
Quo Warranto Petition Related to Investor-Held Fossil Fuel Corporations

Inder Comar <inder@justatonement.org>
To: marc.nolan@doj.ca.gov

Mon, Feb 3, 2020 at 6:44 AM

Dear Mr. Nolan,

Please see the attached letter for your review, petitioning the Attorney General for review of, and action against, investor-held fossil fuel corporations doing business in the State of California to help prevent an imminent breakdown of the Earth's climate system.

Respectfully submitted,

Dave Inder Comar
Executive Director



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To the Attorney General of the State of California

Quo Warranto Petition Questioning Ability of Investor-Held Fossil Fuel Corporations to Conduct Unrestrained, Potentially Catastrophic Business in California

Marc J. Nolan
Deputy Attorney General
Office of the Attorney General
Opinion Unit, Dept. of Justice
300 South Spring Street
Los Angeles, CA 90013
Marc.Nolan@doj.ca.gov

Dear Mr. Nolan:

On behalf of the steering committee of the #climateletter initiative (www.climateletter.us) I submit this formal request that your office **break the power** of privately-held fossil fuel corporations subject to your jurisdiction—once and for all.

You must take immediate action to prevent these fossil fuel corporations and their subsidiaries and affiliates—the Big Polluters—from triggering a massive climate breakdown. A climate breakdown will cause dangerous and catastrophic changes to the Earth over the coming decades and will lead to mass extinction of species, including the threat of extinction to the human race.

We ask you to place the Big Polluters under court supervision to ensure that they:

- cease and desist with any further emissions of greenhouse gases;
- implement corporate and industrial strategies, approved by U.S. states, to limit warming to 1.5°C by 2100;
- pay restitution, and where this is not possible, compensation to U.S. states for knowingly causing catastrophic damage through their greenhouse gas emissions; and
- pay restitution, and where this is not possible, compensation to poor and developing countries that have already been terribly exploited by the Big Polluters over the last several decades—countries that will now be hit the hardest by the climate crisis.

If the Big Polluters refuse, we ask that you revoke their corporate charters and shutter them—once and for all.



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You must demand, to the fullest extent possible, that this transition away from emissions-producing activities is paid for by the Big Polluters and their investors, and not by consumers or workers.

We bring this petition under *quo warranto* statutes as well as the common law. We reserve the ability to seek further legal action with an appropriate court if this petition is ignored.

We are ready to assist you in any way.

We are experiencing a climate breakdown and an extinction event.

As you are by now aware, the Earth is warming at a fantastic speed never before seen in history.¹

This warming is caused by industrial activity, and specifically, the release of greenhouse gasses such as carbon dioxide, methane, and nitrous oxide.

As of this writing, the Earth has warmed at least 1°C since 1750; and it is estimated that if humanity continues to emit greenhouse gasses at the current rate, the Earth may warm 3°C to 5°C by 2100.² The Earth will keep warming past 2100 until a new homeostasis is reached—perhaps even triggering “Hothouse Earth”³—a world where sea levels are potentially 60 meters (200 feet) higher than today,⁴ and where parts of the Earth are uninhabitable.⁵

The science of global warming has been established as early as the 19th century.⁶ **The massive warming of the global climate system now in progress is unequivocal.**⁷

¹ *Climate Change: How do we know?*, NASA, <https://climate.nasa.gov/evidence/>; *Climate is always changing. Why is climate change of concern now?*, The Royal Society, (<https://royalsociety.org/topics-policy/projects/climate-change-evidence-causes/question-6/>) (last updated February 2014) (“This speed of warming is more than ten times that at the end of an ice age, the fastest known natural sustained change on a global scale.”; Noah S. Diffenbaugh, Christopher B. Field, *Changes in Ecologically Critical Terrestrial Climate Conditions*, *Science*, August 2, 2013, at 486-92 (Noting that the speed of changes to the climate taking place today are unprecedented in the last 65 million years).

² Press Release. *WMO climate statement: past 4 years warmest on record*, World Meteorological Organization (November 29, 2018) (on file with author).

³ Will Steffen, Johan Rockström, Katherine Richardson, Timothy M. Lenton, Carl Folke, Diana Liverman, Colin P. Summerhayes, Anthony D. Barnosky, Sarah E. Cornell, Michel Crucifix, Jonathan F. Donges, Ingo Fetzer, Steven J. Lade, Marten Scheffer, Ricarda Winkelmann, Hans Joachim Schellnhuber; *Trajectories of the Earth System in the Anthropocene*, *Proceedings of the National Academy of Sciences* Aug 2018, 115 (33) 8252-8259; DOI:10.1073/pnas.1810141115; available at <https://www.pnas.org/content/115/33/8252>.

⁴ *Id.*

⁵ *Id.*

⁶ *Climate Change: How do we know?*, *supra*, at fn 1.

⁷ Pachauri, R. K., & Reisinger, A. (2007). IPCC fourth assessment report. *IPCC, Geneva, 2007*.



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Even while our Earth is rapidly warming, our planet is also currently undergoing a great extinction event—the sixth such event in 540 million years.⁸ At least 1 million species are threatened with imminent extinction within decades.⁹

Combined with one another, our species is now creating the conditions for “catastrophic” conditions as early as 2050, and “unknown??” risks, including **existential, human-extinction risks**, by 2100.¹⁰

The Earth is changing radically even at this time. You have assuredly read about:

- Record-breaking heatwaves in Europe, the United States, Australia, the Arctic and other places.¹¹ In July 2019, the city of Anchorage, Alaska sustained a temperature of 90°F (32°C) for the first time in recorded history.¹²
- Record-breaking forest fires in Europe, the United States, Australia, the Arctic and other places.¹³ In December 2020, historic wildfires in Australia burned almost 16 million acres

⁸ William J. Ripple, Christopher Wolf, Thomas M. Newsome, Mauro Galetti, Mohammed Alamgir, Eileen Crist, Mahmoud I. Mahmoud, William F. Laurance, 15,364 scientist signatories from 184 countries; *World Scientists' Warning to Humanity: A Second Notice*, BioScience, Volume 67, Issue 12, (December 1 2017); Cristiana Pasca Palmer, *Land and ecosystem degradation and restoration: Priorities for increased investments in biodiversity and resilience in Africa*, (November 13, 2018); *Scientist gives human extinction warning*, UPI, <https://www.upi.com/Scientist-gives-human-extinction-warning/55521276890103/> (last updated June 18, 2010)

⁹ IPBES. 2019. Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES Secretariat, Bonn, Germany.

¹⁰ Yangyang XU, Veerabhadran, Ramanathan, *Well below 2 °C: Mitigation strategies for avoiding dangerous to catastrophic climate changes*, PNAS, September 26, 2017, available at <https://www.pnas.org/content/114/39/10315> (“; Gerardo Ceballos, Paul R. Ehrlich, Rodolfo Dirzo, *Biological annihilation via the ongoing sixth mass extinction signaled by vertebrate population losses and declines*, PNAS, July 25, 2017 (“Thus, we emphasize that the sixth mass extinction is already here and the window for effective action is very short, probably two or three decades at most”); Justin L. Penn, Curtis Deutsch, Jonathan L. Payne, Erik A. Sperling, *Increased temperature and reduced oxygen drove extinctions during the “Great Dying” about 252 million years ago*, Science, December 7, 2018 (noting parallels between current climate change and the Permian Extinction, which took place 252 million years ago and caused an extinction event that killed 96% of all marine species and 70% of terrestrial species); *‘Direct existential threat’ of climate change nears point of no return, warns UN chief*, UN News (September 10, 2018), <https://news.un.org/en/story/2018/09/1018852>.

¹¹ IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, Maycock, M. Tignor, and T. Waterfield (eds.)]. *World Meteorological Organization, Geneva, Switzerland, 32 pp.*

¹² National Weather Service Anchorage, (July 1, 2019) NWS Chat: Public Information Statement. Retrieved from <https://nwschat.weather.gov/p.php?pid=201907011314-PAFC-NOAK48-PNSAFC>

¹³ Abatzoglou, J. T., & Williams, A. P. (2016). Impact of anthropogenic climate change on wildfire across western US forests. *Proceedings of the National Academy of Sciences*, 113(42), 11770-11775.; World Weather Attribution (2018) *Heatwave in northern Europe, summer 2018* Retrieved from <https://www.worldweatherattribution.org/attribution-of-the-2018-heat-in-northern-europe/>; Kirchmeier-Young, M. C., Gillett, N. P., Zwiers, F. W., Cannon, A. J., & Anslow, F. S. (2019). Attribution of the Influence of Human-Induced Climate Change on an Extreme Fire Season. *Earth's*



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and killed 1 billion animals. Fires like this have never been witnessed before.¹⁴

- The death of coral reefs caused by a warmer ocean that is also more acidic because of increased carbon dioxide.¹⁵ This is specifically concerning because coral reefs contain one quarter of the ocean's biodiversity.¹⁶
- The loss of oxygen in large parts of the ocean, causing hypoxia to marine life.¹⁷
- It is warm enough now that we are witnessing, in real time, the melting of polar ice caps. Ice cap melt will trigger a sea level rise that will flood coastal cities, perhaps as much as 50 feet or more. Major cities—New York, Shanghai, Rio de Janeiro, Osaka, Alexandria, Miami—will be gone.¹⁸ Once ice-sheets become unstable, sea level rise may accelerate significantly, **with worst-case scenarios of rapid sea-level rise being more likely than best-case scenarios of slower sea-level rise.**¹⁹
- Soaring temperatures and flooded cities will trigger a global refugee crisis that will be unprecedented in human history,²⁰ at levels not seen since the human race migrated out of Africa. The World Bank estimates by 2050, 140 million people will be displaced within their own countries.²¹ In addition, the United Nations High Commissioner for Refugees estimates 250 million refugees by 2050.²² Other estimates say 1 billion refugees by 2050.²³ The Syrian refugee crisis—a crisis that the world could not effectively manage—will be dwarfed by people fleeing coastlines and climate-fueled disaster zones.
- The United Nations has concluded that one million species “already face extinction, many within decades, unless action is taken to reduce the intensity of drivers of

Future, 7(1), 2-10. Bastin, J. F., Clark, E., Elliott, T., Hart, S., van den Hoogen, J., Hordijk, I., ... & Mo, L. (2019). Understanding climate change from a global analysis of city analogues. *PIOS ONE*, 14(7), e0217592.

¹⁴Sigal Samuel, *A staggering 1 billion animals are now estimated dead in Australia's fires*, Vox, (January 7, 2020) <https://www.vox.com/future-perfect/2020/1/6/21051897/australia-fires-billion-animals-dead-estimate>.

¹⁵ Bradley D. Eyre, Tyler Cyronak, Patrick Drupp, Eric Heinen De Carlo, Julian P. Sachs, Andreas J. Andersson, *Some coral reefs have begun to lose more calcium carbonate than they are producing*, *Science*, February 23, 2018, at 908-911.

¹⁶ Plaisance L, Caley MJ, Brainard RE, Knowlton N (2011) The Diversity of Coral Reefs: What Are We Missing?. *PLOS ONE* 6(10): e25026. <https://doi.org/10.1371/journal.pone.0025026>

¹⁷ Breiburg, D., Levin, L.A., Oschlies, A., Grégoire, M., Chavez, F.P., Conley, D.J., Garçon, V., Gilbert, D., Gutiérrez, D., Isensee, K. and Jacinto, G.S. (2018). Declining oxygen in the global ocean and coastal waters. *Science*, 359(6371), eaam7240.; Joyce, S. (2000). The dead zones: oxygen-starved coastal waters. *Environmental health perspectives*, 108(3), A120-A125.

¹⁸ Strauss, B. H., Kulp, S. and Levermann, A. 2015. Mapping Choices: Carbon, Climate, and Rising Seas, *Our Global Legacy*. Climate Central Research Report. pp. 1-38.

¹⁹ Robel, A. A., Seroussi, H., & Roe, G. H. (2019). Marine ice sheet instability amplifies and skews uncertainty in projections of future sea-level rise. *Proceedings of the National Academy of Sciences*, 116(30), 14887-14892.

²⁰ Abel, G. J., Brottrager, M., Cuaresma, J. C., & Muttarak, R. (2019). Climate, conflict and forced migration. *Global environmental change*, 54, 239-249.

²¹ Press Release. The World Bank, *Climate Change Could Force Over 140 Million to Migrate Within Countries by 2050: World Bank Report* (March 19, 2018) (on file with author).

²² Melita H. Sunjic, *Top UNHCR official warns about displacement from climate change*, UNHCR (December 9, 2018) <https://www.unhcr.org/493e9bd94.html>.

²³ Baher Kamal, *Climate Migrants Might Reach One Billion by 2050*, Inter Press Service (August 21, 2017)

http://www.ipsnews.net/2017/08/climate-migrants-might-reach-one-billion-by-2050/?utm_source=rss&utm_medium=rss&utm_campaign=climate-migrants-might-reach-one-billion-by-2050



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biodiversity loss”.²⁴

- By 2050, London will likely be as hot as Barcelona, and a fifth of the world’s cities will witness environmental conditions that they have never experienced before.²⁵
- United Nations Special Rapporteur Philip Alston has concluded that the climate breakdown will push more than 120 million people into poverty by 2030, triggering **climate apartheid**—a world where the rich stave off the effects of climate change, while the poor are crushed by never ending disasters.²⁶
- Climate-induced stressors—natural disasters, refugee influxes, economic strain and general systemic collapse—will threaten our food systems, infrastructure, and political norms.²⁷ The breakdown of the climate system will seriously escalate the risk of deadly armed conflict between humans.

We must act quickly, and together, to avoid not only the worst effects of a climate breakdown, but also the prospect of a complete collapse of human civilization and a potential human extinction event.

Just 100 corporations have contributed to 71% of greenhouse gas emissions since 1988.

While a climate breakdown presents a threat to our entire species, some are more responsible for this crisis than others.

In July 2017, the non-profit CDP²⁸ revealed that just 100 corporations have been responsible for 71% of greenhouse gas emissions in the atmosphere since 1998.²⁹

The report further noted that the **fossil fuel industry and its products** accounted for 91% of global industrial greenhouse gas emissions in 2015, and about 70% of all anthropogenic greenhouse gas emissions.

²⁴ IPBES. 2019. Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES Secretariat, Bonn, Germany.

²⁵ Bastin, J. F., Clark, E., Elliott, T., Hart, S., van den Hoogen, J., Hordijk, I., ... & Mo, L. (2019). Understanding climate change from a global analysis of city analogues. *PLoS one*, 14(7), e0217592.

²⁶ Human Rights Council (25 June 2019) *Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights*. Retrieved from https://www.ohchr.org/Documents/Issues/Poverty/A_HRC_41_39.pdf

²⁷ Myers, S.S., Smith, M.R., Guth, S., Golden, C.D., Vaitla, B., Mueller, N.D., Dangour, A.D. and Huybers, P. (2017). Climate change and global food systems: potential impacts on food security and undernutrition. *Annual review of public health*, 38, 259-277.; Staudt, A., Leidner, A.K., Howard, J., Brauman, K.A., Dukes, J.S., Hansen, L.J., Paukert, C., Sabo, J. and Solórzano, L.A., (2013). The added complications of climate change: understanding and managing biodiversity and ecosystems. *Frontiers in Ecology and the Environment*, 11(9), 494-501.; Barnett, J. (2003). Security and climate change. *Global environmental change*, 13(1), 7-17.

²⁸ CDP, <http://www.cdp.net>.

²⁹ Paul Griffin, Ph.D., *The Carbon Majors Database: CDP Carbon Majors Report 2017*, CDP, July 2017.



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The CDP revealed that the highest emitting companies (the “**Big Polluters**”) since 1988 include investor-owned companies such as ExxonMobil, Shell, BP, Chevron, Peabody, Total, and BHP Billiton.³⁰ To the extent these entities, their affiliates and/or their subsidiaries are incorporated or doing business in this state, they are unquestionably subject to your jurisdiction.³¹

If the Big Polluters continue to act over the next 28 years as they have done over the previous 28, then global average temperatures will rise around 4°C above pre-industrial levels by 2100.³² Scientists already believe that 2°C (half of this anticipated temperature rise) is “dangerous”³³—which means that warming above 2°C may result in unavoidable multi-meter sea level rise, the shut down of the North Atlantic Overturning Circulation, forced migrations of potentially tens of millions of people from the coastlines, and economic collapse.³⁴

In fact, several studies have concluded that 3°C-5°C of warming will trigger climate “tipping points,” such as the collapse of the western Antarctic ice sheet, the shut down of the North Atlantic Overturning Circulation, the dieback of Amazon rainforests as well as boreal forests, and a collapse of the West African monsoon, among others.³⁵

Triggering these tipping points would have “catastrophic human health effects” and will pose existential threats to the biosphere as well as to a majority of the human population—including the threat of human extinction.³⁶

We may already be witnessing these triggers happen in real time. In July 2019, scientists discovered that the permafrost thaw in the Arctic was already exceeding the modeled

³⁰ *Id.*

³¹ “. . . modern statutes preserve the right of the attorney general, acting for the state, to bring a quo warranto proceeding to dissolve the corporation or to enjoin it from transacting ultra vires business. The state ordinarily does not have enough interest to seek such a drastic penalty; the transgression must be such as to menace the public welfare.” James D. Cox and Thomas Lee Hazen. *Treatise on Law of Corporations* § 4:9 (3d). November 2018.

“Involuntary dissolution in a proceeding by the state is usually authorized by the statutes if it is established that a corporation. . . has continued to exceed or abuse the authority conferred upon it by law.” William M. Fletcher, *Cyclopedia of the Law of Corporations* § 2324. September 2018.

³² Paul Griffin, Ph.D., *The Carbon Majors Database: CDP Carbon Majors Report 2017*, CDP, July 2017.

³³ Hansen, James, et al. “Ice melt, sea level rise and superstorms: evidence from paleoclimate data, climate modeling, and modern observations that 2 C global warming could be dangerous.” *Atmospheric Chemistry and Physics* 16.6 (2016): 3761-3812.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Yangyang XU, Veerabhadran, Ramanathan, *Well below 2 °C: Mitigation strategies for avoiding dangerous to catastrophic climate changes*, PNAS, September 26, 2017; Gerardo Ceballos, Paul R. Ehrlich, Rodolfo Dirzo, *Biological annihilation via the ongoing sixth mass extinction signaled by vertebrate population losses and declines*, PNAS, July 25, 2017.



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future thaw for 2090, 70 years ahead of schedule.³⁷ A permafrost collapse would double the warming from greenhouse gases from expected models.³⁸

To put it simply: the emissions from the Big Polluters are creating the conditions of a civilizational collapse and existential risks to humanity. **Current levels of emissions in the atmosphere are producing unprecedented hardship to the human race that will get substantially worse over a very short period of time, and even threaten human extinction.**

The Attorneys General took collective action to tackle Big Tobacco, and must do so now against the Big Polluters.

In the 1990s, the offices of the Attorneys General took a stand against Big Tobacco. Led by Mississippi Attorney General Mike Moore, Attorneys General commenced litigation against tobacco corporations for the health crises they had caused by manufacturing, selling, and marketing an addictive product that had tremendous social costs. In 1998, forty-six states, four U.S. territories, the Commonwealth of Puerto Rico, and the District of Columbia signed a Master Settlement Agreement with Big Tobacco, resulting in a \$246 billion payment to the states—restitution that paid to compensate for the tremendous harms they had knowingly caused.

The threat of revoking the corporate charters of the Big Tobacco corporations, and shuttering them, was an important tool used by the Attorneys General to get Big Tobacco to pay for the damage it had caused.³⁹

Today, the Big Polluters are causing damage on an even greater scale.

The Big Polluters have known that their products would cause a climate breakdown.

The Big Polluters have known about the harms caused by the production and sale of their products for at least six decades—as early as 1957.⁴⁰ Starting in 1968, the Big Polluters were repeatedly warned of the climate risks of their products, often in dire terms.⁴¹ For example,

³⁷ Farquharson, Louise M., et al. "Climate change drives widespread and rapid thermokarst development in very cold permafrost in the Canadian High Arctic." *Geophysical Research Letters* (2019).

³⁸ Turetsky, Merritt R., et al. "Permafrost collapse is accelerating carbon release." (2019): 32.

³⁹ See, e.g., *State v. Philip Morris Inc.*, 179 Misc. 2d 435 (N.Y. Misc. 1998) (discussing New York Attorney General's petition to revoke corporate charter of two industry groups that had disseminated false propaganda related to tobacco); *Wynn v. Philip Morris, Inc.*, 51 F. Supp. 2d 1232 (N.D. Ala. 1999) (private plaintiff seeking *quo warranto* action against tobacco actions for abusing corporate privileges).

⁴⁰ Center for International Environment Law. (2017) *Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis*. (page 1)

⁴¹ *Id.*



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a 1968 report from the Stanford Research Institute called *Sources, Abundance, and Fate of Gaseous Atmospheric Pollutants*, delivered to the American Petroleum Institute, cautioned that the burning of fossil fuels was probably increasing CO₂ levels in the atmosphere, which in turn would increase global temperatures that could melt the ice caps, cause sea levels to rise, warm the oceans, and seriously damage the environment on a global scale.⁴²

Exxon Mobil knew at least as early as 1977 that its products were causing terrible environmental damage. In July 1977, a senior scientist at Exxon reported to company executives that “general scientific agreement” labeled fossil fuels the most likely way in which mankind contributes to global climate change.⁴³ In another internal report also dated 1988, Exxon noted that the “greenhouse effect” was potentially one of the most significant environmental issues of the 1990’s and that greenhouse gases were by-products of fossil fuels.⁴⁴ This echoed a memo from 1981, in which Exxon’s Manager of Strategic Planning, Roger Cohen, wrote that “we will unambiguously recognize the threat by the year 2000 because of advances in climate modeling and the beginning of real experimental confirmation of the CO₂ effect.” Cohen wrote that by 2030, the effects of global warming may “indeed be catastrophic” at least for a “substantial fraction of the earth’s population.”⁴⁵ The fact that, just a few years after these memos were written, Exxon and other major oil companies began building their platforms with higher decks in anticipation of rising sea levels demonstrates their trust in the reports.⁴⁶

Royal Dutch Shell knew as early as 1988 that its products were warming the planet and potentially causing a climate breakdown.⁴⁷ In an internal report dated 1988 that was discovered by Dutch journalists, Shell admitted that climate impacts could include “significant changes in sea level, ocean currents, precipitation patterns, regional temperature and weather.” Increase in “runoff, destructive floods, and inundation of low-lying farmland” would follow. The report stated that these changes would impact “the human environment, future living standards and food supplies, and could have major social, economic and political consequences.” The report described abandoning cities and countries in low-lying areas (e.g. Bangladesh) and coral reef destruction, concluding these environmental and socio-economic changes might be the “**greatest in recorded history.**” (Emphasis added.) One year later, in 1989, Shell announced

⁴² *Id.* at p12.

⁴³ Neela Banerjee, Lisa Song, and David Hasemyer, *Exxon’s Own Research Confirmed Fossil Fuels’ Role in Global Warming Decades Ago*, Inside Climate News, September 15, 2015.

⁴⁴ *1988 Exxon Memo on the Greenhouse Effect*, Climate Files, <http://www.climatefiles.com/exxonmobil/566/>

⁴⁵ *1981 Exxon Memo on Possible Emission Consequences of Fossil Fuel Consumption*, Climate Files, <http://www.climatefiles.com/exxonmobil/1981-exxon-memo-on-possible-emission-consequences-of-fossil-fuel-consumption/>.

⁴⁶ See Bill McKibben, *Falter: Has the Human Game Begun to Play Itself Out?* 74 (2019).

⁴⁷ *1988 Shell Confidential Report “The Greenhouse Effect”*, Climate Files, <http://www.climatefiles.com/shell/1988-shell-report-greenhouse/>



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redesigns for its natural gas platforms in the North Sea to account for rising sea levels as a result of global warming.⁴⁸

In 1989, the Big Polluters commenced a strategy to confuse the public about the effects of global warming. Exxon, Mobile, Chevron, Shell and British Petroleum helped create the Global Climate Coalition, which lobbied aggressively against action on climate change in the United States and internationally.⁴⁹ These efforts have continued for decades, despite the fact that these the Big Polluters were preparing in private for the terrible effects of climate change.⁵⁰

The Big Polluters have known what they were doing. Their conduct through the present is knowing, intentional, and a grave violation of corporate and international law.

The Big Polluters are destroying our lives and our fundamental right to life.

The right to life is protected by the Fifth and Fourteenth Amendments. The right to life is protected by international law,⁵¹ considered the “supreme right,”⁵² which a state must protect even in times of national emergency.⁵³

The right to life is a *jus cogens* norm under international law,⁵⁴ meaning it is a right of the highest order, which must be protected by all governments. In general, a state has an affirmative obligation to protect individuals against violations of the right to life where threats to life are foreseeable.⁵⁵

⁴⁸ Center for International Environment Law. (2017) Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis.(page 15)

⁴⁹ Center for International Environment Law. (2017) Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis. (page 16)

⁵⁰ Center for International Environment Law. (2017) Smoke and Fumes: The Legal and Evidentiary Basis for Holding Big Oil Accountable for the Climate Crisis. (page 18)

⁵¹ *American Convention on Human Rights*, Inter-American Commission on Human Rights, articles 3 and 4, (November 22, 1969) <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>; *International Covenant on Civil and Political Rights*, United Nations Human Rights, article 6 (December 16, 1966) <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; *American Declaration of the Rights and Duties of Man*, article 1 (1948); UN Human Rights Committee General Comment No. 36, ¶ 62. https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf.

⁵² *General Comment No. 6: The right to life (Article 6)*, UN Doc HRI/GEN/1Rev 6 (30 April 1982) 127, para 1; *General Comment No. 14: Nuclear Weapons and the Right to Life (Article 6)*, UN Doc HRI/GEN/1/Rev1 (9 November 1984) 18, para 1.

⁵³ UNHRC, General Comment No 6 (n 55) para 1.

⁵⁴ Rosalyn Higgins, ‘Derogations Under Human Rights Treaties’ (1977) 48 *British Yearbook of International Law* (1976-77) 281; WP Gormley, ‘The Right to Life and the Rule of Non-Derogability: Preemptory Norms of Jus Cogens’ in Bertrand G Ramcharan (ed), *The Right to Life in International Law* (Lieden, Martinus Nijhoff, 1995) 145.

⁵⁵ *General Comment NO. 31: The Nature of the General Obligation Imposed on States Parties to the Covenant* (29 March 2004) UN Doc CCPR/C/21/Rev1/Add 13, UNHRC, para 8; *Annakkaragae Sranjini Sadamali Pathmini Peiris v. Sri Lanka* (2011) UNHRC Communication No. 1862/2009, UN Doc CCPR/C/103/D/1862, para 7.2.



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Human life will be increasingly at risk as the climate breakdown continues. We have provided you with just a snapshot of the science related to the climate breakdown and the Sixth Great Extinction.

We ask that you protect the right to life by breaking the power of the fossil fuel corporations.

The Big Polluters are destroying our futures, and our ability to choose our own futures, through the right to self-determination.

The right to self-determination is the right to choose one's own destiny. The right to self-determination is a *jus cogens* norm under international law,⁵⁶ meaning it is a right of the highest order, which must be protected by all governments.

The United Nations Office of High Commission of Human Rights considers it "clear" that "insofar as climate change poses a threat to the right of peoples to self-determination, States have a duty to take positive action, individually and jointly, to address and avert this threat."⁵⁷

Instead of choosing our own destinies, the science is clear that the future will be framed by never ending climate-fueled catastrophes, climate migration, and society-wide breakdowns and collapse. Tens of millions of people will be displaced, creating a permanent refugee crisis. Instead of choosing our own destinies, we will be in permanent fight-or-flight mode—all while the Big Polluters continue to ravage the planet.

We ask that you protect the right to self-determination by breaking the power of the fossil fuel corporations.

The Big Polluters are destroying our health and our fundamental right to health.

The right to health is protected as a customary norm of international law.⁵⁸ Paul Hunt, the United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of Physical and Mental Health, has concluded that the failure to take the health impact of climate change

⁵⁶ *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* [1970] ICJ Reports 1971, esp 31; Ian Brownlie, *Principles of Public International Law*, 5th edn (Oxford, Oxford University Press, 1998) 513.

⁵⁷ Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights (15 January 2009) UN Doc A/HRC/10/61 (OHCHR Report on Climate Change and Human Rights) para 41.

⁵⁸ ED Kinney, 'the International Human Right to Health: What Does This Mean For Our Nation and World?' (2001) 34 *Indiana Law Review* 1457, 1464-67 and 1475.



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“will endanger the lives of millions of people across the world.”⁵⁹ Phillip Alston, the United Nations Special Rapporteur on Extreme Poverty and Human Rights, has concluded that climate change “threatens to undo the last fifty years of progress in development, global health, and poverty reduction.”⁶⁰ Middle class families, including in developed places like the United States and Europe, will be “rendered poor.”

The climate breakdown will create widespread suffering and disease—a combination of a broken social fabric, the spread of tropical diseases,⁶¹ and even the spread of diseases released from a melting permafrost. With warming of 4°C, tropical diseases transmitted by mosquitos such as Zika might be found as far north as Alaska and northern Finland.⁶² And as the permafrost melts, infectious agents that humans might not be prepared for, or have no immunity to, may be released back into the biosphere as temperatures climb.⁶³

We ask that you protect the right to health by breaking the power of the fossil fuel corporations.

The Big Polluters are destroying our property and our fundamental right to property.

The right to property is protected by the Fifth and Fourteenth Amendments. The right to property is also protected by international law.⁶⁴ Coastal properties are already under severe threat from rising seas; but more generally, all property is now at risk of destruction from the superpowered hurricanes and storms, floods, fires, droughts, record-breaking heat and extreme weather events.

⁵⁹ Paul Hunt, ‘Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health’ (8 August 2007) UN Doc A/62/214, 22, paras 100-102.

⁶⁰ Human Rights Council (25 June 2019) *Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights*. Retrieved from https://www.ohchr.org/Documents/Issues/Poverty/A_HRC_41_39.pdf

⁶¹ Patz, J. A., et al. “Climate change and infectious diseases.” *Climate change and human health: risks and responses* 2 (2003): 103-32.

⁶² Ryan, Sadie J., et al. “Global expansion and redistribution of Aedes-borne virus transmission risk with climate change.” *PLoS neglected tropical diseases* 13.3 (2019): e0007213.

⁶³ Goudarzi, Sara. “As Earth Warms, the Diseases That May Lie within Permafrost Become a Bigger Worry.” *Scientific American* 12 (2016).

⁶⁴ *The Universal Declaration of Human Rights*, General Assembly of the United Nations, article 17 (December 10, 1948) http://www.claiminghumanrights.org/udhr_article_17.html#at18; *International Covenant on Civil and Political Rights*, United Nations Human Rights, article 1 (December 16, 1966)

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; *American Declaration of the Rights and Duties of Man*, article 23 (1948)

https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf; *American Convention on Human Rights*, article 21 (September 1, 2015) <https://minorityrights.org/law-and-legal-cases/american-convention-on-human-rights-article-21/>.



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We ask that you protect the right to property by breaking the power of the fossil fuel corporations.

The Big Polluters are destroying our right to a stable system of government.

International law recognizes a right to have a stable system of government to sustain peace.⁶⁵ We urge to you think about the consequences of the impending climate breakdown on our way of life, particularly our system of government. Even the most robust political system will strain to deal with the practical challenges posed by a climate system in collapse.

If nothing is done to stabilize the climate, American freedoms and human rights more generally will be gravely threatened. Politicians and governments may be forced to take emergency measures to cope with the existential challenges that lie ahead. These measures, taken out of expediency, may ultimately lead to the destruction of the rule of law, human dignity, and personal freedoms.

We ask that you protect the right to a stable system of government that can sustain peace by breaking the power of the fossil fuel corporations.

The Attorneys General have a legal duty to inspect, regulate and restrict corporate conduct—and to revoke the corporate charters of corporations that engage in socially disastrous activities.

Corporations are purely creatures of state law. And every state, typically through the Attorney General, has the right and the power to set reasonable restrictions on corporate conduct—particularly if that conduct is causing widespread social harm or is violating law.

In **Delaware**, for example, the Attorney General has the statutory authority to move “to revoke or forfeit the charter of any corporation for abuse, misuse or nonuse of its corporate powers, privileges or franchises. The Attorney General shall proceed for this purpose by complaint in the Court of Chancery.”⁶⁶

In **New York**, the Attorney General is empowered to seek dissolution of a corporation if that corporation “has exceeded the authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its

⁶⁵ *Declaration on the Right to Peace*, Human Rights Council, article 1 (June 24, 2016).

⁶⁶ 8 Del. C. § 283.



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business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the state has become liable to be dissolved.”⁶⁷

The Attorney General can also prevent a foreign corporation from engaging in similar conduct within the state by filing a similar petition to “enjoin or annul the authority of any foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause for its dissolution under section 1101.”⁶⁸

And in **California**, California Corporations Code section 1801 and California Civil Procedure Code section 803 permit the Attorney General to “bring an action against any domestic corporation . . .” that has “fraudulently abused or usurped corporate privileges or powers.”⁶⁹ The law permits the Attorney General to bring an action “against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state.” Cal Civ. Proc. Code § 803. The language of the California Civil Procedure Code section 803 **requires** that the attorney general “**must** bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person, or when he is directed to do so by the governor (emphasis added).”⁷⁰

Under the laws of the several states a single act of abuse can warrant judicial inquiry and possible legal action to revoke a corporate charter.⁷¹

Woodrow Wilson summarized the power of states to police corporate conduct in his inaugural address as Governor of New Jersey:

A corporation exists not of natural right, but only by license of law, and the law, if we look at the matter in good conscience, is responsible for what it creates. . . . If law is at liberty

⁶⁷ N.Y. Bus. Corp. Law § 1101(a)(2).

⁶⁸ N.Y. Bus. Corp. Law § 1303.

⁶⁹ Cal. Corp. Code § 1801.

⁷⁰ *Id.* (emphasis added.)

⁷¹ See, e.g., *Havemeyer v. Superior Court of the City and County of San Francisco*, 84 Cal. 327 (1890) (revoking corporate charter for a company that abused its corporate privileges by monopolizing sugar); *Citizens Utilities Co. of California v. Superior Court of Alameda County*, 56 Cal. App. 3d 399, 405, 407 (1976) (holding that a quo warranto action against a corporation in existence since 1909 was appropriate when Attorney General alleged that the corporation was providing “impure, unwholesome and unpotable” water to residents); *People v. North Riv. Sugar Ref. Co.*, 24 N.E. 834 (N.Y. 1890) (affirming “corporate death” of company that had engaged in an illegal sugar monopoly); *People by Abrams v. Oliver Sch.*, 619 N.Y.S.2d 911 (affirming revocation of corporate charter of business school that had been engaged in ongoing consumer fraud) (4th Dept. 1994); *Southerland ex. rel. Snider v. Decimo Club, Inc.*, 142 A. 786 (Del. Ch. 1928) (revoking corporate charter that claimed to be engaged in non profit activities but which was intentionally engaging in for profit activities); *Craven v. Fifth Ward Republican Club, Inc.*, 37 Del. Ch. 524 (1958) (court issuing preliminary injunction against non profit corporation that had violated criminal and other laws related to alcohol use).



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to adjust the general conditions of society itself, it is at liberty to control these great instrumentalities which nowadays, in so large part, determine the character of society.⁷²

The Attorneys General have a duty to bring the Big Polluters' grave infringements of law to an end.

All governments are legally obligated to redress wrongful conduct that has breached a fundamental norm or fundamental norms of international law. These obligations include:

- Ceasing the wrongful act;⁷³
- Making full reparations for the injury;⁷⁴
- A duty not to recognize the situation created by the breach as lawful;⁷⁵
- A duty not to provide aid or assistance in maintaining the unlawful situation;⁷⁶ and finally
- A duty to bring the breach to an end through lawful means.⁷⁷

A failure to take the necessary action required to remedy a wrong is a violation of international law.⁷⁸ To the extent that U.S. state governments are failing to remedy the grave breaches of law caused by the Big Polluters, even though they have the power to do so under their state corporate laws, then these U.S. state governments are potentially creating liability for themselves and the United States under international law.⁷⁹

In other words, you are under a legal duty to force the Big Polluters to comply with all law, and ceasing wrongful and damaging acts. You are under a legal duty to prevent this state's potential complicity with a climate breakdown, and the potentially existential threats to our species.

⁷² Quoted in *Liggett Co. v. Lee*, 288 U.S. 517, 560, n. 37 (1933) (Brandeis, J. dissenting).

⁷³ *Case Concerning the Factor at Chorzów (Germany v. Poland)* [1927] PCIJ Rep Series A no 17, 47; International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, Art 30(b) and Commentary to Art 30, para 1.

⁷⁴ *Id.*, Art 31(1); and Commentary to Art 31, para 12 (nothing that international law does not recognize reduction or attenuation of reparation for concurrent causes)

⁷⁵ *Id.*, Commentary to Art 41; *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory* [2004] ICJ Reports 2004, para 159 (*The Wall Case*)

⁷⁶ International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, Art 40; *The Wall Case*, para 159.

⁷⁷ International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, Commentary to Art 40, para 3; *The Wall Case*, para 159.

⁷⁸ *Corfu Channel (UK v. Albania)* (Merits) [1949] ICJ Rep 4.

⁷⁹ International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, Art 4 ("The conduct of any organ shall be considered an act of that State under international law, whether the organ exercised legislative, executive, judicial or any other functions, whatever position it holds in the organisation of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.").



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We ask the Attorneys General to break the power of the Big Polluters— once and for all.

The world is in danger, and it needs heroes to emerge. Mike Moore and state Attorneys General answered the call twenty years ago against Big Tobacco. Now we ask that you defend us and our rights from grave infringement, and defend civilization—even the species—itsself.

Already, the Attorneys General of the States of New York, Rhode Island and Massachusetts have initiated proceedings against the Big Polluters under theories of securities and consumer fraud. While we welcome these efforts, this is not enough, and these proceedings ignore the inherent power of Attorneys General to regulate corporate activity in their jurisdictions when that corporate activity is a threat to society itself.

We note the efforts of a similar group of attorneys who in 1998 asked your office to investigate alleged environmental and corporate abuses committed by Union Oil Co., and who submitted a similar petition urging oversight by the Attorney General under *quo warranto* principles.⁸⁰ The Attorney General's office declined at the time to pursue action. How much more damage must be caused before uncontrolled greenhouse gas emissions are finally restrained and the climate system stabilized? What else must burn, or melt, or sink—or be forever extinguished and made extinct—before the right scrutiny of law is finally applied to the terrible crisis at hand?

The gravity of the imminent, irreversible harm now requires immediate, compelling action by government officials with the legal mandate and authority to address that harm.

We hereby formally request that pursuant to your authority, in addition to all common law rights related to a *quo warranto* petition, that you take action to break the power of the Big Polluters—once and for all.

We ask you to place the Big Polluters under court oversight and have them:

- cease and desist with any further emissions of greenhouse gases;
- implement corporate and industrial strategies, approved by U.S. states, to limit warming to 1.5°C by 2100;
- pay restitution, and where this is not possible, compensation to U.S. states for knowingly causing global damage through greenhouse gas emissions; and

⁸⁰ Nancy Rivera Brooks, *Group Wants Union Oil's Charter Revoked*, Los Angeles Times (Sept. 11, 1998) <https://www.latimes.com/archives/la-xpm-1998-sep-11-fi-21521-story.html>



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- pay restitution, and where this is not possible, compensation to poor and developing countries that have already been terribly exploited by the Big Polluters over the last several decades—countries that will now be hit the hardest by the climate crisis.

A court must supervise the implementation of the above, to ensure that the transition away from emissions-producing activities is paid for by Big Polluters and their investors, and not by consumers or workers.

If the Big Polluters refuse to take the above actions and refuse to consent to court oversight, then we hereby formally request that you revoke their corporate charters and shutter them—once and for all.

You will have no choice to do this, in order to restrain them from intentionally triggering massive warming and, ultimately, a complete breakdown of the planetary climate system. **We emphasize that this breakdown may have already commenced and will only accelerate.**

We stand prepared to provide any further evidence that your offices may require to understand the science of the climate breakdown and the grave possibility of human extinction in the decades ahead.

We urge you to act.

Respectfully submitted,

/s/ Dave Inder Comar

Dave Inder Comar
Executive Director
Just Atonement Inc.



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Schedule A

The Big Polluters (Investor-held)

ExxonMobil

Shell

BP

Chevron

Peabody Energy

Total S.A.

BHB Billiton

Conoco Phillips

Rio Tinto
