclusive, which are also:

- a) to or from Shaun Goho, *and/or*
- b) which use any of the following terms, *anywhere* in the correspondence be it the to, from, cc, bcc, and/or Subject fields and/or body of the email or attachments: i) Harvard, ii) Pawa, iii) Eubanks, iv) McKibben, v) Kimmell, vi) "Union of Concerned Scientists", and/or vii)

@ucsusa.org. None of these terms are case sensitive.

¹ This includes public records, and associated public information, see discussion of Data Delivery Standards, *infra*.

EXHIBIT 2

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Public records show that Professors Horowitz and Carlson are using their positions at your public university to coordinate with certain activists groups in organizing and pursuing law enforcement and civil investigations and litigation against private opponents of a particular political agenda. We seek correspondence and other records illuminating this use of a public university faculty position and resources.

Please consider as responsive entire email “threads” containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters.

We request records on the University’s system, e.g., its backend logs, not those which survive on a faculty member’s own machine or account.

We do not demand your Office produce requested information in any particular form, instead we request records in their native form, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards.² The covered information we seek is electronic information, this includes electronic *records*, and other public *information*.

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² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

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In the context of our experience with responsive agencies taking the effort to physically print, then (often, poorly) scan *electronic* mail into (typically, non-searchable) PDF files, we note that production of electronic records necessitates no such additional time, effort or other

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resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.

We understand we owe the office the cost of material, required to satisfy this request. We agree to pay legitimate expenses up to \$150.00. If you estimate costs will exceed that please notify us immediately and break down the expected costs.

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Also, CEI is a media organization, which the federal government has already acknowledged is the case for purposes of the federal FOIA.³

As such, we request a waiver of any fees involved, as release of these records is in the public interest and the Office is permitted to and does exercise discretion in waiving or reducing fees on that basis.

The campaign in which Profs. Carlson and Horowitz have involved themselves and the School using, and which they have participated in expressly on the basis of, their UCLA credential⁴ is the subject of intense public, media, congressional oversight and now judicial

³ See e.g., Department of the Treasury FOIA Nos. 2012-08-053, 2012-08-054.

⁴ See, e.g., <https://law.ucla.edu/news-and-events/4065/2018/1/25/holding-fossil-fuel-companies-liable-for-climate-change-harms-in-california-c--law-science-and-justice---keynote-remarks-by-bill-mckibben/> and <https://blog.ucsusa.org/peter-frumhoff/scientists-state-prosecutors-fossil-fuel-companies-climate-accountability>.

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interest⁵ — which is indeed a principal objective of the campaign.⁶ It involves third-parties and plainly no relevant privilege with the exception of possible personal contact information if that information is not already posted on the websites of various participating universities, pressure groups and the like. The requested information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and any others concerned with government activities on this critical subject, or as the United States Supreme Court once noted in the context of the federal FOIA, what their government, which under open records laws includes publicly funded academic institutions, is up to.

If you have any questions please do not hesitate to contact me. We look forward to your timely response.

Respectfully submitted,



Christopher C. Horner
Senior Fellow, CEI
chris.horner@cei.org
202.262.4458

⁵ See, e.g., John O'Brien, "Exxon Prepares To Sue California Cities, Says They Contradict Themselves On Climate Change", *Forbes*, January 8, 2018, <https://www.forbes.com/sites/legalnewsline/2018/01/08/exxon-prepares-to-sue-california-cities-say-they-contradict-themselves-on-climate-change/amp/>; Andrew Scurria, "California Municipalities' Debt Disclosures Contrast With Climate Warnings", *Wall Street Journal*, January 8, 2018, <https://www.wsj.com/articles/california-municipalities-debt-disclosures-contrast-with-climate-warnings-1515456551>; see also <https://www.courthousenews.com/wp-content/uploads/2018/01/ExxonDepositions.pdf>.

⁶ See, e.g., <http://eidclimate.org/video-attorney-admitted-press-coverage-might-important-winning-climate-lawsuits/>.

VERIFICATION

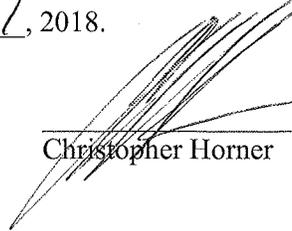
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VERIFICATION

I, Christopher Horner, am Senior Fellow with the Petitioner Competitive Enterprise Institute (“CEI”), and am authorized to make this verification of its behalf. I have personal knowledge of the facts alleged in the foregoing Petition as they concern CEI, and if called upon to testify I would competently testify as to the matters stated herein.

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

Executed at Keywick, Virginia on November 1, 2018.



Christopher Horner

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA