

No. 19-1644

United States Court of Appeals
For the Fourth Circuit

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Mayor and City Council of Baltimore,

Plaintiff-Appellee,

v.

BP P.L.C.; et al.,

Defendants-Appellants.

On Appeal From The United States District Court,
For The District of Maryland
Case No. 1:18-cv-02357-ELH
(Hon. Ellen L. Hollander)

**BRIEF OF AMICI CURIAE ROBERT BRULLE, CENTER FOR
CLIMATE INTEGRITY, CHESAPEAKE CLIMATE ACTION
NETWORK, BENJAMIN FRANTA, STEPHAN LEWANDOWSKY,
NAOMI ORESKES, GEOFFREY SUPRAN, and the
UNION OF CONCERNED SCIENTISTS
IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE**

William A. Rossbach
ROSSBACH LAW, P.C.
401 North Washington St.
Missoula, MT 59807-8988
Tel. (406) 543-5156
Fax (406) 728-8878
bill@rossbachlaw.com

Counsel for Amici Curiae

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CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1, Amicus Center for Climate Integrity certifies that it is a non-profit organization. The Center for Climate Integrity does not have a parent corporation, and no publicly held company has any ownership of the organization. Amicus Chesapeake Climate Action Network also certifies that it is a non-profit organization. The Chesapeake Climate Action Network does not have a parent corporation, and no publicly held company has any ownership of the organization. Amicus Union of Concerned Scientists also certifies that it is a non-profit organization. The Union of Concerned Scientists does not have a parent corporation, and no publicly held company has any ownership of the organization. All other amici are private individuals and not corporations.

IDENTITY AND INTEREST OF AMICUS CURIAE

Individual Amici are scholars and scientists with strong interests, education, and experience in the environment and the science of climate change, with particular interest in public information and communication about climate change and how the public and public leaders learn about and understand climate change.

Dr. Naomi Oreskes is Professor of the History of Science and Affiliated Professor of Earth and Planetary Sciences at Harvard University. Professor Oreskes' research focuses on the earth and environmental sciences, with a particular interest in understanding scientific consensus and dissent. **Dr. Geoffrey Supran** is a Research Associate in the Department of the History of Science at Harvard University. Working alongside Prof. Oreskes, Supran's applied social science research investigates the history of climate communications and denial by fossil fuel interests. **Dr. Robert Brulle** is a Visiting Professor of Environment and Society at Brown University and an Emeritus Professor of Sociology and Environmental Science at Drexel University. His research focuses on U.S. environmental politics, critical

theory, and the political and cultural dynamics of climate change. **Dr. Benjamin Franta** is a Ph.D. Candidate in the Department of History at Stanford University, where he studies the history of climate science and fossil fuel producers. He holds a separate Ph.D. in Applied Physics from Harvard University and a J.D. from Stanford Law School.

Stephan Lewandowsky is a Professor and Chair in Cognitive Science at the University of Bristol. His research examines the potential conflict between human cognition and the physics of the global climate.

The Center for Climate Integrity is a non-profit organization that works to empower communities and elected officials with the knowledge and tools they need to hold polluters accountable for their contributions to the climate crisis. Through campaigns, communications, and strategic legal support, the organization works to ensure that the fossil fuel industry pays its fair share of the costs of climate change.

The Chesapeake Climate Action Network is a non-profit organization dedicated to fighting climate change and addressing the harms caused by fossil-fuel infrastructure in Maryland, Virginia, and

Washington, D.C., and to securing policies that will put the world on a path to climate stability.

The Union of Concerned Scientists is a national non-profit organization that puts rigorous, independent science to work to solve our planet's most pressing problems. The organization combines technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

Amici submit this brief because they understand that the conduct at the core of the Plaintiff-Appellee's Complaint is that the Defendants affirmatively and knowingly concealed and denied the hazards that they knew would result from the normal use of their fossil fuel products by misrepresenting those products and deliberately discrediting scientific information related to climate change. As such, it is critical to the ultimate outcome of these appeals that full documentation of these misrepresentations is available to the Court as it considers the arguments and claims made by Defendants-Appellants.

All parties have consented to the filing of this brief. No party's counsel authored the brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing of

submitting the brief, and no person other than amici or their counsel contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION

At least 50 years ago, Defendants-Appellants (hereinafter, “Defendants”) knew that the unabated extraction, production, promotion, and sale of their fossil fuel products would result in material dangers to the public. Defendants failed to disclose this information or take steps to warn the public. Instead, they acted to conceal their knowledge and discredit climate science, running misleading nationwide marketing campaigns and funding scientists and third-party organizations to exaggerate scientific uncertainty and promote contrarian theories, in direct contradiction to their own research and actions taken to protect their assets from climate change impacts.¹

The devastating consequences of Defendants’ efforts to deny and discredit the scientific consensus on climate change are now well understood by the international scientific community. A draft report authored by the United Nations’ Intergovernmental Panel on Climate Change’s (IPCC) (to be released in 2022) states:

¹ A detailed history of Defendants’ deception is documented in our previous amicus brief. *Mayor and City Council of Baltimore v. BP P.L.C. et al.*, Docket No. 19-1644 (4th Cir. 2021), Brief for Robert Brulle et al. as Amici Curiae Supporting Plaintiff-Appellee.

Rhetoric on climate change and the undermining of science have contributed to misperceptions of the scientific consensus, uncertainty, unduly discounted risk and urgency, dissent, and, most importantly, polarized public support delaying mitigation and adaptation action, particularly in the US.²

While their tactics have changed, Defendants' overall strategy of deception continues to this day. Defendants acknowledge that the climate is changing and claim to be active partners in efforts to combat climate change. However, they continue to run marketing and lobbying campaigns intended to mislead policymakers and the public about climate change and their role in causing it, effectively reframing the narrative by shifting responsibility for reducing fossil fuel emissions from producers to consumers. Defendants promote themselves as responsible stewards of the environment and innovators in clean energy solutions, while their records reveal continued massive investments in fossil fuels and comparatively inconsequential investments in renewable and low-carbon products and technologies. Defendants

² Zack Colman and Karl Mathiesen, *Climate scientists take swipe at Exxon Mobil, industry in leaked report*, Politico (July 2, 2021), <https://www.politico.com/news/2021/07/02/climate-scientists-exxon-mobile-report-497805>.

continue to fund third-party organizations that oppose regulation and aim to minimize Defendants' central role in causing the climate crisis.

In doing so, Defendants created—and continue to create—the harms Plaintiff alleges, and therefore should be held liable in state court.

I. DEFENDANTS MINIMIZE THE HARMS ASSOCIATED WITH THEIR PRODUCTS BY EMPHASIZING RISK RATHER THAN REALITY

Defendants have used—and continue to use—advertising campaigns to emphasize uncertainty as a means to deny climate science and delay action. Similar to tactics employed by the tobacco industry, Defendants have shifted their focus from explicit statements of doubt and denial to implicit acknowledgements couched in ambiguous statements about “risk”—in other words, something that may or may not happen.³ Defendants systematically describe climate change as a “risk” that can be managed through consumer choices and other means, rather than as a scientific reality caused by the extraction, production,

³ Geoffrey Supran and Naomi Oreskes, *Rhetoric and frame analysis of ExxonMobil's climate change communications*, 4 *One Earth* 696, 709 (May 21, 2021), [https://www.cell.com/one-earth/pdfExtended/S2590-3322\(21\)00233-5](https://www.cell.com/one-earth/pdfExtended/S2590-3322(21)00233-5).

and use of their fossil fuel products. In doing so, Defendants minimize the reality and severity of present-day harms associated with their products.

Climate “risk” is widely used throughout Exxon’s advertising campaigns. A 2021 peer-reviewed study written by two authors of this brief, Drs. Geoffrey Supran and Naomi Oreskes, used computational linguistic analysis to demonstrate that in Exxon’s public climate communications from 2000 onward there was no term more highly associated with “climate change” and “global warming” than “risk(s)”. The authors concluded that the company’s framing of climate change as a risk creates doubt and uncertainty, effectively downplaying Exxon’s role in the climate crisis and contradicting the findings of its own scientists who characterized the threat of climate change as “catastrophic.”⁴

Exxon and other Defendants mislead and deceive the public by changing the conversation from reality to risk, thereby introducing uncertainty into the public climate narrative, even while superficially appearing not to.

⁴ *Id.*

II. DEFENDANTS MINIMIZE THEIR ROLE IN CREATING THE HARMS ASSOCIATED WITH THEIR PRODUCTS BY SHIFTING RESPONSIBILITY FOR CLIMATE CHANGE ONTO INDIVIDUALS

To the extent that Defendants are willing to admit a climate crisis exists, they argue it is our collective fault, not theirs. Defendants' marketing campaigns seek to frame the climate crisis as one that was created, and should be solved, by individuals. For example, in the early 2000s, BP ran a marketing campaign to introduce the first "carbon footprint calculator," which uses an individual's personal data to calculate how many tons of carbon dioxide are emitted as a result of that person's consumer choices.⁵ BP's carbon calculator further gives individuals the opportunity to purchase carbon offsets to neutralize or reduce their carbon footprint.⁶

Drs. Supran's and Oreskes' study revealed that the fossil fuel industry has used advertising campaigns to deflect attention away from its role in creating climate change by extracting, producing, and selling

⁵ bp Target Neutral, *Drive down your carbon footprint*, https://www.bp.com/en_gb/target-neutral/home/calculate-and-offset-your-emissions/travel.html#/.

⁶ *Id.*

fossil fuels by focusing attention on consumer demand for its products.⁷

Internal industry documents show that Exxon disproportionately recognized climate change as a “fossil fuel” problem caused by “fossil fuel combustion”—in other words, by the company’s own products.

However, the company’s public-facing communications tell a different story. Exxon overwhelmingly presents climate change as caused by the “energy demand” of “consumers,” and as a problem to be solved by “energy efficiency.”⁸

Once again, following in the footsteps of the tobacco industry, Defendants have shifted the blame from themselves as producers and marketers to individual consumers. In doing so, Defendants obfuscate their responsibility to extract fewer fossil fuels and shift to cleaner products and technologies. Not only has this messaging strategy allowed Defendants to minimize their role in creating the climate crisis, but it also continues to be used “to undermine climate litigation, regulation, and activism.”⁹

⁷ Supran and Oreskes, *supra* note 3, at 706-08.

⁸ *Id.*

⁹ *Id.* at 696.

III. DEFENDANTS MISLEAD AND DECEIVE THE PUBLIC BY PROMOTING THEMSELVES AS LEADERS IN CLIMATE SOLUTIONS, THOUGH THEIR INVESTMENTS AND OTHER ACTIONS DEMONSTRATE OTHERWISE

In recent years, Defendants have launched nationwide marketing campaigns that portray Defendants as fully committed to the fight against the climate crisis. From 2003 to 2018, the leading fossil fuel companies spent more than \$3 billion on such campaigns, portraying themselves as responsible corporate actors, while failing to take meaningful climate action.¹⁰ However, Defendants' own public records show that each has failed to meaningfully invest in renewable and low-carbon energy products and technologies.

In 2004, Defendant British Petroleum (BP) launched an advertising campaign that attempted to demonstrate BP's commitment to clean energy by changing its name to "Beyond Petroleum."¹¹ But in the years that followed, BP divested its assets in solar and wind

¹⁰ Robert J. Brulle et al., *Corporate promotion and climate change*, 159 *Climatic Change* 87-101 (2020), <https://doi.org/10.1007/s10584-019-02582-8>.

¹¹ Terry Macalister and Eleanor Cross, *BP rebrands on a global scale*, *The Guardian* (July 24, 2000), <https://www.theguardian.com/business/2000/jul/25/bp>.

power.¹² Then in 2019, BP launched its “Keep Advancing” and “Possibilities Everywhere” campaigns, once again promoting its commitment to clean energy.¹³ However, records show that 96 percent of BP’s energy investments remained in fossil fuels that year, leaving less than 4 percent for investments in “alternative energy”—a general term that includes natural gas, which emits methane and CO₂, both greenhouse gases.¹⁴ The UK-based organization ClientEarth filed a complaint with the UK National Contact Point for the OECD Guidelines for Multinational Enterprises (UK NCP) against BP for these misleading ads, alleging that BP’s “current advertising misleads the public in the way that it presents BP’s low-carbon energy activities, including their relative scale to its fossil fuel extraction activities, the role of gas, as well as the global energy system and climate change.”¹⁵

¹² Javier E. David, *‘Beyond Petroleum’ No More? BP Goes Back to Basics*, CNBC (Apr. 22, 2013), <https://www.cnbc.com/id/100647034>.

¹³ @bp_America, Twitter (July 17, 2019, 3:30PM), https://twitter.com/bp_america/status/1151574814244519937.

¹⁴ *BP Annual Report and Form 20-F 2019*, at 63, <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/investors/bp-annual-report-and-form-20f-2019.pdf>.

¹⁵ ClientEarth, *Complaint Against BP in Respect of Violations of the OECD Guidelines* (June 17, 2020), at 6,

The UK NCP found the complaint “material and substantiated,” and would have considered the complaint if BP had not ended the campaign in response to ClientEarth’s complaint.¹⁶

In 2010, Defendant Chevron launched the advertising campaign “We Agree” that portrayed the company as being committed to sustainable energy and environmental stewardship.¹⁷ It highlighted statements that the company claimed to agree with, such as “the world needs more than oil” and “Protecting the Planet is everyone’s job.”¹⁸ By 2014, however, Chevron sold its sole renewable energy branch, the subsidiary Chevron Energy Solutions.¹⁹ As evidenced in a complaint

<https://www.clientearth.org/media/4npme1i1/ncp-complaint-clientearth-v-bp-complaint-submission-and-annex-a-ce-en.pdf>.

¹⁶ UK National Contact Point for the OECD Guidelines for Multinational Enterprises, *Decision: Initial Assessment: ClientEarth Complaint to the UK NCP about BP* (June 16, 2020), <https://www.gov.uk/government/publications/client-earth-complaint-to-the-uk-ncp-about-bp/initial-assessment-clientearth-complaint-to-the-uk-ncp-about-bp>.

¹⁷ Chevron Corporation, *Chevron Launches New Global Advertising Campaign: ‘We Agree’* (Oct. 18, 2010), <https://www.chevron.com/stories/chevron-launches-new-global-advertising-campaign-we-agree>.

¹⁸ Danny Gregory, *Chevron “We Agree” Print*, WordPress (Jan. 1, 2013), <https://dannygregorywork.wordpress.com/2013/01/01/chevron-we-agree-print/>.

¹⁹ Ben Elgin, *Chevron Makes it Official With Sale of Renewable-Energy Unit*, Bloomberg Businessweek (Sep. 2, 2014),

against Chevron for its deceptive advertising, Chevron spent only 0.2 percent of its \$13 billion annual capital expenditures on low-carbon energy sources between 2010 and 2018.²⁰

Defendant Exxon has also promoted digital and other campaigns that mislead consumers about the company's investments and environment impact. It has run advertorials—paid advertisements styled like editorials—as part of its campaign titled “A Greener Energy Future. Literally.”²¹ During this campaign, Exxon touted its commitment and ability to produce 10,000 barrels of algae biofuel per day. But the impact of their investment in biofuels is meager in comparison—these investments represent only 0.2 percent of the company's refinery production between 2010 and 2018.²²

<https://www.bloomberg.com/news/articles/2014-09-02/chevron-makes-it-official-with-sale-of-renewable-energy-unit-to-opterra>.

²⁰ Ryan Schleeter, *Greenpeace Jointly Files FTC Complaint Against Chevron*, Greenpeace USA (Mar. 16, 2021), <https://www.greenpeace.org/usa/news/greenpeace-jointly-files-ftc-complaint-against-chevron/>.

²¹ ExxonMobil, *The Future of Energy? It May Come From Where You Least Expect*, New York Times, <https://www.nytimes.com/paidpost/exxonmobil/the-future-of-energy-it-may-come-from-where-you-least-expect.html>.

²² InfluenceMap, *Big Oil's Real Agenda on Climate Change* (Mar. 2019), at 13, <https://influencemap.org/report/How-Big-Oil-Continues-to-Oppose-the-Paris-Agreement-38212275958aa21196dae3b76220bdc>.

Defendant Shell has branded itself as an environmentally conscious energy company as well. Its marketing campaign claims that it is investing “lower-carbon biofuels and hydrogen, electric vehicle charging, solar and wind power.”²³ But in 2020, it only earmarked between \$2-3 billion per year for low-carbon expenditures, compared to the \$17 billion it spends on fossil fuels operations.²⁴ In 2020, Shell spent \$1.7 billion exploring for new fossil fuels, approximately 24 times the \$70 million it spent on carbon capture and storage and approximately 19 times the \$900 million it spent on nature-based projects.²⁵

In addition, Defendants continue to fund climate disinformation through third-party organizations to promote scientific uncertainty and undermine climate science. For example, in 2007, ExxonMobil pledged to stop funding climate denier groups, stating that the company would “discontinue contributions to several public policy research groups

²³ Shell, *Nature-based Solutions and Shell, New Energies*, YouTube (May 15, 2020), https://www.youtube.com/watch?v=p_peqYDtoA.

²⁴ Shell, *Annual Strategic Report 2020*, at 103, <https://reports.shell.com/annual-report/2020/servicepages/downloads/files/shell-annual-report-2020.pdf>.

²⁵ *Id.* at 50, 104, and 204.

whose position on climate change could divert attention from the important discussion on how the world will secure the energy required for economic growth in an environmentally responsible manner.”²⁶

In direct contradiction to this commitment, the company continues to fund groups that spread misinformation about climate science. From 2008 through 2019, Exxon spent approximately \$13 million funding think tanks and lobby groups that reject established climate science, spread misinformation, and oppose the company’s public positions on climate policy.²⁷ In June 2021, Exxon senior director of federal relations Keith McCoy admitted to as much when he stated that the company “aggressively [fought] against some of the science” by using third-party “shadow groups.”²⁸

²⁶ ExxonMobil, *2007 Corporate Citizenship Report*, at 39, https://www.globalhand.org/system/assets/a25f2fc01db618e4965a9618b5cd66bc49dfe471/original/2007_Coporate_Citizenship_Report.pdf?1340478058.

²⁷ Union of Concerned Scientists, *ExxonMobil Foundation & Corporate Giving to Climate Change Denier & Obstructionist Organizations*, (2018), <https://ucs-documents.s3.amazonaws.com/global-warming/XOM+Worldwide+Giving+2018.pdf>; Union of Concerned Scientists, *ExxonMobil Foundation & Corporate Giving to Climate Change Denier & Obstructionist Organizations* (2019), <https://ucs-documents.s3.amazonaws.com/clean-energy/exxon-mobil-grants-1998-2019.pdf>.

²⁸ Lawrence Carter, *Inside Exxon’s Playbook: How America’s Biggest Oil*

As evidenced above, Defendants' marketing and lobbying campaigns aim to mislead and deceive policymakers and the public about climate change and their role in causing it. They further deceive the public by promoting themselves as leaders in climate solutions, while their continued investments in fossil fuels—at the expense of renewable and low-carbon energy sources—and funding of third-party organizations demonstrate otherwise.

IV. CONCLUSION

Defendants had actual knowledge of the risks associated with their fossil fuel products as early as the late 1950s and no later than 1968, as described in our previous amicus brief. Despite their knowledge and expertise on climate science, Defendants affirmatively promoted—and continue to promote—the use of their products through deceptive and misleading marketing campaigns. Defendants thus created the harms alleged by Plaintiff and therefore should be held liable in state court. Amici urge this Court to affirm the decision below.

Company Continues to Oppose Action on Climate Change (June 30, 2021), <https://unearthed.greenpeace.org/2021/06/30/exxon-climate-change-undercover/>.

RESPECTFULLY SUBMITTED this 14th day of September, 2021.

By: /s/ William A. Rossbach
William A. Rossbach
ROSSBACH LAW, P.C.
401 North Washington St.
Missoula, MT 59807-8988
Tel. (406) 543-5156
Fax (406) 728-8878
bill@rossbachlaw.com

CERTIFICATE OF COMPLIANCE

4th Cir. Case Number 19-1644

I am the attorney or self-represented party.

This brief contains 2700 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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/s/ William A. Rossbach

William Rossbach

CERTIFICATE OF SERVICE

4th Cir. Case Number 18-1644

I hereby certify that I electronically filed the foregoing **Brief of Amici Curiae Robert Brulle, Center for Climate Integrity, Benjamin Franta, Stephan Lewandowsky, Naomi Oreskes, Geoffrey Supran, and the Union of Concerned Scientists in Support of Plaintiff-Appellee and Affirmance** on this date with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the Appellate Electronic Filing system.

/s/ William A. Rossbach

William Rossbach