

# Revoke ExxonMobil's Corporate Charter for Climate Destruction and Cover-Up

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*More than 50,000 people from around the world came together in Paris in December 2015 to address the single biggest threat to the survival of the natural world – the climate crisis. There is virtual unanimity among scientists that the burning of fossil fuels is causing the warming of the planet, and if critical steps are not taken, a habitable world will cease to exist.*

But there are entities that stand to lose if alternative sources of energy overtake coal, oil and natural gas. They are huge corporations, including ExxonMobil, Chevron, Shell and Texaco.

Indeed, from 1990 to 2005, Exxon – now called ExxonMobil – spent millions of dollars in a sophisticated campaign to cast doubt on the science of climate change. The oil giant knew better.



Exxon's Scientists Confirm Climate Change

In 1977, James Black, an Exxon senior scientist, told a meeting of powerful oil company executives, "There is general scientific agreement that the most likely manner in which mankind is influencing the global climate is through carbon dioxide release from burning of fossil fuels." The following year, Black wrote: "Present thinking holds that man has a time window of five to ten years before the need for hard decisions regarding changes in energy strategies might become critical."

Exxon made a strategic decision to publicly sow seeds of doubt about climate change while internally confirming it.

During much of the 1980s, Exxon conducted cutting-edge research on climate change. In 1982, its environmental affairs office prepared a corporate primer labeled "not to be distributed externally." It said that preventing global warming "would require major reductions in fossil fuel combustion." If that didn't happen, the primer read, "There are some potentially catastrophic events that must be considered." It added: "Once the effects are measurable, they may not be reversible."

In 1989, Duane Levine, Exxon's manager of science and strategy development, told the board of directors that scientists largely agreed that the burning of fossil fuels would release gases that could raise temperatures between 2.7 and 8.1 degrees Fahrenheit by the middle of the 21st century. Glaciers would melt and sea levels would rise, Levine declared, "with generally negative consequences."

When James Hansen, a prominent NASA climate scientist, testified before Congress in 1988 that global warming had begun, Sen. Tim Wirth (D-Colorado) said, "Congress must begin to consider how we are going to slow or halt that warming trend."

As calls for reductions in carbon dioxide from fossil fuels increased in the United States and around the world, Exxon realized the severity of the threat to its bottom line. Brian Flannery, Exxon's climate expert, wrote in an internal newsletter that such regulations would "alter profoundly the strategic direction of the energy industry."

### Exxon Begins to Sow Doubt About Climate Change

Exxon made a strategic decision to publicly sow seeds of doubt about climate change while internally confirming it. A far-reaching investigation by Columbia University's Energy and Environmental Fellowship Project and the Los Angeles Times, and another by InsideClimate News, revealed Exxon's fateful shift.

An internal draft memo dated August 1988, called "The Greenhouse Effect," set forth the "Exxon position." It advised that the corporation should "emphasize the uncertainty."

Lawbreaking corporations can be dissolved, put out of business and their assets sold pursuant to a judge's order.

In 1992, Exxon joined the Global Climate Coalition (GCC), a group of fossil fuel companies and industry front groups organized by the American Petroleum Institute to spread uncertainty about the scientific basis for climate change. The GCC took ads in The New York Times and The Washington Post, emphasizing doubt about climate change.

Exxon was not alone in its deception. Mobil, Texaco, Shell, Standard Oil of California, Gulf Oil and other behemoths joined together in the GCC to protect their enormous profits.

Exxon conducted a PR campaign, lobbying to prevent US and international measures to limit greenhouse gases. For years, Mobil, then ExxonMobil after the two oil giants merged in 1999, bought a weekly “advertorial” on the editorial pages of the Times.

Exxon repeatedly cited the rationale underlying the 1997 US refusal to ratify the Kyoto Protocol: restricting carbon dioxide emissions “could result in serious harm to the United States economy, including significant job loss, trade disadvantages, increased energy and consumer costs, or any combination thereof.”

In 1998, Exxon’s senior environmental lobbyist frighteningly declared, “Victory will be achieved when ... average citizens ‘understand’ uncertainties in climate science” and when “recognition of uncertainty becomes part of ‘conventional wisdom.’”

More recently, in 2012, ExxonMobil’s CEO minimized fears about climate change. Rex Tillerson told the Council on Foreign Relations, “We have spent our entire existence adapting. We’ll adapt.” He added, “It’s an engineering problem and there will be an engineering solution.”

How reassuring. Merely an “engineering problem.”

#### Revoking a Corporate Charter

One of the side events at the Paris climate conference was devoted to holding ExxonMobil accountable for its dangerous deception about climate change. Columbia law professor and former environmental lawyer Michael Gerrard presented a scenario whereby the corporation could be sued for being a criminal enterprise under the RICO statute (Racketeer Influenced and Corrupt Organizations Act), violating consumer protection laws, constituting a public nuisance and participating in a civil conspiracy.

At that meeting, I suggested petitioning the attorney general of New Jersey, where ExxonMobil is incorporated, to revoke its corporate charter.

Corporations have no inherent right to exist. Since corporations are created by states, the states possess the power to dissolve them. Every state and the District of Columbia have a procedure by which citizens, through their attorney general, can go to court to revoke the charter of a corporation that violates the law. Thus, lawbreaking corporations can be dissolved, put out of business and their assets sold pursuant to a judge’s order that will protect jobs, the environment and the public interest.

In 1976, California’s conservative Republican attorney general used corporate charter revocation to force a private water company out of business for delivering contaminated water to its customers. The company settled the litigation and its assets were sold before its charter was revoked.

New Jersey residents should urge their attorney general to initiate proceedings to revoke the corporate charter of ExxonMobil.

The New York State attorney general used the tool in 1998 in conjunction with other

litigation to put two New York corporations, Council for Tobacco Research and Tobacco Institute Inc., out of business and order their assets donated to state education and health institutions. Dennis Vacco argued that the Council was using its tax-exempt status by acting as a propaganda arm of the tobacco industry. The stated mission of the groups was “to provide truthful information about the effects of smoking on public health,” Vacco said. “Instead,” he added, “these entities fed the public a pack of lies in an underhanded effort to promote smoking and to addict America’s kids.”

The tobacco industry eventually agreed to dissolve the two front groups as part of a multistate settlement of a lawsuit over the public health costs of smoking. But first, Vacco convinced the states’ courts to appoint a receiver for the two tobacco groups and dissolve the Council for Tobacco Research because it had violated its nonprofit corporate charter and tax-exempt status.

Also in 1998, Alabama Circuit Judge William Wynn, acting as a private citizen, filed a lawsuit to revoke the charters of Alabama’s five major tobacco companies. They included Philip Morris, Brown & Williamson, R.J. Reynolds, The Liggett Group and Lorillard Corporation. Judge Wynn cited legal violations including contributing to the delinquency of a minor, unlawful distribution of material harmful to a minor, endangering the welfare of a child, third degree assault, reckless endangerment and deceptive business practice. Although ultimately unsuccessful, the judge’s action shed a critical light on the malfeasance of the tobacco industry.

Indeed, in the 1950s and 1960s, the tobacco companies had intentionally spread disinformation about the dangers of tobacco. While they financed internal research demonstrating that tobacco was addictive and harmful, they sponsored a public campaign minimizing the dangers. The parallels with ExxonMobil are striking. The tobacco companies were convicted in 2006 of “a massive 50-year scheme to defraud the public.”

In September 1998, a coalition of 150 environmental and human rights organizations petitioned California Attorney General Dan Lundgren to revoke the corporate charter of Union Oil Co. of California (Unocal) due to violations of state and international law in the construction of a natural gas pipeline in partnership with Myanmar’s (formerly Burma) military dictatorship. The petition was filed by Loyola Law School professor Robert Benson and other attorneys for the International Law Project for Human, Economic and Environmental Defense (HEED), a project of the National Lawyers Guild.

The petition alleged 10 counts of illegal actions by Unocal. They included enslavement and forced labor; forced relocation of Burmese villages and villagers; killing, homicide, rape and torture; environmental devastation; cultural genocide of indigenous and tribal people; aiding and abetting oppression of women and homosexuals; unfair and unethical treatment; usurpation of political authority; and deception of the courts, shareholders and the public.

Ironically, in the count of environmental devastation, the petition called Unocal “an incorrigible recidivist polluter” and “an engine of destructive greenhouse gases” whose actions are contributing to life-threatening climate change amounting to “ecocide.”

The petition was denied and later refiled before a new state attorney general who, in turn, also turned it down. But the mass mobilization against Unocal likely led the corporation to pull out of a gas pipeline deal with Afghanistan, whose Taliban government was a notorious human rights violator.

In 1996, the law firm of Hadsell & Stormer, also comprised of attorneys from the National Lawyers Guild, brought suit on behalf of 14 Burmese villagers in the landmark case of *Doe v. Unocal*. Filed under the Alien Tort Statute and several California laws, the lawsuit alleged forced labor, crimes against humanity, violence against women and torture.

Four months after the lawsuit was settled in 2005, Chevron bought Unocal's interest in the Burmese pipeline. As stated above, Chevron is one of the large oil companies contributing to climate change. Such is the circle of corporate malfeasance.

#### ExxonMobil's Corporate Charter Should Be Revoked

In November 2015, New York State Attorney General Eric Schneiderman launched an investigation to determine whether ExxonMobil lied to the public about the perils of climate change or to its investors about how those risks may harm the oil business. Schneiderman served the corporation with a subpoena, demanding records of its climate research, including financial information and emails.

New Jersey residents should urge their attorney general to initiate proceedings to revoke the corporate charter of ExxonMobil, which is incorporated in New Jersey. US Supreme Court Justice Byron White said in 1978 about corporations: "The state need not permit its own creation to consume it." ExxonMobil's dangerous and deceptive behavior has endangered not only the state of New Jersey. The climate crisis it has helped create threatens to consume the entire world.

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