

# POLITICO

## Exxon scrambles to contain climate crusade

**A green campaign to make the company pay for climate change is besieging the oil industry and its conservative allies.**

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On Nov. 3, ExxonMobil dispatched its top lobbyists to Capitol Hill on an urgent mission — tamping down an escalating campaign aimed at making the country’s largest oil company pay a legal and political price for its role in warming the planet.

The meeting marked a striking shift in Exxon’s handling of the controversy. The notion of holding oil companies responsible for global warming, in the same way tobacco companies had to pay billions of dollars in damages over the health effects of cigarettes, had long been seen as a quixotic quest led by scruffy, oil-hating extremists. But POLITICO’s interviews with dozens of activists, industry officials and lawmakers suggest that support for a legal crusade against Exxon is growing far beyond the political fringe — and now poses the biggest existential threat the company has faced in decades.

Just five days before the meeting on Capitol Hill, Democratic presidential front-runner Hillary Clinton had urged the Justice Department to investigate whether the petroleum giant spent decades deceiving the public about the threat of climate change. State attorneys general had Exxon in their sights as well, preparing to issue subpoenas that would eventually rope in virtually all of Washington’s conservative policy apparatus. A four-year effort by green activists, scientists and lawyers to turn Big Oil’s biggest player into the poster child for climate change — deliberately patterned after the successful campaign to take down tobacco — was shaking the descendant of John D. Rockefeller’s Standard Oil empire to its core.

So the four Exxon executives arrived at the office of California Democrat Rep. [Ted Lieu](#) with one job: convincing four of their most vocal congressional critics that the company wasn’t the polluting villain its enemies were making it out to be.

Exxon supports “sound climate policy” and has tripled its greenhouse-gas cuts since 2008, the executives boasted to the lawmakers in a 10-page [glossy presentation](#), later obtained by POLITICO. Exxon was even on record in favor of a tax on carbon emissions — a climate remedy more radical than anything President Barack Obama has proposed.

The company left empty-handed, though, after refusing to directly answer questions about whether it had suppressed internal research that underscored the threat of climate change while publicly sowing doubt about climate science, according to people in the room.

The presentation made at least one thing clear, however: After years of shrugging off pressure from eco-activists, Exxon was showing signs of worry.

And Exxon wasn't the only one with reasons to be nervous.

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Interviews with advocates on both sides of the feud reveal how quickly the anti-Exxon movement has sprouted, to the point that it's now consuming op-ed pages, airwaves and courtrooms across the country. Once merely intent on shaming the oil giant into better behavior, environmentalists are pursuing a strategy to discredit the company, weaken it politically and perhaps make it pay the kinds of multibillion-dollar legal settlements that began hitting the tobacco industry in the 1990s.

The campaign — led by some of the same climate activists who defied Beltway wisdom by killing the Keystone XL oil pipeline — has mushroomed into far more than a greens-versus-Exxon feud.

Just last week, a leaked subpoena from the attorney general in the U.S. Virgin Islands revealed a vast probe that demanded Exxon's communications with more than 100 free-market think tanks, conservative consulting firms and climate-skeptic scientists — proof, the company's supporters say, that environmentalists are using the legal system to launch a broad attack on their political opponents. The subpoena targets Exxon's dealings with parties including the Competitive Enterprise Institute, the U.S. Chamber of Commerce Foundation, the Hoover Institution, George Mason University and scientists at the Massachusetts Institute of Technology, the University of Alabama and the University of Delaware.

The first subpoena to Exxon came from New York Attorney General Eric Schneiderman, who used his state's powerful consumer fraud law to hit the company with legal papers just a day after the lobbyists' meeting on the Hill. AGs in California and Massachusetts have also launched investigations into the company.

Members of Congress have weighed in too, with Sen. Sheldon Whitehouse (D-R.I.) and presidential contender Sen. Bernie Sanders (I-Vt.) urging DOJ to consider bringing civil racketeering cases against oil companies.

“Obviously, we take it extremely seriously,” Exxon spokesman Alan Jeffers told POLITICO, noting that the company is complying with the New York subpoena while it fights the racketeering summons from Virgin Islands Attorney General Claude Walker. The greens' campaign is built on “distorted reports that they have commissioned and a distorted history of climate research that we've done openly with government bodies,” Jeffers added.

Both sides describe the political stakes of the campaign as huge.

“Exxon’s been able to work its political will for a quarter of a century — they shouldn’t be able to,” said climate activist Bill McKibben, a leader of the fight against Keystone. “They should be a toxic political brand.”

“Exxon is taking this real seriously, and that tells you something, doesn’t it?” Matt Pawa, a Massachusetts lawyer who has repeatedly gone after Exxon in court, said in an interview. “Maybe they’ve got something to hide.”

Even rival oil companies that disdain Exxon’s support for a carbon tax are spooked about how far the greens’ campaign has gotten, especially when the industry is already reeling from a huge slump in fuel prices.

"Industry doesn’t look at this and say, ‘Too bad for Exxon,’” one fossil-fuel lobbyist said. “We say it’s very chilling, a horrible precedent, and no one wants to see themselves next.”

Underscoring the industry’s anxiety is the breadth and intensity of the counterattack it has mounted. Industry consultants are accusing the state AGs of colluding with environmentalists, and have questioned the role of foundations created by the Rockefeller family — petroleum heirs turned anti-oil activists — in helping bankroll some news organizations’ Exxon investigations.

The industry is even exploring the idea of launching a counter-probe: A lobbyist for one of Exxon’s industry rivals told POLITICO he has reached out to red-state attorneys general to gauge their interest in probing where environmental groups are getting their funding. No takers have emerged so far.

But industry backers’ main argument is that the greens are assaulting the constitutional rights of anyone who dissents from mainstream climate science. Heritage Foundation fellow Hans von Spakovsky has denounced Schneiderman’s probe as a “Soviet-Style investigation,” while conservative columnist George Will called it an example of “gangster government.”

“Instead of honoring legitimate academic and scientific inquiry, the far-left has gone to extremes to silence those who disagree,” Oklahoma Republican Sen. Jim Inhofe, the chairman of the Environment and Public Works Committee, said Wednesday. He added, “This is nothing more than a misuse of power to score cheap political points.”

Exxon itself has made similar arguments, fighting the Virgin Islands subpoenas in court as an infringement on the company’s free-speech rights. But Walker, the territory’s AG, dismissed that reasoning.

“The First Amendment is not a defense to fraud,” Walker told POLITICO through a spokesman, and “the Constitution provides no right to mislead shareholders.”

“The tobacco companies,” he added, “raised exactly these arguments. ... That was soundly rejected by the courts.”

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The seeds of the Venus flytrap closing around Exxon were planted in June 2012 in the wealthy seaside town of La Jolla, Calif., where two dozen scientists, lawyers and academics huddled for a scholarly conference on an issue that had vexed the environmental movement for decades: How, on a planet filled with 7 billion people, do you hold oil companies liable for their role in worsening climate change?

“This wasn’t a strategy session,” said Peter Frumhoff, a conference organizer and the director of science and policy at the Union of Concerned Scientists. “This was a kind of first cut at, for lack of a better word, an exercise in applied scholarship.”

But attendees emerged with two strategies that would set the tone for today’s anti-Exxon fight.

First, they underscored the importance of building a catalogue of peer-reviewed research making the case that individual corporations could be held responsible for their contributions to climate change, a step that could serve as Exhibit A in future legal action. That tactic took a page from Exxon itself, which funded research after its 1989 Valdez spill arguing that Alaska’s Prince William Sound was already recovering from the damage.

Richard Heede, a climate researcher who helped organize the La Jolla conference, said the attendees realized the “value” of having credible peer-reviewed research.

Working with other academics like Naomi Oreskes, whose book "Merchants of Doubt" drew parallels between the climate and tobacco fights, Heede published articles in peer-reviewed journals that placed the responsibility for climate change at the feet of major fossil fuel companies. In a November 2013 study, for example, Heede estimated that 63 percent of worldwide emissions of industrial carbon dioxide and methane came from a group of 90 “carbon major” entities. (ExxonMobil was prominent in the list.) Environmental groups like Greenpeace immediately trumpeted the research.

“For a long time, fossil fuel companies have benefited from the idea that everyone is responsible for climate change — and if everyone is responsible, then nobody is responsible,” said Carroll Muffett, the president of the Center for International Environmental Law. “Now the science is moving into a much finer resolution.”

Second, the La Jolla attendees agreed that obtaining and publicizing internal corporate documents was the key to turning public opinion against the oil companies and eventually securing a legal victory.

“A key breakthrough in the public and legal case for tobacco control came when internal documents came to light showing the tobacco industry had knowingly misled the public,” the 2012 conference organizers wrote in a memo on the meeting. “Similar documents may well exist in the vaults of the fossil fuel industry and their trade associations and front groups, and there are many possible approaches to unearthing them.”

Exxon’s opponents are likely to get hold of more internal records as the attorneys general proceed with their investigations. Schneiderman’s aides are culling through tens of thousands of pages of documents from the company, according to a person familiar with the probe.

“I’d be amazed if there aren’t several paper trails that will be found through subpoenas,” said veteran lawyer Richard Ayres, one of the Natural Resources Defense Council’s co-founders and an attendee at the 2012 conference. “Once subpoenas are answered, the trails will begin to be more visible and people will find this idea of litigation a lot more appealing.”

The source familiar with Schneiderman’s probe said the wide leeway afforded by his state’s financial fraud law, the Martin Act, aided his request for documents. Those include records of Exxon’s internal research into climate change’s causes, the role of climate information in business decisions, and marketing, advertising and company communications.

From the start, Exxon’s critics drew heavily on the lengthy legal crusade against tobacco companies that culminated in a massive settlement in 1998 totaling hundreds of billions of dollars.

Tobacco critics made little headway in the 1950s, when few Americans knew of the dangers of smoking. But the anti-tobacco fight gained steam as studies directly linked cigarettes to cancer and other ailments, eventually allowing the states to collect huge windfalls from the tobacco companies as compensation for smoking’s health costs.

For the people gathered in La Jolla, even getting to the lawsuit stage would be a victory. “No matter what the outcome, litigation can offer an opportunity to inform the public,” anti-tobacco litigator Sharon Eubanks said at the meeting, according to the meeting notes.

At the heart of any legal strategy is proof of a conspiracy or fraud — in this case, an alleged effort by oil companies to conceal their internal knowledge of their product’s contributions to climate change. The activists’ big break came in September and October, when the nonprofit investigative website InsideClimate News and the Los Angeles Times published stories alleging that Exxon’s scientists had known as far back as the 1970s that the company’s fossil fuels would cook the planet, even as its executives hid that knowledge.

The stories, citing internal Exxon documents, didn’t make an immediate splash in Washington. Lieu and Rep. Mark DeSaulnier (D-Calif.) didn’t ask DOJ to launch an investigation until Oct. 15. Exxon addressed the controversy for the first time on Oct. 21, singling out InsideClimate as “an anti-oil and gas activist organization” — the first of many times that the industry would slam the news outlet for taking money from the anti-fossil-fuel Rockefeller Brothers Fund and Rockefeller Family Fund.

Then the activists scored a political coup on Oct. 29 by injecting the issue into the mainstream of the presidential race. Responding to a question at a New Hampshire town hall, Hillary Clinton told an activist from McKibben’s climate group that the Justice Department should look into Exxon’s activities, saying, “There’s a lot of evidence they misled.”

Days later, Exxon’s lobbyists were taking the meeting in Lieu’s office with Lieu, DeSaulnier and two other liberal House Democrats. They aimed to “show the source documents that we think are the complete opposite of what the media reports have showed,” Exxon spokesman Jeffers said afterward.

Their message: Exxon “believes in climate change, they believe it’s largely caused by the burning of fossil fuels and human activity, and they support a fee on carbon,” Lieu recalled in an interview. “That is the company line.”

But when Lieu asked if Exxon supported any current proposal to tax the carbon in its nearly 25 billion barrels in proved worldwide oil reserves, the lobbyists said no. Nor would the company admit to the greens’ accusations of deceiving the public.

“The basic questions were not at all resolved or seriously addressed in the meeting,” Rep. Peter Welch (D-Vt.) told POLITICO. DeSaulnier called Exxon’s pitch an attempt at “damage control,” rather than an effort to be “open and honest and corrective.”

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American oil companies are coping with the anti-Exxon campaign at a uniquely vulnerable time, with oil prices dropping to a 13-year low in February. Exxon lost its top-ranked credit rating last month thanks to a debt load that has more than tripled since 2012 and earnings that fell by 50 percent last year.

To be sure, Exxon’s status as one of the world’s most profitable companies remains unshaken. Its market value is nearly double that of Chevron, the nation’s second-biggest oil and gas company.

But as the greens’ campaign matures, Washington’s conservative firmament is broadcasting its fury at what it sees as a fishing expedition aimed at ferreting out embarrassing information about the company.

Among those fighting back is CEI-affiliated conservative activist Chris Horner, who has used public records requests to uncover internal documents about coordination between activists and state attorneys general. Horner, who runs an anti-environmentalist research machine called E&E Legal, released emails last month that showed the attorneys general consulting with an anti-Exxon lawyer and an official at the Union of Concerned Scientists before holding a news conference in March with former Vice President Al Gore.

Two BakerHostetler litigators, David Rivkin and Andrew Grossman, have also founded a project called Free Speech in Science accusing the environmentalists of attacking climate skeptics’ constitutional rights.

“You don’t normally choose a target first, based on their speech, and say you’re going to pursue all theories” available to attack that target, said Grossman, also an adjunct scholar at the conservative Cato Institute. “What’s really going on here is intimidation.”

Leaders of the Federalist Society, an alliance of conservative lawyers that counts Supreme Court Justices Clarence Thomas and Samuel Alito as members, have penned lengthy attacks on Schneiderman and other attorneys general investigating Exxon. National Review, Reason, Powerline and others followed suit in defending the oil giant, as have members of The Wall Street Journal's editorial board.

Exxon is "considering all of our options" for potential legal action against InsideClimate News, the Los Angeles Times or activist groups, spokesman Jeffers told POLITICO.

Aside from the company itself, the most vocal resistance to the greens has come FTI Consulting, a firm filled with former Republican aides that has helped unify the GOP in defense of fossil fuels. Under the banner of Energy in Depth, a project it runs for the Independent Petroleum Association of America, FTI has peppered reporters with emails that suggest "collusion" between green activists and state AGs, and has raised questions over InsideClimate's Rockefeller grants.

The intensity of Energy in Depth's counter-assault reflects the degree of potential pain the entire industry faces from Exxon's troubles. IPAA senior vice president Jeff Eshelman said its efforts "haven't been to defend one company or interest, but rather to showcase [InsideClimate's] ongoing attacks on the American oil and gas industry that seem to be funded by multi-million-dollar activists."

InsideClimate News, which was named a Pulitzer Prize finalist last month for its Exxon stories, says it has received \$25,000 from the Rockefeller Family Fund, or about 2 percent of the company's budget. The idea that the funding is influencing its news coverage is "an easy accusation, but it's completely baseless," founder and publisher David Sassoon told POLITICO. "Our funders have no access to our editorial and they never have."

As for Exxon, he said: "They have never asked us for a correction. They don't dispute the authenticity of the documents that our report is based on."

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While nearly 200 nations hammered out a global climate agreement in Paris in December, many establishment environmentalists took a victory lap. But the anti-Exxon forces were girding for their next fight.

On the sidelines of the United Nations conference in Paris, Pawa — the Massachusetts lawyer — delivered a private talk to activists that McKibben described as his "opening argument in the case" against Exxon. Columbia Law School professor Michael Gerrard also spoke that day at Pawa's request about what he described as "some of the defenses that would be raised" by a corporation facing legal threats linked to its greenhouse gas emissions.

Pawa is a veteran Exxon antagonist, having won a \$236 million judgment against Exxon in 2013 for polluting New Hampshire's groundwater. He helped an Alaskan Inuit village sue the company in 2008 over the rising seas that threatened the local economy.

And the previously unreported closed-door huddle in Paris wasn't the only place Pawa has touted his legal theory of Exxon's culpability.

He delivered a courtroom-style presentation titled "What Exxon Knew About Global Warming, and What it Did Anyway" in March at an environmental law conference in Oregon. Later that month, he led a closed-door briefing with Democratic attorneys general and their staff, according to emails obtained by Horner's conservative think tank.

Pawa's central role in the escalating bombardment of Exxon has made him a target, as the company's allies liken him to a puppet master orchestrating the campaign behind the scenes. But he told POLITICO that he is not formally involved in any state investigations, even as he suggested that more AGs could jump into the fray.

"There will be a successful outcome some day, whether it's my or another generation of lawyers," Pawa said. He added: "I do think we will be successful. I hope it's in the short term."

Activists plan to make a public stand at Exxon's annual shareholder meeting May 25, where several resolutions intended to force the company into acknowledging the climate threat will come to a vote.

The calls for a DOJ racketeering investigation from Clinton, Sanders, Lieu and Whitehouse, a former state attorney general, are also paying off. The Justice Department told Lieu in March that it had referred the requests to the FBI, a move that doesn't preclude DOJ later filing a civil complaint.

Walker, the Virgin Islands' AG, predicted that his Exxon probe will take longer than the four months it took for his office to secure an \$800 million settlement in a separate case against Hess Oil. But otherwise, he said, a thorough inquiry "takes time, and my job is to get it done right, not fast."

Oil companies may face yet another headache if Democrats regain the Senate in November: Lawmakers such as Whitehouse told POLITICO they will push to hold hearings like those in the 1990s where tobacco executives had to testify under oath.

The prospect of intensifying political trouble for Exxon and other major oil companies while a legal case drags on is an integral design feature of activists' campaign against the company. Whether the endgame is the type of multibillion-dollar settlement that crippled cigarette makers, or whether it's a Beltway surrender that forces the company to do more on climate change, no longer matters.

What matters, the company's critics say, is sending a message to the industry that its days of climate obstructionism are over.

In the meantime, Whitehouse is betting that the flood of internal Exxon documents emerging as a result of the investigations will uncover damaging information.

"It wouldn't surprise me if some of these organizations were busily scrubbing their files to get rid of culpatory materials," he said.

Meanwhile, the industry's seemingly united pro-Exxon front belies a paradox: Other American oil companies are frustrated by the company's stated advocacy of a "revenue-neutral" carbon tax. No Democrat or environmentalist takes that stance seriously, but Exxon's willingness to even utter the phrase makes it an outlier among U.S. drillers and refiners, which fear that a levy on greenhouse gases could gain momentum if Clinton wins in November.



Many in the industry are also skeptical of Exxon's ties to the Democratic front-runner: The company's Washington office includes senior lobbyist Theresa Fariello, who bundles contributions for Clinton's campaign, and former Democratic aide Dan Easley, both of whom attended the Election Day meeting in Lieu's office.

"Exxon was one of the first companies out of the gate on a carbon tax, and they've made no secret they want to get along with the Clinton guys," said one fossil-fuel lobbyist unaffiliated with the company. "Their chickens are coming home to roost."