

Congress of the United States  
Washington, DC 20515

September 25, 2023

Mr. Vic Sher  
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Dear Messrs. Sher and Edling:

Over the past five years, your law firm, Sher Edling LLP (“Sher Edling”), has launched a barrage of lawsuits aimed at bankrupting oil and gas companies.<sup>1</sup> While people may use their resources to bring whatever cases they want—even those that may be so frivolous as to be sanctionable—it appears that left-wing funds are footing the bill for Sher Edling’s climate crusade. Radical activists are backing these lawsuits, too. Ann Carlson, the acting administrator of the National Highway and Traffic Administration (“NHTSA”),<sup>2</sup> gave legal services to Sher Edling while she was a professor at University of California, Los Angeles (“UCLA”) School of Law. Ms. Carlson’s prior work for your firm raises concerns about her current efforts to extralegally create new climate policy through vehicle fuel economy standards. As the Republican leaders of the Senate and House committees with oversight over energy policy and NHTSA, we seek information concerning the third-party donations funding your firm’s climate cases as well as Ms. Carlson’s role in those lawsuits.

Sher Edling has established a niche for itself in the so-called “climate cases” field. Since 2017, Sher Edling has filed over twenty such cases on behalf of Democrat-controlled states, counties, and cities.<sup>3</sup> These lawsuits distort common law causes of action—like public nuisance claims, which target wrongful conduct that directly harmed the plaintiff—and allege that oil and gas companies are liable for causing “climate change-related injuries.”<sup>4</sup> Sher Edling’s lawsuits rely upon a daisy-chain causation theory: energy companies extracted and sold fossil fuels knowing that their actions caused climate change; climate change, in turn, triggered weather events like storm surges and droughts that would not have occurred but for the extraction and sale of the companies’ fossil fuels; these events damaged the state’s property and resources; and the state incurred expenses to address the damage. In effect, Sher Edling is asking courts to create novel liability for perfectly legal activities without alleging those activities directly harmed anyone.

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<sup>1</sup> *Climate Damage and Deception*, Sher Edling, <https://www.sheredling.com/cases/climate-cases/>.

<sup>2</sup> Republican senators on the Senate Commerce Committee have raised concerns that Ms. Carlson’s appointment as acting administrator was invalid. See Sept. 20, 2023 Letter from Republican Members of the Senate Commerce Committee to President Biden, <https://www.commerce.senate.gov/services/files/796C3233-2110-4A65-ADA3-4CFA39FDE167>.

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

<sup>4</sup> Complaint, *Rhode Island v. Chevron Corp.*, No. PC-2018-4716, ¶ 224 (Providence Super. Ct. Jul. 2, 2018).

Sher Edling purports to be taking a righteous gamble that this ludicrous argument will pan out. The firm shopped these lawsuits to jurisdictions around the country.<sup>5</sup> And to convince them to sign up for what is likely to be very costly litigation, Sher Edling agreed to provide its legal services at no cost unless it obtained a “settlement against the industry.”<sup>6</sup> So far, however, it is unlikely Sher Edling has earned any fees from these lawsuits, as none has settled.

It appears that Sher Edling is not really working on these lawsuits on a contingency basis, but rather the lawsuits are being funded, tax-free, by wealthy liberals via dark money pass-through funds. For example, from 2017 through 2021, the Resources Legacy Fund, which is focused on advancing “bold environmental outcomes,”<sup>7</sup> gave Sher Edling over \$5.2 million,<sup>8</sup> including \$2.4 million in 2020 alone.<sup>9</sup> In 2021, the New Venture Fund, which also gears itself towards “conservation, climate, and energy issues,” gave Sher Edling \$3 million.<sup>10</sup> Both of these firms purportedly manage the funds of affluent elitists like Hollywood star Leonardo DiCaprio.<sup>11</sup> And as these groups showered Sher Edling with millions of dollars, your law firm advanced numerous climate change lawsuits. It therefore appears that dark money—a purported concern of many who support radical climate legislation—is fueling your firm’s litigious effort to achieve a left-wing goal lacking majority support in Congress: the eradication of fossil fuels.

Mr. DiCaprio is not Sher Edling’s only friend in high places. NHTSA’s acting administrator Ann Carlson provided professional services to the firm for years, though she has remained tight-lipped about it. She did not identify the firm in her U.S. Department of Transportation recusal form.<sup>12</sup> Yet on her UCLA annual reporting forms for the years 2016 through 2019 (all of which she filed in a single month just before she joined NHTSA), Ms. Carlson stated that she performed “pro bono consulting on litigation for municipalities litigating against oil companies” as a “consultant/committee member” for Sher Edling each year.<sup>13</sup> Publicly-available emails further reveal that Ms. Carlson fundraised for the

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<sup>5</sup> Anne C. Mulkern, *Oil Company Allies Say Climate Lawsuits Were Shopped Around*, CLIMATEWIRE (Apr. 10, 2018), <https://www.eenews.net/articles/oil-company-allies-say-climate-lawsuits-were-shopped-around/>.

<sup>6</sup> Lesley Clark, *Baltimore County Officials Balk at Climate Lawsuit*, CLIMATEWIRE (Nov. 21, 2022), <https://subscriber.politicopro.com/article/eenews/2022/11/21/baltimore-county-officials-balk-at-climate-lawsuit-00069641>; see also Alex Kuffner, *Kilmartin Sues “Big Oil” Over Climate-Change Damage*, THE PROVIDENCE JOURNAL (Jul. 2, 2018), <https://www.providencejournal.com/story/news/courts/2018/07/02/ri-ag-sues-fossil-fuel-companies-over-alleged-role-in-climate-change/11607325007/> (Rhode Island “will pay the firm only if the fossil-fuel companies pay damages.”).

<sup>7</sup> *The RLF Story: Innovating to Meet the Moment*, Resources Legacy Fund, <https://resourceslegacyfund.org/our-story/>.

<sup>8</sup> Joe Schoffstall and Thomas Catenacci, *Group Leo DiCaprio Funneled Grants Through to Fund Climate Lawsuits Moved to Largest US Dark Money Network*, FOX NEWS (Oct. 21, 2022), <https://www.foxnews.com/politics/group-leo-dicaprio-funneled-grants-fund-climate-lawsuits-moved-largest-us-dark-money-network>.

<sup>9</sup> 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *Resources Legacy Fund* (Feb. 2, 2022), <https://resourceslegacyfund.org/wp-content/uploads/2022/03/RLF-2020-IRS-Form-990-Public-Copy-Amended.pdf>.

<sup>10</sup> 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *New Venture Fund* (Nov. 4, 2022), <https://newventurefund.org/wp-content/uploads/2022/11/NVF-2021-990-Public-Disclosure-Copy.pdf>.

<sup>11</sup> Joe Schoffstall and Thomas Catenacci, *supra* note 8.

<sup>12</sup> U.S. Department of Transportation Recusal Form, Ann Carlson (Jun. 9, 2022) (on file with Committee).

<sup>13</sup> Ann Carlson, *Annual Reporting Form*, University of California, Los Angeles School of Law (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>.

firm,<sup>14</sup> travelled to Hawaii “to encourage Hawaii to consider a nuisance lawsuit,”<sup>15</sup> and allowed students in UCLA’s Environmental Law Clinic to give assistance to Sher Edling on these climate cases.<sup>16</sup> Moreover, it appears that Ms. Carlson has moved from attacking traditional energy through litigation to attacking it through regulation: on July 28, 2023, NHTSA proposed stringent fuel economy standards that, as even NHTSA admits, will make purchasing cars less affordable in the name of reducing “the impacts and risks associated with climate change.”<sup>17</sup>

This inquiry is not the first time a member of Congress has raised concerns about Sher Edling’s funding or the work Ms. Carlson did for the firm. On May 16, 2023, following Ms. Carlson’s nomination to be administrator of NHTSA, Ranking Member Cruz sent Sher Edling a letter requesting information on these topics.<sup>18</sup> Then, on May 30, the administration suddenly withdrew Ms. Carlson’s nomination without explanation.<sup>19</sup> Meanwhile, Sher Edling failed to comply with numerous requests for a response. The firm waited until July 28 to have its outside counsel—who was part of the left-wing campaign that tried to smear Supreme Court Justice Brett Kavanaugh during his confirmation process<sup>20</sup>—send a nonresponsive letter, asserting nonsensical justifications for its decision to stonewall a congressional inquiry.<sup>21</sup> For example, it stated that Ms. Carlson “did not consult with Sher Edling about *any specific climate damage and deception cases*” but also claimed that, as a “legal expert” who “consulted pro bono on the legal issues underlying the climate damage and deception cases,” Ms. Carlson’s communications with Sher Edling are “privileged”<sup>22</sup> despite Congress not being bound by common law privileges. Even a court, which *is* bound by common law privileges, would reject Sher Edling’s blanket assertion of an unspecified privilege. Moreover, Ranking Member Cruz asked for details about the nature of Ms. Carlson’s work, not for communications. Instead of answering legitimate oversight questions, all Sher Edling offered were vague nonresponsive claims about compliance and a generalized assertion of privacy, confidentiality, and privilege without disclosing anything of substance about Ms. Carlson’s work for the firm.

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<sup>14</sup> Feb. 26, 2018, E-mail from Ann Carlson to D. Emmett, <https://govoversight.org/wp-content/uploads/2022/05/Sabin-and-his-Rs.pdf>.

<sup>15</sup> Jun. 24, 2019, E-mail from Ann Carlson to D. Emmett, <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-Discretionary-Fund-Requested-Records-20-8371.pdf>.

<sup>16</sup> Maxine Joselow, *Lawsuits Target Exxon’s Social Media “Green Washing,”* CLIMATEWIRE (Jul. 22, 2021), <https://www.eenews.net/articles/lawsuits-target-exxons-social-media-green-washing/>.

<sup>17</sup> Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027-2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030-2035, 88 Fed. Reg. 56128, 56325 (Aug. 17, 2023) (to be codified at 49 C.F.R. pts. 531, 533, 535, and 537); *USDOT Proposes Updated Fuel Economy Standards to Strengthen Energy Security, Save Americans Hundreds of Dollars at the Gas Pump*, NHTSA (Jul. 28, 2023), <https://www.nhtsa.gov/press-releases/usdot-proposal-updated-cafe-hdpuv-standards>.

<sup>18</sup> May 16, 2023 Letter from Sen. Cruz to Sher Edling (on file with Committee).

<sup>19</sup> *Nominations and Withdrawals Sent to the Senate*, The White House (May 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/05/30/nominations-and-withdrawals-sent-to-the-senate-11/>.

<sup>20</sup> Abera Coe, *A Who’s Who of Attorneys Shaping the Kavanaugh Hearing*, Law360 (Sept. 26, 2018), <https://www.law360.com/articles/1086346/a-who-s-who-of-attorneys-shaping-the-kavanaugh-hearing> (noting that Kavanaugh-accuser Deborah Ramirez was represented by William Pittard of D.C.-based KaiserDillon PLLC).

<sup>21</sup> July 28, 2023 Letter from Sher Edling to Sen. Cruz (on file with Committee).

<sup>22</sup> *Id.* (emphasis added).

The timing of Sher Edling’s letter is also curious. It was sent the same day as Ms. Carlson’s agency released a rule that would severely reduce gasoline usage<sup>23</sup> and two days before Democratic senators urged the U.S. Department of Justice to bring lawsuits against the fossil fuel industry that bear an eerie similarity to those your firm has brought.<sup>24</sup> Sher Edling’s obstructionism, coupled with that curious timing, only raises further concerns that the firm’s operations are not above board.

So that our committees may understand how third parties are financing Sher Edling’s climate change lawsuits and Ms. Carlson’s role in those lawsuits, please provide the written responses and documents in response to the questions below no later than October 9, 2023.

1. Ms. Carlson indicated in her UCLA outside activities form that she worked as a “consultant/committee member” for Sher Edling.<sup>25</sup> Please describe the nature of Ms. Carlson’s work for Sher Edling, including the years she served in those roles, what her work in each role entailed, the specific lawsuits she worked on, the specific lawsuits she had any role in and her compensation each year, including any benefits she received or expenses Sher Edling reimbursed.
2. Please describe the nature of UCLA’s Environmental Law Clinic’s work for Sher Edling, the years during which that assistance was provided, and the specific cases that members of that clinic worked on. Please also identify any expenses for that work that Sher Edling reimbursed and any donations the firm or its partners have made to UCLA School of Law since 2017.
3. Please provide a list of every person and entity, excluding clients and vendors, that provided Sher Edling with any amount of money. For each person or entity listed, please include the following information: (a) the amount of the money provided; (b) the date the money was provided; (c) the purpose for which the money was directed to be used; and (d) the manner in which that money was provided, i.e., through a grant, litigation funding agreement, or some other contract or agreement. If the funding was provided pursuant to a written agreement, please provide a copy of that agreement.

Sincerely,



Ted Cruz  
Ranking Member  
Committee on Commerce, Science,  
and Transportation



James Comer  
Chairman  
Committee on Oversight and  
Accountability

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<sup>23</sup> Corporate Average Fuel Economy Standards for Passenger Cars and Light Trucks for Model Years 2027-2032 and Fuel Efficiency Standards for Heavy-Duty Pickup Trucks and Vans for Model Years 2030-2035, *supra* note 17.

<sup>24</sup> July 31, 2023 Letter from Senators Sanders, Merkley, Markey and Warren to Attorney General Merrick Garland, <https://www.sanders.senate.gov/wp-content/uploads/Letter-to-DOJ-Fossil-Fuel-Industry.pdf>.

<sup>25</sup> Ann Carlson, *supra* note 13.