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17 The Viscount Monckton of Brenchley, et al.

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION  
21

22 THE PEOPLE OF THE  
STATE OF CALIFORNIA

Plaintiff,

v.

BP P.L.C., et al.

Defendants.

Case Nos. C-17-06011 WHA  
and C-17-06012 WHA

23 **SPECIAL STATEMENT OF AMICI CURIAE IN REPLY TO**  
24 **RESPONSE BY PLAINTIFF TO MOTION TO FILE AMICI**  
25 **CURIAE BRIEF**

- 26 (1) THE VISCOUNT MONCKTON OF BRENCHLEY,  
27 (2) DR WILLIE WEI-HOCK SOON, (3) PROFESSOR DAVID LEGATES,  
28 (4) DR WILLIAM M. BRIGGS, (5) DIPL.-ING. MICHAEL LIMBURG,  
29 (6) DR DIETRICH JESCHKE, (7) MR ALEX HENNEY,

1 (8) MR JOHN WHITFIELD, AND (9) MR JAMES MORRISON

2 I.

3 **INTRODUCTION**

4 On March 16, 2018, the above-listed persons filed their Motion for Leave to File an Amici  
5 Curiae Brief in Support of Defendants.

6 On March 20, 2018, Plaintiff filed its Response to the Motion, which styled itself a  
7 “Statement of Non-Opposition”, but in substance set forth points and arguments that could support  
8 denial of the Motion, or the Court’s ignoring the Amici Brief even after formally granting the  
9 Motion for Leave to file it. Plaintiff’s content also was utterly tendentious, inflammatory,  
10 defamatory, and outrageous.

11 Because of that objectionable content, we immediately proceeded to draft a Reply Brief in  
12 support of the Motion. Our second draft was being reviewed by these amici when the Court pre-  
13 empted that work by issuing, on March 23, 2018, its Order granting the Motion for Leave to File  
14 our Amici Curiae brief. This, of course, mooted the need for a Reply Brief.

15 But the Court’s Order did not moot the desirability and indeed necessity of our adapting  
16 the draft Reply Brief into this Special Statement in response to Plaintiff’s objectionable filing.  
17 After all, as noted above, Plaintiff had taken care to state its nominal Non-Opposition to our  
18 Motion, a position that could be expected to result in the Court’s almost certainly granting the  
19 Motion. Indeed, the Court stated at the tutorial on March 21, 2018 that a filed statement of Non-  
20 Opposition by Plaintiff, combined with Mr. Boutros’ statement for the Defendants in open Court  
21 that they also did not oppose the filing of amicus briefs, apparently would cause the Court to  
22 automatically approve the amicus submissions. Transcript at p, 120, lines 12-21.

1 Under best and proper practice, Plaintiff should have simply stated its Non-Opposition  
2 without elaboration, and left it at that, realizing that this position would inevitably cause the  
3 Motions to be granted. Because Plaintiff presumably was aware of this, its presumptive motive  
4 in gratuitously adding its lengthy scurrilous and inflammatory material was to improperly sway  
5 the Court's assessment of the merits of our brief once the Court approved its filing.

6 This constituted a de facto improper opposition brief on the merits prior to the Court's  
7 issuing an Order calling for such briefs. And it was not only an improper and unauthorized brief,  
8 but also an utterly incompetent one precisely because it embarrassingly sank into the gutter of  
9 personal invective and attack, not even genuflecting in the direction of a substantive response on  
10 the merits.

11 Under these extraordinary circumstances, these amici believe they have no practical choice  
12 but to submit this Special Statement in rebuttal, even though the Court has already granted our  
13 Motion.

## 14 II.

### 15 SUMMARY

16 Plaintiff's response is conspicuously silent on the scientific merits of the two points of  
17 science advanced in our proposed Amici Curiae brief. Instead, plaintiff implicitly admits its  
18 inability to answer our two scientific points when it indulges in a vitriolic deluge of personal  
19 attacks on the integrity of *amici*. Plaintiff's allegations are untrue, unfair, or disproportionate. But  
20 above all, they are utterly irrelevant to the scientific argument offered by *amici*, which stands or  
21 falls on its own merits.

22 In logic, the *argumentum ad hominem* – the attack upon the character of the man rather  
23 than the character of his argument – was first described as a logical fallacy by Aristotle in his

1 *Sophistical Refutations* some 2,500 years ago. *Argumentum ad hominem* is an infamous subspecies  
2 of *ignoratio elenchi*, the fundamental fallacy of not understanding how to conduct a fair and  
3 legitimate argument. That is because what matters scientifically is the quality of a scientist’s  
4 research and the soundness of his scientific reasoning and argumentation, not his supposed  
5 character defects or his imagined sources of funding.

6 **III.**

7 **ARGUMENT**

8 Amici respond to Plaintiff’s allegations as follows. The allegations are indented; *amici’s*  
9 responses are written full out to the margins.

10 (A) Plaintiff says: ... “the proposed *amici* are (with one exception) not climate  
11 scientists ...”

12 **Response:**

13 Amici are happy not merely to admit that this is true, but to embrace and champion that  
14 truth. The whole point of our amici brief is that climate scientists do not know what they are doing  
15 in a crucial area of science that actually is outside their expertise, which is knowledge of control  
16 systems and feedback in those systems. Climate scientists’ ignorant mishandling of this crucial  
17 material requires intervention and correction by Engineers and Statisticians. Amici are able to  
18 supply that necessary expertise.

19 Following is further information about the relevant qualifications and experience of *amici*,  
20 which expands upon the biographical information we provided in our Motion.

1           **Lord Monckton** received individual tuition in applied mathematics and in mathematical  
2 as well as formal logic as part of his Cambridge degree in Classical Architecture. He gave advice  
3 to the British Prime Minister on numerous scientific questions from 1982 to 1986 as one of the six  
4 members of the Prime Minister’s Policy Unit at 10 Downing Street. Applied mathematics and  
5 logic are both skills that are, on any view, relevant to the two matters of science in the *amicus*  
6 *curiae* brief.

7           Lord Monckton wrote the BASIC program (Exhibit A) that read down the comma-  
8 delimited text file compiled by Cook *et al.* (2013), byte by byte, to determine -- contrary to repeated  
9 false assertions by Cook *et al.* that 97.1% of 11,944 learned papers listed in their datafile as having  
10 been published in the journals of science on climate and related topics in the 21 years 1991-2011  
11 had explicitly stated their support for the official “consensus” proposition to the effect that recent  
12 global warming was chiefly anthropogenic – that Cook *et al.* had themselves marked only 64  
13 papers, or 0.5%, as having stated their support for that proposition.

14           **Dr. Willie Soon** is an award-winning astrophysicist at the Harvard-Smithsonian Center for  
15 Astrophysics, where his work on the connection between solar variability and terrestrial climate is  
16 directly relevant to the scientific questions that *amici* have brought before the Court. Dr Soon has  
17 lectured on climate change throughout the world and has published several papers on it.

18           **Dr David Legates** is the tenured Professor of Climatology in the University of Delaware,  
19 and is a former Delaware State Climatologist. He, too, has authored several papers on climate  
20 change and has lectured on the subject worldwide.

21           **Dr William Briggs** is emeritus Professor of Statistics at the Weill Cornell Medical School  
22 at Cornell University, is the author of an important work on statistical uncertainty, and has  
23 contributed to the statistical element in *amici*’s long-standing program of research into the climate-

1 sensitivity or “how-much-warming” question. In particular, Dr. Briggs has verified that the  
2 uncertainty bounds in *amici’s* papers on climate sensitivity are correctly derived.

3 **Dipl.-Ing. Michael Limburg** holds a Diploma in electrical engineering and has theoretical  
4 as well as practical knowledge of feedback theory that is directly relevant to *amici’s* second  
5 scientific point in their brief for the Court. Feedback theory is currently not well understood by  
6 climatologists. Owing to his deep knowledge and long experience in the theory of mensuration,  
7 Herr Limburg conducted in 2010 an in-depth climate-related project to research the quality and  
8 quantity of the systematic errors that appeared to have arisen in the historical measurement of local  
9 and regional temperature and sea-level data, directly affecting the calculation of trends in time-  
10 series for global mean temperature and global mean sea level. One result of this research was a  
11 peer-reviewed paper published in March 2014 in *Energy and Environment* under the title *New*  
12 *systematic errors in anomalies of global mean temperature time-series*.

13 **Professor Dietrich Jeschke** is an adjunct Professor of Applied Control Theory in the  
14 University of Applied Sciences at Flensburg, Germany (where by convention he is referred to  
15 merely as “Doctor” until he obtains tenure in November 2018). His specialist knowledge of  
16 feedback theory is directly relevant to *amici’s* second point. He greatly simplified *amici’s*  
17 argument by showing that the form of the zero-dimensional-model equation traditional in climate-  
18 sensitivity studies could be simply modified by replacing the temperature changes that served as  
19 input and output signals with absolute temperatures, thereby taking correct account of the feedback  
20 response to the emission temperature that would prevail at the Earth’s surface in the absence of  
21 any greenhouse gases. Climatology had hitherto assumed, erroneously, that only a temperature  
22 change could induce a feedback response.

1           **Mr. Alex Henney** gained a first-class degree as bachelor of science in engineering; a  
2 Fulbright Scholarship and Master of Science in engineering from the University of Virginia, and  
3 a Master of Science (Econ.) from the London School of Economics. He was on the board of  
4 London Electricity, then advised on how to change the electric industry of England and Wales  
5 from a monopoly into a competitive market. He has advised on electric markets and regulation  
6 from Norway to New Zealand, as well as in the United States. In recent years he has studied the  
7 technical difficulties and high economic costs of attempting to decarbonise thermal based electric  
8 systems such as those in Britain, PJM (originally Pennsylvania, New Jersey, Maryland System),  
9 MISO (Midcontinent Independent System Operator), New York State, and New England. The  
10 issue of electricity generation, too, is of direct relevance. Indeed, in the tutorial held by the Court  
11 on March 21, 2018, the question of the impact of nuclear generation on net emissions of carbon  
12 dioxide from electricity generation was raised by the Court.

13           **Mr. John Whitfield** is an electronics engineer who built a test circuit to simulate the  
14 operation of temperature feedback in the climate, since the principles of feedback mathematics are  
15 of universal application in dynamical systems on which feedbacks operate. On the basis of his  
16 design for the test circuit, a more sophisticated circuit was designed, constructed and operated at a  
17 national laboratory to confirm the results given in the second point of the *amicus* brief, and  
18 particularly the fact that, in a dynamical system in which feedback processes are present, even an  
19 unamplified input signal (i.e., the 255.4 K emission temperature in the climate) will induce a  
20 response to any nonzero feedback fraction.

21           **Mr. James Morrison**, as an undergraduate at the University of East Anglia, recently  
22 received a high mark for a thesis offering a new and more reliable way of predicting the arrival of  
23 atmospheric rivers over California, and was able to pass to a California senator of his acquaintance

1 several weeks’ warning of the formation and landfall of an atmospheric river over California in  
2 December 2017.

3 The *amici* submit, therefore, that they possess among them the skills necessary to assist the  
4 Court in forming a view on whether and to what extent the two scientific points they have offered  
5 to the Court are meritorious. It was, therefore, unreasonable of Plaintiff to dismiss the *amici* on the  
6 spurious and inaccurate ground that only one of them is a climate scientist.

7 All of them have relevant expertise. Moreover, the principal result that the *amici* offer to the  
8 Court in their brief is an error of feedback theory, from network analysis, a specialist field  
9 borrowed but not understood by climatology. Three of the amici are control-theory specialists  
10 who are able to provide this understanding.

11 (B) Plaintiff says: “... the first four proposed *amici* (Monckton, Soon, Legates and  
12 Briggs) are ... affiliated with [the] Heartland [Institute]; three are explicitly listed  
13 by Heartland as its “policy advisors”. And Heartland has a well-known history of  
14 attacking scientific conclusions to gratify its corporate funders, including  
15 defendant Exxon Mobil Corporation. Between 1997 and 2006 Heartland reportedly  
16 received at least \$676,000 directly from Exxon or its predecessors or subsidiaries;  
17 at one time Heartland’s “Government Relations Advisor” was apparently an Exxon  
18 executive. Heartland previously accepted money from Philip Morris, and its  
19 solicitations for more cash boasted about its prior attacks on the science on second-  
20 hand smoke and its publications like *Joe Camel Is Innocent*. Heartland is a veteran  
21 anti-science mercenary.”

22 **Response:**

23 The Heartland Institute has some 500 unpaid policy advisors. *Amici* have no knowledge of  
24 the Institute’s funding. They note that Plaintiff appears to recognize that the Institute has received

1 no funding from defendant Exxon Mobil Corporation for well over a decade. *Amici* have no  
2 knowledge whether any Exxon executives ever worked for the Institute.

3 Likewise, we see no relevance to the climate question before the Court in Plaintiff’s  
4 allegation that the Institute “accepted money from Philip Morris [a tobacco corporation] or that it  
5 had “boasted about its prior attacks on the science on second-hand smoke”. *Amici* have no  
6 knowledge of whether second-hand smoke from cigarettes is dangerous to health. However, in  
7 case the Court believes this issue is in some fashion relevant, the following information may be of  
8 assistance.

9 Lord Monckton met Professor Richard Doll at the Houses of Parliament in 1986. Professor  
10 Doll’s epidemiological research on doctors who smoked had provided the first definitive evidence  
11 of the causative association between lung cancer and smoking – evidence that has since been amply  
12 confirmed. Professor Doll, however, told Monckton that the evidence of a danger to health from  
13 what was then called “passive” or “second-hand” smoking (i.e., being in the same room as smokers  
14 but not smoking oneself), and is now known as “environmental tobacco smoke”, was not  
15 definitive.

16 *Amici* are aware of a detailed judgment by the Federal District Court for the Middle District  
17 of North Carolina in 1998 reviewing the finding by the Environmental Protection Agency on  
18 environmental tobacco smoke that is still the principal evidence for an imagined health risk:

19 “In conducting the ETS Risk Assessment, EPA disregarded information and  
20 made findings on selective information; did not disseminate significant  
21 epidemiologic information; deviated from its Risk Assessment Guidelines; failed  
22 to disclose important findings and reasoning; and left significant questions without  
23 answers. EPA’s conduct left substantial holes in the administrative record. While  
24 so doing, EPA produced limited evidence; then claimed the weight of the Agency’s  
25 research evidence demonstrates ETS causes cancer. Gathering all relevant  
26 information, researching, and disseminating findings were subordinate to EPA’s  
27 demonstrating ETS a Group A carcinogen. EPA’s conduct transgressed the general  
28 meaning of the Radon Research Act’s operative language. ... EPA’s conduct of the

1 ETS Risk Assessment frustrated the clear Congressional policy underlying the  
2 Radon Research Act.” Flue-Cured Tobacco Co-Op. v. United States  
3 Environmental Protection Agency, 4 F.Supp.2d 435, 466 (M.D.N.C. 1998).

4 Therefore, Plaintiffs’ assertion that the Heartland Institute was guilty of “attacks on the science on  
5 second-hand smoke” is unfair and prejudicial in that it is calculated falsely to imply that “the  
6 science” on that question is settled, and it does not reflect the fact, strongly evidenced in the North  
7 Carolina judgment against EPA, that there are two sides to this question, just as there are on climate  
8 science.

9 (C) Plaintiff says; “... some of them have been paid directly or indirectly by the Defendants.”

10 **Response:**

11 None of the *amici* has been paid by any of the defendants. Willie Soon’s institution paid  
12 him a small share of a grant that it had negotiated with one of the Defendants. The institution, not  
13 the *amicus*, was the contracting party and received the bulk of the funds.

14 (D) Plaintiff says:... “**Willie Soon** ... is known to have accepted more than \$1.2  
15 million from the fossil-fuel industry, including Exxon and the American Petroleum  
16 Institute (an organization supported by all Defendants directly or through their  
17 predecessors and/or operating subsidiaries. As the New York Times has reported,  
18 Soon’s correspondence with his corporate funders “described many of his  
19 scientific papers as “deliverables” that he completed in exchange for their money.  
20 For example, a 2008 “request for payment from Soon to Exxon has been published,  
21 and in it Soon specifically names the climate research he performed in exchange  
22 for the money. Soon’s scientific papers repeatedly failed to disclose his conflict of  
23 interest, a behaviour that his employer described as “inappropriate”. Simply put,  
24 Soon has received substantial sums of money for his climate “research” from  
25 Exxon, one of the parties to this action.... For years Soon took money from Exxon  
26 and the American Petroleum Institute to write about climate change.”

1 **Response:**

2 Dr Soon has not “accepted more than \$1.2 million from the fossil-fuel industry”. He works  
3 at the Harvard-Smithsonian Center for Astrophysics, which, on his behalf, has negotiated contracts  
4 with various sources of funding for well over a decade. Some of the funders were fossil-fuel  
5 corporations or foundations. Dr Soon has also received grants from the National Aeronautics and  
6 Space Administration and from the U.S. Air Force Office of Scientific Research. The Center  
7 withheld most of the funds received as a contribution to overhead, so that the emoluments actually  
8 received by Dr Soon from these contracts were approximately equivalent to the annual wages of a  
9 burger-flipper at McDonald’s. A very illuminating graph comparing expenditures by ExxonMobil  
10 and Greenpeace on climate change is set forth in Exhibit B hereto.

11 The terms of the contracts with funders stipulated non-disclosure. Dr. Soon meticulously  
12 complied with those contract terms, as his employment with the Center as the contracting party  
13 and as his employer required him to do.

14 In 2015, Dr Soon co-authored a paper by amici Lord Monckton, Professor Legates and  
15 Dr. Briggs outlining some of the ideas that led to the research that is the subject of the second  
16 scientific point in the amicus brief. The paper was published in the *Science Bulletin* of the  
17 Chinese Academy of Sciences. It received extensive worldwide publicity, and downloads of  
18 the paper from the journal’s website made it the most-read paper in the journal’s entire 61-  
19 year archive, by an order of magnitude.

20 One regrettable consequence was that, in an attempt to discredit the paper’s findings,  
21 climate campaigners mounted a savage campaign of defamatory vituperation against Dr  
22 Soon – who had not in fact received any funding whatsoever for his participation – on the  
23 false ground that he had not disclosed his funding and had declared no conflict of interest.

1           The Harvard-Smithsonian Center’s director thereupon issued various public  
2 statements detrimental to its employee Dr. Soon, and disclosed contract details in breach of  
3 its contractual duty of confidentiality to the funder, leading to the loss of a substantial  
4 contract. The director bizarrely described Dr Soon’s adherence to those contractual  
5 obligations of confidentiality as “inappropriate”. He falsely accused Dr. Soon of having  
6 aggrandized his affiliation as being “Harvard-Smithsonian Center for Astrophysics” when  
7 Dr Soon had previously been instructed by Dr Irwin Shapiro, then Director of the Center,  
8 that he was to use precisely this very phrase to describe his affiliation!

9           Lord Monckton wrote the Chief Justice of the United States, John Roberts, in his role  
10 as chief trustee of the Smithsonian Institution *ex officio*, whereupon the Center’s false  
11 allegations against Dr Soon swiftly and permanently ceased, though no apology was ever  
12 made to him. A summary of Lord Monckton’s investigation, conducted with the assistance  
13 of Professor Legates and Dr Briggs and sent to all Trustees of the Smithsonian, is set forth  
14 in Exhibit C.

15           At the same time, an apparently coordinated hate campaign against Dr Soon, which  
16 has continued ever since, ran on the front pages of the *New York Times*, the *Washington Post*,  
17 the *Boston Globe*, the *Los Angeles Times*, and in the columns of both *Science* and *Nature*.  
18 As a result of the startling extent of that baseless campaign of hatred, Lord Monckton went  
19 carefully through the paper that had been published in the *Science Bulletin* to discover  
20 whether the hate campaign might be a diversionary tactic to draw attention away from any  
21 statement in the *Science Bulletin* paper that might have given climate campaigners grounds  
22 to apprehend that *amici*’s research would eventually come across a significant error in the  
23 derivation of climate sensitivity.

1 Lord Monckton found a single paragraph – which, ironically, Dr Soon had suggested  
2 should perhaps not be included on the ground that *amici*'s research in that area was not yet  
3 complete – indicating that there appeared to be an irregularity in the feedback mathematics,  
4 though at that time *amici* had not identified the cause of the irregularity. Lord Monckton  
5 hereupon studied the equations and the related literature with some care, and the error  
6 described in the *amicus* brief came to light.

7 (E) Plaintiff says: “David Legates identifies himself as a “former State  
8 Climatologist” for Delaware, but he does not mention that the Delaware governor  
9 ordered him not to use that title in connection with any statement on climate  
10 change, or that he was eventually asked to resign that position by officials at the  
11 University of Delaware. He is a research fellow at the Independent Institute  
12 (which previously received funding from Exxon and other fossil fuel interests),  
13 has previously been affiliated with the George C. Marshall Institute (another  
14 denialist group funded in the past by Exxon), and has given talks at the Heartland  
15 Institute. He also frequently co-authors papers with Monckton, Soon and/or  
16 Briggs.”

17 **Response:**

18 Plaintiff has made several misstatements of fact, relying upon citations embodying these  
19 misstatements. The Governor of Delaware at no time ordered Professor Legates not to use the title  
20 of State Climatologist with respect to climate change. Following a misleading article by the  
21 *Delaware News Journal*, which had incorrectly stated that the State Climatologist was a nominee  
22 of the governor and thus should directly reflect her views on climate change, Governor Minner  
23 wrote, as set forth in Exhibit D hereto:

24 “Recent media coverage of events associated with the subject of climate change has  
25 generated some confusion about the role of the State Climatologist and whom the  
26 position represents. In light of my position, and due to the confusion surrounding

1 your role with the State, I am directing you to offer any future statements on this or  
2 other public policy matters only on behalf of yourself or the University of Delaware  
3 and not as State Climatologist. I believe that your responsibilities as State  
4 Climatologist do not include representing the views of Delaware’s Executive  
5 Branch, and I understand that you have not provided your opinions as such.”

6 Professor Legates was not “told to resign”. Rather, in accordance with a gentlemen’s  
7 agreement, he exchanged positions with Dr Danual Leathers, who had held the title before he  
8 became Deputy Dean of the University of Delaware.

9 This matter is incorrectly recorded at the relentlessly unreliable Wikipedia, where climate  
10 campaigners tend to rewrite the biographies of those skeptical of the official position on the climate  
11 in such a way as to cast them in a maximally unfavorable light. Any attempt to correct such errors  
12 is simply deleted, usually within minutes. One such campaigner has rewritten some 2,000  
13 biographies of skeptical researchers, some of them many times, in each instance with intent  
14 unfairly to harm their reputations.

15 As to the allegations that Professor Legates is “affiliated” with three groups, having  
16 received funding therefrom, he has not received any money to conduct research on climate change,  
17 and the Heartland Institute has not paid him to give talks. As for the Independent Institute and the  
18 George C. Marshall Institute, Dr Legates has not had any interaction with them in at least a decade.  
19 And when he did, he was never paid for any work he performed with them or for them. The George  
20 C. Marshall Institute no longer even exists.

21 (F) Plaintiff says: “**William Briggs** is a former adjunct professor of statistics at  
22 Cornell’s medical school, who describes his specialty as “uncertainty analysis of  
23 all kinds”; his published work on climate change is almost entirely pieces co-  
24 authored with Monckton and/or Soon.”  
25  
26

1 **Response:**

2 Dr Briggs was an Assistant Professor in Cornell’s Medical School, and later an Adjunct Full  
3 Professor of Statistics at Cornell. He is the author of *Uncertainty: The Soul of Modeling,*  
4 *Probability and Statistics*, a leading work in the field that shows how massive over-certainty and  
5 false or misleading claims are caused by the kinds of statistical methods used in climate research,  
6 among other areas. One of his specialties is in assessing the value of forecasts, including climate  
7 and weather forecasts, an area in which he has published many works (some with Monckton, Soon,  
8 and Legates, and many without).

9 (G) Plaintiff says: “Christopher Monckton ... has a long history of unreliability. It  
10 appears that he has falsely claimed to be a member of the House of Lords, and to  
11 have discovered an “invention” that “shows much promise” to cure HIV, malaria  
12 and multiple sclerosis. He prepared a 55-page affidavit to provide what he called  
13 “expert testimony” to an American court, to show that there was only a “1 in 25  
14 quadrillion” chance that President Obama’s birth certificate was genuine. He  
15 appears to have made misleading statements about whether an article he wrote was  
16 peer-reviewed.”

17 **Response:**

18 Lord Monckton’s passport states: “The holder is The Right Honourable Christopher  
19 Walter, Viscount Monckton of Brenchley”. By letters patent granted to Lord Monckton’s  
20 grandfather, of perpetual effect and not rescinded, he is a Viscount in the Peerage of the United  
21 Kingdom, a member of the House of Lords. However, in 1998 the right to sit or vote was removed  
22 from nearly all hereditary peers, including Lord Monckton’s late father, though all other privileges  
23 of the peerage remained. One day before an important televised debate on the climate question in  
24 Australia, the Clerk of the Parliaments in London issued a public letter to Lord Monckton telling

1 him not to call himself a member of the House. A legal opinion on the status of hereditary peers  
2 as members of the House is available. The Clerk was wrong.

3 Lord Monckton conducts research in many fields and, working with a professor of surgery  
4 who is now the Australian Government’s chief research scientist, he discovered a new use for a  
5 pre-existing medication. Of five wheelchair-bound multiple sclerosis patients treated with the  
6 medication, four are walking. An HIV patient gave blood for testing, and even small titres of the  
7 medication were found in laboratory tests to reduce the viral load noticeably. Efficacy of this novel,  
8 broad-spectrum approach against malaria has not yet been tested, but an expert at the Bill Gates  
9 Foundation considers it may be worth testing.

10 The Sheriff of Maricopa County, Arizona, asked Lord Monckton to review the evidence of  
11 forgery in President Barack Obama’s birth certificate and to provide an affidavit giving his opinion  
12 on the probability that the document was genuine. Before swearing the affidavit, Lord Monckton  
13 obtained a supporting affidavit from an eminent Professor of Mathematics, who certified that the  
14 methods used had been efficacious and the conclusion justified.

15 Lord Monckton has not made misleading statements about peer review. A list of his peer-  
16 reviewed publications is available on request. In one instance, a paper by His Lordship was  
17 reviewed by an eminent professor, revised and published, whereupon at the instance of climate  
18 campaigners the editor who had commissioned the paper at the instance of a member of the  
19 Argonne National Laboratory and the professor who had reviewed the paper were dismissed and  
20 the new editors altered the slug at the masthead of the journal so that, instead of stating that the  
21 journal published “reviewed papers”, it stated the journal published “non-reviewed papers”.

22

1 DATED: March 27, 2018

Respectfully submitted,

2 LAW OFFICES OF JAMES BRADEN

3 By: /s/ James Braden  
 4 James Braden

6 PETER FERRARA

7 By: /s/ Peter Ferrara  
 8 Peter Ferrara

9 Attorneys for Amici Curiae  
 10 The Viscount Monckton of Brenchley, et al.

11  
 12 **Exhibit A**

13 **Program to read down & count “consensus” endorsements in cook.txt**

```

14 '===== DATAFILE ANALYSIS OF COOK et al., 2013 =====
15
16 #COMPILE EXE ' Compile to assembler for execution speed
17 DEFLNG a-z ' Long integer on interval [-2147483648, 2247483647]
18 FUNCTION PBMAIN () AS LONG ' Program: main routine
19
20 '===== INITIAL CONDITIONS =====
21
22 c$=CHR$(13): cr$=c$+CHR$(10) ' End-of-record markers
23
24 DIM lev(12000),level(10),x AS STRING*1 ' DIMENSION & DECLARE VARIABLES
25
26 OPEN "f:\warming\cook.txt" AS #1 LEN=1 ' Open the Cook et al. text file
27 j=0: d$="": rec=1 ' Reset byte count: Reset data string: Recd counter=1
28 ct=0 ' DATAFIELD: 1 yr; 2 ttl; 3 jnl; 4 auth; 5 type; 6 E-level
29
30 '===== DATA PROCESS ALGORITHM =====
31
32 DO: j=j+1 ' GET DATA: increment byte count j
33 GET #1,j,x: IF EOF(1) THEN EXIT DO ' READ BYTE: and, if end of file reached, stop
34 IF x="," OR x=c$ THEN ' IF comma-delim. End of datafield, or end of record ...
35 ct=ct+1 ' ... Increment datafield counter
36 IF ct=5 THEN IF VAL(d$)>7 THEN nbg=nbg+1 ' ... Count non-peer, non-clim. & no-abstr. (E-level >7)
37 IF ct=6 THEN lev(rec)=VAL(d$) ' ... 6th datafield is endorsemt. Level: convert to integer
38 IF x=c$ THEN ct=0: j=j+1: rec=rec+1 ' ... End of record: reset dfield counter: inc. byte & recd
39 d$="" ' ... Reset data string to empty
40 ELSE d$=d$+x ' ELSE add byte to datafield string
41 END IF ' END read byte j
42 LOOP: CLOSE: rex=rec-1 ' Close the source file: rex is the # of abstracts on file
43
44 FOR rec=1 TO rex ' INCREMENT ENDORSEMENT-LEVEL COUNTER
45 v=lev(rec): level(v)=level(v)+1 ' ... Read the endorsement level: increment its counter
46 NEXT ' NEXT rec
47
48 '===== DISPLAY RESULTS =====
49
    
```

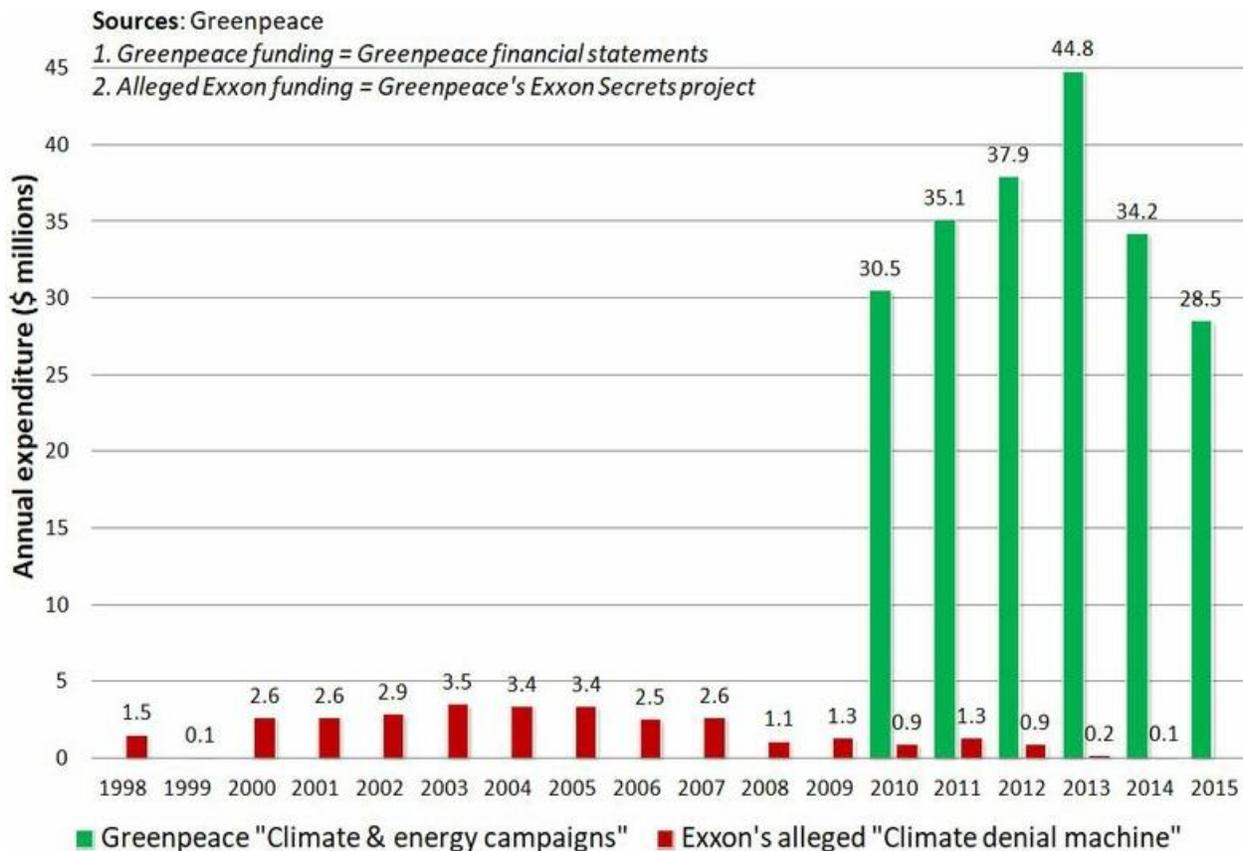
```

1 k=0 ' RESULTS STRING: reset checksum counter
2
3 FOR v=1 TO 7 ' LEVELS OF ENDORSEMENT
4 res$=res$+FORMAT$(level(v),"* #####"): k=k+level(v) ' ... Build results string: Count total papers
5 NEXT: res$=res$+FORMAT$(k,"* #####")+cr$ ' NEXT v: Total-papers checksum should be 11,944
6
7 FOR v=1 TO 7 ' AS % OF ALL PAPERS
8 res$=res$+FORMAT$(level(v)/k,"* ###.0%") ' ... Include percentage in results string
9 NEXT: res$=res$+cr$ ' NEXT v (next level of endorsement)
10
11 FOR v=1 TO 7 ' AS % OF ALL PAPERS EXPRESSING AN OPINION
12 IF v=4 THEN w=0 ELSE w=v ' ... Set level 4 count to 0
13 res$=res$+FORMAT$(level(w)/(k+40-level(4)),"* ###.0%") ' ... Add percentage to results string
14 NEXT ' NEXT v [NB: 40 papers expressed uncertainty]
15
16 m$=res$+cr$+cr$+" Total"+STR$(rex)+"": Excl"+STR$(nbg) 'rex should equal k: excluded papers 'Excl' should be 0
17 MSGBOX m$,"Cook et al." ' Display results
18
19 END FUNCTION ' =====
20
21
22
23
24
25

```

## Exhibit B

### Comparison of spending by ExxonMobil and Greenpeace on climate change



26  
27

## Exhibit C

### Misconduct by the Smithsonian: a report to the Regents

#### Syllabus of findings

AS the three co-authors with Dr Willie Soon of *Why models run hot*, a January 2015 climate paper in the Chinese Academy's *Science Bulletin* whose publication led to the wide circulation of allegations that he had not disclosed a source of his research funding, we have investigated the allegations. Our findings are summarized on this page and the next.

For 25 years Dr Wei-Hock Soon, an award-winning solar physicist of international standing expert in the Sun's modulation of terrestrial climate, has been a tenured but unsalaried employee of the Smithsonian Astrophysical Observatory, affiliated to the Harvard-Smithsonian Center for Astrophysics. The Smithsonian Trust Fund pays him out of money received from donors he has approached. He reports each proposed grant to the Observatory, which is then solely responsible for negotiating and signing a funding contract with the donor, receiving the funds, retaining 30% for overhead, and paying for his research out of the balance.

In 2008 the Observatory negotiated such a contract with Southern Company. The contract included a term binding the Smithsonian – and, therefore, Dr Soon as its employee – not to publish the donor's identity. The Smithsonian should not have agreed to that term, but, having agreed to it, should have honored it. Instead, it acted in breach of contract, of the Stored Communications Act and of its obligations to Dr Soon by disclosing the funders' identity. Dr Soon, in making no disclosure, honored the contract as the law requires.

Late in 2009 a political advocacy group made an FOIA request to the Smithsonian for details of Dr Soon's funders. Dr Soon twice wrote to the general counsel's office to say FOIA did not bind the Smithsonian and that disclosure would breach the Smithsonian's obligation of commercial confidentiality and its policy on FOIA compliance, and advocacy groups would exploit it to prejudice his academic freedom. Nevertheless, the Smithsonian's general counsel shut off Dr Soon's computer access and appropriated copies of his files, whereupon the Smithsonian made the disclosure, which, as he had predicted, the advocacy group swiftly and ruthlessly exploited to his disadvantage and to that of the Smithsonian. The Smithsonian's disclosure was intended to put Dr Soon's funding at risk, and has now done so. Later this year, Southern Company will not renew its long-standing contract with the Smithsonian to fund his research.

In January 2015 a political advocacy group, inferentially to divert attention from our paper's conclusions, widely circulated in the international news media an allegation that fossil-fuel interests had funded Dr Soon's research for our paper but he had not disclosed his "conflict of interest" to the *Science Bulletin*. The editor consulted the lead author, who explained we had all done the research in our own time and on our own dime. The advocacy group, on realizing no one had funded our paper, widely circulated allegations that in 11 earlier papers published since 2008 Dr Soon had not disclosed Southern Company's funding. The group did not challenge his scientific conclusions *in se*. Southern Company did not directly or indirectly influence him or require or expect him to alter the content of any of his papers or to reflect any particular scientific viewpoint. Nor, given the subject-matter of each of the 11 papers, could any conceivable conflict

1 of interest on his part be legitimately imagined to have arisen from Southern Company’s funding of his  
2 research.

3 In response to the recent publicity, the Smithsonian and its senior management engaged in a willful and  
4 apparently co-ordinated campaign of false statements and implications intended to damage Dr Soon:

5 **February 21:** Ms Christine Pulliam, a Smithsonian press officer, told *The Guardian* that Dr Soon had  
6 “failed to meet the disclosure requirements of some of the journals that published his research”. She added:  
7 “Soon should have followed those policies.” Yet the Smithsonian’s contract term forbade him to identify  
8 his funder; and, in any event, no reportable conflict of interest arose because Southern Company had had  
9 no involvement in the methodology, conclusions or decision whether to publish the research, and because  
10 the subject-matter was not such as to arouse genuine suspicion of a conflict of interest.

11 **February 22:** The Smithsonian issued a press release announcing that it would stage an investigation into  
12 what the release described as Dr Soon’s “failure to disclose” his funding. Yet the Smithsonian knew he had  
13 merely acted in compliance with the non-disclosure obligation they, not he, had negotiated. This release  
14 has since been retracted and replaced.

15 **February 22:** The press statement by the Smithsonian falsely claimed that the Smithsonian does “not fund  
16 Dr Soon”. True, the Smithsonian does not pay him a salary, and he is responsible for attracting research  
17 funds, but it is the Smithsonian Trust Fund that receives donors’ grants and pays him from the Trust Fund.

18 **February 22:** The Smithsonian’s statement said Dr Soon is merely a “part-time researcher”, when his  
19 appointment is full-time but he has been ill ever since – and at least in part owing to – the original disclosure  
20 by the Smithsonian of the confidential details of his funding.

21 **February 22:** The Smithsonian’s statement falsely implied that Dr Soon does not think we are a cause of  
22 climate change. Yet *Why models run hot* is irrefutable evidence that he, like all of us, accepts we are a cause  
23 of it. The scientific debate is not about *whether* we cause global warming, but about *how much* global  
24 warming we may cause.

25 **February 25:** The Observatory’s director, Dr Charles Alcock, told the *Chronicle of Higher Education* that  
26 Dr Soon should not have described his affiliation as “Harvard-Smithsonian Center for Astrophysics” and  
27 that he “holds no Harvard appointment”, falsely implying he had inflated his affiliation. Dr Alcock added  
28 that, legally speaking, the Center has no existence. Yet he is its director. Its name is mentioned in funding  
29 proposals it sent to Southern Company. If it has no legal existence, the Observatory’s use of its name in  
30 funding proposals was dishonest. A previous director had issued a standing instruction, not since rescinded,  
31 that the affiliation was to be stated as “Harvard-Smithsonian Center for Astrophysics”. In every paper for  
32 25 years Dr Soon had complied, without objection from the Smithsonian. Dr Alcock was wrong to criticize  
33 him on this ground, wrong to imply he was falsely claiming “a Harvard appointment”, and wrong in terms  
34 of Smithsonian policy not to pass to general counsel our FOIA request for the Center’s founding documents.

35 **February 25:** Dr Kress, the Smithsonian’s interim under-secretary for science, made a public statement  
36 that Dr Soon’s research “was not of the highest quality”. Yet the Smithsonian had given Dr Soon an award  
37 in in 2003 for the high quality of his research. Dr Kress, a botanist unqualified to assess the value of research  
38 in solar physics, was wrong thus to cast aspersions, particularly at a time when his colleague was under fire.

1 These many falsehoods and false implications, within days of each other, were intended individually and  
2 by mutual reinforcement to cause severe financial loss to Dr Soon and to compound the damage the  
3 Smithsonian had already done to his health, reputation, livelihood and career as a solar physicist. The  
4 inexplicable and continuing refusal by the Smithsonian to correct the record, despite Dr Soon's requests  
5 and ours that it should do so, further aggravates the damage to him and evidences the Smithsonian's intent  
6 to cause him loss and damage.

7 Dr Soon is manifestly blameless. He has acted at all times correctly, in compliance with the policies of the  
8 Smithsonian and with the terms of his donor's funding contract with his employer. Dr Soon declared his  
9 sources of funding for all his published papers other than those funded by Southern Company, for he was  
10 under no contractual obligation not to disclose those funders' identity. It was only in the 11 papers to whose  
11 funding Southern Company had contributed that he did not disclose the funders' identity, for – through the  
12 Smithsonian's fault and not his – he was bound in law not to disclose it.

13 The Smithsonian and its personnel acted questionably in agreeing to the confidentiality clause, unlawfully  
14 in failing to honor it once they had agreed to it, improperly in failing to follow its own FOIA policies,  
15 reprehensibly in failing to come to the aid of a long-standing and award-winning colleague suffering  
16 because he had acted in compliance with a contract term to which they had consented, criminally in  
17 conducting a campaign of coordinated and false allegations and implications intended to damage Dr Soon  
18 and cause him financial loss, willfully in failing to correct the record when asked, and prejudicially in  
19 ignoring our FOI request for copies of the Center for Astrophysics' founding documents.

20 We are asking the Regents and Inspector-General of the Smithsonian and the Attorney-General of  
21 Massachusetts to investigate the Smithsonian's misconduct. When they have confirmed our findings, the  
22 Smithsonian must apologize to Dr Soon and make just and full restitution to him for the loss and damage it  
23 has caused.

24 Viscount Monckton of Brenchley  
25 Professor David Legates  
26 Dr Matt Briggs

27 April 2015

## 28 **Exhibit D**

### 29 **Letter from the Governor of Delaware to Professor Legates** 30 **February 13, 2007**

31 Ruth Anne Minner, Governor

32 Dr David Legates, University of Delaware

33 Dear Dr Legates

1 The purpose of this letter is to help clarify your role as State Climatologist. As you know, recent statements  
2 and actions related to the issue of climate change have focused attention on your position as State  
3 Climatologist and the associated roles and responsibilities that come with this designation.

4 First, let me thank you for your contribution to our State. Your counsel on weather events that could have  
5 serious impacts on citizens and infrastructure has been invaluable to our transportation and emergency  
6 planning and response teams. Likewise, your participation in the National Climate Data Center provides an  
7 important service for Delaware. I trust that your continued efforts in these areas will be beneficial to all  
8 concerned.

9 Let me now turn to the issue of immediate interest. Recent media coverage of events associated with the  
10 subject of climate change has generated some confusion about the role of the State Climatologist and whom  
11 the position represents. Your views on climate change, as I understand them, are not aligned with those of  
12 my administration.

13 I have long held the view that carbon emissions from human activity have been a contributor to the changes  
14 we are now seeing in the Earth's climate, and that opinion was validated recently by a gathering of the  
15 Union of Concerned Scientists. Based on that view, I accepted Governor Pataki's invitation in 2003 to join  
16 with New York and other northeastern states to develop a program to reduce greenhouse gas emissions in  
17 lieu of any initiative by the federal government. Six other Governors and I signed an agreement in 2005 to  
18 reduce greenhouse gas emissions 10 percent by 2019 from our fossil-fuel power plants and we will be  
19 seeking legislation this session to implement this program. Three more states intend to join this program.

20 In light of my position and due to the confusion surrounding your role with the State, I am directing you to  
21 offer any future statements on this or other public policy matters only on behalf of yourself or the University  
22 of Delaware and not as State Climatologist. I believe that your responsibilities as State Climatologist do not  
23 include representing the views of Delaware's Executive Branch, and I understand that you have not  
24 provided your opinions as such.

25 It is my sincere hope that you do not view this as an affront to your professional credibility but rather an  
26 attempt to ensure that the public better understands the role of the State Climatologist and the distinction  
27 between the State Climate Office and Delaware's executive agencies.

28 Please feel free to contact [name] of DNREC at [number] if you would like to discuss this personally.

29 Sincerely,  
30 /s/ Ruth Ann Minner  
31 Governor