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October 6, 2023

**VIA ELECTRONIC MAIL**

Sen. Ted Cruz  
Ranking Member, Committee on Commerce, Science, and Transportation  
U.S. Senate

Hon. James Comer  
Chairman, Committee on Oversight and Accountability  
U.S. House of Representatives

**RE: Your September 25, 2023 Letter to Vic Sher and Matt Edling**

Dear Ranking Member Cruz and Chairman Comer:

I write on behalf of my firm's client, Sher Edling LLP ("Sher Edling"), and in response to your September 25, 2023 letter to Vic Sher and Matt Edling ("September 25 Letter").

Your letter includes several inaccurate statements, and it suggests a similar number of misapprehensions. Below, I work to correct those and otherwise to address your concerns. I expect that, having reviewed the below, your understanding of the firm's work will be different.<sup>1</sup>

*First*, you worry that Sher Edling seeks "the eradication of fossil fuels" and aims to "bankrupt[] oil and gas companies." Sept. 25 Ltr. at 1-2. You needn't worry. Eradicating fossil

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<sup>1</sup> Sher Edling provides this response in the interest of correcting the record, addressing your stated concerns, and otherwise moving beyond this matter. In so doing, it necessarily reserves its rights, including in connection with the jurisdiction of the House Committee on Oversight and Accountability. *Compare, e.g.*, Sept. 25 Ltr. at 1 (identifying authors as "Republican leaders of the Senate and House committees with oversight over *energy policy* and *NHTSA*") (emphases added), *with, e.g.*, Rules of the U.S. House of Representatives, 118<sup>th</sup> Cong., Rule X.1(f)(11), *available at* <https://cha.house.gov/cache/files/5/3/5361f9f8-24bc-4fbc-ac97-3d79fd689602/1F09ADA16E45C9E7B67F147DCF176D95.118-rules-01102023.pdf> (assigning to Committee on Energy & Commerce jurisdiction over "[n]ational energy policy generally"); *id.* at Rule X.1(r)(18) (assigning to Committee on Transportation and Infrastructure jurisdiction over "transportation regulatory agencies").

fuels and bankrupting such companies are not what the pending lawsuits are about; rather, the lawsuits center on compensating communities for injuries arising from specific corporate misconduct by particular members of the fossil fuel industry. Here is how Sher Edling explains the actual aims of its clients in these cases:

Sher Edling represents cities, counties, and states in lawsuits to hold fossil fuel industry defendants accountable for their decades-long campaigns of deception about the science of climate change and the role their products play in causing it, as well as their failure to take steps to avoid the harm they knew would arise from the use of their products or even to warn anyone about it.

Sher Edling LLP, Climate Damage & Deception, <https://www.sheredling.com/cases/climate-cases/> (last visited Oct. 6, 2023). Holding oil and gas companies accountable for whatever damages they may have imposed on local communities across our country by virtue of the companies' tortious business practices is something I expect we all support (well, except, perhaps, those defendant companies). Moreover, if the defendant oil and gas companies did declare bankruptcy, that might limit the ability of Sher Edling's clients (the various state and local communities that have been harmed) to recover from those companies the damages that they have suffered; in short, bankruptcy would not appear in anyone's interest.

*Second (and relatedly)*, you state that Sher Edling's clients are seeking damages "without alleging those activities [i.e., the activities of the defendant oil and gas companies] directly harmed anyone." Sept. 25 Ltr. at 1. This misunderstands the cases. The complaints in Sher Edling's clients' cases, in fact, seek to recover damages precisely to compensate for harms caused by the defendants' failures to warn and decades of deception. As the court held in *City & County of Honolulu v. Sunoco LP*, the claims brought by Sher Edling's clients

are tethered to existing well-known elements including duty, breach of duty, causation, and limits on actual damages caused by the alleged wrongs. . . . Plaintiffs do not ask for damages for *all* effects of climate change; rather, they seek damages only for the effects of climate change allegedly *caused* by Defendants' breach of Hawai'i law regarding failures to disclose, failures to warn, and deceptive promotion. . . . Plaintiffs do not ask this court to limit, cap, or enjoin the production and sale of fossil fuels. Defendants' liability in this case, if any, results from alleged tortious conduct, and not from lawful conduct in producing and selling fossil fuels.

Order Denying Defs.' Mot. to Dismiss, Civ. No. 1CCV-20-0000380 (JPC) (Haw. Cir. Ct. Mar. 29, 2022) (emphases in original).

The same is true of the express allegations in other deception-based cases in which Sher Edling works with public counsel. For example, the State of New Jersey's complaint alleges:

Defendants’ individual and collective conduct—including, but not limited to: their failures to warn of the threats fossil fuel products posed to the world’s climate; their wrongful promotion of fossil fuel products and their concealment of known hazards associated with the use of those products; and their public deception campaigns designed to obscure the connection between their products and climate change and its environmental, physical, social, and economic consequences—is a direct and proximate cause that brought about or helped bring about climate change and consequent harms to New Jersey.

Complaint & Jury Demand, *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22, ¶ 233 (N.J. Super. Ct. Oct. 18, 2022). Other pending lawsuits—both in cases in which Sher Edling works with public counsel and in cases in which Sher Edling is not involved—similarly allege that oil and gas companies have damaged particular communities. *See, e.g.*, Complaint & Jury Demand, *City of Hoboken v. Exxon Mobil Corp.*, No. HUD-L-003179-20, ¶ 15 (Hudson Cty., N.J. Super. Ct. Sept. 2, 2020) (“The fossil fuels driving Defendants’ billion-dollar profits, and Defendants’ lies about the risks of fossil fuels, are the cause of both the escalating climate harms experienced by Hoboken and the enormous costs the City now must undertake to abate them.”).

On that last point (referencing cases in which Sher Edling is *not* involved), you should understand that many communities are seeking to recover their damages in similar circumstances, and Sher Edling is simply one law firm assisting clients in that undertaking. Indeed, as I understand it, there are more than twenty states, counties, and municipalities bringing similar lawsuits *without* the involvement of Sher Edling, and those communities in turn are represented by at least eight private law firms, one nonprofit law firm, and in-house counsel from the attorney general’s offices of at least three states. *See, e.g., id.* at 1 (listing counsel for City of Hoboken, New Jersey).

*Third*, you worry that certain cases brought by Sher Edling’s clients “distort common law causes of action” and otherwise depend on “ludicrous arguments.” Sept. 25 Ltr. at 1-2. Your concerns in this regard, however, are misplaced, both procedurally and substantively.

- *Procedurally*, it is not appropriate—under both separation of powers and federalism doctrines—for either of your committees to comment on the legal viability of these cases.
  - As to the separation of powers, these are matters proceeding in various courts; it is for the judiciary—not the legislature—to determine whether the claims in those cases have merit or, alternatively, “distort” the law or otherwise involve “ludicrous” arguments. *See also, e.g.*, <https://www.cruz.senate.gov/services/help-with-a-federal-agency> (“[T]he advice of the Ethics Committee concerning pending court actions is that Senate offices should refrain from intervening in such legal actions until the matter has reached a resolution in the courts. The principle behind such

advice is that the judicial system is the appropriate forum for the resolution of legal disputes and, therefore, the system should be allowed to function without interference from outside sources.”).

- And, as to federalism, each of the cases identified in your letter has been brought in a *state court*, rather than a federal court, and each involves the application of *state law*, rather than federal law; these are not matters for the federal government. Indeed, I understand that the federal courts that have been asked to weigh in on this question—including at the appellate level in the First, Second, Third, Fourth, Eighth, Ninth, and Tenth Circuits—*unanimously* have rejected the defendants’ persistent efforts to remove the cases from the state courts. *See, e.g., State of Connecticut v. Exxon Mobil Corp.*, 2023 WL 6279941, at \*13 (2d Cir. Sept. 27, 2023) (collecting cases).
- *Substantively*, where courts have reached motions to dismiss (despite the defendant oil and gas companies’ multi-year efforts to remove the cases from state courts and otherwise to prevent those cases from moving forward), those courts have concluded that the claims of Sher Edling’s clients, and other plaintiffs, far from constituting “distort[ions]” of any causes of action (or otherwise involving any “ludicrous” arguments), in fact have the merit necessary to proceed. *See, e.g., Commonwealth of Mass. v. Exxon Mobil Corp.*, No. 1984-CV-03333 (Mass. Super. Ct. June 22, 2021) (denying motions to dismiss); *City & Cty. of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (JPC) (Haw. Cir. Ct. Mar. 29, 2022) (same; discussed above). And all of these rulings have come, mind you, despite the defendants’ access to extraordinary “blank check” legal talent.

*Fourth*, you assert that the lawsuits brought by Sher Edling’s clients “are being funded, tax-free, by wealthy liberals via dark money pass-through funds,” and you even refer to the contributors of that money as “affluent elitists.” Sept. 25 Ltr. at 2. Setting aside the name-calling, donations to Sher Edling do not finance any particular lawsuit; rather, such donations support only the firm’s general operations in this area. *See also infra*.

*Fifth*, you misunderstand Sher Edling’s previous efforts to address concerns raised by Senator Cruz on these issues. On May 12, 2023, Senator Cruz wrote to Mr. Sher and Mr. Edling; Senator Cruz did so in the context of seeking information regarding President Biden’s then-pending nomination of Ann Carlson to serve as the Administrator of the National Highway Traffic Safety Administration (“NHTSA”).<sup>2</sup> Within a week, Sher Edling responded.<sup>3</sup> Subsequently, on May 30, President Biden withdrew his nomination of Ms. Carlson.<sup>4</sup>

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<sup>2</sup> *See* Ltr. from Sen. Ted Cruz to Vic Sher & Matt Edling (May 12, 2023) (“May 12 Letter”).

<sup>3</sup> *See* Ltr. from William Pittard to Sen. Ted Cruz (May 19, 2023).

<sup>4</sup> *See* PN464 – Nomination of Ann Elizabeth Carlson for Department of Transportation, 118th Congress (2023-2024), <https://www.congress.gov/nomination/118th-congress/464>.

Notwithstanding that withdrawal of the predicate for Senator Cruz's questions, Sher Edling continued to engage with the Senator, eventually providing a lengthy July 28, 2023 response to his inquiries.<sup>5</sup> Following that response, Sher Edling then heard nothing further on this matter until your September 25 Letter. In short, as it does via this letter, Sher Edling has worked to be attentive to congressional concerns, even while noting that those concerns rest substantially on inaccurate assumptions, as explained in the July 28 Letter and this letter.

*Sixth (and related to Sher Edling's previous responses to Senator Cruz)*, you note that Sher Edling is a law firm engaged in litigation, and you reference the issue of privilege. *See* Sept. 25 Ltr. at 1, 3. In doing so, however, you state that Congress is not "bound by common law privileges." *Id.* at 3. That is not correct; in *Trump v Mazars*, 140 S. Ct. 2019, 2032 (2020), Chief Justice John Roberts, writing for seven of the Supreme Court's justices, recently emphasized:

[R]ecipients of legislative subpoenas retain their constitutional rights throughout the course of an investigation. And recipients have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications . . . .

(citations omitted).

*Seventh (and this perhaps gets to the heart of your concern)*, you worry that Sher Edling is part of a vast "left-wing campaign." Sept. 25 Ltr. at 3-4. There are two parts to your concern; both lack any basis, as I reassure you below.

- Initially, you worry about Sher Edling's chosen counsel, my firm. Sept. 25 Ltr. at 3. You reference that, more than five years ago, my firm represented Deborah Ramirez, a private citizen pulled into the political maelstrom around the nomination of now-Supreme Court Justice Brett Kavanaugh. Indeed, my firm (and I personally) proudly represented Ms. Ramirez. Neither she, nor I, nor my firm, however, were part of any "left-wing campaign," then or now. Sept. 25 Ltr. at 3. Indeed, in the many years since that legal representation (just as during the many years before it), my firm, and I personally, have represented many individuals and entities across the political spectrum—including high-ranking officials in the administration of former President Donald Trump (both in his White House and as the heads of multiple of his Executive Branch agencies). *See also, e.g.*, D.C. Rule of Professional Conduct 1.2(b) ("A lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social, or moral views or activities.").
- You then reference the days on which (a) a particular government regulatory agency "released a rule," and (b) four Senators sent a letter. Sept. 25 Ltr. at 4.

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<sup>5</sup> *See* Ltr. from William Pittard to Sen. Ted Cruz (July 28, 2023) ("July 28 Letter").

You find the timing of those events “curious,” *id.*, perhaps worrying that Sher Edling somehow orchestrated those happenings. It did not; it learned about these events through news reports. If any left-wing conspiracy exists, Sher Edling has been left out of it.

*Eighth*, you ask about Ms. Carlson’s indication that she once served as a “consultant/committee member” for Sher Edling. Sept. 25 Ltr. at 4 (quoting a public disclosure by Ms. Carlson). This is something that Senator Cruz had asked about at the time that President Biden nominated Ms. Carlson to serve as the Administrator of the NHTSA. *See* May 12 Ltr. at 2. Sher Edling engaged with Senator Cruz on this question at that time. *See, e.g.*, July 28 Ltr. at 3. To further allay your concerns: Ms. Carlson has consulted pro bono on the legal issues underlying the climate damage and deception cases for which Sher Edling serves as outside counsel. *See, e.g.*, Ann Carlson, *Annual Reporting Forms*, University of California, Los Angeles School of Law, Reporting Periods July 1, 2016 – June 30, 2017; July 1, 2017 – June 30, 2018; July 1, 2018 – June 30, 2019, available at <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>. After reasonable investigation, it appears that Ms. Carlson’s consultations for Sher Edling ended by 2020 (when, as I understand it, she departed the University of California, Los Angeles School of Law for the U.S. Department of Transportation). As to the nature of the consultations, it does not appear, after reasonable investigation, that Ms. Carlson consulted with Sher Edling on the merits of any specific climate damage and deception case; rather, her consultations were limited to the general legal issues implicated by those cases.

*Ninth*, you ask about Sher Edling’s past relationship with “UCLA’s Environmental Law Clinic[.]” Sept. 25 Ltr. at 4. Again, this is a topic about which Senator Cruz asked during President Biden’s nomination of Ms. Carlson to serve as NHTSA Administrator. *See* May 12 Ltr. at 3. And it is a topic on which Sher Edling responded. *See, e.g.*, July 28 Ltr. at 3. In short, the relevant clinic provided assistance, on issues arising in then-pending and potential cases, during approximately 2018 and 2019. After reasonable investigation, it does not appear that Sher Edling has reimbursed the clinic for any expenses—and nor does it appear that any of Sher Edling’s equity partners donated to the clinic’s host (the University of California, Los Angeles School of Law) during the time the clinic provided assistance, or subsequently.

*Tenth (and finally)*, you ask about donors to Sher Edling. As I’ve previously explained, the firm has received philanthropic grants in support of its work, and the media has reported on those grants. *See, e.g.*, July 28 Ltr. at 3-4 & n.9. Indeed, such donations are publicly disclosed via the IRS 990 filings of the relevant organizations. *See, e.g.*, Internal Revenue Service (2020), *Form 990: 2020 Return of Organization Exempt from Income Tax: Resources Legacy Fund*, [https://apps.irs.gov/pub/epostcard/cor/954703838\\_202012\\_990\\_2022030219678910.pdf](https://apps.irs.gov/pub/epostcard/cor/954703838_202012_990_2022030219678910.pdf). As noted above in this letter, these donations support Sher Edling’s general operations; they do not finance any particular lawsuit.

Sen. Ted Cruz & Hon. James Comer

October 6, 2023

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Thank you for the opportunity to correct the record, to provide context, and otherwise to address your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "William Pittard". The signature is fluid and cursive, with a prominent "W" and "P".

William Pittard

cc: Sen. Maria Cantwell, Chair, Committee on Commerce, Science, and Transportation  
Hon. Jamie Raskin, Ranking Member, Committee on Oversight and Reform