



Pushing Preemption:

The Corporate Campaign to Deny

Municipalities Access to the Courts

**CENTER FOR
CLIMATE
INTEGRITY**

The Center for Climate Integrity

AUGUST 2022

AUTHORS

Emily Sanders
Lynn Zinser

CONTRIBUTOR

Benjamin Foote-Huth



ABOUT CCI

CCI's mission is to empower communities and elected officials with the knowledge and tools they need to hold oil and gas corporations accountable for decades of lying about climate change. Through strategic campaigns, communications, and legal support, we ensure that the fossil fuel industry pays its fair share of the massive costs of climate damages.

Contents

2	Executive Summary
5	Introduction
8	Part I: The Historical and Present Threat to Municipal Litigation
8	<i>Section I: The Importance of Municipal Litigation</i>
14	<i>Section II: From Tobacco to Climate, Corporate Interests Have Fought Liability</i>
26	<i>Section III: The Players</i>
38	<i>Section IV: The Tactics</i>
45	Part II: Battling Municipal Preemption
45	<i>Recognizing Preemption Before It Becomes Law</i>
47	<i>Repealing Harmful Preemption Legislation</i>
48	<i>Proactive Measures to Protect and Expand Local Access to the Courts</i>
50	<i>Resources for Advocates for Access to the Courts</i>
53	Conclusion
54	Appendix 1: Preemption Chart
56	Appendix 2: Cases Underway to Make Climate Polluters Pay

Executive Summary

Communities have long turned to the courts to hold corporate actors accountable for damages caused when industries intentionally deceive the public about the danger of their products. Without access to the courts, municipalities would have had no viable means to hold the corporations that produce tobacco, opioids, asbestos, lead paint, PFAS chemicals, and fossil fuels accountable for those damages.

Corporations, their trade associations, and front groups are well aware of this fact and have long sought to limit or flat-out block access to the courts as a means of avoiding accountability for their actions.

In recent years, the U.S. Chamber of Commerce (the Chamber) has spearheaded an attack on municipalities' right to access the courts.

In 2019, the Chamber of Commerce's Institute for Legal Reform (ILR) published a report titled "Mitigating Municipality Litigation," a playbook of "legislative and judicial solutions that states can pursue" to reduce municipal litigation. The Chamber is not subtle in their efforts to deny access to the courts, laying out specific actions the group wants states to take and bills they want legislators to pass in order to restrict and eliminate legal avenues for local communities seeking justice. In the report, these tactics fall under four overarching strategies: limiting municipalities' access to legal counsel or the courts, prohibiting litigation against certain industries, modifying causes of action under which municipalities can bring lawsuits, and eliminating available forums where a lawsuit can be brought.

To activate this strategy in the field, corporate interests have built a powerful triumvirate led by the Chamber, the American Legislative Exchange Council (ALEC), and the National Association of Manufacturers (NAM) and their local affiliates. Hiding behind these allied associations, individual companies can avoid doing the hands-on dirty work, relying instead on the Chamber for lobbying, ALEC for legislation, and NAM to attack and run smear campaigns against residents and communities seeking access to justice.

The Chamber, ALEC, and NAM have a well-documented, multidecade history of using disinformation and lobbying to delay government action and shield the opioid, tobacco, and gun industries from liability. The same groups and corporations are now working together to restrict communities' access to the courts to address climate damages resulting from the fossil fuel industry's lies and deception. We tracked and documented that web throughout this research.

Two years after the release of its 2019 report, the ILR published an update, doubling down on their recommendations to obstruct communities' rights and pathways to justice and explicitly naming climate liability lawsuits as an increasing threat to their business as usual.

The industry has reason to be concerned. A growing wave of climate liability lawsuits filed by cities, counties, and states across the country are asking the courts to protect their communities from the mounting costs of adapting and responding to a host of dangerous climate-related damages that the fossil fuel industry predicted decades ago—including more frequent and severe flooding, heat waves, storms, wildfires, and rising seas. These lawsuits rely on well-tested legal theories and well-documented evidence that major oil and gas companies knew and continue to lie about their products' leading role in climate change through a sophisticated disinformation campaign—what several state attorneys general have called a “campaign of deception”—in order to delay government action to address the crisis.

The industry's coordinated campaign to block access to the courts has already had an effect: since 2019, municipal litigation preemption bills have been introduced in Arizona, Florida, Ohio, and Kansas, and one passed in Texas. These bills employ the same tactics recommended by the Chamber, such as preventing municipalities from hiring outside counsel and granting the state attorney general the power to prohibit local governments from filing suit.

By exercising their right of access to the courts, local governments can protect their communities from bearing the full costs of environmental, economic, and public health harms caused by bad actors. Fossil fuel corporations and their allies, and other industries that profit from the promotion and sale of dangerous products, are investing massive resources into a coordinated takedown of local democracy, because they know obstructing the levers of accountability is the only way they can avoid paying for the harm they've caused.

While this report details the attacks from the U.S. Chamber, ALEC, and NAM against municipalities' rights, we also outline options for communities to defend those rights. We recommend ways elected leaders can recognize preemption legislation before it becomes law, as well as repeal preemption legislation through the courts and state legislatures. Both methods have elicited successes in their early stages. We also suggest proactive measures that state legislatures can take to protect and expand local access to the courts, including:

- extending the statute of limitations for communities to file liability lawsuits when a legal violation is revealed long after it took place;
- enacting new causes of action specific to localized damages affecting municipalities;
- enacting new rules of liability to account for newer iterations of legal violations and appropriately tailored remedies, such as in the case of fossil fuel companies' climate deception and recent efforts to make them pay for the ensuing damages; and
- expanding the legal remedies available to municipalities seeking to address corporate-driven harms through the courts.

Lastly, we provide resources and organizations to provide further assistance for communities seeking accountability and justice.

Introduction

For decades, communities have turned to the courts to seek justice and recover damages from corporations when they deceive consumers, policymakers, and the public about the harms associated with their products. In many cases, when legislation does not yet exist to protect communities from economic, environmental, or public health harms—or when systemic lobbying and disinformation campaigns waged by corporate actors have obstructed proactive policy—legal action may be the only path to remediate existing harms and prevent further damages.

In recent years, communities have taken legal action against a wide range of industries in response to their deceptive behavior, including the corporations that produce tobacco, opioids, lead paint, asbestos, per- and polyfluoroalkyl substances (PFAS chemicals), guns, and most recently, fossil fuels. These lawsuits, which seek to hold corporations accountable for the damages they caused, rely on evidence that those corporations knew their products would cause harm but lied and concealed that knowledge in order to protect their business operations and assets.

In response, industries have learned how to shield their actions from legal scrutiny and have worked to undermine any mechanisms that might be used to hold them accountable. A prominent strategy promoted by the industry and its allies is municipal preemption laws, or legislation that effectively prevents local governments from seeking justice through the courts.

In 2019, the U.S. Chamber of Commerce—a longtime defender of powerful corporate interests—unveiled a roadmap to counter municipal litigation, called “Mitigating Municipality Litigation: Scope and Solutions,” published through its Institute for Legal Reform. In it, the Chamber recommends a series of specific steps that state legislatures can take to make it difficult, if not impossible, for local governments to pursue legal action to address a range of harms, from contaminated drinking water to climate change. Without any consideration of the rationale as to how and why communities should take legal action to address local issues, the Chamber suggests aggressive tactics to undermine local authority—such as giving state governments the power to prohibit municipal litigation, passing state laws that would prevent municipalities from recovering damages under any circumstances, and even amending state constitutions to protect corporations rather than people.

The Chamber presents four overarching strategies to prevent communities from seeking justice through the courts:

- limiting municipalities' access to legal counsel or the courts;
- prohibiting litigation against certain industries;
- modifying causes of action under which municipalities can bring lawsuits to “eliminate or avoid municipal litigation altogether”; and
- eliminating available forums where a lawsuit can be brought or restricting state jurisdiction over municipal lawsuits.

This Chamber-led effort to preempt municipal litigation is now in full swing as a growing number of communities across the country take steps to hold major fossil fuel companies accountable for climate deception and the resulting damages in court. Since 2017, over two dozen states and municipalities have filed lawsuits against major oil and gas companies for lying about their role in causing climate change, and many seek to recover at least a portion of the increasingly overwhelming costs to adapt and recover from the climate damages they now face. These lawsuits follow well-established legal precedent—and, if successful, they will help to ensure taxpayers aren't left to shoulder the burden of those costs on their own.

In 2021, the Chamber's ILR published an update to its *Mitigating Municipality Litigation* report, focused on the growing wave of climate liability lawsuits brought on behalf of municipalities across the country. Using the industry's well-worn talking points, the Chamber mischaracterizes climate liability cases as attempts to implement policy to address global emissions, rather than a means to address and recover local climate damages knowingly caused by oil and gas companies. The Chamber reiterates the same scorched-earth tactics described in its original report to quash those suits.

Today, an increasing number of bills are being introduced in states across the country—including Arizona, Kansas, Ohio, Florida, and Texas—that employ a variety of aggressive tactics to prevent municipalities from holding corporations accountable. The bills would provide immunity from liability for the companies named in climate liability litigation as well as other corporate actors.

Access to the courts is not only a fundamental right, but it is also essential to protect communities from the massive and growing damages caused by climate change. This report examines the threat to this right, orchestrated by a network of industry allies and front groups, all of whom are following a well-worn playbook used for decades by industries facing similar liability claims. It then identifies which organizations are responsible for these threats, how municipal litigation is vital to both local democracy and justice, how litigation can help communities recover the costs of past and present climate damages, and lastly, what options are available for municipal governments to protect their access to the courts.

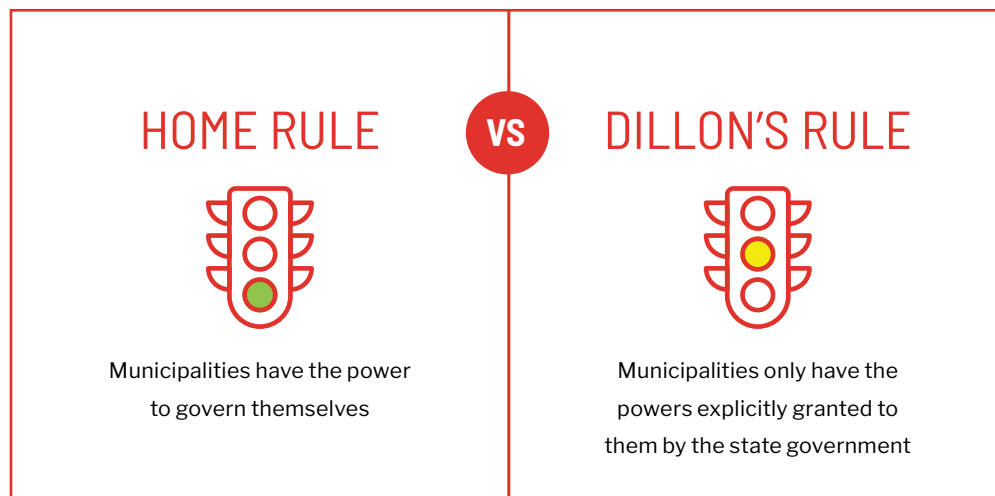
Part I: The Historical and Present Threat to Municipal Litigation

Section I: The Importance of Municipal Litigation

LOCAL AUTONOMY MATTERS

Municipal governments have long pioneered solutions to some of the greatest challenges facing society. From addressing wage inequality through minimum wage laws to expanding broadband access through municipal networks, city and county officials have responded to the specific, localized needs of the communities they represent. Municipal authority to strengthen local protections, or Home Rule, fosters laboratories of democracy: it allows both state and local governments to create and test laws that can, if successful, help influence and evolve federal policy.

FIGURE 1: HOME RULE VS. DILLON'S RULE



Local smoking bans are one such example of how local action can influence broader policy.¹ In 1977, the city of Berkeley, California, passed the nation’s first ordinance restricting smoking in restaurants and public places.² In 1990, San Luis Obispo became the first city in the world to ban smoking in all public buildings.³ Los Angeles banned smoking in restaurants outright in 1993,⁴ and New York City banned smoking in workplaces in 1995.⁵ In 2002, New York City passed even more sweeping restrictions, and a 2014 study showed that these laws helped precipitate a large reduction in smoking rates.⁶

Similarly, when Seattle passed the first \$15 minimum wage law for municipal businesses in 2015, other local governments followed.⁷ Today, nearly three dozen cities and counties have passed laws raising their minimum wage to at least \$15 an hour—helping to build nationwide pressure to raise the federal minimum wage, which hasn’t budged from \$7.25 since 2009.⁸

For much of the nation’s history, legislative efforts to place restrictions on municipal authority were relatively rare.⁹ More recently, however, some states have attempted to curtail local democracy with legislation to preempt municipal litigation. The trend of municipal preemption laws extends beyond lawsuits, constituting a widespread attack on local communities’ ability

1 Overview List—Number of Smokefree and Other Tobacco-Related Laws, [no-smoke.org](https://no-smoke.org/wp-content/uploads/pdf/mediaordlist.pdf), AM. NONSMOKERS RIGHTS FOUNDATION (Apr. 1, 2022), <https://no-smoke.org/wp-content/uploads/pdf/mediaordlist.pdf>.

2 INST. OF MED. OF THE NAT’L ACADEMIES, *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence* 110–12 tbl.5-1(2010), https://www.ncbi.nlm.nih.gov/books/NBK219565/pdf/Bookshelf_NBK219565.pdf.

3 Leon Koenen, *San Luis Obispo: The First City with a Major Public Smoking Ban*, [kcet.org](https://www.kcet.org/social-focus/san-luis-obispo-the-first-city-with-a-major-public-smoking-ban) (Mar. 8, 2011), <https://www.kcet.org/social-focus/san-luis-obispo-the-first-city-with-a-major-public-smoking-ban>.

4 Robert Reinhold, *Los Angeles Bans All Restaurant Smoking*, [nytimes.com](https://www.nytimes.com/1993/06/25/us/los-angeles-bans-all-restaurant-smoking.html), N.Y. TIMES (June 25, 1993), <https://www.nytimes.com/1993/06/25/us/los-angeles-bans-all-restaurant-smoking.html>.

5 INST. OF MED. OF THE NAT’L ACADEMIES, *supra* note 2, at 111.

6 Elizabeth A. Kilgore, Jenna Mandel-Ricci, Michael Johns, Michaela H. Coady, Sarah B. Perl, Andrew Goodman & Susan M. Kansagra, *Making It Harder to Smoke and Easier to Quit: The Effect of 10 Years of Tobacco Control in New York City*, 104 AM. J. OF PUB. HEALTH e5, e5–e8 (2014), <https://doi.org/10.2105/ajph.2014.301940>.

7 Matthew Zeitlin, *What Seattle Learned from Having the Highest Minimum Wage in the Nation*, [vox.com](https://www.vox.com/the-highlight/2019/7/13/20690266/seattle-minimum-wage-15-dollars), VOX, <https://www.vox.com/the-highlight/2019/7/13/20690266/seattle-minimum-wage-15-dollars> (last updated July 22, 2019, 9:07 AM).

8 Kerri Anne Renzulli, *33 Places in the U.S. Where the Minimum Wage is Already \$15 an Hour—or More*, [newsweek.com](https://www.newsweek.com/33-places-us-where-minimum-wage-already-15-hour-more-1572446), NEWSWEEK (Feb. 26, 2021, 2:02 PM), <https://www.newsweek.com/33-places-us-where-minimum-wage-already-15-hour-more-1572446>; *When Was the Last Time the Minimum Wage Was Raised*, [raisetheminimumwage.com](https://raisetheminimumwage.com/question-answer/when-was-the-last-minimum-wage-increased/#:~:text=The%20federal%20minimum%20wage%20was,per%20hour%20for%2010%20years), RAISE THE MINIMUM WAGE (Aug. 29, 2016), <https://raisetheminimumwage.com/question-answer/when-was-the-last-minimum-wage-increased/#:~:text=The%20federal%20minimum%20wage%20was,per%20hour%20for%2010%20years>.

9 Jennifer L. Pomeranz & Mark Pertschuk, *State Preemption: A Significant and Quiet Threat to Public Health in the United States*, 107 AM. J. PUB. HEALTH 900, 900 (2017), <https://doi.org/10.2105/AJPH.2017.303756>.

to address local problems. Our research found that, since 2019, at least 25 states have enacted or considered municipal preemption legislation on various issues—including voting rights, local control of elections, plastic bag bans, natural gas hookups, and various public health initiatives related to the COVID-19 pandemic (see Appendix).

The Local Solutions Support Center (LSSC), a nonprofit organization dedicated to tracking preemption legislation and its threat to local democracy, tracked more than 400 bills to preempt municipal legislative and legal autonomy in the 2021 legislative session, more than double the amount in 2019.¹⁰ More than 70 of those bills were introduced in either Florida or Texas.

MUNICIPAL LITIGATION AS A TOOL OF DEMOCRACY

The judicial system plays a crucial role in empowering local governments to protect residents when laws to prevent environmental, economic, or public health harms do not exist. Litigation has long served as an essential tool and sometimes the sole mechanism for municipalities to recover costs from corporations or other entities that have knowingly caused financial, environmental, and/or public health damages to communities.

When data breaches began to endanger the personal data of millions across the country, there were no laws to determine whether or how companies should address the damage done to consumers. It wasn't until two California cities turned to litigation that major consumer credit reporting companies began to be held accountable.

More specifically, in 2018, San Diego filed suit against Experian after discovering a three-year-long data breach about which the company had failed to notify consumers.¹¹ One year earlier, San Francisco took Equifax to court after the company failed to notify consumers about another data breach that compromised the personal data of 143 million people.¹²

¹⁰ A Session Like No Other: An Overview of 2021's Unprecedented Wave of State Preemption Bills, supportdemocracy.org, LOC. SOL.S SUPPORT CTR., <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/61008c78292a9823551143bd/1627425912437/ASessionLikeNoOther-LocalSolutionsSupportCenter-1Pager.pdf> (last visited Apr. 21, 2022).

¹¹ Greg Moran, *San Diego City Attorney Sues Experian Over Massive Data Breach, Saying Consumers Were Never Told*, [sandiegouniontribune.com](https://www.sandiegouniontribune.com), SAN DIEGO UNION-TRIBUNE (Mar. 21, 2018, 4:40 PM), <https://www.sandiegouniontribune.com/news/watchdog/sd-me-data-breach-20180321-story.html>.

¹² Lisa Fernandez, *San Francisco First City in U.S. to Sue Equifax for Failing to Protect 15M Californians*, [foxla.com](https://www.foxla.com), FOX 11 (Sept. 26, 2017), <https://www.foxla.com/news/san-francisco-first-city-in-u-s-to-sue-equifax-for-failing-to-protect-15m-californians>.

Those lawsuits helped bring awareness to these companies' failure to protect their consumers. And as a result, in 2019, California passed a sweeping consumer protection law, which was later amended to include a data breach notification provision.¹³

As explored further in Figure 2, there are many examples of successful municipal litigation where communities were awarded compensation for damages knowingly caused by corporations, and where absent this litigation, there would have been no recourse to mitigate the harms inflicted. Litigation involving opioids, tobacco, lead, asbestos, and the gasoline additive MBTE, as well as other industrial chemical pollutants like PFAS, PFOA, TCP, and pesticides, are some of the most well-known cases.

A successful outcome in one place often sets a precedent for others. Whether the result is a jury verdict, judgment, or settlement, municipal litigation can provide a path to recovery for communities facing harms, produce documents that reveal corporate malfeasance, and bring on a wave of accountability, retribution, and reputational risk that industries fear above all else. This outcome, where litigation leads local governments to employ a series of strategies to take on corporate actors, is a principal reason that the U.S. Chamber of Commerce and others work so hard to deny cities and counties their right to take legal and legislative action.

In 2009, for instance, a federal jury held ExxonMobil liable for contaminating New York City's groundwater with MBTE, which the company used despite its knowledge that MTBE was likely to poison water supplies, and for failing to warn the public. The city was awarded \$105 million to remediate the contamination and provide safe drinking water to residents.¹⁴ The state of New Hampshire filed a similar suit and was awarded \$236 million in damages in 2013.¹⁵ Exxon appealed both rulings to the U.S. Supreme Court, which refused to hear either case.¹⁶

13 Sam Heidari, *Security Data Breach Notification: California Law Updates*, [heidarilawgroup.com](https://www.heidarilawgroup.com), HEIDARI L. GRP. (July 6, 2021), <https://www.heidarilawgroup.com/blog/security-data-breach-notification-california-law-updates/>.

14 Mireya Navarro, *City Awarded \$105 Million in Exxon Mobil Lawsuit*, [nytimes.com](https://www.nytimes.com), N.Y. TIMES (Oct. 19, 2009), <https://www.nytimes.com/2009/10/20/science/earth/20exxon.html>.

15 Lynne Tuohy, *ExxonMobil Must Pay \$236M for NH Pollution Case*, apnews.com, AP NEWS (Apr. 19, 2013), <https://apnews.com/article/f8bfec66a628496d93db44f4a49fb1a8>.

16 Lawrence Hurley, *U.S. Top Court Rejects Exxon Appeal in Groundwater Contamination Case*, [reuters.com](https://www.reuters.com), REUTERS (May 16, 2016, 9:40 AM), <https://www.reuters.com/article/us-court-exxon-mobil/u-s-top-court-rejects-exxon-appeal-in-groundwater-contamination-case-idUSKCN0Y71HD>.

In the aftermath of these verdicts, lawsuits were filed around the country seeking damages for the harmful effects of MTBE, and most ended in settlements.¹⁷ There were a few other large jury awards against the additive's producers, including \$69 million awarded to South Lake Tahoe and \$120 million to Santa Monica, California.¹⁸

Last year saw the first jury verdict to result from litigation filed by municipalities across the country against drug manufacturers, distributors, and sellers for minimizing the dangers of opioid addiction and bypassing protocols for the sake of profits. In November of 2021, a federal jury decided that Walmart, CVS, and Walgreens should be held liable for their failure to monitor opioid prescriptions in northeast Ohio. In the spring of 2022, a federal judge will determine the appropriate damages to award Trumbull and Lake counties, which are seeking \$2.4 billion to recover the costs of addressing opioid addictions and fatal overdoses caused by the companies' negligence.¹⁹

Settlements as a Step Toward Recovery

In many cases, costs are recovered through settlements, which usually represent a fraction of the total compensation for damages that communities are owed. Still, those funds can make the difference in whether a community is able to launch vital rehabilitation, remediation, and recovery services to begin to address that harm. Settlements can also produce crucial documents and evidence of wrongdoing that can be used to prevent further harm.

The push to hold paint manufacturers liable for the harms caused by lead paint and to enforce stricter public health standards for lead in paint also started with municipal lawsuits in California. The suits eventually resulted in a groundbreaking \$305 million settlement in 2019 that allowed 10 plaintiff municipalities to fund remediation in their communities.²⁰

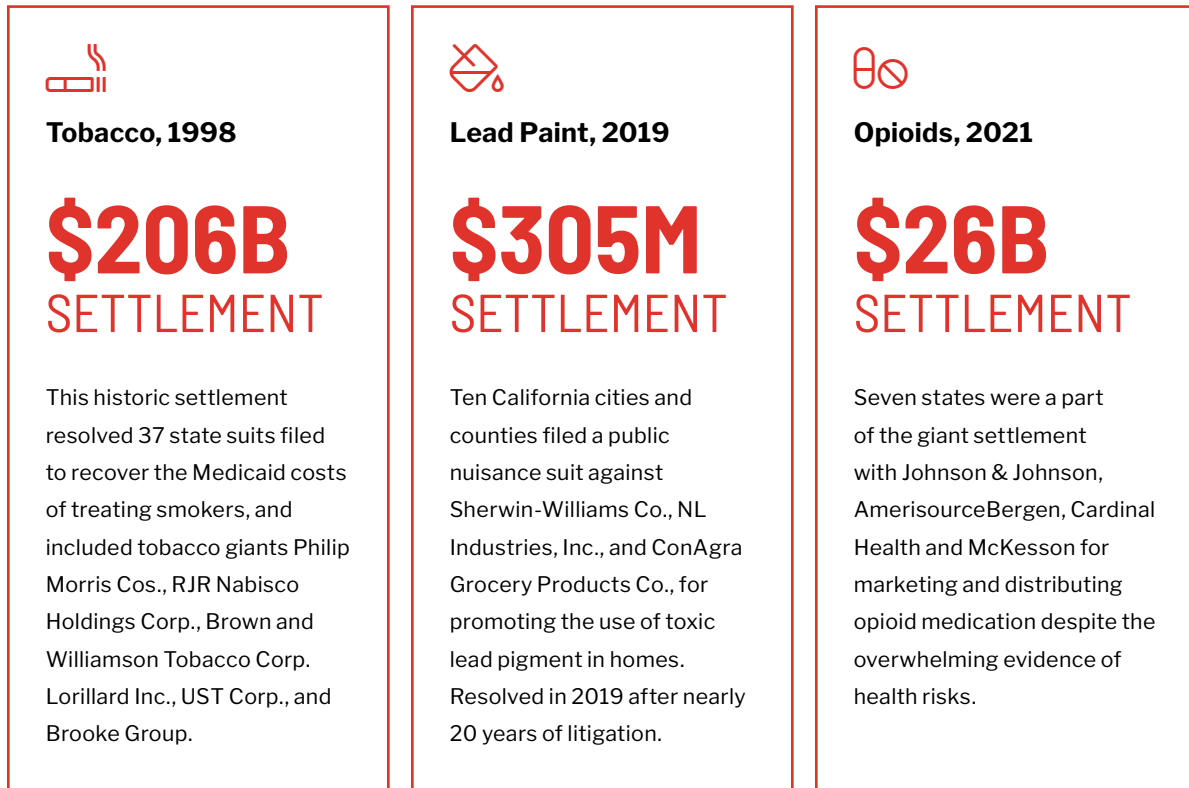
17 Jim Ballidis, *What Were Some of the Issues Concerning Litigation over Methyl Tertiary Butyl Ether*, [hg.org](https://www.hg.org/legal-articles/what-were-some-of-the-issues-concerning-litigation-over-methyl-tertiary-butyl-ether-24126), HG, <https://www.hg.org/legal-articles/what-were-some-of-the-issues-concerning-litigation-over-methyl-tertiary-butyl-ether-24126>.

18 Janet Wilson, *\$423-million MTBE Settlement Is Offered*, [latimes.com](https://www.latimes.com/archives/la-xpm-2008-may-08-me-mtbe08-story.html), L.A. TIMES (May 8, 2008, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2008-may-08-me-mtbe08-story.html>.

19 John Seewer, *Jury Holds Pharmacies Responsible for Role in Opioid Crisis*, [apnews.com](https://apnews.com/article/business-health-ohio-medication-opioids-d778b97c0eb409aa0d53dcfd9e4f2ad0), AP NEWS (Nov. 23, 2021), <https://apnews.com/article/business-health-ohio-medication-opioids-d778b97c0eb409aa0d53dcfd9e4f2ad0>.

20 *Lead Paint Archives*, [sfcityattorney.org](https://www.sfcityattorney.org), CITY ATT'Y OF S.F. (Jul. 17, 2019), <https://www.sfcityattorney.org/category/news/lead-paint/>.

FIGURE 2: LIABILITY LITIGATION DELIVERS ACCOUNTABILITY



California’s lead paint lawsuits were also significant in establishing a legal precedent for product liability cases, including climate liability lawsuits, to be heard in state court.²¹ In 2018, the U.S. Supreme Court refused to hear the paint manufacturers’ appeal, citing the fact that the lawsuit relied solely and specifically on state common law claims, and that the higher court would therefore not likely intervene.

Another example was a \$260 million settlement in 2019 between the nation’s three largest drug distributors and a drug producer, and Cuyahoga and Summit counties in Ohio.²² The distributors, AmerisourceBergen, Cardinal Health, and McKesson, and drugmaker Teva agreed

21 Dana Drugmand, *Why a Supreme Court Ruling on Lead Paint Could Impact Climate Cases*, [climatedocket.com](https://www.climatedocket.com), CLIMATE DOCKET (Nov. 13, 2018), <https://www.climatedocket.com/2018/11/13/lead-paint-supreme-court-climate-liability/>.

22 Julie Carr Smyth & Geoff Mulvihill, *\$260 Million Deal Averts 1st Federal Trial on Opioid Crisis*, apnews.com, AP News (Oct. 21, 2019), <https://apnews.com/article/lawsuits-us-news-ap-top-news-opioids-health-c428bb2ba4cd4cc6a59f8dbe79e18d9f>.

to the settlement to address the devastating opioid crisis enabled by the industry's widespread marketing and its denial of the risks of addiction (though they refused to admit wrongdoing). The money was set aside to fund treatment, rehabilitation, and mental health services for victims of addiction.

These outcomes continue to have cascading effects for municipalities hoping to take on corporate actors for the damages they have caused. In response, the Chamber's policy recommendations, which seek to undermine municipalities' access to such means of recovery and justice from the courts, are the natural next step for corporations looking to protect themselves from accountability.

Section II: From Tobacco to Climate, Corporate Interests Have Fought Liability

The U.S. Chamber of Commerce and other industry allies have spent the past several decades building strategies to enable some of society's most powerful corporate actors to operate with impunity. With the help of powerful law firms, front groups, and trade associations, tobacco companies were among the first to develop a roadmap for deception that has since become the playbook for industries seeking to avoid accountability for their dangerous products.

The first large-scale scientific studies to decisively link smoking to cancer were published in the early 1950s, and in 1964, the U.S. Surgeon General issued a report concluding that "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."²³ Executives at tobacco companies, however, were aware of this link as early as the 1940s, having already directed their own scientists to research the issue.²⁴

23 Adam Chandler, *Cigarettes Have Officially Been Bad for You for 50 Years*, [theatlantic.com](https://www.theatlantic.com/national/archive/2014/01/cigarettes-have-officially-been-bad-you-50-years/356910/), ATLANTIC (Jan. 11, 2014), <https://www.theatlantic.com/national/archive/2014/01/cigarettes-have-officially-been-bad-you-50-years/356910/>; Kenneth E. Warner, *Tobacco Control Policies and Their Impacts*, 11 ANNALS AM. THORACIC SOC'Y 227, 227 (2013).

24 K. Michael Cummings, Anthony Brown & Richard O'Connor, *The Cigarette Controversy*, 16 CANCER EPIDEMIOLOGY AND PREVENTION BIOMARKERS 1070, 1074 (2007).

Instead of warning customers about the hazards they knew their products would cause, the tobacco companies funded a massive disinformation campaign to confuse consumers and policymakers, bury the science, and sow doubt about the risks.²⁵

As early as 1953, the tobacco industry hired public relations firm Hill & Knowlton Inc.—later hired by the fossil fuel industry—to minimize the dangers associated with their products. “We should create a committee with ‘research’ in the title so that the public recognize[s] the existence of weighty scientific views which hold there is no proof that cigarette smoking is a cause of lung cancer,” reads a 1953 memo from Hill & Knowlton to tobacco executives, who formed the Tobacco Industry Research Committee a year later.²⁶ The committee’s tactics included funding their own studies that purported to show no discernible link between cigarette smoking and cancer, undermining the conclusions of studies showing negative health impacts of smoking, and positing alternate theories on the causes of lung cancer.²⁷

“Doubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the mind of the general public. It is also the means of establishing a controversy.”—Brown & Williamson, “Smoking and Health Proposal,” 1969²⁸

When whistleblowers began releasing documents in the early '90s about the industry’s scientific knowledge and subsequent deception, the legal momentum turned against the industry.²⁹ Key testimony came in a pretrial deposition in 1995, when Jeffrey S. Wigand, a former Brown & Williamson vice president of research and development, revealed that

25 DAVID MICHAELS, DOUBT IS THEIR PRODUCT: HOW INDUSTRY’S ASSAULT ON SCIENCE THREATENS YOUR HEALTH 3 (2008).

26 Michael J. Goodman, *Tobacco’s PR Campaign: The Cigarette Papers*, [latimes.com](https://www.latimes.com/archives/la-xpm-1994-09-18-tm-40179-story.html), L.A. TIMES (Sept. 18, 1994, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1994-09-18-tm-40179-story.html>.

27 TOBACCO CONTROL RSCH. GRP., *Influencing Science: Commissioning Research and Reviews*, [tobaccotactics.org](https://tobaccotactics.org/wiki/influencing-science-commissioning-research-and-reviews/), U. OF BATH, <https://tobaccotactics.org/wiki/influencing-science-commissioning-research-and-reviews/> (last updated Mar. 11, 2021, 9:52 AM).

28 BROWN & WILLIAMSON, SMOKING AND HEALTH PROPOSAL 4 (1969), on file with U. OF CAL. S.F. LIBR., <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=psdw0147> (last visited Apr. 21, 2022).

29 Myron Levin, *Smoking Gun: The Unlikely Figure Who Rocked the U.S. Tobacco Industry*, [latimes.com](https://www.latimes.com/archives/la-xpm-1996-06-23-fi-17774-story.html), L.A. TIMES (June 23, 1996, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1996-06-23-fi-17774-story.html>.

tobacco companies were not only aware of the link between smoking and cancer, but had also manipulated academic research to obscure that link from the public.³⁰ Wigand's comments made clear that tobacco industry executives were lying when they testified to Congress under oath that cigarettes were not addictive and did not cause cancer.

In 1998, the nation's four largest cigarette companies reached a master settlement with attorneys general from eight states, agreeing to pay \$206 billion over 25 years for the health costs to consumers and to place restrictions on their marketing and advertising. Between the 1950s and that point, the tobacco industry adopted two core legal strategies to avoid accountability. The first was convincing judges that federal regulatory law superseded the state laws under which many were suing.³¹ Second, while fighting those battles in the courtroom, tobacco companies and their allies pioneered what they euphemistically called "tort reform": pushing laws that would kneecap litigation filed against them. Often promoted by dark money groups with deep ties to the industry, tort reform campaigns were designed to waive liability for corporations and to hinder access to courts.³²

This work was accompanied by a massive and highly successful communications campaign, led by trade groups and industry associations, designed to convince the public that lawsuits posed a threat to the economy and that these issues should be decided by legislative bodies (where those trade groups and the industry's money had enormous influence).

The U.S. Chamber of Commerce and the National Association of Manufacturers led many of the tobacco industry's public disinformation campaigns and lobbied legislators to protect their business interests from liability at all costs. The law firm Shook, Hardy & Bacon worked so closely with the tobacco industry in its attack on the science that it was named in several

30 Jeffrey Wigand: *Tobacco Whistleblower*, [whistleblowers.org](https://www.whistleblowers.org), NAT'L WHISTLEBLOWER CTR., <https://www.whistleblowers.org/members/jeffrey-wigand/> (last visited Apr. 4, 2022); *Transcript of a Session of the Pretrial Deposition of Jeffrey S. Wigand*, [wsj.com](https://www.wsj.com), WALL ST. J., <https://www.wsj.com/edition/resources/documents/bw.htm>.

31 Barry Meier, *Cigarette Makers and States Draft a \$206 Billion Deal*, [nytimes.com](https://www.nytimes.com), N.Y. TIMES (Nov. 14, 1998), <https://www.nytimes.com/1998/11/14/us/cigarette-makers-and-states-draft-a-206-billion-deal.html>; Kathleen Michon, *Tobacco Litigation: History & Recent Developments*, NOLO, <https://www.nolo.com/legal-encyclopedia/tobacco-litigation-history-and-development-32202.html> (last visited Apr. 21, 2022).

32 Ctr. for Just. & Democracy, *Fact Sheet: Big Tobacco's Covert Role in "Tort Reform,"* centerjd.org, N.Y. L. SCH., <https://centerjd.org/content/fact-sheet-big-tobaccos-covert-role-tort-reform> (last visited Apr. 21, 2022); The Ctr. for Media & Democracy, *Tort reform*, [sourcewatch.org](https://www.sourcewatch.org), SOURCEWATCH, https://www.sourcewatch.org/index.php/Tort_reform.

cases along with its clients and charged with deceiving the public.³³ According to a ruling from Judge Gladys Kessler that found 10 tobacco companies guilty of violating racketeering laws in 2006, the firm’s lawyers “played an absolute central role in the creation and perpetuation” of the companies’ “fraudulent schemes.” Kessler called it a “sad and disquieting chapter” in the history of the legal profession.³⁴

When the pharmaceutical industry found itself under fire as the opioid crisis swept the country, it took the tobacco industry’s tactics even further. In addition to hiding the science that showed the addictive and deadly nature of their products, pharmaceutical companies co-opted some doctors and medical associations, wooing them with perks and encouraging them to overlook the studies that brought those dangers to light.³⁵ These companies lobbied politicians and used trade associations to plead their case. They pushed laws that immunized the pharmaceutical industry from liability, including a uniquely aggressive law in Michigan shielding the industry from almost all liability lawsuits.³⁶

While these other industries fought their battles against accountability, the oil and gas industry was observing from the sidelines, knowing its turn would come. In an internal planning report from 1998, Shell Oil posited a scenario where the burning of fossil fuels would result in a “series of violent storms” on the East Coast, and that a climate liability lawsuit would follow.³⁷

33 United States v. Phillip Morris, Inc., et. al., No. 99-2496, Amended Final Opinion, at 97–98 (D.D.C. 2006), https://www.justice.gov/sites/default/files/civil/legacy/2014/09/11/amended%20opinion_0.pdf; David Martin, *Devil’s Advocates*, thepitchkc.com, THE PITCH (Apr. 5, 2007), <https://www.thepitchkc.com/news/article/20603947/devils-advocates>; Myron Levin, *Smoking’s Big Guns*, latimes.com, L.A. TIMES (Dec. 15, 1996, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1996-12-15-fi-9180-story.html>.

34 United States v. Phillip Morris, Inc., et. al., No. 99-2496, at 4 (2006).

35 Julia Lurie, *The Untold Story of Purdue Pharma’s Cozy Relationship with the American Medical Association*, motherjones.com, MOTHER JONES (Aug. 5, 2021), <https://www.motherjones.com/politics/2021/08/purdue-pharma-american-medical-association-relationship-opioid-crisis-public-health/>.

36 Karl Evers-Hillstrom, *Pharma Lobby Poured Millions into ‘Dark Money’ Groups Influencing 2020 Election*, opensecrets.org, OPEN SECRETS (Dec. 8, 2020, 3:50 PM), <https://www.opensecrets.org/news/2020/12/pharma-lobby-poured-millions-into-darkmoney-groups/>; Karen Bouffard, *Michigan Law Shielding Drug Makers Draws Scrutiny Amid Opioid Crisis*, detroitnews.com, THE DETROIT NEWS (June 14, 2018, 10:38 PM), <https://www.detroitnews.com/story/news/local/michigan/2018/06/15/michigan-law-shields-opioid-lawsuits/649577002/>.

37 1998 Shell Internal TINA Group Scenarios 1998–2020 Report, climatefiles.com, CLIMATE FILES, <https://www.climatefiles.com/shell/1998-shell-internal-tina-group-scenarios-1998-2020-report/> (last visited Apr. 21, 2022).

“Following the storms, a coalition of environmental NGOs brings a class-action suit against the US government and fossil-fuel companies on the grounds of neglecting what scientists (including their own) have been saying for years: that something must be done. A social reaction to the use of fossil fuels grows, and individuals become ‘vigilante environmentalists’ in the same way, a generation earlier, they had become fiercely anti-tobacco. Direct action campaigns against companies escalate. Young consumers, especially, demand action.”—Shell “TINA Group Scenarios,” report, 1998

THE OIL AND GAS INDUSTRY FOLLOWS SUIT

In 2015, journalistic investigations from Inside Climate News, the Los Angeles Times, and the Columbia School of Journalism revealed that major oil and gas companies and their trade associations have understood since at least the 1970s that the burning of fossil fuels would irreversibly heat the Earth’s atmosphere, causing, in their own words, “potentially catastrophic” consequences.³⁸ The industry’s own researchers were on the cutting edge of climate science, producing eerily accurate predictions and timelines for global warming that mirror those the scientific community agrees upon today.³⁹

Former Exxon consultant and physicist Martin Hoffert, one of the scientists who was hired to investigate the link between burning fossil fuels and climate change, testified before Congress in October 2019 that the company “deliberately created doubt when their internal research confirmed how serious a threat it was.”⁴⁰

38 Sara Jennings, Katie Jennings, Masako Melissa Hirsch & Susanne Rust, *What Exxon Knew About the Earth’s Melting Arctic*, [latimes.com](https://graphics.latimes.com/exxon-arctic/), L.A. TIMES (Oct. 9, 2015), <https://graphics.latimes.com/exxon-arctic/>; Neela Banerjee, Lisa Song & David Hasemyer, *Exxon’s Own Research Confirmed Fossil Fuels’ Role in Global Warming Decades Ago*, insideclimatenews.org, INSIDE CLIMATE NEWS (Sept. 16, 2015), <https://insideclimatenews.org/news/16092015/exxons-own-research-confirmed-fossil-fuels-role-in-global-warming/>.

39 Emma Pattee, *The Scientists Hired by Big Oil Who Predicted the Climate Crisis Long Ago*, [theguardian.com](https://www.theguardian.com/environment/2021/jul/02/scientists-climate-crisis-big-oil-climate-crimes), THE GUARDIAN (July 2, 2021), <https://www.theguardian.com/environment/2021/jul/02/scientists-climate-crisis-big-oil-climate-crimes>.

40 Marianne Lavelle, *Former Exxon Scientists Tell Congress of Oil Giant’s Climate Research Before Exxon Turned to Denial*, insideclimatenews.org, INSIDE CLIMATE NEWS (Oct. 24, 2019), <https://insideclimatenews.org/news/24102019/exxon-scientists-climate-research-testify-congress-denial/>.

Over the next four decades, oil and gas companies and their trade industry representatives launched a massive disinformation campaign to cast uncertainty over the science that their own experts had confirmed. They placed advertisements in major media outlets to create the illusion of doubt about the certainty of scientific predictions and funded an army of climate-denying front groups that lobbied governments at every level to forgo policy decisions that would address the crisis.⁴¹ They sent lobbyists to influence the United Nations' Intergovernmental Panel on Climate Change as it began to discuss how to tackle the looming catastrophe.⁴²

They funded economic consultants to produce skewed research that inflated the costs of climate legislation and ignored its benefits, and successfully used that research to advocate against government action on climate change.⁴³

The campaign reached the highest levels of the U.S. government. In fact, the State Department gave credit to the oil industry-backed Global Climate Coalition (GCC) for leading President George W. Bush to reject the landmark Kyoto Protocol in 2001.⁴⁴ An internal State Department briefing stated that officials were instructed to tell the GCC that Bush's decision was "in part, based on input from you."⁴⁵

The Global Climate Science Communications Plan, a 1998 memo developed by the American Petroleum Institute and its members, made clear the industry's well-coordinated plans to sow doubt about climate science and obstruct climate action. The memo states that "victory will be achieved when average citizens understand uncertainties in climate science" and when "[t]hose promoting the Kyoto treaty on the basis of extant science appear to be out of touch with reality... . Unless 'climate change' becomes a non-issue, meaning that the Kyoto proposal is

41 Chris McGreal, *Big Oil and Gas Kept a Dirty Secret for Decades. Now They May Pay the Price*, [theguardian.com](https://www.theguardian.com/environment/2021/jun/30/climate-crimes-oil-and-gas-environment), THE GUARDIAN (June 30, 2021), <https://www.theguardian.com/environment/2021/jun/30/climate-crimes-oil-and-gas-environment>; Phoebe Keane, *How the Oil Industry Made Us Doubt Climate Change*, [bbc.com](https://www.bbc.com/news/stories-53640382), BBC NEWS (Sept. 20, 2020), <https://www.bbc.com/news/stories-53640382>.

42 Karen Savage & Mat Hope, *Global Climate Coalition: Documents Show How a Fossil Fuel Lobby Group Manipulated UN Climate Negotiations*, [climatedocket.com](https://www.climatedocket.com/2019/04/25/global-climate-coalition-gcc-un-climate-change-ipcc/), THE CLIMATE DOCKET (Apr. 25, 2019), <https://www.climatedocket.com/2019/04/25/global-climate-coalition-gcc-un-climate-change-ipcc/>.

43 Benjamin Franta, *Weaponizing Economics: Big Oil, Economic Consultants, and Climate Policy Delay*, ENV'T POL., Aug. 25, 2021, at 4, <https://doi.org/10.1080/09644016.2021.1947636>.

44 Savage & Hope, *supra* note 42.

45 Memorandum from Ken Brill, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, to Paula Dobriansky, Under Secretary of State for Global Affairs (Jun. 20, 2001), <https://www.documentcloud.org/documents/4407192-Global-Climate-Coalition-Meeting-2001.html#document/p3/a420404>.

defeated and there are no further initiatives to thwart the threat of climate change, there may be no moment when we can declare victory for our efforts.”⁴⁶

Faced with overwhelming evidence that its products are causing a global catastrophe, the fossil fuel industry has been forced to evolve its out-and-out climate denial. However, oil and gas companies continue to funnel their immense resources into an evolving and highly sophisticated disinformation and greenwashing campaign designed to shift responsibility for action away from themselves and keep the fossil fuel industry’s business model alive for as long as possible.

Harvard researchers Naomi Oreskes and Geoffrey Supran published a 2021 analysis of more than a hundred internal and external ExxonMobil documents showing that the company continues to manipulate the public’s understanding of climate change and prevent collective action to address the crisis.⁴⁷ Since then, Exxon’s now-former federal lobbyist Keith McCoy was caught on tape exposing the company’s efforts to derail policy to address climate change.⁴⁸ Executives from ExxonMobil, Shell, Chevron, BP America, the American Petroleum Institute, and the U.S. Chamber of Commerce testified before the House Committee on Oversight and Reform, where they doubled down on their deception and defended their companies’ legacies of climate denial,⁴⁹ and the fossil fuel industry flooded the 2021 UN Climate Change Conference (COP26) in Glasgow with 503 lobbyists—more representatives than any individual country.⁵⁰

46 *Global Climate Science Communications Action Plan*, AM. PETROLEUM INST. (Apr. 3, 1998), <https://s3.documentcloud.org/documents/2840903/1998-API-Global-Climate-Science-Communications.pdf>.

47 Geoffrey Supran & Naomi Oreskes, *Rhetoric and Frame Analysis of ExxonMobil’s Climate Change Communications*, 4 ONE EARTH 696, 697–712 (2021), <https://doi.org/10.1016/j.oneear.2021.04.014>.

48 Jeff Brady, *Exxon Lobbyist Caught on Video Talking About Undermining Biden’s Climate Push*, [npr.org](https://www.npr.org/2021/07/01/1012138741/exxon-lobbyist-caught-on-video-talks-about-undermining-bidens-climate-push), NPR (July 1, 2021, 11:37 AM), <https://www.npr.org/2021/07/01/1012138741/exxon-lobbyist-caught-on-video-talks-about-undermining-bidens-climate-push>; Corbin Hiar, *Exxon Splits with Lobbyist Who Divulged Climate Strategy*, [eenews.net](https://www.eenews.net/articles/exxon-splits-with-lobbyist-who-divulged-climate-strategy/), E&E NEWS (Sept. 28, 2021, 7:00 AM), <https://www.eenews.net/articles/exxon-splits-with-lobbyist-who-divulged-climate-strategy/>.

49 Josh Lederman, *Big Oil CEOs Deny Lying to the Public About Climate Change*, [nbcnews.com](https://www.nbcnews.com/business/business-news/big-oil-ceos-deny-lying-public-climate-change-rcna4033), NBC (Oct. 28, 2021, 2:28 PM), <https://www.nbcnews.com/business/business-news/big-oil-ceos-deny-lying-public-climate-change-rcna4033>; Corbin Hiar & Nick Sobczyk, *Dems, Oil Execs Clash at Hearing: ‘They Are Obviously Lying.’*, [eenews.net](https://www.eenews.net/articles/dems-oil-execs-clash-at-hearing-theyre-obviously-lying/), E&E NEWS (Oct. 28, 2021), <https://www.eenews.net/articles/dems-oil-execs-clash-at-hearing-theyre-obviously-lying/>; Jamie Henn, *Big Oil CEOs Just Lied Before Congress. It’s time they’re held accountable*, [theguardian.com](https://www.theguardian.com/commentisfree/2021/oct/29/big-oil-ceos-just-lied-before-congress-its-time-theyre-held-accountable), THE GUARDIAN (Oct. 29, 2021), <https://www.theguardian.com/commentisfree/2021/oct/29/big-oil-ceos-just-lied-before-congress-its-time-theyre-held-accountable>.

50 *Hundreds of Fossil Fuel Lobbyists Flooding COP26 Climate Talks*, [globalwitness.org](https://www.globalwitness.org/en/press-releases/hundreds-fossil-fuel-lobbyists-flooding-cop26-climate-talks/), GLOBAL WITNESS (Nov. 8, 2021), <https://www.globalwitness.org/en/press-releases/hundreds-fossil-fuel-lobbyists-flooding-cop26-climate-talks/>.

The effort to thwart climate action has, in large part, been driven by the U.S. Chamber of Commerce. Citing a 2017 study from InfluenceMap, the 2020 U.S. Senate report named the Chamber as one of the “the two most influential opponents of climate action,” along with the National Association of Manufacturers.⁵¹

“The Chamber is by far the largest lobbyist in Washington, having spent more than \$1.6 billion lobbying the federal government over the last two decades. That is almost three times more than the next largest spender,” the report reads. “The Chamber has also been one of the largest dark money spenders on congressional races, having spent almost \$150 million since *Citizens United*. Almost all was spent on candidates opposed to climate action. Many of its ads attacked candidates for supporting good climate policies.”⁵²

InfluenceMap’s analysis regards the outsized influence of the Chamber, the American Legislative Exchange Council and the National Association of Manufacturers as “highly obstructive to the development of international, Federal and US state level climate policy over the last few years.” In 2022, Influence Map published an updated briefing that summarizes the various ways the Chamber continues to lobby against climate policy—including fighting climate provisions in the Build Back Better Act, submitting criticism of an EPA proposal to regulate methane emissions from oil and gas operations, and advocating for increased oil and gas production in the U.S.⁵³

While the Chamber claims to have evolved in its positions on climate change and states that inaction on climate change is “not an option,” the group is still fighting hard against climate policy.⁵⁴ Its activities continue to such a degree that following its October hearing, the U.S.

51 SENATE DEMOCRATS’ SPECIAL COMM. ON THE CLIMATE CRISIS, THE CASE FOR CLIMATE ACTION: BUILDING A CLEAN ECONOMY FOR THE AMERICAN PEOPLE, 208 (2020), https://www.schatz.senate.gov/imo/media/doc/SCCC_Climate_Crisis_Report.pdf.

52 *Id.* at 210.

53 *Trade Associations and Their Climate Policy Footprint*, influencemap.org, INFLUENCEMAP (Dec. 2017), <https://influencemap.org/report/Trade-Associations-and-their-Climate-Policy-Footprint-067f4e745c9920eb3dfaa5b637511634>; *The U.S. Chamber of Commerce and Climate Policy*, influencemap.org, INFLUENCEMAP (Mar. 2022), <https://influencemap.org/report/The-US-Chamber-of-Commerce-and-its-Corporate-Members-on-Climate-17631>.

54 *The Chamber and Climate 2019–2020: The US Chamber of Commerce’s Fossil Fuel Advocacy in 2019–20*, CHANGE THE CHAMBER*LOBBY FOR CLIMATE, <https://drive.google.com/file/d/1vopnWHRRekDcqc8yEqAQi8TnoXubs-abK/view>.

Chamber was subpoenaed by the House Oversight and Reform Committee for internal documents to be used in an ongoing investigation into climate disinformation.⁵⁵

THE ROLE OF LITIGATION IN ADDRESSING CLIMATE CHANGE

The fossil fuel industry's strategy of deception, denial, and obstruction left the United States as the only industrialized nation with no meaningful climate policies.

As a result, many communities lack the resources to adapt to and prepare for the dangerous climate impacts they now face.⁵⁶

Without help, municipalities face limited revenue options—and may even be forced to cut existing public services, raise taxes, and/or relocate entire neighborhoods as climate-driven threats and their associated costs continue to rise.

Following the path taken to hold the tobacco and opioid industries liable for their harms, in 2017, municipalities began filing lawsuits against major fossil fuel companies seeking

55 Nick Sobczyk, *House Oversight Subpoenas Big Oil*, [eenews.net](https://www.eenews.net), E&E NEWS (Nov. 2, 2021, 4:47 PM), <https://www.eenews.net/articles/house-oversight-subpoenas-big-oil/>.

56 Governments, research institutions, and public interest organizations like ours have begun accounting for the costs of climate change, with staggering results: [A 2019 Center for Climate Integrity study](https://www.climatecosts2040.org/files/ClimateCosts2040_Report.pdf) found that coastal communities across the country could collectively spend more than \$400 billion on sea wall and coastal barrier construction to protect against chronic flooding from sea level rise by 2040. Sverre LeRoy & Richard Wiles, *High Tide Tax: The Price to Protect Coastal Communities from Rising Seas*, [climatecosts2040.org](https://www.climatecosts2040.org). THE CTR. FOR CLIMATE INTEGRITY (June 2019), https://www.climatecosts2040.org/files/ClimateCosts2040_Report.pdf. Another 2021 CCI study [found](https://coolingcrisis.org/uploads/media/HotterDaysHigherCosts-CCI-September2021.pdf) that by 2025, as the number of dangerously hot days surge, public schools across the United States will spend at least \$40 billion to install or upgrade air conditioning systems. Sverre LeRoy, Megan Matthews & Richard Wiles, *Hotter Days, Higher Costs: The Cooling Crisis in America's Classrooms*, coolingcrisis.org, THE CTR. FOR CLIMATE INTEGRITY (Sept. 2021), <https://coolingcrisis.org/uploads/media/HotterDaysHigherCosts-CCI-September2021.pdf>. The United States experienced [22 separate billion-dollar disasters in 2020](https://www.noaa.gov), according to the National Oceanic and Atmospheric Administration. *Record Number of Billion-Dollar Disasters Struck U.S. in 2020*, [noaa.gov](https://www.noaa.gov), NAT'L OCEANIC & ATMOSPHERIC ADMIN. (Jan. 8, 2021), <https://www.noaa.gov/stories/record-number-of-billion-dollar-disasters-struck-us-in-2020>.

That same year, wildfires across the state of California cost [at least \\$10 billion](https://abc7news.com/california-wildfires-cost-of-cal-fire-stanford-wildfire-research/6897462/) in property damage alone. David Louie, *Damage from California's Wildfires Estimated at \$10 Billion, Experts Say*, ABC7 NEWS (Oct. 9, 2020), <https://abc7news.com/california-wildfires-cost-of-cal-fire-stanford-wildfire-research/6897462/>.

Municipal governments are already spending millions, if not billions, of dollars to protect residents from more frequent and severe climate impacts. In New Jersey, the state's chief resilience officer [warned](https://www.njspotlightnews.org/2021/01/climate-change-planning-need-transfer-risk-local-municipalities-flood-prone-coastal-retreat-costs-criticism/) municipal governments that they could not rely on state and federal governments to fund projects to address local climate impacts and would need to begin planning their budgets accordingly. Jon Hurdle, *NJ Municipalities Warned They Will Need to Take a Bigger Role in Climate Planning*, NJ SPOTLIGHT NEWS (Jan. 22, 2021), <https://www.njspotlightnews.org/2021/01/climate-change-planning-need-transfer-risk-local-municipalities-flood-prone-coastal-retreat-costs-criticism/>.

The result is an insurmountable financial challenge for communities across the country, as local governments and taxpayers have to foot the bill for climate adaptation, recovery, and resilience almost entirely on their own.

to recover the increasing costs of adapting to and recovering from the climate damages those companies knowingly caused. These lawsuits also seek to hold the fossil fuel industry accountable for deceiving consumers, lawmakers, media, and the public in order to prevent action to address the problem.⁵⁷

To date, 20 municipalities, six states (Connecticut, Delaware, Massachusetts, Minnesota, Rhode Island, and Vermont), the District of Columbia, and the Pacific Coast Federation of Fishermen’s Associations have filed lawsuits in state court, seeking to hold fossil fuel companies accountable.⁵⁸ The evidence cited in climate accountability lawsuits includes the hundreds of documents collected by journalists, academics, and whistleblowers exposing the oil and gas industry’s long-standing knowledge that burning fossil fuels would have devastating consequences for people and the planet and its subsequent acts of fraud and deception. The leading legal theories under which climate liability suits have been filed—common law torts, product liability, and consumer protection—are outlined below.

57 In July 2017, Imperial Beach, California, became one of the first municipalities in the country to file a lawsuit against oil and gas companies to make them pay their fair share of those costs. Speaking in 2020, Imperial Beach Mayor Serge Dedina drew a direct line between climate costs and his city’s ability to provide basic services for residents, stating: “[Imperial Beach is] a city without a parks and rec department. A city where last year when we had coastal flooding, and the federal government was closed... We actually had to clean up the flooding that happened on federal property and pay for it because they couldn’t do it, they were shut down. And that was the money I would have spent on a parks and rec program, that we could no longer pay for because we had to bail out the federal government.” CHESAPEAKE CLIMATE ACTION NETWORK, *The Fight for Polluter Accountability: Congress and Climate Litigation*, YouTube (Sept. 23, 2020), <https://www.youtube.com/watch?v=WkZ5gouMx8o>.

Charleston, South Carolina, which filed a cost recovery and climate fraud (consumer protection) lawsuit in September 2020 against 24 major fossil fuel companies, will spend at least \$2 billion to defend against disastrous storm surge and more frequent “sunny day” flooding. It is also bracing for significant losses in jobs and revenue from its tourism and aquaculture economies and will need to invest in cooling centers to protect residents from increasingly extreme heat. Oliver Milman, *Charleston Aims to Force Fossil Fuel Companies to Pay \$2bn to Combat Climate Crisis*, [theguardian.com](https://www.theguardian.com), THE GUARDIAN (Sept. 20, 2020), <https://www.theguardian.com/us-news/2020/sep/20/charleston-force-fossil-fuel-companies-pay-2bn-combat-climate-crisis>.

When Hurricane Sandy hit the U.S. Eastern Seaboard in 2012, Hoboken, New Jersey, suffered \$100 million in damages. *Hoboken’s Post-Sandy Resilience: Learning from the Past, Rebuilding the Future*, [ucsusa.org](https://www.ucsusa.org), CTR. FOR SCIENCE & DEMOCRACY AT THE UNION OF CONCERNED SCIENTISTS (Jan. 22, 2014), <https://www.ucsusa.org/resources/post-sandy-resilience-hoboken-new-jersey>. Today, according to Mayor Ravinder Bhalla, the city has already invested a quarter-billion dollars in a comprehensive water management system designed to keep communities from flooding, especially during increasing extreme weather events — and will no doubt have to spend billions more to prevent future damages. Chris Fry, *Hoboken Chooses “Meadow Concept” for Rebuild by Design Park*, [jerseydigs.com](https://www.jerseydigs.com), JERSEY DIGS (Oct. 30, 2020), <https://jerseydigs.com/hoboken-chooses-meadow-concept-for-rebuild-by-design-park/>.

In September of 2020, Hoboken filed its own cost recovery and climate fraud lawsuit against ExxonMobil, the American Petroleum Institute, and other major fossil fuel companies. *Hoboken Becomes First NJ City to Sue Big Oil Companies, American Petroleum Institute for Climate Change Damages*, [hobokennj.gov](https://www.hobokennj.gov), HOBOKEN (Sept. 2, 2020), <https://www.hobokennj.gov/news/hoboken-sues-exxon-mobil-american-petroleum-institute-big-oil-companies#:~:text=Hoboken%20Mayor%20Ravi%20S...its%20devastating%20impact%20on%20Hoboken>.

58 *Climate Liability Litigation*, payupclimatepolluters.org, THE CTR. FOR CLIMATE INTEGRITY, <https://payupclimatepolluters.org/cases>.

Common Law Torts

The polluter pays principle is the underlying basis for the torts claims of nuisance, trespass, and other common law claims alleged in several suits. This principle holds that those whose actions or products cause harm—in this case, fossil fuel products that emit the greenhouse gasses that cause climate change—should bear the costs of the damage to human health, property, and the environment.

In March 2020, for example, the city and county of Honolulu, Hawai'i, filed a lawsuit against BP, Chevron, Exxon, Shell, and other fossil fuel companies to recover the costs of the climate damages they now face, including sea level rise and flooding. Across the state of Hawai'i, these costs are projected to reach an estimated \$19 billion in lost land, beaches, roads, infrastructure, and housing by the end of the century.⁵⁹

Product Liability

Product liability includes claims for flaws and defects in a product or failure to warn consumers when a producer or manufacturer knew, or should have known, that normal use of its product would cause harm yet failed to act on that knowledge.

In 2018, Baltimore, Maryland, filed a lawsuit against 26 oil and gas companies in Maryland state court, arguing that the companies' products and deception led to a host of climate damages including flooding, heat waves, rising seas, and more frequent and intense storms.⁶⁰

Consumer Protection

“Climate fraud” lawsuits seek to hold fossil fuel companies and their trade associations liable for misleading and deceptive marketing about the role of fossil fuels in global warming.

In 2021, New York City filed a consumer protection lawsuit against ExxonMobil, Shell, BP, and the American Petroleum Institute for engaging in deceptive trade practices “about the

59 Dana Drugmand, *Honolulu Announces Lawsuit to Hold Oil Industry Accountable for Climate Damages*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (Nov. 5, 2019), <https://www.climatedocket.com/2019/11/05/honolulu-hawaii-climate-suit-oil/>; See *Estimated \$19B Damage to Hawai'i by 2100*, U.S. National Climate Assessment, [hawaii.edu](https://www.hawaii.edu), U. OF HAWAI'I NEWS (Nov. 28, 2018), <https://www.hawaii.edu/news/2018/11/28/hawaii-us-national-climate-assessment/#:~:text=In%20Hawaii%CA%Bb%2C%20the%20value%20of.more%20than%20%2419%20billion%20statewide>.

60 David Hasemyer & Nicholas Kusnetz, *Baltimore Sues 26 Fossil Fuel Companies Over Climate Change*, insideclimatenews.org, INSIDECLIMATE NEWS (July 20, 2018), <https://insideclimatenews.org/news/20072018/baltimore-climate-change-lawsuit-inner-harbor-coastal-flooding-sea-level-rise-urban-waterfront-revitalization/#:~:text=It%20claims%20that%20the%2026.to%20Baltimore%2C%20the%20lawsuit%20says>.

central role their products play in causing the climate crisis,” in violation of the city’s consumer protection law. The lawsuit alleges that the companies misrepresented their commitment to climate solutions to consumers while actively lobbying to block climate action.⁶¹

In 2021, Massachusetts’ consumer fraud lawsuit, filed against ExxonMobil in 2019, became the first climate liability lawsuit to survive a motion to dismiss.⁶²

Several municipalities’ complaints have detailed how their communities of color and low-income communities are most exposed to the impacts of climate change, yet have least access to the federal aid and resources necessary to repair climate damages and fund the resilience and adaptation projects necessary to prevent further harm.⁶³ In 2020, the Hoboken City Council unanimously passed a resolution directing any monies recovered from the city’s climate liability lawsuit first toward resiliency efforts at its public housing development, the Hoboken Housing Authority, whose residents suffered millions of dollars in damages as a result of Hurricane Sandy and who continue to be most impacted by flooding and severe weather events.⁶⁴

BIG OIL STRIKES BACK

The oil and gas industry continues to search for new ways to immunize itself from accountability in court. Roberta Walburn, an attorney who was part of the legal team that represented Minnesota in its groundbreaking tobacco case, noted the striking similarities in the tobacco and fossil fuel companies’ response to the threat of liability litigation.⁶⁵

61 *New York City Sues ExxonMobil, Shell, BP, and The American Petroleum Institute for Systemically and Intentionally Deceiving New Yorkers*, [nyc.gov](https://www1.nyc.gov/office-of-the-mayor/news/293-21/new-york-city-sues-exxonmobil-shell-bp-the-american-petroleum-institute-systematically), OFF. OF THE MAYOR OF THE CITY OF N.Y. (Apr 22, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/293-21/new-york-city-sues-exxonmobil-shell-bp-the-american-petroleum-institute-systematically>.

62 Press Release, [mass.gov](https://www.mass.gov/news/ag-healey-issues-statement-in-response-to-court-rulings-denying-exxon-motions-to-dismiss-offices-lawsuit), OFF. OF ATT’Y GEN. MAURA HEALEY, AG Healey Issues Statement in Response to Court Rulings Denying Exxon’s Motions to Dismiss Office’s Lawsuit (June 24, 2021), <https://www.mass.gov/news/ag-healey-issues-statement-in-response-to-court-rulings-denying-exxon-motions-to-dismiss-offices-lawsuit>.

63 Rebecca Hersher & Ryan Kellman, *Why FEMA Aid Is Unavailable to Many Who Need It the Most*, [npr.org](https://www.npr.org/2021/06/29/1004347023/why-fema-aid-is-unavailable-to-many-who-need-it-the-most), NPR (June 29, 2021, 5:01 AM), <https://www.npr.org/2021/06/29/1004347023/why-fema-aid-is-unavailable-to-many-who-need-it-the-most>; Christopher Flavelle, *Why Does Disaster Aid Often Favor White People?*, [nytimes.com](https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html?smid=tw-share), N.Y. TIMES (June 7, 2021), <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html?smid=tw-share>.

64 *Minutes for Meeting of September 2, 2020*, hobokennj.ig2.com, THE COUNCIL OF THE CITY OF HOBOKEN, <http://hobokennj.ig2.com/Citizens/FileOpen.aspx?Type=12&ID=1546&Inline=True>.

65 Roberta B. Walburn, [ciresiconlin.com](http://www.ciresiconlin.com), CIRESI CONLIN LLP, <http://www.ciresiconlin.com/team/roberta-walburn/> (last visited Apr. 20, 2022); Dana Drugmand, *Minnesota AG: Climate Liability Recalls State’s Fight Against Tobacco Industry*, [climatedocket.com](https://www.climatedocket.com/2019/10/16/minnesota-attorney-general-keith-elliison-climate/), THE CLIMATE DOCKET (Oct. 16, 2019), <https://www.climatedocket.com/2019/10/16/minnesota-attorney-general-keith-elliison-climate/>.

“I think we’re seeing in the climate change litigation the fossil fuel players using the same playbook as the tobacco companies did,” Walburn told The Climate Docket. “They’re using some of the same players, hiring a payroll of researchers to create doubt about the science, using trade groups to do the same thing.”⁶⁶

The oil and gas industry and its allies have assailed these lawsuits publicly with a familiar messaging refrain: climate change is a global problem that cannot be addressed by the courts, fossil fuel companies and others should be trusted to tackle climate change through “innovation,” and the fault for climate change lies with everyone who uses fossil fuels, not the companies that produce them.⁶⁷ These arguments deliberately misconstrue the purpose of climate liability litigation and echo talking points used by the tobacco and firearms industries to try to shift blame and responsibility to the victims of their deception.⁶⁸ That’s no coincidence: in many cases, some of the very same people and organizations are behind the defense of these same industries.

Section III: The Players

In response to this recent wave of litigation, the Chamber released “Municipality Litigation: A Continuing Threat”—an update to its initial report, this time focusing specifically on preventing more states and communities from filing climate accountability lawsuits. This attack is just the latest in an extensive effort, led by a network of front groups with deep ties to industry, to cutoff municipalities’ access to the courts.

66 Drugmand, *supra* note 62.

67 Fossil fuel industry allies and front groups recycle these same talking points, using similar language, in op-eds and statements to discredit climate liability litigation. Below are just a few examples:

[Climate change can't be solved in court](#)

[Address climate change through congressional action, not lawsuits](#)

[Government Officials Should Prioritize Climate Solutions, Not Climate Lawsuits](#)

Tom Stebbins, *Climate Change Can't be Solved in Court*, [nydailynews.com](https://www.nydailynews.com/opinion/ny-oped-climate-change-cant-be-solved-in-court-20210407-khdrbugohvfb7p6c2tvpbowah4-story.html), N.Y. DAILY NEWS (Apr. 7, 2021), <https://www.nydailynews.com/opinion/ny-oped-climate-change-cant-be-solved-in-court-20210407-khdrbugohvfb7p6c2tvpbowah4-story.html>; Bernard L. Weinstein, *Address Climate Change Through Congressional Action, Not Lawsuits*, [thehill.com](https://thehill.com/opinion/energy-environment/560547-address-climate-change-through-congressional-action-not-lawsuits/), THE HILL (June 29, 2021, 7:00 AM), <https://thehill.com/opinion/energy-environment/560547-address-climate-change-through-congressional-action-not-lawsuits/>; Jeffrey Kupfer, *Government Officials Should Prioritize Climate Solutions, Not Climate Lawsuits*, [realclearenergy.org](https://www.realclearenergy.org/articles/2021/11/16/government_officials_should_prioritize_climate_solutions_not_climate_lawsuits_803787.html), REALCLEAR ENERGY (Nov. 16, 2021), https://www.realclearenergy.org/articles/2021/11/16/government_officials_should_prioritize_climate_solutions_not_climate_lawsuits_803787.html.

68 Geoffrey Supran & Naomi Oreskes, *Rhetoric and Frame Analysis of ExxonMobil's Climate Change Communications*, 4 ONE EARTH 696, 697-712 (2021), <https://www.sciencedirect.com/science/article/pii/S2590332221002335>.

The U.S. Chamber of Commerce, the National Association of Manufacturers, and the American Legislative Exchange Council are at the helm, orchestrating the fossil fuel industry's assault on climate accountability lawsuits. Their playbook was honed while protecting Big Tobacco from liability and has subsequently been used to ward off legal threats to countless other industries—guns, pharmaceuticals, asbestos, lead paint, and now oil and gas.

The Chamber, NAM, ALEC, and a network of right-wing think tanks are part of a large web of organizations that also includes smaller, hard-to-track, dark money-funded groups with names that suggest high ideals or grassroots support, such as the Texas Public Policy Foundation, Texans for Legal Reform, the American Tort Reform Association (ATRA), and the Civil Justice Reform Group.⁶⁹

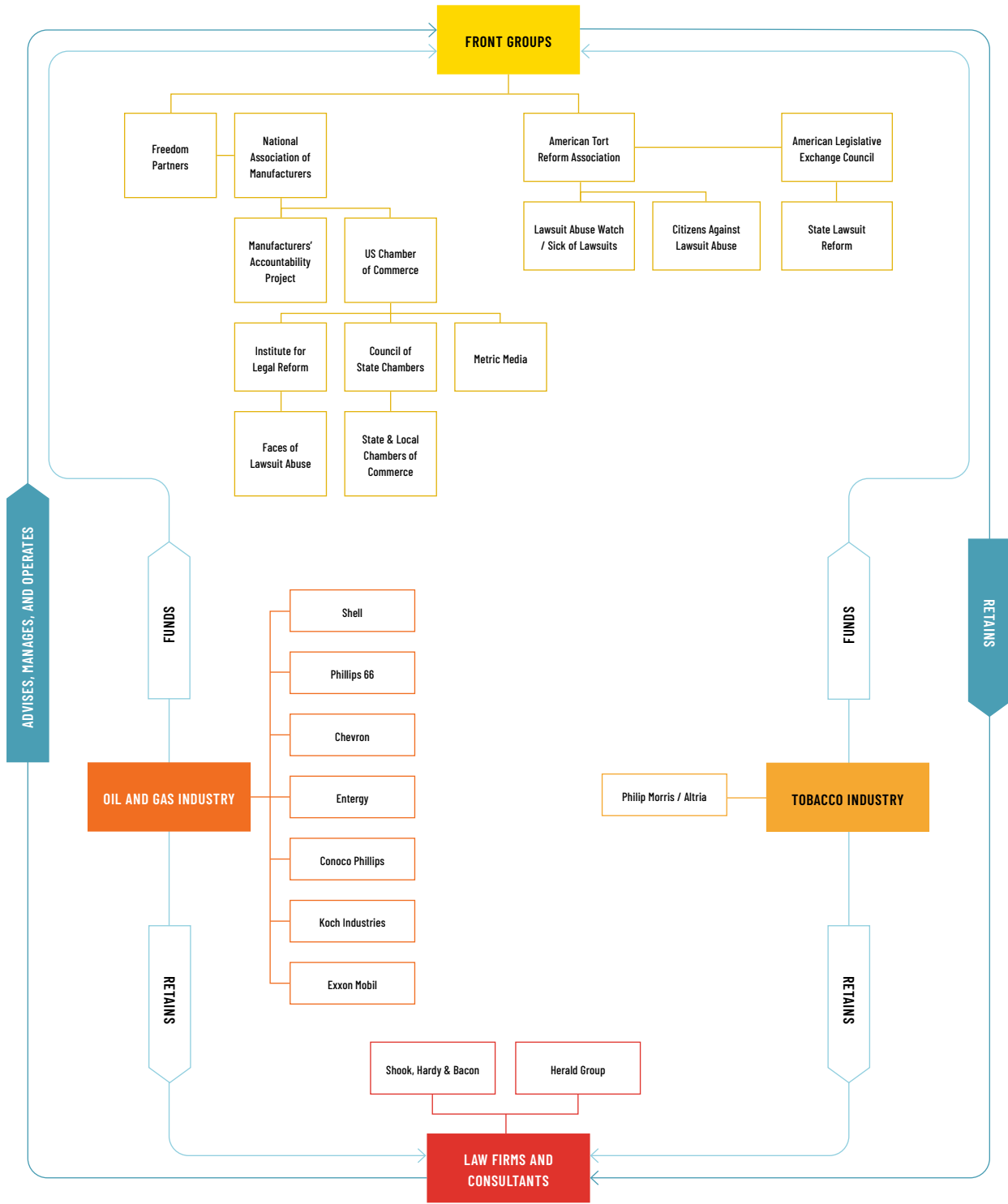
Each group's role has been refined through decades of cooperation to restrict access to the courts and warp the justice system in favor of corporate interests. Sitting at the top of this pyramid, the Chamber leads and coordinates many of the efforts to undercut municipal litigation to hold corporations accountable. The fossil fuel industry relies on ALEC to provide the legislative proposals that states can use as templates to preempt municipal litigation, and turns to NAM for smear campaigns directed at public interest organizations and elected officials who stand in their way.⁷⁰

Collectively, the Chamber, NAM, and ALEC have executed a multi-decade, sophisticated assault on public health and safety, typically disguised as efforts to protect the economy, free enterprise, and manufacturing jobs.

69 Our Mission, [tortreform.com](https://www.tortreform.com), TEXANS FOR LAWSUIT REFORM, <https://www.tortreform.com/our-mission/>; ATRA at a Glance, AMERICAN TORT REFORM ASS'N, <https://www.atra.org/>; Civil Justice Reform Group: Tax Filings by Year, NONPROFIT EXPLORER, <https://projects.propublica.org/nonprofits/organizations/800154271> (last visited Apr. 22, 2022).

70 Mike McIntire, *Conservative Nonprofit Acts as a Stealth Business Lobbyist*, N.Y. TIMES, <https://www.nytimes.com/2012/04/22/us/alec-a-tax-exempt-group-mixes-legislators-and-lobbyists.html>; Karen Savage, *Battling for Big Oil: Manufacturing Group Leads Assault on Climate Suits*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (Feb. 26, 2019), <https://www.climatedocket.com/2019/02/26/national-association-manufacturers-oil-climate-liability/>.

FIGURE 3: INDUSTRY FRONT GROUPS SHIELDED BIG TOBACCO, AND NOW BIG OIL, FROM LAWSUITS—USING THE EXACT SAME PLAYBOOK.



U.S. CHAMBER OF COMMERCE AND THE INSTITUTE FOR LEGAL REFORM

The U.S. Chamber of Commerce bills itself as the champion and advocate of American businesses. Founded by NAM as the National Council of Commerce in 1912, its mission is grounded in the principle that free market enterprise is an unfailing force for good in American life. In reality, its lobbying promotes, above all else, the profit-driven interests of large corporations, including unequivocal support for the fossil fuel industry.

The Chamber has long been a powerful partner in the fossil fuel industry's campaigns to promote climate disinformation and denial and obstruct climate action at the federal level. According to research from Brown University, the Chamber has known about the link between fossil fuels and climate change since at least 1989—science that the group was publicly denying by 1991.⁷¹

That same report found that during the crucial period when the United States perhaps had its best shot at taking meaningful action to curb climate change—between the introduction of the Kyoto Protocol in 1997 and the failure of Congress to pass climate legislation in 2009—the Chamber launched messaging and lobbying campaigns to encourage skepticism about climate science and promote the idea that climate action would hurt jobs and the economy. These campaigns were in part driven by the Global Climate Coalition, an industry front group of which the Chamber was a member and consistently served on its board of directors.

The Chamber's effort to thwart climate action continues to this day. Most recently, the Chamber threatened to pull its support from lawmakers who back climate policy—much of which was moved from President Biden's 2021 infrastructure package to a separate reconciliation bill. The Chamber has vowed to “do everything [they] can to prevent this tax raising, job killing reconciliation bill from becoming law.”⁷² In early 2022, Sen. Joe Manchin of West Virginia, whose vote would be crucial to the bill's passage, said unequivocally that the proposal was “dead.”⁷³

71 Cole Triedman, *Chamber of Obstruction: The U.S. Chamber of Commerce's Shifting Discourses on Climate Change, 1989–2009*, [climatedevlab.brown.edu](http://www.climatedevlab.brown.edu), BROWN U. CLIMATE & DEV. LAB (June 29, 2021), http://www.climatedevlab.brown.edu/uploads/2/8/4/0/28401609/chamber_of_obstruction_report.pdf.

72 Meagan Flynn, *Rep. Elaine Luria, Endorsed by U.S. Chamber of Commerce, Now Targeted by Its Ad Campaign*, [washingtonpost.com](https://www.washingtonpost.com/dc-md-va/2021/09/24/luria-spanberger-chamber-of-commerce/), WASH. POST (Sept. 24, 2021, 6:02 PM), <https://www.washingtonpost.com/dc-md-va/2021/09/24/luria-spanberger-chamber-of-commerce/>; Oliver Milman, *Apple and Disney Among Companies Backing Groups Against US Climate Bill*, [theguardian.com](https://www.theguardian.com), THE GUARDIAN (Oct. 1, 2021), <https://www.theguardian.com/us-news/2021/oct/01/apple-amazon-microsoft-disney-lobby-groups-climate-bill-analysis>.

73 See Clare Foran, Manu Raju & Ted Barrett, *Manchin Delivers Grim News for Biden's Build Back Better Plan: 'It's Dead,'* [cnn.com](https://www.cnn.com), CNN, <https://www.cnn.com/2022/02/01/politics/manchin-build-back-better-dead/index.html> (Feb. 2, 2022, 10:14 AM).

As of the writing of this report, Sen. Manchin has received more campaign contributions for the 2022 campaign cycle from the coal mining, oil and gas, natural gas transmission and distribution, and tobacco industry than any other sitting U.S. senator.⁷⁴

The Chamber continues to give extreme climate denial a prominent platform. During a 2021 Chamber of Commerce Energy Summit in East Texas, U.S. Senator John Cornyn told an enthusiastic audience that those concerned about climate change and demanding action were part of a “cult” and that climate change “is part of the ...religion, of renewable energy.”⁷⁵

The Chamber’s members and funding are largely undisclosed, and the sum total of its donations from fossil fuel companies remains unknown. However, several representatives from Chevron, ConocoPhillips, Shell, Entergy, and other major fossil fuel corporations sit on the Chamber’s board of directors.⁷⁶

The Chamber has filed amicus briefs in support of fossil fuel companies, typically mischaracterizing climate liability lawsuits as attempts to regulate the industry and control emissions.⁷⁷ The Chamber also uses a network of “local media” outlets run by its Institute for Legal Reform and managed by Metric Media to promote that spin.⁷⁸ Such outlets include *Legal Newsline*, *Cook County Record*, *Louisiana Record*, *Madison–St. Clair Record*, *Northern California Record*, *Pennsylvania Record*, *Southeast Texas Record*, *Southern California Record*, *St. Louis Record*, *West Virginia Record*, and *Florida Record*.

The Chamber’s Institute for Legal Reform is the leading organization advocating to restrict or limit municipalities from bringing lawsuits against corporate interests. As described by the Chamber, the ILR is the “champion [of] a fair legal system that promotes economic growth”—

74 Joe Manchin: *Top Industries 2017–2022*, [opensecrets.org](https://www.opensecrets.org), OPEN SECRETS, <https://www.opensecrets.org/members-of-congress/joe-manchin/industries?cid=N00032838&cycle=2022&type=I> (last visited Apr. 20, 2022).

75 Raga Justin, *Texas Sen. John Cornyn Calls Climate Change Advocacy a ‘Cult,’* THE DALLAS MORNING NEWS (June 4, 2021, 5:09 PM), <https://www.dallasnews.com/news/politics/2021/06/04/texas-sen-john-cornyn-calls-climate-change-advocacy-a-cult/>.

76 U.S. Chamber Board of Directors, U.S. CHAMBER OF COM., <https://www.uschamber.com/about/board-of-directors>.

77 See Ben Geman, *Powerful Lobbying Groups Push Back on Climate Suits*, AXIOS (Nov. 25, 2020), <https://www.axios.com/lobbying-groups-amicus-briefs-scotus-climate-316b2389-6f96-4cd1-8c26-5d10341dd7de.html>.

78 Priyanjana Bengani, *Hundreds of ‘Pink Slime’ Local News Outlets are Distributing Algorithmic Stories and Conservative Talking Points*, COLUMBIA JOURNALISM REVIEW (Dec. 18, 2019), https://www.cjr.org/tow_center_reports/hundreds-of-pink-slime-local-news-outlets-are-distributing-algorithmic-stories-conservative-talking-points.php.

its priorities include reforming rules governing class action lawsuits, eliminating fraud claims in asbestos litigation, and fighting the expansion of third-party litigation funding, particularly in support of municipalities bringing lawsuits.⁷⁹ ILR uses public relations to promote its “tort reform” agenda and backs corporate-friendly state attorneys general and judges, while funding attack ads against those who seek to hold the Chamber’s member companies accountable in court.⁸⁰ It also employs its many state and local affiliates to promote its priorities.

As described earlier, the ILR published its roadmap to preempting municipal litigation that has been used by corporations, trade associations, and front groups to push state legislation that would make it more difficult, if not impossible, for communities to hold them liable for their dangerous products.

ALEC

The American Legislative Exchange Council, founded in 1973, calls itself the largest voluntary organization of state legislators in the country, “dedicated to the principles of limited government, free markets and federalism.”⁸¹ In practice, ALEC is primarily dedicated to fulfilling the wishes of its wealthy corporate donors, serving as the legislative arm of industry efforts to avoid both legal and regulatory accountability.

ALEC has aggressively backed preemption legislation that shields industry from liability, from supporting laws shielding the tobacco and gun industries from litigation to writing model bills making it nearly impossible to hold asbestos companies liable for the harms they knowingly caused.⁸² During the height of the COVID-19 pandemic, ALEC wrote a model bill to limit civil liability for corporations after a declared disaster or public emergency, provided the company

79 Institute for Legal Reform, [uschamber.com](https://www.uschamber.com), U.S. CHAMBER OF COM., <https://www.uschamber.com/program/institute-for-legal-reform>.

80 Joanne Doroshow, *The Secret Chamber of Commerce and Its ‘Tort Reform’ Mission*, HUFFPOST (Mar. 18, 2010, 5:12 AM), https://www.huffpost.com/entry/the-secret-chamber-of-com_b_337634.

81 About ALEC, AM. LEGIS. EXCH. COUNCIL, <https://www.alec.org/about/> (last visited Apr. 4, 2022).

82 Anne Landman, *ALEC and the Tobacco Industry*, [prwatch.org](https://www.prwatch.org), PR WATCH (July 15, 2011, 9:04 AM), <https://www.prwatch.org/news/2011/07/10787/alec-and-tobacco-industry>; *ALEC’s Legislative Agenda on Guns*, THE CTR. FOR MEDIA & DEMOCRACY, https://www.alecexposed.org/w/images/b/b8/Header_ALEC_on_Guns_Final_PDF.pdf; Rob O’Dell & Nick Penzenstadler, *You Elected Them to Write New Laws. They’re Letting Corporations Do it Instead*, publicintegrity.org, CTR. FOR PUB. INTEGRITY (Apr. 4, 2019), <https://publicintegrity.org/politics/state-politics/copy-paste-legislate/you-elected-them-to-write-new-laws-theyre-letting-corporations-do-it-instead/>.

“complied with or made a good faith effort to comply with federal, state, or local regulations...”⁸³
The bill would effectively prohibit municipalities that have declared climate emergencies from filing climate liability litigation; at least 98 communities have already made such a declaration.⁸⁴

ALEC also has a dedicated effort to push for tort reform. Its State Lawsuit Reform agenda includes limiting corporate liability and governments’ ability to contract with outside counsel.⁸⁵

ALEC’s membership structure is unique. Along with legislators, corporations are also ALEC members, sit on ALEC task forces, and vote to approve “model” bills. ALEC does not disclose its members or funding sources. A 2021 report by the Center for Media and Democracy traced the majority of ALEC’s donations to large conservative organizations as well as corporations.⁸⁶

Exxon has reportedly given more than \$1.5 million to back ALEC’s legislative lobbying since 1998 , and its executives sat on the same leadership council at ALEC as Altria—the tobacco company formerly known as Phillip Morris.⁸⁷ ALEC also relies on deep financial and lobbying support from the Koch network, whose hardline, anti-regulatory agenda and investments in fossil fuels have driven much of the organization’s efforts.⁸⁸

ALEC hosts events that bring together legislators and corporate members to discuss and vote on model legislation, which those legislators can then bring back to their states to propose

83 *Liability Protection for Employers in a Declared Disaster or Public Emergency Act*, [alec.org](https://www.alec.org/model-policy/liability-protection-for-employers-in-a-declared-disaster-or-public-emergency-act/), AM. LEGIS. EXCH. COUNCIL, <https://www.alec.org/model-policy/liability-protection-for-employers-in-a-declared-disaster-or-public-emergency-act/>; Karen Savage, *Trade Group Floats ‘Model’ Bill to Shield Oil Industry from Climate Lawsuits*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (July 31, 2020), <https://www.climatedocket.com/2020/07/31/alec-liability-legislation-chevron-koch-climate/>.

84 Savage, *supra* note 80.

85 *State Lawsuit Reform: All Categories*, [statelawsuitreform.com](https://www.statelawsuitreform.com), AM. LEGIS. EXCH. COUNCIL, https://www.statelawsuitreform.com/factor_category/.

86 Alex Kotch, *Here’s Who Funds the Right-Wing American Legislative Exchange Council*, [exposedbycmd.org](https://www.exposedbycmd.org), CTR. FOR MEDIA & DEMOCRACY (Sept. 22, 2021, 11:08 AM), <https://www.exposedbycmd.org/2021/09/22/heres-who-funds-the-right-wing-american-legislative-exchange-council/>.

87 *ExxonMobil: Support for the American Legislative Exchange Council*, [sourcewatch.org](https://www.sourcewatch.org), SOURCEWATCH, https://www.sourcewatch.org/index.php?title=Exxon_Mobil#Support_for_the_American_Legislative_Exchange_Council (last updated Apr. 5, 2020); *Altria Group: Ties to the American Legislative Executive Council*, [sourcewatch.org](https://www.sourcewatch.org), SOURCEWATCH, https://www.sourcewatch.org/index.php?title=Altria_Group#Ties_to_the_American_Legislative_Exchange_Council; *Private Enterprise Board*, [alec.org](https://www.alec.org), AM. LEG. EXCHANGE COUNCIL (June 16, 2011), https://web.archive.org/web/20110616121920/http://www.alec.org/AM/Template.cfm?Section=Private_Enterprise_Board&Template=/CM/HTMLDisplay.cfm&ContentID=15992.

88 Lisa Graves, *ALEC Exposed: The Koch Connection*, [thenation.com](https://www.thenation.com), THE NATION (July 12, 2011), <https://www.thenation.com/article/archive/alec-exposed-koch-connection/>.

as actual bills. As reported by ALEC, more than 1,000 of these bills are introduced by legislative members every year, with one in five becoming law.⁸⁹

The group's model bills deal with a broad range of issues, including reducing regulation and taxes, creating stricter immigration laws, eliminating environmental safeguards, supporting voter suppression, weakening labor unions, fighting gun control, and, of course, tort reform. Tort reform model bills include:

- a policy limiting punitive damage awards;
- a "Litigation Accountability Act" that would impose sanctions on plaintiffs that bring legal action deemed "frivolous"; and
- a resolution opposing "regulation through litigation," a mischaracterization of liability litigation used to manipulate the public's understanding of, and shut down, litigation to hold corporations accountable for damages they knowingly caused.⁹⁰

ALEC has long supported fossil fuel interests, playing a decades-long role in the spread of climate disinformation and the obstruction of collective climate action. ALEC worked against climate change policy in a number of ways, including by challenging the Clean Power Plan, fighting state efforts to promote renewable energy, backing the Keystone XL pipeline, and working to cast doubt on climate science.⁹¹ As recently as 2014, ALEC considered developing federal legislation that would abolish the Environmental Protection Agency.⁹²

89 Yvonne Wingett Sanchez & Rob O'Dell, *What Is ALEC? 'The Most Effective Organization' for Conservatives, Says Newt Gingrich*, [usatoday.com](https://www.usatoday.com/story/news/investigations/2019/04/03/alec-american-legislative-exchange-council-model-bills-republican-conservative-devos-gingrich/3162357002/), USA TODAY, <https://www.usatoday.com/story/news/investigations/2019/04/03/alec-american-legislative-exchange-council-model-bills-republican-conservative-devos-gingrich/3162357002/> (last updated Apr. 5, 2019).

90 *Id.*, Neela Banerjee, *What's Behind ALEC's Denial That It Denies Climate Change?*, [insideclimatenews.org](https://insideclimatenews.org/news/14042015/whats-behind-alecs-denial-it-denies-climate-change/), INSIDE CLIMATE NEWS (Apr 14, 2015), <https://insideclimatenews.org/news/14042015/whats-behind-alecs-denial-it-denies-climate-change/>; Mary Bottari, *ALEC's New Union-Busting Toolkit Illustrates the Goal Is to Bankrupt Unions Not Protect Workers*, [prwatch.org](https://www.prwatch.org/news/2019/01/13438/alecs-new-union-busting-toolkit), CTR. FOR MEDIA & DEMOCRACY (Jan 22, 2019), <https://www.prwatch.org/news/2019/01/13438/alecs-new-union-busting-toolkit>; *Model Policy: Punitive Damages Standards Act*, [alec.org](https://alec.org/model-policy/punitive-damages-standards-act/), AM. LEGIS. EXCH. COUNCIL (Jan 9, 2014), <https://alec.org/model-policy/punitive-damages-standards-act/>; *Model Policy: Litigation Accountability Act*, [alec.org](https://alec.org/model-policy/litigation-accountability-act/), AM. LEGIS. EXCH. COUNCIL (Jan 28, 2013), <https://alec.org/model-policy/litigation-accountability-act/>; *Model Policy: Resolution Opposing Regulation Through Litigation*, [alec.org](https://alec.org/model-policy/resolution-opposing-regulation-through-litigation/), AM. LEGIS. EXCH. COUNCIL (Jan 20, 2018) <https://alec.org/model-policy/resolution-opposing-regulation-through-litigation/>.

91 *Clean Power Plan*, [alec.org](https://www.alec.org/tag/clean-power-plan/), AM. LEGIS. EXCH. COUNCIL, <https://www.alec.org/tag/clean-power-plan/>; The Ed. Bd., *The Koch Attack on Solar Energy*, [nytimes.com](https://www.nytimes.com/2014/04/27/opinion/sunday/the-koch-attack-on-solar-energy.html?_r=0), N.Y. TIMES (Apr. 26, 2014), http://www.nytimes.com/2014/04/27/opinion/sunday/the-koch-attack-on-solar-energy.html?_r=0; *Resolution in Support of the Keystone XL Pipeline*, [alec.org](https://www.alec.org/model-policy/resolution-in-support-of-the-keystone-xl-pipeline/), AM. LEGIS. EXCH. COUNCIL, <https://www.alec.org/model-policy/resolution-in-support-of-the-keystone-xl-pipeline/>.

92 Aliha Haq, *Polluter Group ALEC Doubles Down on Environmental Attacks; 111 Groups Send Joint Letter in Protest*, [nrdc.org](https://www.nrdc.org/experts/aliya-haq/polluter-group-alec-doubles-down-environmental-attacks-111-groups-send-joint), NRDC (Dec. 5, 2014), <https://www.nrdc.org/experts/aliya-haq/polluter-group-alec-doubles-down-environmental-attacks-111-groups-send-joint>.

When Google quit ALEC in 2014, chief executive Eric Schmidt stated that ALEC had been “literally lying” about climate change.⁹³ Microsoft, Facebook, Yahoo, and YELP left ALEC shortly thereafter, saying ALEC’s outspoken climate denial ran contrary to their stated positions on the climate. ALEC’s dishonest stance was enough to prompt BP and Shell to sever ties with the group in 2015—and in 2018, Exxon followed suit.⁹⁴

ALEC has since softened its rhetoric in response to the public exodus of its members but has not changed its policy goals nor stopped working to craft bills friendly to the fossil fuel industry. In 2021, journalist Kate Aronoff reported on the group’s new campaign to push model bills that cast policies to regulate emissions as “unfairly discriminating against fossil fuel companies.”⁹⁵

THE NATIONAL ASSOCIATION OF MANUFACTURERS

The National Association of Manufacturers is the largest manufacturing trade association in the United States, and it played a major role in founding the U.S. Chamber of Commerce. NAM does not disclose its membership list, but its board includes some of the oil and gas industry’s most powerful executives—including executives of Exxon, Shell, and ConocoPhillips.⁹⁶ The association has also received significant funding from the Koch network.⁹⁷

NAM has worked for decades to push climate denial. In 1989, NAM founded the Global Climate Coalition (GCC), a group known for its massive lobbying and PR campaigns promoting climate

93 Transcript, *A Conversation with Google Chairman Eric Schmidt*, [thedianerehmsshow.org](http://thedianerehmsshow.org/shows/2014-09-22/conversation-google-chairman-eric-schmidt), DIANE REHM SHOW, <http://thedianerehmsshow.org/shows/2014-09-22/conversation-google-chairman-eric-schmidt>.

94 Amy Westervelt, *BP Joins List of Companies Fleeing ALEC*, [theguardian.com](https://www.theguardian.com/sustainable-business/2015/mar/23/alec-bp-british-petroleum-companies-conservative-lobbyist), THE GUARDIAN (Mar. 23, 2015, 6:00 PM), <https://www.theguardian.com/sustainable-business/2015/mar/23/alec-bp-british-petroleum-companies-conservative-lobbyist>; Karl Mathiesen & Ed Pilkington, *Royal Dutch Shell Cuts Ties with ALEC Over Rightwing Group’s Climate Denial*, [theguardian.com](https://www.theguardian.com/business/2015/aug/07/royal-dutch-shell-alec-climate-change-denial), THE GUARDIAN (Aug. 7, 2015, 1:59 PM), <https://www.theguardian.com/business/2015/aug/07/royal-dutch-shell-alec-climate-change-denial>; Kyla Mandel, *Exxon Quits ALEC*, [thinkprogress.org](https://archive.thinkprogress.org/exxon-quits-alec-lobbying-group-020c0ce2dad1/), THINKPROGRESS (July 12, 2018, 3:59 PM), <https://archive.thinkprogress.org/exxon-quits-alec-lobbying-group-020c0ce2dad1/>.

95 Kate Aronoff, *Conservatives Have a New Bogyman: Critical Energy Theory*, [newrepublic.com](https://newrepublic.com/article/164641/conservatives-new-bogyman-critical-energy-theory), THE NEW REPUBLIC (Dec. 7, 2021), <https://newrepublic.com/article/164641/conservatives-new-bogyman-critical-energy-theory>.

96 NAM Board of Directors, <https://www.nam.org/about/board-of-directors/>.

97 A Maze of Money, [sourcewatch.org](https://www.sourcewatch.org/index.php?title=File:A_Maze_of_Money.png), SOURCEWATCH, https://www.sourcewatch.org/index.php?title=File:A_Maze_of_Money.png (last visited Apr. 20, 2022).

disinformation.⁹⁸ Its goal was to cloud the public’s perception of the issue and convince people that climate science was either undecided or that the issue was politically motivated, or both.

The GCC disbanded in 2002 when many of its largest corporate members could no longer deny the threat of climate change.⁹⁹

NAM, like ALEC and the Chamber, then shifted its emphasis from outright climate denial to lobbying efforts to block legal or legislative action that would effectively address climate change. The three groups were described in a 2017 InfluenceMap report as having the most negative impact on international, federal, and U.S. state-level climate policy in recent years.¹⁰⁰ When communities began taking the fossil fuel industry to court for climate damages, NAM took the offensive. In 2019, NAM president Jay Timmons used the organization’s State of Manufacturing address to frame the lawyers representing communities in climate liability suits as “slinking around” promising “jackpot justice” to prompt municipalities to litigate.¹⁰¹

In December 2017, NAM formed the Manufacturers’ Accountability Project (MAP), a group whose mission is to “bring attention to and push back on efforts to transform social, political and environmental public policy matters into state court public nuisance and consumer protection lawsuits targeting manufacturers.”¹⁰² But while MAP claims the mantle of accountability, it works to ensure that no fossil fuel company is ever held accountable for the damages it caused. NAM tapped Phil Goldberg, a former coal lobbyist and a managing partner in the Washington office of Shook, Hardy & Bacon, which vehemently defended the tobacco

98 National Association of Manufacturers, [climateinvestigations.org](https://climateinvestigations.org/trade-association-pr-spending/national-association-of-manufacturers/), CLIMATE INVESTIGATIONS CTR., <https://climateinvestigations.org/trade-association-pr-spending/national-association-of-manufacturers/> (last visited Apr. 20, 2022); 1996 *Global Climate Coalition: An Overview and Attached Reports*, [climatefiles.com](http://www.climatefiles.com), CLIMATE FILES, <http://www.climatefiles.com/denial-groups/global-climate-coalition-collection/1996-global-climate-coalition-overview/>; Karen Savage, *Inside the GCC: The Industry Group that Mobilized to Fight Global Climate Action*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (Apr. 25, 2019), <https://www.climatedocket.com/2019/04/25/gcc-global-climate-coalition-history/>.

99 Laura Miller, *Global Climate Coalition Melts Down*, [prwatch.org](https://www.prwatch.org/spin/2002/02/1061/global-climate-coalition-melts-down), THE CENTER FOR MEDIA AND DEMOCRACY (Feb. 27, 2002), <https://www.prwatch.org/spin/2002/02/1061/global-climate-coalition-melts-down>; *Global Climate Coalition: Climate Denial Legacy Follows Corporations*, climateinvestigations.org, CLIMATE INVESTIGATIONS CTR. (Apr. 25, 2019), <https://climateinvestigations.org/global-climate-coalition-industry-climate-denial/>.

100 *Trade Associations and their Climate Policy Footprint*, influencemap.org, INFLUENCEMAP (Dec. 2017), <https://influencemap.org/report/Trade-Associations-and-their-Climate-Policy-Footprint-067f4e745c9920eb3dfaa5b637511634>.

101 *NAM State of Manufacturing Address: Lone Star College*, [nam.org](https://www.nam.org), NAT’L ASS’N OF MANUFACTURERS (Feb. 20, 2019), <https://www.nam.org/wp-content/uploads/2019/05/Jay-Timmons-Lone-Star-College-State-of-Manufacturing-Address-2019.pdf>.

102 *About Us*, MANUFACTURERS ACCOUNTABILITY PROJECT, <https://mfgaccountabilityproject.org/about-us/>.

industry and was instrumental in its deception campaigns, as special counsel in the effort to discredit climate liability lawsuits.¹⁰³

MAP's goal is to discredit the communities and attorneys pursuing climate liability suits. Each time a new suit is filed, MAP responds with statements and op-eds that criticize and distort the basic facts of those lawsuits, often making the standard claim that the suits are an attempt to regulate climate change through the courts.¹⁰⁴

Yet the majority of judges hearing these cases have rejected the industry's same arguments. One judge wrote the fossil fuel defendants "misconstrue" the plaintiff's claims, while another likened the industry's mischaracterization to a "mirage."¹⁰⁵

In October 2020, MAP released a report attacking municipal climate lawsuits and accusing the private attorneys involved in the cases of abusing the legal system to earn a paycheck.

103 Sue Reisinger, *National Association of Manufacturers Hires Special Counsel to Handle Growing Climate Change Lawsuits*, [law.com](https://www.law.com/corpcounsel/2019/01/23/national-association-of-manufacturers-hires-special-counsel-to-handle-growing-climate-change-lawsuits/), CORP. COUNS. (Jan. 23, 2019), <https://www.law.com/corpcounsel/2019/01/23/national-association-of-manufacturers-hires-special-counsel-to-handle-growing-climate-change-lawsuits/>; Coal Mining Lobbying Profile: Lobbyists, [opensecrets.org](https://www.opensecrets.org), OPENSECRETS (2011), https://www.opensecrets.org/lobby/induscode_lob.php?id=e1210&year=2011.

104 Below are a few examples of MAP's messaging on climate liability lawsuits, all penned by Phil Goldberg:

[Innovation, not litigation can protect Mass. from climate change](#)
[Americans Need Solutions on Climate Change, Not Finger Pointing and Ineffective Lawsuits](#)
[Suing manufacturers won't mitigate climate change](#)

MAP's press statements on climate liability lawsuits, which employ remarkably repetitive language, can be found here: [MAP Press Statements](#). Phil Goldberg, *Goldberg: Innovation, Not Litigation Can Protect Mass. From Climate Change*, [bostonherald.com](https://www.bostonherald.com/2021/03/19/goldberg-innovation-not-litigation-can-protect-mass-from-climate-change/), BOSTON HERALD (Mar. 19, 2021, 5:18 AM), <https://www.bostonherald.com/2021/03/19/goldberg-innovation-not-litigation-can-protect-mass-from-climate-change/>; Phil Goldberg, *Americans Need Solutions on Climate Change, Not Finger Pointing and Ineffective Lawsuits*, [newsweek.com](https://www.newsweek.com/americans-need-solutions-climate-change-not-finger-pointing-ineffective-lawsuits-opinion-1605224), NEWSWEEK (June 30, 2021, 8:00 AM), <https://www.newsweek.com/americans-need-solutions-climate-change-not-finger-pointing-ineffective-lawsuits-opinion-1605224>; Phil Goldberg, *Letter to the Editor: Suing Manufacturers Won't Mitigate Climate Change*, [pressherald.com](https://www.pressherald.com/2021/08/21/letter-to-the-editor-suing-manufacturers-wont-mitigate-climate-change/), PRESS HERALD (Aug. 21, 2021), <https://www.pressherald.com/2021/08/21/letter-to-the-editor-suing-manufacturers-wont-mitigate-climate-change/>; *Press Statements*, [mfgaccountabilityproject.org](https://mfgaccountabilityproject.org/category/press-statements/), MAP, <https://mfgaccountabilityproject.org/category/press-statements/> (last visited Apr. 4, 2022).

105 In Hawai'i, U.S. Judge Derrick K. Watson [wrote](#) that the fossil fuel companies' arguments "misconstrue" the claims made by Honolulu, which are about "alleged concealment of the dangers of fossil fuels, rather than the acts of extracting, processing, and delivering those fuels." *City and County of Honolulu v. Sunoco LP*, 2021 WL 531237 (D. Hawai'i, 2021).

In Rhode Island, First Circuit Judge Ojetta Rogeriee Thompson [wrote](#) that the "mirage" of the fossil fuel companies' arguments "only lasts until one remembers what Rhode Island is alleging in its lawsuit. Rhode Island is alleging the fossil fuel companies produced and sold oil and gas products in Rhode Island that were damaging the environment and engaged in a misinformation campaign about the harmful effects of their products on the earth's climate." *Rhode Island v. Shell Oil Products Co.*, 979 F.3d 50 (1st Cir. 2020).

They further claimed that municipal litigants are part of a “highly coordinated,” long-term “effort to turn climate change into a tort litigation issue.”¹⁰⁶

SMALLER ORGANIZATIONS ALSO PLAY A LARGE ROLE

To increase their reach and influence in policymaking, the Chamber, ALEC, and the American Tort Reform Association support and often operate vast networks of state-based organizations. While many of these groups appear to be led by concerned citizens working on behalf of the public, they are funded directly or indirectly by the above three national organizations.

Many groups are former Lawsuit Abuse Watch operations, a series of state and regional groups branded as watchdog organizations, founded and financed by the Chamber, that seek to restrict access to the courts through campaigns and lobbying for preemptive legislation. One of these groups, Citizens Against Lawsuit Abuse, operates groups in Illinois, Louisiana, Florida, California, Texas, Colorado, West Virginia, and Georgia that are, as of the writing of this report, running Facebook ads about “greedy trial lawyers” and the need for tort reform.¹⁰⁷

These groups were also active in the tobacco industry’s efforts to evade accountability and were front and center in the “tort reform” movement of that era. Philip Morris used ALEC, ATRA, and its spinoff groups—such as Alabama Voters Against Lawsuit Abuse and Louisiana for Legal Reform—to promote industry immunity from litigation¹⁰⁸. A 1995 confidential memo from a tobacco industry law firm to the industry’s “Tort Reform Policy Committee” emphasized that, in order to succeed, communications promoting tort reform “must not be linked to the tobacco industry.”¹⁰⁹

106 *Beyond the Courtroom: Climate Tort Litigation in the United States*, mfgaccountabilityproject.org, MAP (Oct. 5, 2020), <https://mfgaccountabilityproject.org/wp-content/uploads/2020/10/MAP-Beyond-the-Courtroom-FINAL.pdf>.

107 *Citizens Against Lawsuit Abuse*, CALA, <https://www.cala.com/>; *Citizens Against Lawsuit Abuse*, [sourcewatch.org](https://www.sourcewatch.org), SOURCEWATCH, https://www.sourcewatch.org/index.php/Citizens_Against_Lawsuit_Abuse; Carl Deal & Joanne Doroshov, *The CALA Files: The Secret Campaign by Big Tobacco and Other Major Industries to Take Away Your Rights*, centerjd.org, CTR. FOR JUST. & DEMOCRACY (Sept. 3, 2000), <https://centerjd.org/content/cala-files-secret-campaign-big-tobacco-and-other-major-industries-take-away-your-rights>; *Ads from Citizens Against Lawsuit Abuse*, FACEBOOK, https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=US&view_all_page_id=143329509024&search_type=page&media_type=all.

108 *Tort Reform Project Budget*, [industrydocuments.ucsf.edu](https://www.industrydocuments.ucsf.edu), COVINGTON BURLING (Oct. 3, 1995), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=ysgn0085>.

109 Keith A. Teel, *Memorandum to the Tort Reform Policy Committee: Possible Budget for Expanded Tort Reform Program*, [industrydocuments.ucsf.edu](https://www.industrydocuments.ucsf.edu), COVINGTON BURLINGTON (Jan. 24, 1995), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=zpcb0105>.

Other groups include State Lawsuit Reform, an ALEC project that “grades” each state based on its tort laws, and Faces of Lawsuit Abuse, a group formed by the Chamber and ILR.¹¹⁰

These groups, like the major trade associations, operate under a veneer of protecting honest citizens threatened by an abuse of the justice system. Their true goal, however, is removing citizens’ and municipalities’ access to that justice system.

Section IV: The Tactics

The fossil fuel industry and its allies are relying on two recognizable strategies to evade accountability in the courts: securing immunity from liability at the federal level and restricting municipalities’ access to the courts at the state level.

FEDERAL LIABILITY WAIVERS

The most direct path for industries to avoid paying for the damages they cause is through provisions granting them complete legal immunity. Liability waivers are the fairy tale ending for bad corporate actors, a legislative get-out-of-jail-free card that prevents communities from ever holding them accountable in court.

Many industries, including manufacturers of tobacco, asbestos, and lead, have tried and failed to attain waivers of liability.¹¹¹ The only industry to succeed was the firearm industry, which aggressively pushed for legal immunity after more than 40 cities filed lawsuits in the early 1990s seeking to hold gun manufacturers and dealers accountable for the harm caused by their products and for negligent business practices. In 2005, the industry won a victory: federal lawmakers passed the *Protection of Lawful Commerce in Arms Act* (PLCAA), effectively shielding the gun industry from most civil litigation in federal and state court. Since 2005, only a handful of such cases have survived pretrial motions to dismiss, with even the most compelling cases dismissed before evidence of industry wrongdoing could be introduced.¹¹²

110 *State Lawsuit Reform*, STATE LAWSUIT REFORM, <https://www.statelawsuitreform.com/>; *Louisiana: The Lawsuit Paradise Series*, [facesoflawsuitabuse.org](https://www.facesoflawsuitabuse.org), FACES OF LAWSUIT ABUSE, <https://www.facesoflawsuitabuse.org/2020/06/louisiana-the-lawsuit-paradise-series/>.

111 *Justice Denied: 71 ALEC Bills in 2013 Make it Harder to Hold Corporations Accountable for Causing Injury or Death*, [centerjd.org](https://www.centerjd.org), PRWATCH (July 10, 2013), <https://www.centerjd.org/content/justice-denied-71-alec-bills-2013-make-it-harder-hold-corporations-accountable-causing-injur>.

112 *Frequently Asked Questions About Gun Industry Immunity*, [americanprogress.org](https://www.americanprogress.org), CTR. FOR AM. PROGRESS (May 4, 2021), <https://www.americanprogress.org/issues/guns-crime/reports/2021/05/04/499071/frequently-asked-questions-gun-industry-immunity/#fn-499071-6>.

The PLCAA didn't make guns safer or address gun violence in any meaningful way—Americans continue to die from gun violence in alarming numbers.¹¹³ PLCAA simply obliterated a critical avenue for communities to seek justice and recover funds to address the harm done.

It is no coincidence that fossil fuel companies lined up to support a carbon pricing scheme that would include such a provision.¹¹⁴ The Baker-Schultz Plan—named for its lead authors, former secretaries of state James A. Baker III and George P. Shultz—proposed a modest and gradually rising carbon tax.¹¹⁵ The proposal was developed in 2017 by the Climate Leadership Council (CLC), a nonprofit policy institute whose founding members include Exxon, BP, and Shell.¹¹⁶

The plan would have put a price on carbon emissions in exchange for severe restrictions on the Environmental Protection Agency's ability to regulate said emissions and for the inclusion of a blanket waiver of liability for climate damages now and in the future.

The plan drew backing from a wide range of supporters, including the founding corporate members of CLC as well as former New York City Mayor Mike Bloomberg, former Federal Reserve Chair Ben Bernanke, and former EPA Administrator Christine Todd Whitman. But its liability waiver provision ignited enough vocal opposition that it was quietly dropped from the proposal in 2019.¹¹⁷

Seeking a federal liability waiver is a high-profile and difficult undertaking. Instead, industries often pursue protection at the state level, commonly by asking states to legislate against municipalities' right to levy such lawsuits against them.

113 Reis Thebault & Danielle Rindler, *Shootings Never Stopped During the Pandemic: 2020 Was the Deadliest Gun Violence Year in Decades*, [washingtonpost.com](https://www.washingtonpost.com), WASH. POST (Mar. 23, 2021), <https://www.washingtonpost.com/nation/2021/03/23/2020-shootings/>.

114 Karen Savage, *Exxon Funds Push for Carbon Tax that Ends Climate Liability Suits*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (Oct. 10, 2018), <https://www.climatedocket.com/2018/10/09/exxon-carbon-tax-climate-liability/>.

115 *The Four Pillars of Our Carbon Dividends Plan*, [clcouncil.org](https://www.clcouncil.org), CLIMATE LEADERSHIP COUNCIL, <https://www.clcouncil.org/our-plan/> (last updated Sept. 2019); Karen Savage, *Mayors Group Votes to Support Cities' Right to Sue Oil Industry for Climate Damages*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (July 2, 2019), <https://www.climatedocket.com/2019/07/01/mayors-climate-liability/>; *Our Story*, CLIMATE LEADERSHIP COUNCIL, <https://clcouncil.org/our-story/>.

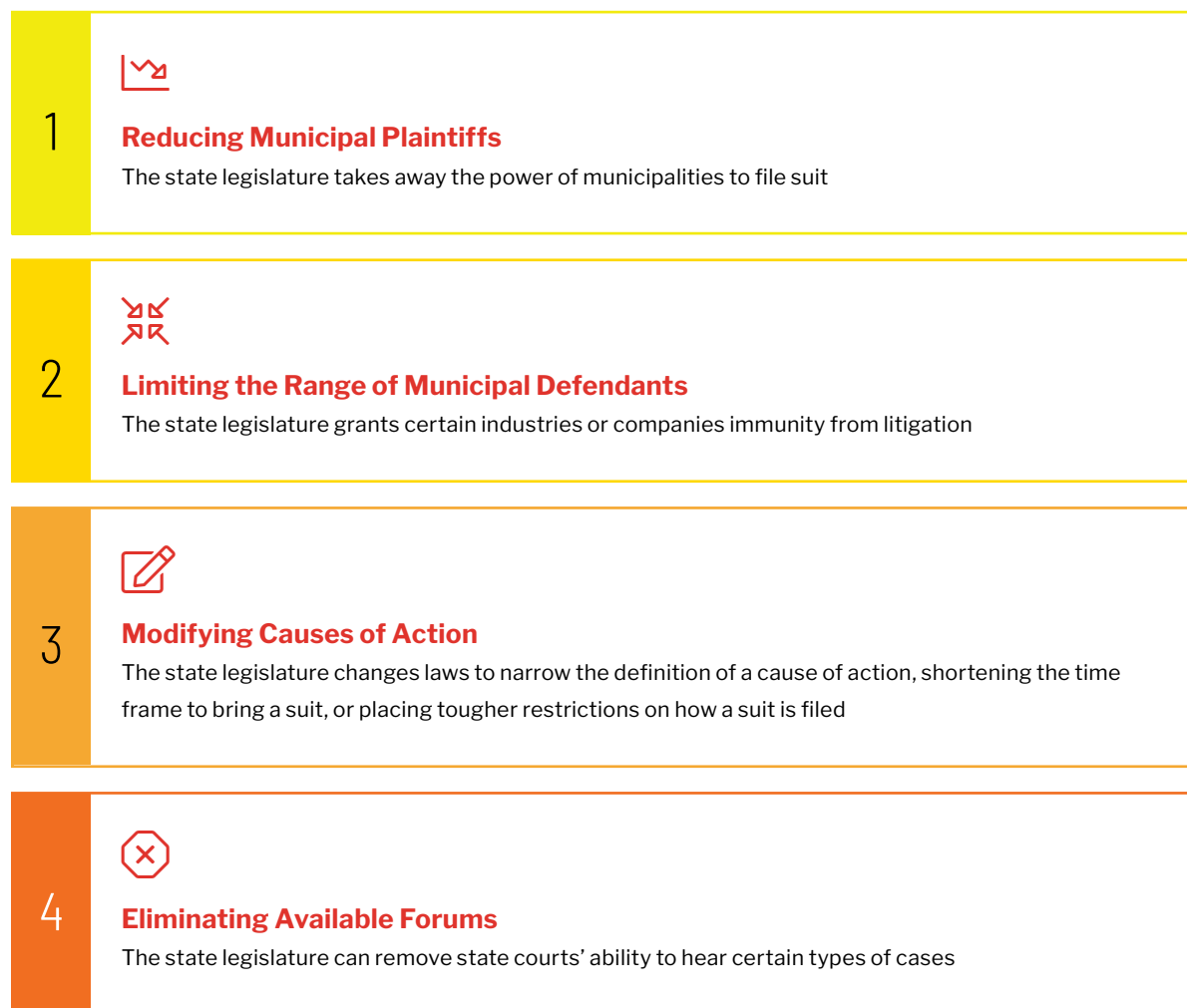
116 *Our Solution*, CLIMATE LEADERSHIP COUNCIL, <https://clcouncil.org/our-solution/>; Arathy S. Nair & Sahil Shaw, *Exxon Suspended from Climate Advocacy Group It Helped Form*, [reuters.com](https://www.reuters.com), REUTERS (August 6, 2021), <https://www.reuters.com/business/exxon-suspended-climate-advocacy-group-it-helped-form-2021-08-06/>.

117 Karen Savage, *Mayors Group Votes to Support Cities' Right to Sue Oil Industry for Climate Damages*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (July 2, 2019), <https://www.climatedocket.com/2019/07/01/mayors-climate-liability/>; Karen Savage, *Climate Liability Waiver Dropped from Major Carbon Tax Proposal*, [climatedocket.com](https://www.climatedocket.com), THE CLIMATE DOCKET (Sept. 13, 2019), <https://www.climatedocket.com/2019/09/12/climate-liability-waiver-carbon-tax-baker-schultz/>.

RESTRICTING MUNICIPALITIES' ACCESS TO THE COURTS

Today's most prominent efforts to protect fossil fuel companies and other industries from legal liability have taken the form of a targeted assault, led by the U.S. Chamber of Commerce, on municipalities' fundamental right to access the courts. The aggressive tactics in the Chamber's ILR report have been used by state legislatures to effectively prevent local communities from seeking remedies for local harms and achieving some measure of justice.

FIGURE 4: PROPOSED METHODS OF MITIGATING MUNICIPAL LITIGATION



The ILR report describes the “threat” municipal lawsuits pose to corporate interests and proposes four overarching courses of action state legislatures can take to stifle them at the outset:

1. Limiting Access to Counsel or the Courts

The Chamber describes an offensive strategy by which state governments can change and implement laws to “abolish or circumscrib[e]” (p. 20) municipalities’ right to bring lawsuits.

Some of the Chamber’s recommended methods of preventing municipalities from filing suit include:

- stripping localities of the power to bring lawsuits under certain causes of action, including common law claims;
- applying state laws retroactively to have lawsuits dismissed;
- requiring that a state-level official, such as an attorney general, approve any municipal litigation prior to filing; and
- preventing or creating obstacles to the hiring of outside counsel, which the report acknowledges is “usually essential” for municipalities or states with limited resources to bring a lawsuit (p. 31).

The report also recommends prohibiting municipalities from recovering the costs of public services made necessary as a result of bad corporate conduct—for example, the costs of repairing and responding to climate disasters—under the suggested justification that “those services are government functions that are funded by taxes and should be borne by society as a whole” (p. 29).

2. Prohibiting Litigation Against Certain Industries

A second approach proposed by the Chamber is to limit potential defendants—in other words, states would change laws to immunize entire industries from being taken to court.¹¹⁸

State-level liability waivers have a history that precedes the ILR report. In response to a growing number of municipal lawsuits in the late 1990s, the firearm industry encouraged states to shield gun manufacturers and dealers from being held liable in court for the harms their products caused. For example, in 1998, after New Orleans became the first local government in the nation to bring a lawsuit accusing gun makers of selling unsafe products and creating a public nuisance, the Louisiana legislature passed a statute that said only the state could seek to recover damages from the gun industry for “injury, death, or loss or to seek other injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition.”¹¹⁹ This statute could be applied retroactively and, as a result, gun manufacturers successfully moved to dismiss New Orleans’ lawsuit.¹²⁰

118 Some states’ gun immunity laws assert that an industry’s actions do not constitute a public nuisance. An Oklahoma statute provides: “The State Legislature declares that the lawful design, marketing, manufacturing, or sale of firearms or ammunition to the public is not unreasonably dangerous activity and does not constitute a nuisance.” 21 OK Stat. § 21-1289.24a (2015).

Similar language exists in Tennessee and Georgia, and the Georgia law was used to dismiss a suit by Atlanta against the gun industry. Tenn. Code § 39-17-1314; Ga. Code § 16-11-173; *Sturm, Ruger & Co. v. City of Atlanta*, 253 Ga. App. 713, 560 S.E.2d 525 (2002).

One example cited in the IRL’s report was a product liability law passed in Michigan in 1995—the only one like it in the country—that functionally immunized drug manufacturers and sellers from liability for property damage, personal injury, and death caused by their products. The legislation says that “in a product liability action against a manufacturer or seller ... the manufacturer or seller is not liable” if the drug and its labeling complied with federal law when it was produced. ROB MCKENNA, ELBERT LIN & DREW KETTERER, U.S. CHAMBER INST. FOR LEGAL REFORM, *MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS* 35 (2019).

“This provision promises to be a hurdle for the more than 50 Michigan cities and counties that have brought lawsuits against opioid manufacturers,” the ILR remarks. *Id.*

Indeed, any such liability waiver at the state or federal level would essentially bar residents who have been harmed by dangerous products from accessing their local courts.

119 Richard C. Ausness, *Public Tort Litigation: Public Benefit or Public Nuisance?*, 77 *TEMPLE L. REV.* 825, 840 (2004); Guy Coates, *Louisiana Lawmakers Void Gun Lawsuit*, apnews.com, AP (June 4, 1999), <https://apnews.com/article/e5d3cf356e7757d582a07efcf4dd9571>.

120 *La. Court Throws Out Gun Lawsuit*, apnews.com, AP (Apr. 3, 2001), <https://apnews.com/article/aca28540eeb5808ad0365a928b6e6e9>.

3. Modifying Causes of Action

The Chamber’s third course of action suggests three options for tort reform that could “eliminate or avoid municipal litigation altogether” (p. 37):

- modifying or repealing common law causes of action and/or limiting the remedies available under such claims;
- shortening the statutes of limitations and repose (i.e., time frame in which a suit must be brought); and
- imposing additional legal requirements that would make it more difficult for municipalities to bring or sustain litigation.

For example, after the Georgia legislature passed a law in 2005 establishing strict filing requirements for asbestos cases that placed an extraordinary burden of proof on victims of asbestos poisoning, several cases were dismissed by Georgia state courts, and the state saw a steep drop in new cases. Before the new asbestos laws were enacted, Fulton County State Court Judge Henry Newkirk had an asbestos-related caseload of about 1,200 cases. After the new laws passed, Newkirk’s caseload fell to about a dozen.¹²¹

The ILR report also recommends that a state could limit available remedies if the plaintiff has contributed to the alleged harms through the use of defendant’s products—even if, as in the case with fossil fuels, consumers were provided no warnings as to the harms those products would cause. This principle is one of industry’s tried-and-true tactics, in effect shifting responsibility from the industry that deceived consumers onto the consumers themselves.

4. Eliminating Available Forums

The Chamber’s fourth and final approach to preempting municipal litigation is eliminating the available forums in which a municipal lawsuit can be brought by removing state courts’ jurisdiction over certain claims (nuisance, in particular).

As the report itself states, this approach “may be the most aggressive” (p. 43) and could interfere with the separation of powers. The Chamber suggests that constitutional

¹²¹ Joe Lahav, *Georgia Mesothelioma Lawyers: Filing a Claim in Georgia*, [asbestos.com](https://www.asbestos.com/mesothelioma-lawyer/georgia/), THE MESOTHELIOMA CTR., <https://www.asbestos.com/mesothelioma-lawyer/georgia/> (last updated Apr. 15, 2022).

amendments would be a way around this: “Modifying courts’ jurisdiction through constitutional amendment rather than by legislation, of course, would avoid these concerns by redefining the separation of powers” (p. 44).

In its conclusion, the ILR report states that “given the authority of states to control the powers of their constituent municipalities...a number of paths are available to states interested in curbing municipal litigation” (p. 45). As clearly acknowledged by its authors, the Chamber’s primary goal in publishing the report was to interfere with and override access to the courts for municipalities seeking to hold bad actors accountable and protect taxpaying citizens.

LAWSUIT PREEMPTION BILLS ARE ON THE RISE IN STATE LEGISLATURES.

Since 2019, Arizona, Kansas, Ohio, Florida, and Texas have introduced bills that would preempt municipal litigation, incorporating strategies recommended in the ILR report.¹²²

As of yet, only Texas has successfully passed its bill into law. In March 2019, Texas Governor Greg Abbott signed HB 2826, which requires local governments to disclose the “purpose” of new legal contracts and grants the state attorney general veto power of any municipal contract. The Chamber’s 2021 update to its original report praised Texas officials for their “willingness to propose legislative changes to effectuate” the Chamber’s “solutions,” and confirmed that “states are expected to continue considering changes to state law in upcoming legislative sessions.”

122 *Bill History for SB1459*, [azleg.gov](https://apps.azleg.gov/BillStatus/BillOverview/73766), ARIZ. STATE LEGISLATURE, <https://apps.azleg.gov/BillStatus/BillOverview/73766>; *HB 2461*, kslegislature.org, KAN. STATE LEGISLATURE, http://www.kslegislature.org/li_2020/b2019_20/measures/hb2461/; Randy Ludlow, *Bill Could Allow Yost to Take Over Local Government Opioid Lawsuits*, [dispatch.com](https://www.dispatch.com/story/news/politics/county/2019/08/27/bill-could-allow-yost-to/4365267007/), THE COLUMBUS DISPATCH (Aug. 27, 2019), <https://www.dispatch.com/story/news/politics/county/2019/08/27/bill-could-allow-yost-to/4365267007/>; *86(R) HB 2826*, capitol.texas.gov, TEX. LEGISLATURE, <https://capitol.texas.gov/tlodocs/86R/billtext/html/HB02826F.htm>.

Part II: Battling Municipal Preemption

As explored throughout Part I, corporations and their network of allies, led by the U.S. Chamber of Commerce, have waged an unprecedented campaign to curtail local communities' pursuit of accountability and justice via the courts. Access to the justice system is a fundamental right, and it is imperative for communities to know how they can protect and expand that right.

Recognizing Preemption Before It Becomes Law

Secrecy is often the greatest weapon of industries and special interest groups seeking to avoid accountability for the damages they caused. Often, municipal preemption bills are worded in a way that clouds their true purpose or timed so as to receive little scrutiny. In order to counter these proposals, municipal leaders and state legislators must be able to recognize them.

Not all preemption bills target litigation, but similar tactics are used to pass most preemption legislation. Below are some common strategies used to pass preemption legislation of all kinds:

1. **Rushed legislation.** Bills are introduced quickly, with little explanation of their merits or impacts. This minimizes open debate on the purpose of the bill, giving legislators little opportunity to consult their constituents and hampering the ability of opponents to organize against it.
2. **End-of-session logjams.** Voting on these bills in the hectic final days of a session also gives legislators little time to consider their meaning or how their constituents would be impacted.
3. **Add-ons.** Adding the preemption proposal to pre-existing bills on nonrelevant substantive topics. Legislators may add language removing or blocking access to the courts to popular bills that have widespread support, making it more difficult for opponents to contest or defeat such provisions.
4. **Repeal only to replace.** A state legislature may repeal preemption on a specific policy area, only to replace it with a bill using different language that achieves its desired effect.

Common key words and language that should raise a red flag to consider a bill's true intent:¹²³

- “Any order or ordinance by any political subdivision shall be **consistent with and not more restrictive than state law...**”
- “Local governments may not impose **regulations that exceed...**”
- “The department has **exclusive regulatory authority...**”
- “It is the intent of the legislature to **occupy the whole field...**”
- “This part **preempts** the laws of any local government...”
- “Local laws and ordinances that are **more restrictive shall not be enacted...**”
- “The **state shall have sole authority** to control and regulate...”
- “Regulation is a matter of **statewide concern...**”
- “...and **no more stringent** than a state statute...”
- “This act shall **supersede** any other statute or municipal ordinance...”
- “For the purposes of equitable and **uniform regulation and implementation...**”

123 *Preemption By Any Other Name*, publichealthlawcenter.org, PUB. HEALTH L. CTR, <https://publichealthlawcenter.org/sites/default/files/resources/nplan-fs-preemption-2010.pdf>.

In a 2018 report titled “City Rights in an Era of Preemption: A State-by-State Analysis,” the National League of Cities (NLC) recommended state legislators consider the following (emphasis added):¹²⁴

*Preemption can arise for political or policy reasons or a combination of the two. In most cases, cities and their advocates want to avoid legislation or proposals that limit city authority. Conversations with state municipal leagues suggest that there may be cases where preemption is either unavoidable or can have an overall positive effect, like streamlined regulations across the state to encourage business development. **The key in these cases is active communication between state legislators and city officials to minimize any negative effects of the preemption and to steer the legislation in the best way possible.** State municipal leagues also noted the need to carefully consider how and when they use their limited political capital with their state when confronting preemption and other challenges on multiple fronts. “Choosing your battles wisely” was a common refrain.*

Repealing Harmful Preemption Legislation

Communities have typically used two avenues to oppose preemption bills that have already been passed. One is by taking to the courts to advocate for the right to protect their citizens. The other is through retroactive legislation at the state level.

LITIGATION TO REPEAL PREEMPTION

In late 2019, Philadelphia passed a law banning single-use plastic bags in the city. In response, the Pennsylvania General Assembly put language in its budget bill that preempted municipalities’ ability to pass such bans.¹²⁵ The statute enacted a moratorium prohibiting local governments from “enact[ing] or enforc[ing] a law, rule, regulation or ordinance imposing a tax on or relation to the use, disposition, sale, prohibition or restriction of single-use plastics.”

¹²⁴ Nicole DuPuis, Trevor Langan, Christiana McFarland & Angelina Panettieri, *City Rights in an Era of Preemption: A State-by-State Analysis*, nlc.org, NAT’L LEAGUE OF CITIES, <https://www.nlc.org/wp-content/uploads/2017/02/NLC-SML-Preemption-Report-2017-pages.pdf>.

¹²⁵ *Pennsylvania Sued Over Moratorium on Plastic Bag Ban*, natlawreview.com, NAT’L L. REV. (Mar 20, 2021), <https://www.natlawreview.com/article/pennsylvania-sued-over-moratorium-plastic-bag-bans>.

In 2021, the city of Philadelphia was joined by the city of West Chester, the township of Lower Merion, and the borough of Narberth in a lawsuit challenging the constitutionality of that preemption law and asserting their right to enact and enforce plastic bag legislation.¹²⁶

While the lawsuit was pending, the city of Philadelphia instituted its citywide ban on plastic bags in October 2021, with enforcement beginning in April 2022.¹²⁷

LEGISLATION TO REPEAL PREEMPTION

Colorado lawmakers have used legislation to turn the tide against preemption. During Jared Polis' campaign for governor in 2018, Polis promised to return autonomy to elected officials serving closest to the people.¹²⁸

Following his election, the governor passed laws allowing Colorado municipalities to pass their own gun laws, regulations over oil and gas drilling, local minimum wage options, and plastic regulations.¹²⁹

Proactive Measures to Protect and Expand Local Access to the Courts

Attacks on local democracy often occur in the state legislature, where corporate special interests have encouraged lawmakers to enact laws that would restrict communities' access to the courts. But there are several ways for state legislators to advocate for and defend municipalities' right to pursue justice.

126 Philadelphia and Other Municipalities File Litigation to Assert Right to Restrict Plastic Bags, [phila.gov](https://www.phila.gov/2021-03-03-philadelphia-and-other-municipalities-file-litigation-to-assert-right-to-restrict-plastic-bags), CITY OF PHILA. (Mar. 3, 2021), <https://www.phila.gov/2021-03-03-philadelphia-and-other-municipalities-file-litigation-to-assert-right-to-restrict-plastic-bags>.

127 Philly's Plastic Bag Ban is Finally Here—with Enforcement Still to Come, [why.org](https://why.org/articles/phillys-plastic-bag-ban-is-finally-here-with-enforcement-still-to-come/), PLAN PHILLY (Sept. 30, 2021), <https://why.org/articles/phillys-plastic-bag-ban-is-finally-here-with-enforcement-still-to-come/>.

128 Brian Eason & John Frank, Jared Polis Made a Lot of Promises in Bid for Governor. Here's His Progress on the 10 Biggest, coloradosun.com, THE COLO. SUN (Apr. 27, 2019), <https://coloradosun.com/2019/04/17/jared-polis-top-campaign-promises-colorado/>.

129 Chantal da Silva, Colorado Lets Cities Pass Own Gun Laws After Supermarket Shooting, [independent.co.uk](https://www.independent.co.uk/news/world/americas/law-mass-shooting-jared-polis-colorado-b1869820.html), THE INDEP. (June 21, 2021, 4:16 PM), <https://www.independent.co.uk/news/world/americas/law-mass-shooting-jared-polis-colorado-b1869820.html>; Casey Leins, Colorado's Governments Gain Control Over Oil and Gas, [usnews.com](https://www.usnews.com/news/best-states/articles/2019-04-17/colorados-governments-gain-control-over-oil-and-gas), U.S. NEWS & WORLD REPORT (April 17, 2019), <https://www.usnews.com/news/best-states/articles/2019-04-17/colorados-governments-gain-control-over-oil-and-gas>; Dominick Moreno, Jessie Danielson, Rochelle Galindo & Jovan Melton, Local Government Minimum Wage, leg.colorado.gov, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/bills/hb19-1210>; Alex Burness, Colorado Will Ban Single-Use Plastic Bags and Polystyrene, Create Bag Fees, [denverpost.com](https://www.denverpost.com), THE DENVER POST (July 6, 2021, 2:51 PM), <https://www.denverpost.com/2021/07/06/colorado-plastic-bag-ban-fee/>.

State legislators can join local government committees, where they will be well positioned to question and challenge policies that would hamper local democracy. They can also take proactive measures to preserve communities' access to the courts and make it easier for municipal governments to hold corporations liable for harms.

EXTENDING THE STATUTE OF LIMITATIONS

Extending the statute of limitations, or the time during which a lawsuit can be filed, can ensure that communities have the opportunity to access the courts when a legal violation is revealed long after that wrongdoing took place. For example, in 2016, California Senator Ben Allen introduced the Climate Science Truth & Accountability Act, which aimed to provide a four-year window during which public prosecutors could sue fossil fuel companies using claims relating to unfair business practices—in this case, defrauding the public and consumers about climate change—once the alleged fraud was revealed. Extending statutes of limitations could similarly aid communities facing harms that they only recently discovered were caused by corporations—including drinking water contamination, lead or asbestos poisoning, opioid addiction, toxic agricultural runoff, and more.¹³⁰

ENACTING NEW CAUSES OF ACTION

State legislatures can also enact new causes of action, or predefined sets of facts used to bring an enforceable claim in court, that would allow municipalities to hold individuals or corporations liable for specific damages that commonly impact their communities. For example, New York's Oil Spill Act, or Navigation Law Article 12, provides that a person who discharges petroleum is strictly liable for all cleanup and removal costs associated with its cleanup, including direct and indirect costs, such as attorney's fees.¹³¹

EXPANDING THE RULES OF LIABILITY

Legislators can also push for new or expanded rules of liability. For instance, in 1995, the state of Florida enacted the Medicaid Third Party Liability Act, which changed the rules for liability in lawsuits against tobacco companies to allow the state to recover smoking-related costs

¹³⁰ Ben Allen, *SB 1161—Climate Science Truth & Accountability Act*, [ucsusa.org](https://www.ucsusa.org/sites/default/files/attach/2016/05/fact-sheet-climate-science-truth-accountability-act.pdf), OFF. OF SENATOR BEN ALLEN (May 10, 2016), <https://www.ucsusa.org/sites/default/files/attach/2016/05/fact-sheet-climate-science-truth-accountability-act.pdf>.

¹³¹ *Section 181: Liability*, [nysenate.gov](https://www.nysenate.gov/legislation/laws/NAV/181), N.Y. STATE SENATE (Sept. 22, 2014), <https://www.nysenate.gov/legislation/laws/NAV/181>.

covered by Medicaid. This new cause of action allowed Florida's government to recover costs on behalf of the healthcare system, because the tobacco companies had knowingly increased the risk of harm and the associated costs. The same could be applied for the costs of climate damages, which are currently being borne by various government agencies despite being caused primarily by the actions of fossil fuel companies.¹³²

EXPANDING AVAILABLE REMEDIES

Lastly, state legislators can work to expand the monetary compensation and other remedies municipal governments are able to recover through litigation, so as to make litigation more feasible and recovery more equitable for smaller, less resourced communities facing costly and dangerous damages.

Resources for Advocates for Access to the Courts

While advocates for local democracy in the state legislature are key, other stakeholders can take action to protect municipalities' rights as well. That includes municipal officials who can testify for or against relevant legislation, as well as educate communities on their rights; statewide officeholders who may be able to speak on these issues; and organizations that represent the interests of local communities on a large or small scale.

Groups like the Local Solutions Support Center, the National League of Cities, the American Association for Justice (AAJ), the Community Environmental Legal Defense Fund, and the Center for Climate Integrity, as well as the state and local versions of these groups, have experience and expertise that local lawmakers and good government advocates can rely on to protect municipal access to the courts.¹³³

In partnership with other organizations, the **Local Solutions Support Center** has released a series of reports documenting preemption bills and lessons learned from successful efforts to repeal those bills. On its website, the LSSC highlights legal resources for challenging preemption efforts, communications and messaging strategies to counteract the

132 ANDREW GAGE, & MARGARETHA WEWERINKE, WEST COAST ENV'T LAW, VANUATU ENV'T L. ASS'N, TAKING CLIMATE JUSTICE INTO OUR OWN HANDS: A MODEL CLIMATE COMPENSATION ACT 9 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906252.

133 About NLC, NAT'L LEAGUE OF CITIES, <https://www.nlc.org/>; Only AAJ, AM. ASS'N FOR JUST., <https://www.justice.org/>.

disinformation that often accompanies preemption legislation, and resources to help public education efforts.¹³⁴

The **National League of Cities** has provided a guide to understanding preemption legislation, lists preemption legislation by state, and proposes model state constitutional language and legal commentary to support home rule principles and strengthen local democracy.¹³⁵

The **American Association for Justice** monitors federal legislation that would preempt state tort law. The AAJ's Preemption Law Litigation Group educates and assists lawyers, legislators, and regulators in protecting state legal action from federal preemption interference. For example, the organization's members represent tens of thousands of individuals involved in drug liability lawsuits against major corporations, whose cases were threatened with preemption by the Food and Drug Administration (FDA) in 2006.¹³⁶ AAJ is now working to protect similar cases against other "regulatory preemption" measures by the FDA.

The **Community Environmental Legal Defense Fund** (CELDF) assists localities against the preemption efforts of state governments that prioritize the rights of corporations over those of people and communities. CELDF developed a set of "community rights," championing local decision-making and advocating for the strengthening of state and federal protections across environmental, economic, and social issue areas. It also helped form the Community Rights Networks that advocate for those rights and for local democracy.¹³⁷

Finally, the **Center for Climate Integrity** (CCI) empowers communities with the tools they need to hold oil and gas companies accountable. In addition to authoring this report, CCI has

134 *A Session Like No Other: An Overview of 2021's Unprecedented Wave of State Preemption Bills*, LOC. SOL'S SUPPORT CTR., <https://static1.squarespace.com/static/5ce4377cae1ce00013a02fd/t/61008c78292a9823551143bd/1627425912437/AsessionLikeNoOther-LocalSolutionsSupportCenter-1Pager.pdf>; *Legal Resources*, supportdemocracy.org, LOC. SOL'S SUPPORT CTR., <https://www.supportdemocracy.org/legal-assistance>; *Communications & Messaging*, supportdemocracy.org, LOC. SOL'S SUPPORT CTR., <https://www.supportdemocracy.org/communications>; *Organizing, Education, and Outreach*, supportdemocracy.org, LOC. SOL'S SUPPORT CTR., <https://www.supportdemocracy.org/organizing-education-and-outreach>.

135 *What You Need to Know About Preemption*, [nlc.org](https://www.nlc.org), NAT'L LEAGUE OF CITIES (Nov. 18, 2020), <https://www.nlc.org/resource/what-you-need-to-know-about-preemption/>; *Principles of Home Rule for the 21st Century*, [nlc.org](https://www.nlc.org), NAT'L LEAGUE OF CITIES (Feb. 7, 2020), <https://www.nlc.org/resource/new-principles-of-home-rule/>; *INTERACTIVE: Preemption Laws By State*, [nlc.org](https://www.nlc.org), NAT'L LEAGUE OF CITIES (Dec. 9, 2019), <https://www.nlc.org/resource/interactive-preemption-laws-by-state/>.

136 *Preemption Law*, [justice.org](https://www.justice.org), AM. ASS'N FOR JUST., <https://www.justice.org/community/litigation-groups/preemption-law-litigation-group>.

137 *The National Community Rights Center*, NAT'L CMTY. RIGHTS CTR., <https://www.nationalcommunityrightsnetwork.org>; *Community Rights*, celdf.org, CMTY. ENV'T LEGAL DEF. FUND, <https://celdf.org/community-rights/>.

staff available to assist lawmakers with responding to threats to municipal litigation. CCI also convenes the Leaders for Climate Accountability network, which is composed of more than 150 state and local elected officials across the country who are committed to climate accountability and protecting municipal access to the courts.¹³⁸

The state and local versions of these groups have worked to protect local governance. The Arizona League of Cities and Towns monitors and opposes state preemption bills; in 2019, the Arizona League spoke out against tobacco industry legislation that would preempt local public health and safety requirements imposed on the sale and marketing of cigarettes and vape products.¹³⁹ In 2021, it testified in a committee hearing opposing a bill that would hamper the ability of local governments to hire outside counsel and require the attorney general to sign off on all municipal litigation.¹⁴⁰

138 *About*, LEADERS FOR CLIMATE ACCOUNTABILITY, <https://l4ca.org/about>.

139 *Legislative Bulletin: Issue 18*, [azleague.org](http://www.azleague.org), LEAGUE OF ARIZ. CITIES & TOWNS (May 10, 2019), <http://www.azleague.org/DocumentCenter/View/11000/Bulletin-5-10-2019?bidId=>.

140 *SB1487*, [azleague.org](http://www.azleague.org), LEAGUE OF ARIZ. CITIES & TOWNS, <https://www.azleague.org/346/SB-1487>.

Conclusion

Corporations' relentless assault on the rights of communities has helped erode democracy in this country over the past four decades, a strategy funded and championed by the dark money front groups and trade associations that line up when called upon to protect their corporate benefactors.

The fossil fuel industry has followed in the footsteps of the tobacco, pharmaceutical, and other industries that have fought tooth and nail to avoid being held accountable for the harms they knew their products would cause. The U.S. Chamber of Commerce's most recent attempts to block access to the courts take these strategies to a dangerous new level, paving the way for a future in which corporations have carte blanche to wreak havoc on people and the planet for profit—without available mechanisms to hold them accountable.

Communities and the leaders that represent them, however, have tools to fight back.

Appendix 1: Preemption Chart

This table represents just one notable preemption bill passed or introduced by each state since 2019, though many considered or enacted multiple preemption bills since then.

STATE	BILL NUMBER	WHAT IT PREEMPTS	PASSED OR FAILED	CITATION
Alabama	HB 446	Restricts municipalities from requiring clean energy sources.	Passed, 2021	H.R. 446, 2021 Leg., Reg. Sess. (Ala. 2021).
Arizona	HB 2686	Restricts municipalities from requiring clean energy sources.	Passed, 2020	H.R. 2686, 54th Leg., 2nd Reg. Sess. (Ariz. 2020).
Arkansas	SB 137	Restricts municipalities from requiring clean energy sources.	Passed, 2021	S. 137, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021).
Florida	SB 856	Prevents local governments from banning or restricting the construction of new fossil fuel infrastructure.	Passed, 2021	S. 856, 2021 Leg., Reg. Sess. (Fla. 2021).
Georgia	HB 150	Restricts municipalities from requiring clean energy sources.	Passed, May 2021	H.R. 150, 156th Gen. Assemb., Reg. Sess. (Ga. 2021).
Indiana	SB 5	Forbids local health departments from declaring public states of emergency more stringent than the state executive order.	Passed, July 2021	S. 5, 122 Gen. Assemb., 1st Reg. Sess. (Ind. 2021).
Iowa	HF 555	Bars cities and counties from regulating the sale of natural gas or propane.	Passed, April 2021	H.R. 555, 89th Gen. Assemb., 2021 Sess. (Iowa 2021).
Kansas	SB 40	Rescinded local school boards' authority to close schools or begin remote learning without the permission of the state Board of Education.	Passed, March 2021	S. 40, 2021 Leg., Reg. Sess. (Kan. 2021).
Kentucky	HB 207	Restricts municipalities from requiring clean energy sources.	Passed, March 2021	H.R. 207, 2021 Leg., Reg. Sess. (Ky. 2021).
Michigan	HB 4575	Would prohibit the use of energy-efficient appliances in new or existing residential buildings and prohibits local governments from enacting policies that allow otherwise.	Introduced, March 2021	H.R. 4575, 101st Leg., Reg. Sess. (Mich. 2021).
Mississippi	HB 632	Restricts municipalities from requiring clean energy sources.	Passed, March 2021	H.R. 632, 136th Leg., Reg. Sess. (Miss. 2021).
Missouri	SB 230	Would restrict municipalities from requiring clean energy sources.	Introduced, January 2021	S. 230, 101st Gen. Assemb., 1st Reg. Sess. (Mo. 2021).
Montana	HB 259	Prohibits local governments from requiring housing fees or from setting aside property for subsidized and affordable housing.	Passed, April 2021	H.R. 249, 2021 Leg., Reg. Sess. (Mont. 2021).

PUSHING PREEMPTION: THE CORPORATE CAMPAIGN TO DENY MUNICIPALITIES ACCESS TO THE COURTS

STATE	BILL NUMBER	WHAT IT PREEMPTS	PASSED OR FAILED	CITATION
New York	A. 3580	Would preempt local recycling programs and place all consumer goods waste and collection services under the jurisdiction of the state.	Introduced, January 2021	Cong. Deleg'n 3580, 2021 Assemb., 244th Leg. Sess. (N.Y. 2021).
North Carolina	HB 220	Would modify the definition of the term "energy service" in city and county statutes and prevent restriction or regulation based on energy type.	Introduced, March 2021	H.R. 220, 2021 Gen Assemb., Reg. Sess. (N.C. 2021).
North Dakota	HB 1323	Prohibits state and local officials and political subdivisions from mandating individuals use face masks, shields, and coverings in response to the COVID-19 crisis.	Passed, January 2021	H.R. 1323, 67th Leg. Assemb., Reg. Sess. (N.D. 2021).
Ohio	HB 201	Restricts municipalities from requiring clean energy sources.	Passed, July 2021	H.R. 201, 134th Gen. Assemb., Reg. Sess. (Ohio 2021).
Oklahoma	HB 3619	Restricts municipalities from requiring clean energy sources.	Passed, May 2020	H.R. 3619, 57th Leg., 2nd Reg. Sess. (Okla. 2020).
Pennsylvania	SB 275	Restricts municipalities from requiring clean energy sources.	Introduced, February 2021	S. 275, 205th Gen. Assemb., Sess. of 2021 (Pa. 2021).
Tennessee	SB 1934	Restricts municipalities from requiring clean energy sources.	Passed, March 2020	S. 1934, 111th Gen. Assemb., 2nd Reg. Sess. (Tenn. 2020).
Texas	SB 1	Restricts local governments' ability to provide early voting ballots.	Passed, September 2021	S. 1, 87th Leg., 1st Called Sess. (Tex. 2021).
Utah	HB 17	Restricts municipalities from requiring clean energy sources.	Passed, February 2021	H.R. 17, 64th Leg., 2021 Gen. Assemb. (Utah 2021).
West Virginia	HB 2694	Bans municipalities from establishing "red flag laws" to temporarily remove "firearms from people when family members show they pose a threat to themselves or others."	Passed, April 2021	H.R. 2694, 85th Leg., Reg. Sess. (W. Va. 2021).
Wisconsin	SB 23	Preempts city, village, town, or county ordinances requiring employers to provide employees leave for family, medical, or health issues.	Passed, May 2021	S. 23, 105th Leg., Reg. Sess. (Wis. 2021).

Appendix 2: Cases Underway to Make Climate Polluters Pay

Table 1: Consumer Protection

CASE AND SUMMARY	LEGAL CLAIMS ASSERTED	PROCEDURAL STATUS
<p>State of Vermont <i>Vermont v. Exxon et al.</i> Filed: September 14, 2021</p> <p>Attorney General T.J. Donovan filed a state lawsuit against Exxon, Shell, Sunoco, and other oil and gas companies for misleading Vermont consumers about the risks and dangers of their products, thereby denying consumers the opportunity to make informed decisions regarding fossil fuel purchases and consumption, in violation of the state's consumer protection law.</p>	<ul style="list-style-type: none"> Consumer protection 	<p>Complaint filed in Vermont state court. Defendants removed the case to federal court (D.Vt.). Parties awaiting federal district court decision on motion to remand the case to state court.</p>
<p>New York City <i>New York City v. Exxon et al.</i> Filed: April 22, 2021</p> <p>New York City sued Exxon, Shell, BP, and the American Petroleum Institute for engaging in deceptive trade practices "about the central role their products play in causing the climate crisis," in violation of the city's consumer protection law.</p>	<ul style="list-style-type: none"> Consumer protection 	<p>Complaint filed in New York state court. Defendants removed the case to federal court (S.D.N.Y.). Plaintiff's motion to remand stayed pending the outcome of Second Circuit decision in Connecticut v Exxon.</p>
<p>State of Connecticut <i>Connecticut v. Exxon</i> Filed: Sept. 14, 2020</p> <p>Attorney General William Tong filed a state lawsuit against Exxon for "an ongoing systematic campaign of lies and deception" about the company's role in causing climate change, in violation of the state's consumer protection law.</p>	<ul style="list-style-type: none"> Consumer protection 	<p>Complaint filed in Connecticut state court. Defendants removed the case to federal court (D.Conn.), which remanded the case to state court. Defendants appealed district court's remand decision to the Second Circuit (oral argument to be heard week of 6/13/22). Remand stayed while appeal is pending.</p>
<p>District of Columbia <i>D.C. v. Exxon et al.</i> Filed: June 25, 2020</p> <p>Attorney General Karl A. Racine filed a consumer protection lawsuit against Exxon, BP, Chevron, and Shell for misleading consumers about the role their products play in causing climate change.</p>	<ul style="list-style-type: none"> Consumer protection 	<p>Complaint filed in D.C. Superior Court. Defendants removed the case to federal court (D.D.C.). Parties awaiting federal district court decision on motion to remand the case to state court.</p>

Table 1: Consumer Protection (Continued)

CASE AND SUMMARY	LEGAL CLAIMS ASSERTED	PROCEDURAL STATUS
<p>State of Minnesota <i>Minnesota v. Exxon, Koch Industries and API</i> Filed: June 24, 2020</p> <p>—</p> <p>Attorney General Keith Ellison filed a consumer fraud lawsuit against three major architects of climate denial—Exxon, the American Petroleum Institute, and Koch Industries—for conducting a “campaign of deception” to mislead consumers about the science of climate change and failing to disclose their knowledge that fossil fuel products caused global warming.</p>	<ul style="list-style-type: none"> • Consumer protection • Fraud • Misrepresentation • Failure to warn 	<p>Complaint filed in Minnesota state court. Defendants removed the case to federal court (D.Minn), which remanded the case to state court. Defendants appealed district court’s remand decision to the Eighth Circuit (oral argument heard on 3/15/22). Parties awaiting decision. Remand stayed while appeal is pending.</p>
<p>Commonwealth of Massachusetts <i>Massachusetts v. Exxon</i> Filed: Oct. 24, 2019</p> <p>—</p> <p>Attorney General Maura Healey filed a consumer and investor fraud lawsuit against Exxon in state court, charging the fossil fuel company with systematically and intentionally misleading consumers and investors about its role in causing climate change.</p>	<ul style="list-style-type: none"> • Consumer protection 	<p>Complaint filed in Massachusetts state court. Defendant removed the case to federal court (D.Mass.), which remanded the case to state court. State court denied defendant’s motions to dismiss, including its anti-SLAPP motion to dismiss. Defendant filed appeal of decision denying its anti-SLAPP motion with the state appeals court.</p>

Table 2: Cost Recovery

CASE AND SUMMARY	LEGAL CLAIMS ASSERTED	PROCEDURAL STATUS
<p>Maui County, Hawai’i <i>Maui v. Sunoco, et al.</i> Filed: Oct. 12, 2020</p> <p>—</p> <p>The county’s lawsuit against Exxon, BP, Chevron, Shell, and more than a dozen other fossil fuel companies outlines an array of harms its four islands suffer as a result of Big Oil’s deception: 2019 was the county’s warmest year on record. The county’s fire season, which used to last only a few months but now runs year-round, burned six times as many acres in 2019 than 2018. And more than \$3.2 billion in assets, including the county’s five harbors and five airports, are threatened by chronic flooding and sea-level rise.</p>	<ul style="list-style-type: none"> • Public nuisance • Private nuisance • Trespass • Failure to warn 	<p>Complaint filed in Hawai’i state court. Defendants removed the case to federal court (D.Haw.), which remanded the case to state court. Defendants appealed district court’s remand decision to the Ninth Circuit (oral argument heard on 2/18/22). Parties awaiting decision.</p>
<p>Honolulu City and County, Hawai’i <i>Honolulu v. Sunoco, et al.</i> Filed: March 9, 2020</p> <p>—</p> <p>The lawsuit seeks to hold including Exxon, BP, Shell, Chevron, and other climate polluters accountable for climate damages they knew their products would cause. Officials estimate that the cost of lost land, beaches, roads, infrastructure, and displaced residents from sea-level rise and chronic flooding will be \$19 billion by century’s end.</p>	<ul style="list-style-type: none"> • Public nuisance • Private nuisance • Negligence • Trespass • Failure to warn 	<p>Complaint filed in Hawai’i state court. Defendants removed the case to federal court (D.Haw.), which remanded the case to state court. In federal court, defendants appealed district court’s remand decision to the Ninth Circuit (oral argument heard on 2/18/22). Parties awaiting decision. In state court, defendants’ motions to dismiss were denied and case is proceeding to discovery.</p>
<p>Pacific Coast Federal of Fishermen’s Association <i>PCFFA v. Chevron, et al.</i> Filed: Nov. 14, 2018</p> <p>—</p> <p>The Pacific Coast Federation of Fishermen’s Associations, the largest commercial fishermen’s association on the West Coast, sued 30 fossil fuel companies, including Chevron, Exxon, and BP—marking the first climate liability suit to be filed by one industry against another.</p>	<ul style="list-style-type: none"> • Public nuisance • Negligence • Design defect • Failure to warn 	<p>Complaint filed in California state court. Defendants removed the case to federal court (N.D.Cal). Case management conference set for 6/8/22.</p>

Table 2: Cost Recovery (Continued)

CASE AND SUMMARY	LEGAL CLAIMS ASSERTED	PROCEDURAL STATUS
<p>State of Rhode Island <i>Rhode Island v. Chevron, et al.</i> Filed: July 2, 2018</p> <p>—</p> <p>With 400 miles of vulnerable shoreline, Rhode Island became the first state to file suit against a group of fossil fuel companies for current and impending consequences of climate change, ranging from severe storms and drought to considerable sea level rise and flooding along its coast.</p>	<ul style="list-style-type: none"> • Public nuisance • Negligence • Trespass • Design defect • Failure to warn 	<p>Complaint filed in Rhode Island state court. Defendants removed the case to federal court (D.R.I.), which remanded the case to state court. In federal court, per Supreme Court decision in <i>Baltimore v. BP</i>, First Circuit will consider additional arguments as to whether the federal district court has jurisdiction to hear the case. In state court, remand stayed pending the outcome of a personal jurisdiction case before the state supreme court.</p>
<p>King County, Washington <i>King County v. BP, et al.</i> Filed: May 9, 2018</p> <p>—</p> <p>King County filed a lawsuit against BP, Chevron, Exxon, Shell, and ConocoPhillips seeking an order requiring the companies to fund the costs of climate adaptation, including stormwater infrastructure upgrades, salmon recovery, public health protections and other expenses.</p>	<ul style="list-style-type: none"> • Public nuisance • Trespass 	<p>Complaint filed in Washington state court. Defendants removed the case to federal court (W.D.Wash). Plaintiff voluntarily dismissed the case on 9/28/21.</p>
<p>New York City <i>New York City v. BP et al.</i> Filed: Jan. 9, 2018</p> <p>—</p> <p>The nation's largest city made waves when it announced its lawsuit against BP, Chevron, ConocoPhillips, Exxon and Shell to recover the billions it will need to spend to protect its coastlines, infrastructure and citizens from global warming.</p>	<ul style="list-style-type: none"> • Public nuisance • Private nuisance • Trespass 	<p>Complaint filed in federal court (S.D.N.Y.). Case dismissed by the district court. Second Circuit affirmed the judgment.</p>
<p>Oakland and San Francisco, California <i>Oakland et al. v. BP et al.</i> Filed: Sept. 19, 2017</p> <p>—</p> <p>San Francisco officials said they expect to pay \$500 million to fortify the 3-mile seawall along the Embarcadero to prevent roads, homes and businesses from being submerged. Long-term upgrades are projected to cost \$5 billion.</p>	<ul style="list-style-type: none"> • Public nuisance 	<p>Complaints filed in California state court. Defendants removed the case to federal court (N.D.Cal), which denied plaintiffs' motion to remand to state court. Per Ninth Circuit decision reversing lower court's remand decision, district court will reconsider plaintiffs' renewed motion to remand. Status conference scheduled for 5/12/22.</p>
<p>San Mateo, Santa Cruz, and Marin counties; Cities of Richmond, Imperial Beach, and Santa Cruz, California <i>San Mateo et al. v. Chevron et al.</i> Filed: July 17, 2017</p> <p>—</p> <p>These California lawsuits jump-started climate cost recovery suits in the U.S. Calling out 36 of the world's largest oil companies, the complaints point to impacts such as more frequent flooding, beach erosion and the possibility of water inundating roads, sewage treatment plants and other real estate—including the international airport.</p>	<ul style="list-style-type: none"> • Public nuisance • Private nuisance • Negligence • Trespass • Design defect • Failure to warn 	<p>Complaints filed in California state court. Defendants removed the case to federal court (N.D.Cal), which remanded the case to state court. Per Supreme Court decision in <i>Baltimore v. BP</i>, Ninth Circuit considered additional arguments as to whether the federal district court has jurisdiction and issued decision affirming remand on 4/19/22.</p>

Table 3: Cost Recovery and Consumer Protection

CASE AND SUMMARY	LEGAL CLAIMS ASSERTED	PROCEDURAL STATUS
<p>Anne Arundel County, Maryland <i>Anne Arundel County v. BP, et al.</i> Filed: April 26, 2021</p> <p>—</p> <p>The county’s lawsuit seeks to hold major oil and gas companies—including Exxon, BP, Chevron, and Shell—and the American Petroleum Institute accountable for lying to the public about their products’ role in climate change and to recover costs associated with sea-level rise, flooding, and other local climate damages that the companies knew their products would cause.</p>	<ul style="list-style-type: none"> • Consumer protection • Public nuisance • Private nuisance • Trespass • Failure to warn 	<p>Complaint filed in Maryland state court. Defendants removed the case to federal court (D.Md.). Parties are litigating motion to remand.</p>
<p>Annapolis, Maryland <i>Annapolis v. BP, et al.</i> Filed: Feb. 22, 2021</p> <p>—</p> <p>The city’s lawsuit seeks to hold major oil and gas companies—including Exxon, BP, Chevron, and Shell—and the American Petroleum Institute accountable for lying to the public about their products’ role in climate change and to recover costs associated with sea-level rise, flooding, and other local climate damages that the companies knew their products would cause.</p>	<ul style="list-style-type: none"> • Consumer protection • Public nuisance • Private nuisance • Trespass • Failure to warn 	<p>Complaint filed in Maryland state court. Defendants removed the case to federal court (D.Md.). Parties are litigating motion to remand.</p>
<p>State of Delaware <i>Delaware v. BP, et al.</i> Filed: Sept. 10, 2020</p> <p>—</p> <p>The lawsuit brought by Attorney General Kathy Jennings seeks to hold 31 major fossil fuel companies accountable for defrauding the public about the climate change harms they knew their products would cause. The defendants in the case include BP, Chevron, Exxon, Shell, and the American Petroleum Institute, the largest oil and gas trade association.</p>	<ul style="list-style-type: none"> • Consumer protection • Public nuisance • Trespass • Failure to warn 	<p>Complaint filed in Delaware state court. Defendants removed the case to federal court (D.Del.), which remanded the case to state court. District court’s remand decision is on appeal before the Third Circuit. Remand stayed while appeal is pending.</p>
<p>Charleston, South Carolina <i>Charleston v. Brabham, et al.</i> Filed: Sept. 9, 2020</p> <p>—</p> <p>The first climate liability lawsuit in the American South seeks to hold 24 fossil fuel companies accountable for lying about climate change harms they knew their products would cause. Charleston faces increasingly frequent and severe floods and sea-level rise, among other “devastating adverse impacts.”</p>	<ul style="list-style-type: none"> • Consumer protection • Public nuisance • Private nuisance • Trespass • Failure to warn 	<p>Complaint filed in South Carolina state court. Defendants removed the case to federal court (D.S.C.). Parties are litigating motion to remand.</p>
<p>Hoboken, New Jersey <i>Hoboken v. Exxon, et al.</i> Filed: Sept. 2, 2020</p> <p>—</p> <p>The coastal city is seeking to hold Exxon, the American Petroleum Institute, and other fossil fuel companies accountable for their decades-long campaign of climate disinformation, as well as recover hundreds of millions of dollars in climate damages and costs to make the city more resilient.</p>	<ul style="list-style-type: none"> • Consumer protection • Public nuisance • Private nuisance • Negligence • Trespass 	<p>Complaint filed in New Jersey state court. Defendants removed the case to federal court (D.N.J.), which remanded the case to state court. District court’s remand decision is on appeal before the Third Circuit (oral argument to be heard on 6/24/22). Remand stayed while appeal is pending.</p>

Table 3: Cost Recovery and Consumer Protection (Continued)

CASE AND SUMMARY	LEGAL CLAIMS ASSERTED	PROCEDURAL STATUS
<p>Baltimore, Maryland <i>Baltimore v. BP, et al.</i> Filed: July 20, 2018</p> <hr/> <p>Baltimore is suing 26 oil and gas companies whose products—and the decades-long campaigns of deception regarding their repercussions have left the city unduly exposed to an onslaught of climate-caused threats.</p>	<ul style="list-style-type: none"> • Consumer protection • Public nuisance • Private nuisance • Negligence • Trespass • Design defect • Failure to warn 	<p>Complaint filed in Maryland state court. Defendants removed the case to federal court (D.Md.), which remanded the case to state court. Per Supreme Court decision, Fourth Circuit considered additional arguments as to whether the federal district court has jurisdiction and issued decision affirming remand on 4/19/22.</p>
<p>Boulder (City and County) and San Miguel County, Colorado <i>Boulder County et al. v. Suncor and Exxon</i> Filed: April 17, 2018</p> <hr/> <p>In the first climate cost recovery lawsuit led by landlocked communities, Boulder city and county, along with San Miguel county, are seeking to hold Exxon and Suncor Energy accountable for climate deception and make them pay their fair share of the cost of local climate damages.</p>	<ul style="list-style-type: none"> • Consumer protection • Public nuisance • Private nuisance • Trespass • Conspiracy • Unjust Enrichment 	<p>Complaint filed in Colorado state court. Defendants removed the case to federal court (D.Colo.), which remanded the case to state court. In federal court, per Supreme Court decision in <i>Baltimore v. BP</i>, Tenth Circuit considered additional arguments as to whether the federal district court has jurisdiction to hear the case and issued decision affirming remand on 2/8/22. In state court, parties await decisions on defendants' motions to dismiss.</p>