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# United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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LILA HARPER HELMS, MAJORITY STAFF DIRECTOR  
BRAD GRANTZ, REPUBLICAN STAFF DIRECTOR

February 23, 2024

Ms. Jordan Diamond  
President  
Environmental Law Institute  
1730 M Street, NW, Suite 700  
Washington, D.C. 20036

Dear Ms. Diamond:

So-called “climate change lawsuits”—lawsuits claiming that private companies should be monetarily liable for damage to public infrastructure allegedly caused by climate change—have exploded in the past five years.<sup>1</sup> In tandem with this unprecedented litigation, the Environmental Law Institute (ELI) launched a “first-of-its-kind effort” to provide judges with “education on climate science, the impacts of climate change, and the ways climate science is arising in the law.”<sup>2</sup> It appears that ELI’s goal in providing this “education,” however, may be to influence judges to side with plaintiffs in climate change cases.

As you are aware, one of the program’s architects is Ann Carlson, the former Chief Counsel of the National Highway Traffic Safety Administration (NHTSA) whom the President unlawfully appointed acting administrator.<sup>3</sup> As the Ranking Member of the U.S. Senate Committee on Commerce, Science, and Transportation, I write to request information to allow the Committee to evaluate the efforts of both Ms. Carlson and ELI to influence the federal judiciary in its adjudication of climate litigation.

While Ms. Carlson was a member of ELI’s board of directors, ELI unveiled the Climate Judiciary Project (the Project).<sup>4</sup> Although ELI claims that it gives “neutral, objective information

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<sup>1</sup> See, e.g., Joana Setzer & Catherine Higham, GRANTHAM RSCH. INST. ON CLIMATE CHANGE ET AL., GLOBAL TRENDS IN CLIMATE CHANGE LITIGATION: 2023 SNAPSHOT 11 (2023), [https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global\\_trends\\_in\\_climate\\_change\\_litigation\\_2023\\_snapshot.pdf](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf).

<sup>2</sup> *Climate Science and Law for Judges: Introduction*, CLIMATE JUDICIARY PROJECT (Mar. 2023), <https://cjp.eli.org/curriculum/introduction>.

<sup>3</sup> See Letter from Senator Ted Cruz, Ranking Member, S. Comm. on Commerce, Science, & Transp., & Other Republican Comm. Members to the President of the United States (Sept. 30, 2023).

<sup>4</sup> See *Past ELI Board Members*, ENV’T L. INST., <https://www.eli.org/past-eli-board-members?page=2> [<https://web.archive.org/web/20230730212418/https://www.eli.org/past-eli-board-members?page=2>] (showing Carlson was a member of ELI’s Board in 2018); *About CJP*, CJP, ENV’T. L. INST., <https://cjp.eli.org/about> (last visited Feb. 16, 2024) (showing Climate Judiciary Project was unveiled in 2018).

to the judiciary about the science of climate change,”<sup>5</sup> the Project is meant to be a direct complement to the wave of climate change litigation initiated by the Carlson-connected law firm Sher Edling LLP (Sher Edling).<sup>6</sup> Indeed, ELI knows the impact this litigation could have on the fossil fuel industry: ELI recognizes that, in addition to legislation, “[l]itigation has the benefit” of “providing an incentive for adaption efforts as the standard for reasonable behavior changes.”<sup>7</sup> More specifically, ELI states that “climate change litigation” can “control, order, or influence the behavior of others in relation to climate governance.”<sup>8</sup> Therefore, the “highest goal” of ELI’s Project is “to help the judiciary as [it] build[s] a body of law that *appropriately* addresses climate change” through climate change litigation.<sup>9</sup> In other words, ELI intends to accomplish via the courts what it cannot get enacted into law: a radical environmental agenda.

To help judges reach those “appropriate” decisions, the Project developed the “Climate Science and Law for Judges Curriculum” (the Curriculum).<sup>10</sup> While ELI claims the Project is “neutral” and “objective,” the Curriculum reads like a playbook for judges to find in favor of plaintiffs in artificial climate change cases against traditional energy companies: it includes courses that “show[] how climate science is built on long-established scientific disciplines” and “explore[] the human-caused component of [global] warming,” such as the “causal connections between emissions” and “changes in the climate.”<sup>11</sup> Ms. Carlson was a member of the Project’s “Advisory Curriculum Committee,” which “helped to shape, refine, and strengthen the curriculum’s methodology and content.”<sup>12</sup> Ms. Carlson also participated in the Project’s pilot series to train federal judges.<sup>13</sup>

By its own account, the Project appears to have gained hundreds of judicial acolytes, with over 1,700 judges participating in the Project.<sup>14</sup> Its judicial students even include Hawaii Supreme Court Chief Justice Mark Recktenwald, who handed Sher Edling a major win in the lawsuit it

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<sup>5</sup> *About the Climate Judiciary Project*, ENV’T. LAW INST., <https://www.eli.org/climate-judiciary-project>; Sandra Nichols & Paul Hanle, *Judging in a Changed Climate*, 14 THE ENV’T. L. FORUM 55 (July/August 2022) <https://www.eli.org/sites/default/files/files-pdf/Judging%20in%20a%20Changed%20Climate.pdf>.

<sup>6</sup> See Letter from Senator Ted Cruz, Ranking Member, S. Comm. Commerce, Science, & Transp., & Congressman James Comer, Chairman, H. Comm. Oversight & Accountability, to Sher Edling (Sept. 25, 2023), <https://www.commerce.senate.gov/2023/9/sen-cruz-chairman-comer-demand-answers-from-law-firm-regarding-acting-nhtsa-administrator-s-role-in-frivolous-lawsuits-aimed-at-bankrupting-oil-companies>.

<sup>7</sup> Nichols & Hanle, *supra* note 5, at 56.

<sup>8</sup> *Id.*

<sup>9</sup> CJP Staff, *2022 Year in Review*, CJP, ENV’T L. INST. (Apr. 1, 2023), <https://cjp.eli.org/news/230401-2022-year-review> (emphasis added).

<sup>10</sup> *Climate Science and Law for Judges*, *supra* note 2; see also *Climate Science and Law for Judges: Fundamental Rights*, CJP (Jan. 2023), [https://www.eli.org/sites/default/files/files-pdf/Fundamental%20Rights\\_FINAL%20WORD\\_formatted.pdf](https://www.eli.org/sites/default/files/files-pdf/Fundamental%20Rights_FINAL%20WORD_formatted.pdf).

<sup>11</sup> *About the Climate Judiciary Project*, *supra* note 5; *Climate Science and Law for Judges*, *supra* note 2.

<sup>12</sup> *Climate Science and Law for Judges*, *supra* note 2.

<sup>13</sup> Nichols & Hanle, *supra* note 5.

<sup>14</sup> *About the CJP*, *supra* note 5.

filed in 2020 on behalf of the City and County of Honolulu.<sup>15</sup> Ms. Carlson had travelled to Hawaii with Mr. Sher to “encourage Hawaii to consider a nuisance lawsuit” just one year before that case was filed.<sup>16</sup>

The Project’s funding and ties to plaintiffs in climate change cases further belie ELI’s claim of neutrality. For example, ELI and climate litigation juggernaut, Sher Edling, share staff, including Ms. Carlson, who served as a “consultant/committee member” for Sher Edling while also serving on ELI’s board.<sup>17</sup> ELI and Sher Edling also have some of the same sources of financing:

- In 2020, the William and Flora Hewlett Foundation, which provides “grants to protect people and places threatened by a warming planet by addressing climate change globally,” gave \$500,000 to ELI’s Project to “build a body of law supporting climate action.”<sup>18</sup> The same year, the Hewlett Foundation gave \$6.62 million to the Resources Legacy Fund, which donated \$2.4 million to Sher Edling.<sup>19</sup>
- In 2021, the JPB Foundation, which works to “build[] the power of the environmental justice community,” donated \$2 million to ELI’s Project to “advanc[e] a new front against climate change.”<sup>20</sup> The same year, the JPB Foundation gave \$3.45 million to the New Venture Fund for “climate damage and deception litigation support.”<sup>21</sup> The New

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<sup>15</sup> See Notice, *City & Cnty. of Honolulu v. Sunoco LP*, SCAP-22-0000429 (Haw. May 9, 2023); *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173 (Haw. 2023) (upholding denial of defendants-appellees’ motions to dismiss based on lack of jurisdiction and failure to state a claim).

<sup>16</sup> E-mail from Ann Carlson to Dan Emmett (Jun. 24, 2019, 3:51 p.m.) (on file with the Committee).

<sup>17</sup> *Past ELI Board Members*, *supra* note 4; Ann Carlson, Annual Reporting Form, UCLA Sch. L. (Dec. 6, 2020), <https://govoversight.org/wp-content/uploads/2021/08/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>.

<sup>18</sup> *Environment*, HEWLETT FOUND., <https://hewlett.org/programs/environment/> (last visited Feb. 21, 2024); *Environmental Law Institute for the Climate Judiciary Project*, HEWLETT FOUND. (last visited Feb. 16, 2024), <https://hewlett.org/grants/environmental-law-institute-for-the-climate-judiciary-project/>; 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The William and Flora Hewlett Foundation*, 304 (Nov. 3, 2021), <https://www.hewlett.org/wp-content/uploads/2021/12/2020-Form-990-PF-full-return-with-attachments.pdf>.

<sup>19</sup> 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The William and Flora Hewlett Foundation*, 304 (Nov. 3, 2021), <https://www.hewlett.org/wp-content/uploads/2021/12/2020-Form-990-PF-full-return-with-attachments.pdf>; 2020 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The Resources Legacy Fund*, 8 (Feb. 2, 2022), <https://resourceslegacyfund.org/wp-content/uploads/2022/03/RLF-2020-IRS-Form-990-Public-Copy-Amended.pdf>.

<sup>20</sup> *Environment*, JPB FOUND. (last visited Dec. 12, 2023), <https://www.jpbfoundation.org/environment/> [<https://web.archive.org/web/20230306041814/https://www.jpbfoundation.org/environment/>]; 2021 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The JPB Foundation*, 11 (Nov. 11, 2022), <https://projects.propublica.org/nonprofits/organizations/900747216/202223159349101982/full>.

<sup>21</sup> 2021 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The JPB Foundation*, 11 (Nov. 11, 2022), <https://projects.propublica.org/nonprofits/organizations/900747216/202223159349101982/full>.

Venture Fund donated \$3 million to Sher Edling in 2021 and is currently under investigation by the D.C. Attorney General.<sup>22</sup>

- In 2022, the ClimateWorks Foundation, which “is committed to supporting climate solutions that are equitable, inclusive, and just,” gave ELI \$987,763 to support the Climate Judiciary Project and gave New Venture Fund \$1,447,990.<sup>23</sup> That year, the New Venture Fund gave Sher Edling \$2,499,916.<sup>24</sup>

The Standing Rules of the Senate provide the Committee on Commerce, Science and Transportation the authority to “review and study, on a continuing basis” matters related to interstate commerce and transportation including NHTSA and the Senate’s consideration of any nominee thereto.<sup>25</sup> So that the Committee can understand Ms. Carlson’s involvement in ELI’s judicial education efforts related to climate change prior to and following her nomination, the accuracy of her disclosures to Congress, as well as ELI’s connection to Sher Edling and other firms and parties bringing climate change cases and those cases’ potential adverse impacts on interstate commerce, please provide the documents requested below and written answers in response to the questions below no later than March 8, 2024 and in accordance with the attached instructions.

1. Please describe the work that Ms. Carlson performed for ELI during her time on ELI’s Board of Directors, including the contributions she made to the Curriculum.
2. Please provide copies of all communications between ELI and Ms. Carlson from January 20, 2021, to present.
3. Please provide copies of the Project’s member resources and all Curriculum materials and resources, including all modules, the learning dashboard, the resource library, slide presentations, member events, and directory of regional ambassadors or alternatively access thereto.<sup>26</sup>

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<sup>22</sup> 2021 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The New Venture Fund*, 134 (Nov. 4, 2022), <https://newventurefund.org/wp-content/uploads/2022/11/NVF-2021-990-Public-Disclosure-Copy.pdf>; see, e.g., Joe Schoffstall, *D.C. Prosecutors Probe Liberal Dark Money Network After Backlash for Investigating Conservative Orgs*, FOX NEWS, <https://www.foxnews.com/politics/dc-prosecutors-probe-liberal-dark-money-network-backlash-investigating-conservative-orgs> (Oct. 5, 2023).

<sup>23</sup> *About Us*, CLIMATEWORKS FOUND., <https://www.climateworks.org/about-us/> (last visited Feb. 20, 2024); 2022 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, ClimateWorks Foundation, 77, 81 (Oct. 17, 2023), <https://content.climateworks.org/form-990-2022>.

<sup>24</sup> 2022 Internal Revenue Service Form 990: Return of Organization Exempt from Income Tax, *The New Venture Fund*, 155 (Nov. 7, 2023) <https://newventurefund.org/wp-content/uploads/2023/11/NVF-2022-Public-Disclosure-Copy-257292001.pdf>.

<sup>25</sup> S. Rules XXV(1)(f), XXVI(8)(a)(2).

<sup>26</sup> *For Members*, ENV’T LAW INST. CLIMATE JUDICIARY PROJECT (Dec. 12, 2023), <https://cjp.eli.org/dashboard>.

4. Please provide documents sufficient to show or a list of all events sponsored by the Project and every federal, state, and local judge in the United States who either attended or presented at each event.
  - a. For each event, please state whether ELI provided any compensation, including reimbursement for travel expenses, to attendees, and if so, how much money ELI gave to each judge who attended.
5. Please identify every state and federal judge in the United States who has received any training or educational materials created by the Project or otherwise has served in any role related to the Project, including informal advisors and committee members.
6. Please identify every person and entity that provided ELI with any amount of funding that was directed to the Climate Judiciary Project. 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 way that money was provided, *e.g.*, through a grant.

Thank you for your attention to this matter.

Sincerely,



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Ted Cruz  
Ranking Member