

## Memorandum

**TO:** RELEASE  
**FROM:** U.S. Senate Committee on Commerce, Science, and Transportation and U.S. House of Representatives Committee on Oversight and Accountability, Republican Staff  
**DATE:** October 7, 2024  
**Re:** Investigation into the Funding of Sher Edling, LLP’s Lawfare Against American Energy Companies and the Role of Former Nominee to Be NHTSA Administrator, Ann Carlson, in Those Efforts

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### Executive Summary

Sher Edling, LLP, a for-profit, San-Francisco-based law firm, is leading left-wing lawfare to cripple the fossil fuel industry. Over the past few years, the firm has filed over twenty lawsuits against oil and gas companies, claiming they are liable for billions of dollars in damages from weather-related incidents because they knowingly caused climate change. Sher Edling calls these cases “climate deception” cases, while legal scholars call them “climate nuisance suits,” because the “[a]ctivist lawyers and city officials” bringing them “are exploiting a radically misplaced legal theory” of nuisance—which is traditionally a means to address minor, local complaints like persistent loud noise—“to make climate change policy in the courts while landing big cash payouts.”<sup>1</sup> Indeed, not only will Sher Edling receive approximately one-third of any amount it extracts from energy companies if it is somehow successful, far-left funds are offsetting any risk the firm would otherwise have in pursuing these absurd claims by bankrolling Sher Edling to the tune of millions of dollars each year.

Last year, Ranking Member Cruz of the U.S. Senate Committee on Commerce, Science, and Transportation and Chairman Comer of the U.S. House of Representatives Committee on Oversight and Accountability (together, the Committees) opened an investigation into Sher Edling following reports of the firm’s dark-money funding and the Biden-Harris administration’s nomination of Ann Carlson—a environmental law professor who did work for the firm—to be National Highway Traffic Safety Administration (NHTSA) administrator. Through this investigation, the Committees obtained information confirming left-wing groups gave Sher Edling exorbitant sums of money to pursue lawsuits against the oil and gas industry and Carlson and her students at the University of California School of Law (UCLA Law) provided Sher Edling with legal assistance on these cases. Sher Edling also disclosed two, previously unreported upon donations: \$2.86 million from New Venture Fund in 2023 and \$235,000 from the Tides Foundation in 2022.

Still, Sher Edling was largely recalcitrant, employing delay tactics and obfuscating details about its funding and Carlson’s role. For instance, the firm refused to provide the Committees any of its agreements with its funders.

The Committees’ investigation nevertheless revealed left-wing organizations have funded and are continuing to fund the firm’s anti-energy lawfare. Such funding raises important concerns

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<sup>1</sup> John Hays, *Cities File Exploitative Climate Suits. Courts Need to Stop Them*, BLOOMBERG LAW (May 3, 2024), <https://news.bloomberglaw.com/us-law-week/cities-file-exploitative-climate-suits-courts-need-to-stop-them>.

Congress should consider, like whether there should be transparency in third party litigation funding or restrictions on “nonprofit” funds’ donations to for-profit companies. The purpose of this memo is to reveal the information the investigation has uncovered so far, provide details regarding the status of the investigation, and examine Sher Edling’s untenable justifications for evading congressional oversight while catering to the whims of left-wing climate activist groups.

## I. Overview of Sher Edling

Since 2017, Sher Edling, a for-profit law firm that touts itself as a leader in climate change litigation, has launched a barrage of over twenty climate nuisance lawsuits aimed at oil and gas companies.<sup>2</sup> These lawsuits claim the defendants knew their actions caused climate change, and, because their actions caused climate change, which, in turn, caused weather-related disasters, the defendants are liable for the damages those weather-related disasters caused. Sher Edling shopped these lawsuits around to Democrat-controlled states, counties, and cities, offering its legal services at no cost unless it obtained a “settlement against the industry.”<sup>3</sup> The firm has not yet settled, or otherwise prevailed in, a climate nuisance case.

The apparent purpose of Sher Edling’s lawsuits is to advance climate change policy through litigation rather than legislation. Sher Edling co-founder, Matt Edling, said as much in 2018, stating: “Climate change is the existential crisis of our time, and these communities are facing massive costs that will have to be paid either by their taxpayers or by the oil, gas, and coal companies who caused them. And that’s what these lawsuits are all about.”<sup>4</sup> That is not to say Sher Edling has abandoned legislative efforts to impose radical climate policies. Indeed, in 2024 Vic Sher and Matt Edling donated thousands of dollars to the Jane Fonda Climate PAC, “which is laser-focused on one goal: Do what it takes to defeat fossil fuel supporters and elect climate champions at all levels of government.”<sup>5</sup>

Public reporting on Sher Edling’s climate nuisance lawsuits revealed third parties had provided Sher Edling substantial assistance since it began filing these lawsuits.<sup>6</sup> Left-wing funds’ tax returns indicated that they gave Sher Edling millions of dollars in relation to the climate nuisance

<sup>2</sup> See *Climate Damage and Deception*, SHER EDLING LLP, <https://www.sheredling.com/cases/climate-cases>.

<sup>3</sup> Anne C. Mulkern, *Oil Company Allies Say Climate Lawsuits Were Shopped Around*, CLIMATEWIRE (Apr. 10, 2018), <https://www.eenews.net/articles/oil-company-allies-say-climate-lawsuits-were-shopped-around/>; Lesley Clark, *Baltimore County Officials Balk at Climate Lawsuit*, CLIMATEWIRE (Nov. 21, 2022), <https://subscriber.politicopro.com/article/eenews/2022/11/21/baltimore-county-officials-balk-at-climate-lawsuit-00069641>; see also Alex Kuffner, *Kilmartin Sues “Big Oil” Over Climate-Change Damage*, PROVIDENCE JOURNAL (Jul. 2, 2018), <https://www.providencejournal.com/story/news/courts/2018/07/02/ri-ag-sues-fossil-fuel-companies-over-alleged-role-in-climate-change/11607325007/> (Rhode Island “will pay the firm only if the fossil-fuel companies pay damages.”).

<sup>4</sup> *Matt Edling ‘07 Is Suing Big Oil Over Climate Change*, UC SAN FRANCISCO L. SCH. (Apr. 19, 2018), <https://www.uclawsf.edu/2018/04/19/matt-edling-07-is-suing-big-oil-over-climate-change/>.

<sup>5</sup> *Join Us*, JANE FONDA CLIMATE PAC, <https://janepac.com/> (last accessed Sept. 27, 2024).

<sup>6</sup> Joe Schoffstall & Thomas Catenacci, *Group Leo DiCaprio Funneled Grants Through to Fund Climate Lawsuits Moved to Largest US Dark Money Network*, FOX NEWS (Oct. 21, 2022), <https://www.foxnews.com/politics/group-leo-dicaprio-funneled-grants-fund-climate-lawsuits-moved-largest-us-dark-money-network>; Michael I. Krauss, *Using Charitable Funds to Subsidize “Legislation Through Litigation,”* FORBES (Jul. 28, 2020), <https://www.forbes.com/sites/michaelkrauss/2020/07/28/using-charitable-funds-to-subsidize-legislation-through-litigation/?sh=63aff8e43342>.

cases.<sup>7</sup> Sher Edling also enlisted law professors’ support. For instance, Pat Parenteau— an environmental law professor at Vermont Law School who remarked that “[i]f these cases all go to their logical extreme, [the oil companies] all go bankrupt. . . . They should”—advised the firm.<sup>8</sup> And Ann Carlson, director of the Emmett Institute on Climate Change and the Environment at UCLA Law, appeared to have recruited prospective plaintiffs for Sher Edling’s climate nuisance cases.<sup>9</sup> In January 2021, Carlson left UCLA Law to be NHTSA’s chief counsel<sup>10</sup> and in March 2023, the Biden-Harris administration nominated Carlson—who had been supportive of the Green New Deal<sup>11</sup> and nationwide implementation of California’s environmental policies<sup>12</sup>—to be NHTSA administrator.<sup>13</sup> NHTSA is “responsible for keeping people safe on America’s roadways.”<sup>14</sup> In Carlson’s view, though, NHTSA “is in charge of climate standards for cars and trucks, which is why [the Biden-Harris administration] ha[d] recruited [her]” to join the agency.<sup>15</sup>

## II. Overview of Investigation

This investigation began when, in vetting Carlson’s nomination, Senate Commerce Committee Republican staff discovered Carlson failed to disclose her previous work for Sher Edling in her Department of Transportation recusal form and to her former employer, UCLA, as the school’s rules required.<sup>16</sup> The staff’s initial review of public reporting regarding Sher Edling indicated it was an activist law firm pursuing lawsuits at the behest of left-wing climate groups. The House

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<sup>7</sup> See, e.g., 2021 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *New Venture Fund* (Nov. 4, 2022), <https://newventurefund.org/wp-content/uploads/2022/11/NVF-2021-990-Public-Disclosure-Copy.pdf>.

<sup>8</sup> Alex Brown, *Some Cities, States Say Big Oil Should Pay for Climate Change*, STATELINE (Apr. 13, 2022), <https://stateline.org/2022/04/13/some-cities-states-say-big-oil-should-pay-for-climate-damage/>. Matthew Edling also appears to recognize Sher Edling’s climate nuisance litigation against fossil fuel companies “threatens their bottom line.” See Matthew Edling (@matthew\_edling), X (Dec. 26, 2019, 4:21PM), [https://x.com/matthew\\_edling/with\\_replies?lang=en](https://x.com/matthew_edling/with_replies?lang=en).

<sup>9</sup> Email from Ann Carlson to Vic Sher (Apr. 20, 2018), [https://govoversight.org/wp-content/uploads/2022/01/Sher-Edling-PRA-Request\\_Redacted.pdf](https://govoversight.org/wp-content/uploads/2022/01/Sher-Edling-PRA-Request_Redacted.pdf).

<sup>10</sup> *Carlson Joins NHTSA as Chief Counsel*, UCLA LAW (Jan. 22, 2021), <https://law.ucla.edu/news/carlson-joins-nhtsa-chief-counsel>; Matthew Edling (@matthew\_edling), X (Jan. 21, 2021, 2:21PM), [https://x.com/matthew\\_edling](https://x.com/matthew_edling).

<sup>11</sup> Ann Carlson, *Is the Green New Deal’s Ambition Smart Policy?*, LEGAL PLANET (Feb. 11, 2019), <https://legal-planet.org/2019/02/11/is-the-green-new-deals-ambition-smart-policy/>.

<sup>12</sup> Ann Carlson, *California’s Environmental Justice Policies Should Serve as A Model for the Biden-Harris Administration*, LEGAL PLANET (Dec. 4, 2020), <https://legal-planet.org/2020/12/04/californias-environmental-justice-policies-should-serve-as-a-model-for-epa/>.

<sup>13</sup> *PN464—Ann Elizabeth Carlson—Department of Transportation*, CONGRESS.GOV (March 27, 2023), <https://www.congress.gov/nomination/118th-congress/464>.

<sup>14</sup> *About NHTSA*, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., <https://www.nhtsa.gov/about-nhtsa> (last accessed Aug. 20, 2024).

<sup>15</sup> Email from A. Carlson to J. Warren (Jan. 18, 2021), <https://govoversight.org/wp-content/uploads/2023/03/Some-A-Carlson-transition-emails.pdf>.

<sup>16</sup> *Ann Carlson Recusal Form*, U.S. DEPT. OF TRANS. (June 9, 2022), <https://climatelitigationwatch.org/wp-content/uploads/2023/02/Ann-Carlson-recusal-for-signature.pdf>; See, e.g., Ann Carlson, *Annual Reporting Form, 7/1/16-6/30/17*, UCLA SCH. OF LAW (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>. See also Email from A. Carlson to D. Emmett (Feb. 26, 2018), <https://govoversight.org/wp-content/uploads/2022/05/Sabin-and-his-Rs.pdf>.

Committee on Oversight and Accountability had opened a larger inquiry into third party litigation funding, which is when third parties invest in lawsuits in exchange for a percentage of any settlement or judgement.<sup>17</sup> Together, the Committees' investigation of Sher Edling focused on two issues: (1) the extent to which dark-money groups are fueling Sher Edling's climate nuisance litigation, and (2) Carlson's role in this litigation.

Since May 2023, the Committees have sent Sher Edling two letters, over a dozen follow up emails, and participated in three telephonic meetings. Copies of the Committees' letters are attached to this memo. **Throughout the investigation, the Committees asked Sher Edling to answer three questions:**

1. Please describe the nature of Ms. Carlson's work for Sher Edling, including the years she served in those roles, what her work entailed, the specific lawsuits she worked on, the specific lawsuits she had any role in and her compensation each year, including any benefits she received, or expenses Sher Edling reimbursed.
2. Please describe the nature of UCLA's Environmental Law Clinic's [UCLA Law clinic] work for Sher Edling, the years during which that assistance was provided, and the specific cases that members of that clinic worked on. Please also identify any expenses for that work that Sher Edling reimbursed and any donations the firm or its partners have made to UCLA School of Law since 2017.
3. Please provide a list of every person and entity, excluding clients and vendors, that provided Sher Edling with any amount of money. For each person or entity listed, please include the following information: (a) the amount of the money provided; (b) the date the money was provided; (c) the purpose for which the money was directed to be used; and (d) the manner in which that money was provided, i.e., through a grant, litigation funding agreement, or some other contract or agreement. If the funding was provided pursuant to a written agreement, please provide a copy of that agreement.<sup>18</sup>

As explained in further detail below, Sher Edling unjustifiably refused to provide much of the requested information. Moreover, it deliberately delayed responding to the questions, despite the Committees' efforts to work with Sher Edling in good faith. For instance, on December 11, 2023,

<sup>17</sup> Press Release, Comm. on Oversight and Accountability, Comer Calls for Transparency in Third Party Litigation Funding to Expose Activist Funding to Expose Activist and Foreign Influence (July 12, 2024), <https://oversight.house.gov/release/comer-calls-for-transparency-in-third-party-litigation-funding-to-expose-activist-and-foreign-influence%EF%BF%BC/>.

<sup>18</sup> Letter from Sen. Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, and Transportation, to Vic Sher and Matt Edling, Sher Edling LLP (May 12, 2023) [hereinafter May 12, 2023 Commerce Letter] (on file with Committees); Letter from Sen. Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, and Transportation & Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability, to Vic Sher and Matt Edling, Sher Edling LLP (Sept. 25, 2023) (on file with Committees). Ranking Member Cruz originally asked Sher Edling an additional question: whether "Ms. Carlson assisted in any way" with Vic Sher's May 2020 essay in the Stanford Law Review, "Forum Versus Substance: Should Climate Damages Cases be Heard in State or Federal Court." May 12, 2023 Commerce Letter. *See* May 12, 2023 Commerce Letter. Sher Edling responded that "after reasonable investigation, it does not appear Ms. Carlson assisted with that publication." Letter from Sher Edling Counsel, Kaiser Dillon PLLC, to Sen. Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, and Transportation (July 28, 2023) [hereinafter, July 28, 2023 Sher Edling Letter] (on file with Committees).

because Sher Edling had still not identified the names of the cases the UCLA Law clinic worked on in response to question 2, Committee staff narrowed the question, asking Sher Edling to provide the litigation services agreement it had previously noted governed its relationship with the clinic and explaining that providing the agreement would satisfy question 2.<sup>19</sup>

Sher Edling still did not provide nonpublic information responsive to these questions until March 8, 2024, sending the Committees an eight-page letter—almost six pages of which was unresponsive and included *ad hominem* attacks directed at Chairman Comer and Ranking Member Cruz, such as accusing them of relying on “misinformation” spread by groups “that appear to be directed, controlled, or funded by an unsurprising, and highly motivated source—the oil and gas defendants” in Sher Edling’s lawsuits.<sup>20</sup> While the letter identified the donations/grants Sher Edling had received “to support its climate deception litigation work,” it did not identify other funding it has received, or otherwise deny receiving any additional funding, and refused to provide the litigation services agreement. Five days later, Committee staff emailed Sher Edling’s counsel, noting that the March 8 letter was not fully responsive and requesting responses to three clarification questions:

1. Has Sher Edling received any funding (including donations or grants) from any other individuals or entities, excluding clients or vendors?
2. Were the donations identified in the March 8 letter made pursuant to a written agreement? If so, could you please provide a copy of the agreement(s)?
3. Given that such agreements are not privileged under federal law, is Sher Edling still refusing to provide the legal services agreement with the UCLA Environmental Law Clinic?<sup>21</sup>

Sher Edling did not respond to these three clarification questions until June 28, when it formally refused to provide the grant agreements and legal services agreement.<sup>22</sup>

### **III. The Interim Results of the Committees’ Investigation**

#### **A. The Committees’ Investigation Confirmed Resources Legacy Fund and New Venture Fund Gave Sher Edling Over \$10 Million from 2017 through 2022 and Revealed Additional Left-Wing Funding.**

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<sup>19</sup> Email from Committee Staff to Sher Edling Counsel (Dec. 11, 2023) (on file with Committees); July 28, 2023 Sher Edling Letter.

<sup>20</sup> Letter from Sher Edling counsel, Kaiser Dillon PLLC, to Sen. Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, and Transportation, Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability (Mar. 8, 2024) [hereinafter, March 8, 2024 Sher Edling Letter] (on file with Committees).

<sup>21</sup> Email from Committee Staff to Sher Edling Counsel (Mar. 13, 2024) (on file with Committees).

<sup>22</sup> Letter from Sher Edling counsel, Kaiser Dillon PLLC, to Sen. Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, and Transportation, Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability (June 28, 2024) [hereinafter, June 28, 2024 Sher Edling Letter] (on file with Committees).

Initially, Sher Edling provided vague justifications for not supplying information regarding its donors, claiming it was “sensitive information.”<sup>23</sup> For an entire year, no other explanation was given to why Sher Edling could not list its donors. **Eventually, Sher Edling confirmed that from 2017 through 2022, Resources Legacy Fund and New Venture Fund gave the firm \$10.8 million in support of its climate nuisance litigation.**<sup>24</sup> **Sher Edling also revealed two, previously unreported, donations: \$2.86 million from New Venture Fund in 2023 and \$235,000 from the Tides Foundation in 2022.**<sup>25</sup> The investigation found Resources Legacy Fund, New Venture Fund, and Tides Foundation donated a total of \$5.3 million, \$8.4 million, and \$235,000, respectively.<sup>26</sup>

In effect, American taxpayers are bearing the cost of Sher Edling’s litigation. Wealthy liberals, like George Soros, make tax-deductible donations to foundations like the Resources Legacy Fund, New Venture Fund, and the Tides Foundation (or otherwise make tax-deductible donations to other nonprofit organizations that, in turn, give money to these foundations).<sup>27</sup> The foundations then direct that money to Sher Edling to pursue climate change policies through the courts. If these individuals had donated to political candidates or advocacy organizations to enact climate change legislation, however, they would not be able to deduct those donations.<sup>28</sup> Although not illegal, this structure allows the green mafia to achieve its political goals while lowering its tax bill.

***1. Sher Edling confirmed by omission it has not received any fee-generating wins from its climate nuisance cases.***

In requesting information from Sher Edling, the Committees noted Sher Edling’s litigation of twenty climate nuisance lawsuits over a seven-year span without any apparent fee-generating wins suggested the left-wing groups that donated to Sher Edling were financing those cases. Sher Edling scoffed at the claim that the firm had not earned any fees from the climate nuisance lawsuits—declaring it was a “successful, fee-generating law firm”—and listed several cases it had won.<sup>29</sup> However, none was a climate nuisance case. Moreover, Sher Edling revealed the donations “do not finance any particular lawsuit,” but rather support “the firm’s general operations in this area.”<sup>30</sup> These statements confirm leftwing donations allow Sher Edling to expend considerable resources on climate nuisance cases in the absence of any victories.

***2. Sher Edling confirmed that it has received millions of dollars annually in donations, primarily from two groups: Resources Legacy Fund and New Venture Fund.***

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<sup>23</sup> May 24, 2023 Meeting with Sher Edling counsel; December 4, 2024 Meeting with Sher Edling counsel.

<sup>24</sup> March 8, 2024 Sher Edling Letter.

<sup>25</sup> June 28, 2024 Sher Edling Letter.

<sup>26</sup> March 8, 2024 Sher Edling Letter.

<sup>27</sup> See Schoffstall & Catenacci, *supra* note 6; *Publication 526 (2023), Charitable Contributions*, IRS, [https://www.irs.gov/publications/p526#en\\_US\\_2023\\_publink1000229641](https://www.irs.gov/publications/p526#en_US_2023_publink1000229641).

<sup>28</sup> *Publication 526 (2023)*, *supra* note 27.

<sup>29</sup> July 28, 2023 Sher Edling Letter; *see also* Letter from Sher Edling counsel, Kaiser Dillon PLLC, to Sen. Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, and Transportation, Rep. James Comer, Chairman, H. Comm. on Oversight and Accountability (Oct. 6, 2023) [hereinafter, October 6, 2023 Sher Edling Letter] (on file with Committees).

<sup>30</sup> *Id.*

**Sher Edling confirmed that since around the time it filed its first climate nuisance lawsuit in 2017, two leftwing funds—Resources Legacy Fund and New Venture Fund—have donated over \$13.6 million to the firm to “support its climate deception litigation work.”<sup>31</sup>**

Resources Legacy Fund is a 501(c)(3) public charity, which manages and sponsors projects that address “urgent climate . . . and environmental justice crises.”<sup>32</sup> It is the “fiscal sponsor,” meaning the manager, of climate funds established by wealthy liberals like Hollywood star Leonardo DiCaprio.<sup>33</sup> Resources Legacy Fund’s website declares that “[m]odern society is built, in part, on a foundation of elitism, racism, sexism, ageism, and other forms of oppression” and therefore claims to “direct[] funds to those who have been marginalized.”<sup>34</sup> **From 2017 through 2021, Resources Legacy Fund gave Sher Edling over \$5.3 million—\$2.4 million in 2020 alone.**<sup>35</sup>

New Venture Fund is also a 501(c)(3) public charity, managed by Arabella Advisors, that sponsors projects.<sup>36</sup> While it claims to be “a force for social good” focused on “equity and belonging,” New Venture Fund has supported organizations that fuel antisemitism.<sup>37</sup> For instance, New Venture Fund provided funding for Alliance for Global Justice, which sponsored an Israeli-designated terrorist group, as well a chapter of the Council on American-Islamic Relations, whose leaders defended Hamas’s October 7 attack on Israel.<sup>38</sup> And in 2022, it gave \$2.8 million to NEO Philanthropy which, in turn runs MPower Change: an organization that spreads Hamas propaganda and promoted a rally where protestors displayed Nazi swastikas.<sup>39</sup> **From 2021 through 2022, the New Venture Fund gave Sher Edling \$5.2 million.<sup>40</sup> In addition, Sher Edling told the Committees that in 2023 New Venture Fund donated another \$2.86 million to Sher Edling—a donation that has not yet been publicly disclosed.<sup>41</sup>**

### ***3. Sher Edling disclosed that it received additional funding from the Tides Foundation.***

<sup>31</sup> March 8, 2024 Sher Edling Letter.

<sup>32</sup> *Our Cause & Values*, RESOURCES LEGACY FUND, <https://resourceslegacyfund.org/our-cause-values/> (last accessed Sept. 27, 2024).

<sup>33</sup> See Schoffstall & Catenacci, *supra* note 6.

<sup>34</sup> *Diversity, Equity, Inclusion*, RESOURCES LEGACY FUND, <https://resourceslegacyfund.org/diversity-equity-inclusion/> (last visited Sept. 27, 2024); *Grantmaking*, RESOURCES LEGACY FUND, <https://resourceslegacyfund.org/grantmaking/> (last visited Aug. 30, 2024).

<sup>35</sup> March 8, 2024 Sher Edling Letter.

<sup>36</sup> *Who We Are*, NEW VENTURE FUND, <https://newventurefund.org/who-we-are/>.

<sup>37</sup> *Misson & Vaues*, NEW VENTURE FUND, <https://newventurefund.org/who-we-are/mission-and-values/> (last accessed Sept. 27, 2024); Josh Christenson, *Liberal Dark Money Network Has Donated \$10M to Anti-Israel Causes*, N.Y. POST (Oct. 26, 2023), <https://nypost.com/2023/10/26/news/liberal-dark-money-network-has-donated-10-million-to-anti-israel-causes/>.

<sup>38</sup> Christenson, *supra* note 37; *The Council on American Islamic Relations (CAIR)*, ADL, <https://www.adl.org/resources/background/council-american-islamic-relations-cair>.

<sup>39</sup> Christenson, *supra* note 37; Internal Revenue Service. (2022). *Form 990: Return of Organization Exempt from Income Tax: New Venture Fund*, <https://newventurefund.org/wp-content/uploads/2023/11/NVF-2022-Public-Disclosure-Copy-257292001.pdf>.

<sup>40</sup> March 8, 2024 Sher Edling Letter.

<sup>41</sup> *Id.*

Sher Edling divulged another source of funding that had not previously been publicly-reported upon: the Tides Foundation donated \$235,000 to Sher Edling in 2022.<sup>42</sup> Sher Edling explained the Tides Foundation made this grant as part of its “Sustainable Environment” program and the “grant allowed the firm to provide consulting services unrelated to any cases where Sher Edling serves as litigation counsel;” it was not in support of Sher Edling’s climate nuisance or other litigation or general administrative costs.<sup>43</sup>

The Tides Foundation is another 501(c)(3) public charity that claims to be dedicated to “advancing social justice” and an “equitable future,” while supporting various antisemitic groups.<sup>44</sup> For instance, the Tides Foundation is the fiscal sponsor of Palestine Legal, an advocacy group, which co-signed an antisemitic report describing Israel’s existence as “illegal” and sued Columbia University for suspending organizers of violent protests.<sup>45</sup> The Tides Foundation also funds Adalah Justice Project, which has advocated for holding “complicit universities accountable for aiding and abetting Israeli genocide” and supports the Students for Justice in Palestine chapters organizing antisemitic college campus protests.<sup>46</sup> In addition, the Tides Foundation funded two other major organizers of sometimes violent, anti-Israel protests: Jewish Voice for Peace and IfNotNow.<sup>47</sup>

A complete table identifying all of the donations/grants Sher Edling told the Committees it received “to support its climate deception litigation work” is below:

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<sup>42</sup> June 28, 2024 Sher Edling Letter.

<sup>43</sup> *Id.*

<sup>44</sup> TIDES FOUNDATION, [tides.org](https://www.tides.org) (last accessed Sept. 27, 2024); *Our Vision & Mission*, TIDES FOUNDATION, [tides.org/about/mission/](https://www.tides.org/about/mission/) (last accessed Sept. 27, 2024); *FAQs*, TIDES FOUNDATION, <https://www.tides.org/faq/relationship-tides-center-tides-foundation/> (last accessed Sept. 27, 2024).

<sup>45</sup> *About*, PALESTINE LEGAL, <https://palestinelegal.org/about> (last accessed Aug. 16, 2024); *Joint Submission to the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel*, AL-HAQ—LAW IN SERVICE OF MAN (May 31, 2022), [https://www.alhaq.org/cached\\_uploads/download/2022/06/28/coi-submission-root-causes-of-israel-s-violations-1656395537.pdf](https://www.alhaq.org/cached_uploads/download/2022/06/28/coi-submission-root-causes-of-israel-s-violations-1656395537.pdf); Press Release, NYCLU, NYCLY and Palestine Legal Sue Columbia University Over Student Group Suspension (March 12, 2024), <https://www.nyclu.org/press-release/nyclu-and-palestine-legal-sue-columbia-university-over-student-group-suspension>.

<sup>46</sup> *About Us*, ADALAH JUSTICE PROJECT, <https://adalahjusticeproject.org/> (last accessed Sept. 27, 2024); *The NGO Network Orchestrating Antisemitic Incitement on American Campuses*, NGO MONITOR (May 8, 2024), <https://www.ngo-monitor.org/reports/ngo-network-orchestrating-antisemitic-incitement-on-american-campuses/>; Adalah Justice Project, *We Are All SJP*, FACEBOOK (April 20, 2024), <https://www.facebook.com/photo/?fbid=446217624594661&set=a.175022271714199>.

<sup>47</sup> Shia Kapos, *Pro-Palestinian Protestors Are Backed by a Surprising Source: Biden’s Biggest Donors*, POLITICO (May 5, 2024), <https://www.politico.com/news/2024/05/05/pro-palestinian-protests-columbia-university-funding-donors-00156135>; Heather Hollingsworth & David Crary, *Longtime Israeli Policy Foes Are Leading US Protests Against Israel’s Action in Gaza. Who Are They?*, AP NEWS (Nov. 16, 2023), <https://apnews.com/article/israel-hamas-war-college-protests-c94bb0cd246bcc692de86b76b9b2a8cf>.



**Sher Edling's Donations: Individual Donations**

<b>Organization</b>	<b>Date Received</b>	<b>Amount</b>
Resources Legacy Foundation  (Final grant disbursed at the end of 2021, received in 2022)	08/30/2017	\$95,000.00
	10/04/2017	\$166,250.00
	10/11/2017	\$71,250.00
	11/29/2017	\$99,629.26
	03/19/2018	\$ 475,000.00
	05/23/2018	\$ 47,500.00
	06/06/2018	\$ 7,125.00
	10/24/2018	\$ 190,000.00
	12/14/2018	\$ 23,750.00
	12/27/2018	\$ 576,250.00
	02/21/2019	\$ 825,000.00
	11/27/2019	\$ 285,000.00
	01/29/2020	\$ 950,000.00
	02/12/2020	\$ 50,000.00
	03/26/2020	\$ 995,000.00
	08/19/2020	\$ 57,000.00
	10/15/2020	\$ 9,500.00
	11/10/2020	\$ 237,500.00
	12/22/2020	\$ 95,000.00
	01/06/2022	\$55,575.00
New Venture Fund	03/31/2021	\$1,000,000.00
	07/21/2021	\$600,000.00
	11/03/2021	\$666,667.00
	01/12/2022	\$733,333.00*
	04/15/2022	\$1,166,667.00
	05/26/2022	\$1,000,000.00
Tides Foundation	2022	\$235,000.00
New Venture Fund	02/06/2023	\$333,249.00*
	03/02/2023	\$900,000.00
	05/22/2023	\$1,100,000.00
	08/30/2023	\$750,000.00
	12/13/2023	\$111,000.00
* indicates date payment deposited by Sher Edling, but disbursement made and recorded in prior year at New Venture Fund		

### Sher Edling’s Donations: Summary Totals

<u>Organization</u>	<u>Total Amount</u>
Resources Legacy Foundation	\$5,311,329.26
New Venture Fund	\$8,360,916.00
Tides Foundation	\$235,000

#### **B. The Committees’ Investigation Confirmed NHTSA Nominee Carlson and UCLA Law Students Worked on Sher Edling’s Climate Nuisance Lawsuits.**

Through this investigation, the Committees also sought to understand the work Ann Carlson—the Biden-Harris administration’s nominee to be NHTSA administrator—did for the firm.

Before sending letters to Sher Edling, the Committees knew Carlson had performed work for the firm but not what that work entailed. In December 2020, when she was a law professor at UCLA, Carlson submitted “outside activities” forms for the previous four years, indicating she worked for Sher Edling as a “consultant/committee member,” offering “pro bono consulting on litigation for municipalities litigation against oil companies,” but she did not include any further details about her work.<sup>48</sup> Notably, although UCLA rules require faculty to disclose their outside activities annually, Carlson filed the forms for the past four academic years just weeks before she left UCLA to join the Biden-Harris administration.<sup>49</sup> Moreover, in her U.S. Department of Transportation recusal form, which she filed in June 2022, Carlson did not recuse herself from matters involving Sher Edling or mention her work for the firm at all.<sup>50</sup>

Carlson’s email exchanges with real estate millionaire Dan Emmett, which have been made publicly available through public records requests, however, indicate her work for Sher Edling may have included fundraising and recruiting plaintiffs. In a February 26, 2018 email to Emmett, Carlson asking if a wealthy philanthropist “would have any interest in helping to finance the nuisance litigation? I was on a call with the lawyers today (Vic Sher and team) and continue to be very impressed with them.”<sup>51</sup> Emmett responded, “You could certainly reach out. You can tell him Terry’s organization [the Leonardo DiCaprio Foundation] and I are both serious supporters,

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<sup>48</sup> Ann Carlson, *Annual Reporting Form, 7/1/16-6/30/17*, UCLA SCH. OF LAW (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>; Ann Carlson, *Annual Reporting Form, 7/1/17-6/30/18*, UCLA SCH. OF LAW (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>; Ann Carlson, *Annual Reporting Form, 7/1/18-6/30/19*, UCLA SCH. OF LAW (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>; Ann Carlson, *Annual Reporting Form*, UCLA SCH. OF LAW, 7/1/15-6/30/16 (Dec. 6, 2020) (on file with Committees).

<sup>49</sup> *Id.*; Office of the President, *General University Policy Regarding Academic Appointees*, UNIV. OF CAL. (July 1, 2024), [https://www.ucop.edu/academic-personnel-programs/\\_files/apm/apm-025.pdf](https://www.ucop.edu/academic-personnel-programs/_files/apm/apm-025.pdf).

<sup>50</sup> Ann Carlson Recusal Form, U.S. DEP’T. OF TRANS. (June 9, 2022), <https://climatelitigationwatch.org/wp-content/uploads/2023/02/Ann-Carlson-recusal-for-signature.pdf>.

<sup>51</sup> Email from A. Carlson to D. Emmett (Feb. 26, 2018, 8:06PM), <https://govoversight.org/wp-content/uploads/2022/05/Sabin-and-his-Rs.pdf>.

[and] that you are an advisor.”<sup>52</sup> In another June 2019 email to Emmett, Carlson disclosed she travelled to Hawaii “to encourage Hawaii to consider a nuisance lawsuit.”<sup>53</sup> (Sher Edling filed a climate nuisance lawsuit on behalf of the City and County of Hawaii in March 2020.<sup>54</sup>) The emails also reveal Carlson (at least) knew the UCLA Law clinic students were doing work for Sher Edling: In June 2019, she sent Dan Emmett an email stating that “the clinic ha[d] been working on the nuisance cases” for Sher Edling.<sup>55</sup>

Sher Edling told the Committees that for years, “end[ing] by 2020,” Carlson “consulted pro-bono on the legal issues underlying the climate damage and deception cases.”<sup>56</sup> Ann Carlson’s delinquent outside activities disclosures reveal that she began working for Sher Edling sometime between July 1, 2016 and June 30, 2017.<sup>57</sup> Notably, Sher Edling filed the first climate nuisance lawsuit in July 2017.<sup>58</sup>

Sher Edling also stated that Carlson “did not consult 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.”<sup>59</sup>

Sher Edling confirmed the UCLA Law clinic “provide[d] assistance” to Sher Edling “on issues arising in then-pending and potential cases, during approximately 2018 and 2019.”<sup>60</sup> This arrangement means that UCLA Law students helped Sher Edling’s efforts to secure compensation but received no compensation themselves. In fact, as students receiving academic credit for clinic participation, they paid UCLA to be able to do this work.

Carlson’s nomination to be NHTSA administrator was withdrawn during the Committees’ investigation, though she continued to serve as the acting NHTSA administrator until December 26, 2023, and then as NHTSA’s chief counsel for some time after that.<sup>61</sup> While Carlson was

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<sup>52</sup> E-mail from D. Emmett to A. Carlson (Feb. 26, 2018, 8:18PM), <https://govoversight.org/wp-content/uploads/2022/05/Sabin-and-his-Rs.pdf>.

<sup>53</sup> Email from A. Carlson to D. Emmett (June 24, 2019, 3:51PM), <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-Discretionary-Fund-Requested-Records-20-8371.pdf>.

<sup>54</sup> See Complaint, City & Cnty. of Honolulu v. Sunoco LP, No. SCAP-22-0000429 (1st Cir., Haw. Mar. 9, 2020). The Hawaii state judge presiding over this case has indirect ties to Sher Edling through the Climate Judiciary Project—a group that hosts events to teach judges how to handle climate nuisance lawsuits, including an event the Hawaii judge presented at. The project has the same funding sources as Sher Edling. Moreover, Ann Carlson helped to develop the Climate Judiciary Project’s curriculum for judges. See Thomas Catenacci, *Judge Presiding Over Big Oil Climate Change Lawsuit Reveals Connection to Plaintiff’s Eco Lawyers*, FOX NEWS (May 19, 2023), <https://www.foxnews.com/politics/judge-presiding-over-big-oil-climate-change-lawsuit-reveals-connection-plaintiffs-eco-lawyers>.

<sup>55</sup> Email from A. Carlson to D. Emmett (June 24, 2019, 3:51PM), <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-Discretionary-Fund-Requested-Records-20-8371.pdf>.

<sup>56</sup> October 6, 2023 Sher Edling Letter.

<sup>57</sup> See note 48, *supra*.

<sup>58</sup> *Sher Edling LLP Protecting People and the Planet*, SHER EDLING LLP, [https://ago.vermont.gov/sites/ago/files/wp-content/uploads/2022/12/Exh-1-SE-Firm-Resume\\_Redacted.pdf](https://ago.vermont.gov/sites/ago/files/wp-content/uploads/2022/12/Exh-1-SE-Firm-Resume_Redacted.pdf).

<sup>59</sup> October 6, 2023 Sher Edling Letter.

<sup>60</sup> *Id.*

<sup>61</sup> *Nominations & Withdrawals Sent to the Senate*, WHITE HOUSE BRIEFING ROOM (May 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/05/30/nominations-and-withdrawals-sent-to->

acting administrator, NHTSA proposed a rule for fuel economy standards that amounted to a de-facto EV-mandate.<sup>62</sup> This summer, NHTSA finalized a version of this rule—which 26 states have challenged, on the grounds it “exceeds the agency’s statutory authority and otherwise is arbitrary, capricious, an abuse of discretion, and not in accordance with law.”<sup>63</sup>

### **C. Sher Edling Refused to Respond to Most of the Requests Without Providing a Reasonable Basis for Its Refusal.**

For almost a year, the Committees sought responses to just three questions. The Committees even narrowed some of those questions, in an effort to work with Sher Edling in good faith. Nevertheless, throughout most of this period Sher Edling refused to respond to most of the requested information without providing any specific objections to the requests. Eventually, Sher Edling articulated some defenses for its refusals, but even those appear to be wrong on the law.

This section details the information Sher Edling provided, the information Sher Edling refused to provide, its arguments for not providing the information, and a brief overview of why none of those arguments should withstand scrutiny.

#### **1. *Question 1: Please describe the nature of Ms. Carlson’s work for Sher Edling, including the years she served in those roles, what her work . . . entailed, the specific lawsuits she worked on, the specific lawsuits she had any role in and her compensation each year, including any benefits she received or expenses Sher Edling reimbursed.***

Sher Edling told the Committees that Carlson “consulted *pro bono* on the legal issues underlying the climate damages and deception cases for which Sher Edling serves as outside counsel.”<sup>64</sup> The firm stated that “it appear[ed]” Ms. Carlson’s work for Sher Edling “ended by 2020.”<sup>65</sup> It further stated that it “d[id] 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.”<sup>66</sup>

Sher Edling did not provide further detail on Ms. Carlson’s work for Sher Edling, including whether she solicited donors. Sher Edling also failed to address whether Sher Edling provided Ms. Carlson any compensation or benefits or reimbursed any of her expenses.

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the-senate-11/; David Shepardson, *Top US Auto Safety Official Will Leave Agency*, REUTERS (Dec. 15, 2023), <https://www.reuters.com/business/autos-transportation/top-us-auto-safety-official-will-leave-agency-email-2023-12-15/>; Tom Krisher, *Departing US Road Safety Chief Says Agency has the People and Knowhow to Regulate High-tech Vehicles*, AP NEWS (Jan. 30, 2024), <https://apnews.com/article/nhtsa-carlson-vehicles-autonomous-tesla-31837709237f6e14f8cd6148f310ac25>.

<sup>62</sup> *NHTSA Proposes New MY 2027-2032 Corporate Average Fuel Economy Standards*, JDSUPRA (Aug. 17, 2023), <https://www.jdsupra.com/legalnews/nhtsa-proposes-new-my2027-2032-5487126/>.

<sup>63</sup> David Shepardson, *Republican State AGs Challenge New US Fuel Economy Rules*, REUTERS (Jun. 26, 2024), <https://www.reuters.com/business/autos-transportation/republican-state-ags-challenge-new-us-fuel-economy-rules-2024-06-26/>.

<sup>64</sup> October 6, 2023 Sher Edling Letter.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

- 2. Question 2: Please describe the nature of UCLA’s Environmental Law Clinic’s work for Sher Edling, the years during which that assistance was provided, and the specific cases that members of that clinic worked on. Please also identify any expenses for that work that Sher Edling reimbursed and any donations the firm or its partners have made to UCLA School of Law since 2017.**

Sher Edling told the Committees the “clinic provided assistance, on issues arising in then-pending and potential cases, during approximately 2018 and 2019.”<sup>67</sup> The firm further explained that “it [did] not appear that Sher Edling ha[d] reimbursed the clinic for any expenses—nor [did] it appear that any of Sher Edling’s equity partners donated to [UCLA Law] during the time the clinic provided assistance, or subsequently.”<sup>68</sup>

Sher Edling did not tell the Committees the cases that the clinic worked on or any more details regarding the nature of the clinic’s work for Sher Edling. Sher Edling’s counsel did, however, say that “the relationship was governed by a legal services agreement.”<sup>69</sup> As stated above, Committee staff therefore requested the litigation services agreement between Sher Edling and the UCLA Law clinic.<sup>70</sup>

Sher Edling refused to provide this agreement, claiming it was privileged under California state law.<sup>71</sup> Committee staff pointed out that even if Congress were to recognize privilege claims, federal law, not state law would govern Sher Edling’s claim.<sup>72</sup> Moreover, under federal law, retainer and fee agreements are not privileged.<sup>73</sup> Sher Edling nevertheless stood on its privilege assertion, relying primarily on mischaracterizations of the Federal Rules of Evidence and federal court opinions.<sup>74</sup> The Committees therefore expect Sher Edling’s privilege argument should fail.

- 3. Question 3: Please provide a list of every person and entity, excluding clients and vendors, that provided Sher Edling with any amount of money. For each person or entity listed, please include the following information: (a) the amount of the money provided; (b) the date the money was provided; (c) the purpose for which the money was directed to be used; and (d) the manner in which that money was provided, i.e., through a grant, litigation funding agreement, or some other contract or agreement. If the funding was provided pursuant to a written agreement, please provide a copy of that agreement.**

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> July 28, 2023 Sher Edling Letter.

<sup>70</sup> Email from Committee Staff to Sher Edling Counsel (Dec. 11, 2023) (on file with Committees).

<sup>71</sup> March 8, 2024 Sher Edling Letter.

<sup>72</sup> Email from Committee Staff to Sher Edling Counsel (Mar. 13, 2024) (on file with Committees) (citing *Linde Thomson Langworthy Kohn & Van Dyke, P.C. v. Resol. Tr. Corp.*, 5 F.3d 1508, 1513 (D.C. Cir. 1993)).

<sup>73</sup> *Id.* (citing *Hoot Winc, LLC v. RSM McGaldrey Fin. Process Outsourcing, LLC*, 2009 WL 3857425, at \*2 (S.D. Cal. Nov. 16, 2009); *Robinson v. Duncan*, 255 F.R.D. 300, 303 (D.D.C. 2009); *Carrizosa v. Stassinis*, 2006 WL 2529503, at \*3 (N.D. Cal., Aug. 31, 2006); *United States v. Naegele*, 468 F. Supp. 2d 165, 171 (D.D.C. 2007); *Banks v. Off. of Senate Sergeant-at-Arms*, 222 F.R.D. 7, 13 (D.D.C. 2004)).

<sup>74</sup> June 28, 2024 Sher Edling Letter.

In response to this question, Sher Edling eventually provided the information in the table above. Sher Edling stated that it was providing information regarding the “donations/grants” it received “to support its climate deception litigation work,” which was narrower than the information requested.<sup>75</sup> Committee staff therefore asked for “a yes or no to whether there are other grants/donations, that Sher Edling received that either a majority or the entirety of the grant/donation is used to cover administrative costs across the firm or applied to multiple areas of litigation—such as climate litigation, drinking water, land/air/water, etc.”<sup>76</sup> Sher Edling responded that the answer to the question was “no.”<sup>77</sup> It also identified a \$235,000 grant from the Tides Foundation in 2022, as part of Tides’ “Sustainable Environment” program, which it said, “allowed the firm to provide consulting services unrelated to any cases where Sher Edling serves as litigation counsel.”<sup>78</sup> Sher Edling did not explain what those consulting services were. Notably, Sher Edling never answered whether it received additional funding from third parties to pursue this litigation outside of grants/donations.

Sher Edling acknowledged “[a]t least certain of the identified donations/grants were made pursuant to a written agreement,” but refused to provide the agreements with any of its donors.<sup>79</sup> From May 2023 through June 2024, Committee staff repeatedly requested a specific basis for not providing the requested information. Finally, in the June 28, 2024 letter, Sher Edling claimed the “donation/grant agreements” were protected by: (1) the attorney work product doctrine, (2) the First Amendment, and (3) “structure of government concerns.” None is persuasive.

First, Sher Edling’s attorney work product doctrine argument depends on the proposition that its agreements with donors are “litigation funding agreements.” The requested donation/grant agreements, however, do not fit that bill. A litigation funding agreement is an agreement between a third party and a litigant or law firm, in which the third party agrees to provide some amount of funding to finance a lawsuit in exchange for a portion of the potential recovery.<sup>80</sup> But Sher Edling’s donors listed the amounts they gave to Sher Edling as “grants” on their IRS 990 forms<sup>81</sup> and—because private foundations generally cannot make a tax-exempt “grant” for the purpose of generating income—the donors likely would have violated the law by making these grants in exchange for a portion of Sher Edling’s clients’ recovery.<sup>82</sup> Moreover, the litigation services agreements between Sher Edling and its clients do not state that a portion of the clients’ recovery will go to any third party.<sup>83</sup> More likely, then, these agreements are grant agreements and

<sup>75</sup> March 8, 2024 Sher Edling Letter.

<sup>76</sup> Email from Committee Staff to Sher Edling Counsel (Jun. 10, 2024).

<sup>77</sup> June 28, 2024 Sher Edling Letter.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Third-Party Litigation Financing: Market Characteristics, Data, and Trends*, U.S. GOV. ACCOUNTABILITY OFF. (Dec. 2022), <https://www.gao.gov/assets/gao-23-105210.pdf>.

<sup>81</sup> *See, e.g.*, Internal Revenue Service. (2022). *Form 990: Return of Organization Exempt From Income Tax: New Venture Fund*, <https://newventurefund.org/wp-content/uploads/2022/11/NVF-2021-990-Public-Disclosure-Copy.pdf>; Internal Revenue Service. (2020). *Form 990: Return of Organization Exempt From Income Tax: Resources Legacy Fund*, <https://resourceslegacyfund.org/wp-content/uploads/2022/03/RLF-2020-IRS-Form-990-Public-Copy-Amended.pdf>.

<sup>82</sup> *See Grants to Noncharitable Organizations*, IRS, <https://www.irs.gov/charities-non-profits/private-foundations/grants-to-noncharitable-organizations> (last accessed Aug. 20, 2024).

<sup>83</sup> *See, e.g.*, State of Minnesota, Office of the Attorney General, Special Attorney Appointment (Aug. 2020), <https://govoversight.org/wp-content/uploads/2021/01/AGO-LAC.pdf>.

therefore not privileged.<sup>84</sup> Regardless, courts have allowed discovery of litigation funding agreements where, as here, the agreement is relevant to show bias.<sup>85</sup>

Second, Sher Edling’s First Amendment argument is inapt, as it relates to disclosure of the *identities* of an organization’s membership and donors—not disclosure of the *terms* of donor agreements.<sup>86</sup> The First Amendment applies strong protections for political speech, and therefore protects against compelled disclosure of individuals’ donations to advocacy organizations.<sup>87</sup> The First Amendment, however, does not protect from disclosure the terms of those agreements once the identities of the donors is known. Indeed, the foundations that gave money to Sher Edling have already identified their donations, as they are legally required to do, in their IRS 990 forms. Sher Edling had no argument as to how First Amendment protections for individual donors to nonprofit advocacy organizations apply to *agreements* between a for-profit firm and the foundations financing its lawsuits.

Third, Sher Edling’s appeal to “structure of government” concerns is not a serious defense for refusing to disclose information in response to a congressional inquiry. That is why Sher Edling was unable to cite a single statute or case to support it. Subjects of congressional inquiries cannot hide behind lawsuits to avoid scrutiny for any activity that happens to relate to those lawsuits. Indeed, congressional committees have investigated parties to ongoing lawsuits before—not because they are trying to “intervene” in those lawsuits, but because they are investigating issues that may require legislative action.<sup>88</sup>

The Committees therefore expect Sher Edling’s arguments for not providing these agreements should fail.

#### IV. Conclusion

The Committees’ investigation into Sher Edling confirmed it had received both monetary and legal assistance from tax-exempt organizations to pursue climate nuisance cases against the oil and gas industry. Sher Edling received \$10.8 million funding from Resource Legacy Fund and New Venture Fund from 2017 through 2022. The Tides Foundation gave Sher Edling another \$235,000 in 2022 and New Venture Fund gave Sher Edling an additional \$2.86 million in 2023.

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<sup>84</sup> It is possible that in addition to donation/grant agreements, Sher Edling has separate litigation funding agreements with third parties—including private foundations—that have been funding Sher Edling’s litigation. Sher Edling’s arguments, however, focused on the donation/grant agreements it has with the donors it identified.

<sup>85</sup> See *ML Healthcare Servs., LLC v. Publix Super Markets, Inc.*, 881 F.3d 1293, 1303 (11th Cir. 2018).

<sup>86</sup> Sher Edling cites two cases in support of this argument: *Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958) (holding state’s compelled disclosure of a nonprofit’s membership list violated the First Amendment) and *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021) (holding state’s compelled disclosure of a nonprofit’s donors violated the First Amendment).

<sup>87</sup> *Americans for Prosperity Found.*, 594 U.S. at 606.

<sup>88</sup> *The Equifax Data Breach*, U.S. House of Rep. Comm. on Oversight and Gov. Reform (Dec. 2018) <https://oversight.house.gov/wp-content/uploads/2018/12/Equifax-Report.pdf>; *Equifax-Frequently Asked Questions*, Ken Paxton Attorney General of Texas, <https://www.texasattorneygeneral.gov/consumer-protection/equifax/> (last accessed Aug. 16, 2024); Press Release, Sen. Elizabeth Warren, Warren, Warner, Cummings, Krishnamoorthi Reintroduce Legislation to Hold Equifax and Other Credit Reporting Agencies Accountable for Data Breaches (May 7, 2019), <https://www.warren.senate.gov/newsroom/press-releases/warren-warner-cummings-krishnamoorthi-reintroduce-legislation-to-hold-equifax-and-other-credit-reporting-agencies-accountable-for-data-breaches>.

Moreover, in 2018 and 2019, students at UCLA Law assisted with Sher Edling's climate nuisance cases pursuant to a legal services agreement. Before the Biden-Harris administration nominated her to be NHTSA administrator, Ann Carlson also assisted with these cases.

Many of the Committees' questions, however, remain unanswered. Most notably, Sher Edling never disclosed whether it received funding for its climate nuisance lawsuits outside of donations/grants. And it refused to provide its agreements with its donors. It also provided very little detail regarding what Carlson's work for the firm entailed. Meanwhile, Sher Edling resorted to weak legal arguments to avoid transparency. The Committees therefore continue to review additional options for obtaining the requested information.

The information gleaned from this investigation and Sher Edling's tactics should amplify concerns about tax-exempt organizations funding for-profit law firms' litigation, particularly when those lawsuits have the potential to cripple a critical industrial sector. Elected officials in Congress, as well as the general public, should pay close attention to how organizations, such as those detailed within this memo, are able to exercise their influence over the policies and regulatory environment impacting critical industries and consumers caught in the balance. It should also sow further doubt about the motivations behind NHTSA's new, restrictive fuel efficiency standards, which Carlson helped push while at NHTSA.