



Sen. Whitehouse: Bring RICO Charges against Climate Wrongthink

By [Walter Olson](#)

Another step toward criminalizing advocacy: writing in [the Washington Post](#), Sen. Sheldon Whitehouse (D-R.I.) urges the U.S. Department of Justice to consider filing a racketeering suit against the oil and coal industries for having promoted wrongful thinking on climate change, with the activities of “conservative policy” groups an apparent target of the investigation as well. A trial balloon, or perhaps an effort to prepare the ground for enforcement actions already afoot?

Sen. Whitehouse cites as precedent the long legal war against the tobacco industry. When the federal government took the stance that pro-tobacco advocacy could amount to a legal offense, some of us warned tobacco wouldn’t remain the only or final target. To quote what I wrote in [The Rule of Lawyers](#):

In a drastic step, the agreement ordered the disbanding of the tobacco industry’s former voices in public debate, the Tobacco Institute and the Council for Tobacco Research (CTR), with the groups’ files to be turned over to anti-tobacco forces to pick over the once-confidential memos contained therein; furthermore, the agreement attached stringent controls to any newly formed entity that the industry might form intended to influence public discussion of tobacco. In her book on tobacco politics, *Up in Smoke*, University of Virginia political scientist Martha Derthick writes that these provisions were the first aspect in news reports of the settlement to catch her attention. “When did the governments in the United States get the right to abolish lobbies?” she recalls wondering. “What country am I living in?” Even widely hated interest groups had routinely been allowed to maintain vigorous lobbies and air their views freely in public debate.

By the mid-2000s, [calls](#) were being heard, especially in other countries, for making denial of climate change consensus a legally punishable offense or even a “[crime against humanity](#),” while widely known advocate James Hansen had publicly [called](#) for [show trials of fossil fuel executives](#). Notwithstanding the tobacco precedent, it had been widely imagined that the First Amendment to the U.S. Constitution might deter image-conscious officials from pursuing such attacks on their adversaries’ speech. But it has not deterred Sen. Whitehouse.

Law professor Jonathan Adler, by the way, has [already pointed out](#) that Sen. Whitehouse’s op-ed “relies on a study that [doesn’t show what he \(it\) claims](#).” And Sen. [Whitehouse](#), along with Sen. Barbara Boxer (D-Calif.) and Edward Markey (D-Mass.), has been investigating climate-dissent scholarship in a fishing-expedition investigation that drew a [pointed rebuke](#) from then-Cato Institute President John Allison as an “obvious attempt to chill research into and funding of

public policy projects you don't like.... you abuse your authority when you attempt to intimidate people who don't share your political beliefs.”

P.S. Kevin Williamson notes that if the idea of criminalizing policy differences was ever something to dismiss as an unimportant [fringe](#) position, [it is no longer](#). (cross-posted from [Overlawyered](#))

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