

The Fossil Fuel Industry's Use of **SLAPPs** and **Judicial Harassment** in the United States

POLICY BRIEF

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SUMMARY

EarthRights International identified 152 cases in the past ten years where the fossil fuel industry has used strategic lawsuits against public participation (SLAPPs) and other judicial harassment tactics in attempts to silence or punish its critics in the United States.

The fossil fuel industry is not alone in its use of these tactics but stands out for the brazenness and scale of its attacks. SLAPPs and other types of judicial harassment are an ever-present threat to many people in the United States who speak up on political and social issues. This affects people across the political spectrum.

What is happening in the United States is part of a broader global trend of closing civic space, where those who exercise their fundamental rights to speak up about matters of public interest face retaliation in the form of judicial harassment and physical violence.

The First Amendment to the U.S. Constitution sits at the very heart of American democracy. To prevent the U.S. legal system from being used to stifle First Amendment rights, we recommend several steps that policymakers, civil society, and the private sector should take to end the use of judicial harassment tactics in the United States. In this policy brief, we have provided specific guidance on how to:

- Promote broader public awareness of the threat.
- Provide at-risk people and organizations with access to legal support.
- Adopt anti-SLAPP laws for all federal and state courts.
- Hold lawyers accountable for using abusive tactics.
- End the practice of treating protesters like terrorists.

These recommendations are not only relevant to environmental and social justice activists but to all people in the United States who want to exercise their rights to speak up about issues that matter to their communities.

INTRODUCTION

In July 2016, the U.S. government gave permission for a fossil fuel company, Energy Transfer Partners, to run an oil pipeline beneath a lake in North Dakota that provides the Standing Rock Sioux Tribe with their primary source of drinking water. For months, the tribe had opposed the Dakota Access Pipeline, which threatened to contaminate their water and damage dozens of sacred sites.¹ The government's decision sparked outrage across the United States and turned the pipeline into a symbol of the struggle to protect Indigenous sovereignty and land rights.² Thousands of supporters arrived in North Dakota to join protests to block construction from moving forward.

Tensions escalated quickly. Energy Transfer Partners collaborated with federal law enforcement agencies and local police as they arrested hundreds. Protesters reported being attacked by private security forces with dogs and mace, while the pipeline company allegedly sent undercover agents to infiltrate the protest camps.³

Within weeks of taking office, President Trump provided the final permissions needed for the project to be completed.⁴ With the pipeline built, Energy Transfer Partners turned to the courts with a different goal in mind. In August 2017, the company sued several Greenpeace entities and others, alleging that their support for the Standing Rock protests made them part of a "network of putative not-for-profits and rogue eco-terrorist groups."⁵ The company demanded \$900 million in damages under the Racketeer Influenced and Corrupt Organizations (RICO) Act, a law created to fight the mafia. Later, the company added several other individuals, including Indigenous water protectors, to the lawsuit.⁶

The purpose of these lawsuits was not to recover damages⁷ but to intimidate other would-be protesters—Energy Transfer Partners was involved in several pipeline projects around the country that had stirred local opposition. The company's chief executive, Kelcy Warren, told a North Dakota news anchor, "Could we get some monetary damages out of this thing, and probably will we? Yeah, sure. Is that my primary objective? Absolutely not. It's to send a message—you can't do this, this is unlawful, and it's not going to be tolerated in the United States."⁸

The National Guard and police advance toward a water protector holding an eagle feather at a camp near the Standing Rock Reservation in the direct path of the Dakota Access pipeline where 117 people were arrested. Photo by: Richard Bluecloud Castaneda/Greenpeace



Michael Bowe, a lawyer at Kasowitz, Benson & Torres LLP who represented Energy Transfer Partners, had also helped another corporation bring a multimillion-dollar lawsuit against several Greenpeace offices the year before.⁹ In an interview with Bloomberg News, he claimed that other companies were thinking of filing their own RICO lawsuits against environmental and social justice activists.¹⁰

Civil society organizations realized the dangerous implications of Energy Transfer Partners' lawsuits and Bowe's threat of more to come. In an amicus brief submitted to the federal court, the ACLU and other organizations wrote, "If permitted to proceed beyond the pleading phase, this litigation would have the inevitable and impermissible consequence of stifling the activities of law-abiding nonprofit advocacy organizations across the political spectrum, upending democratic principles rooted in the First Amendment."¹¹

Energy Transfer Partners lost its lawsuit in federal court, but the company quickly filed another lawsuit against Greenpeace, this time in North Dakota state court. Several years later, the litigation continues.

The Dakota Access Pipeline lawsuits have become an emblematic example of how the rich and powerful weaponize the courts in an attempt to silence their critics. They can do this without even winning their case. The nonpartisan Uniform Law Commission describes **strategic lawsuits against public participation (or SLAPPs)** as the use of the civil litigation system "not to seek redress or relief for harm or to vindicate one's legal rights, but rather to silence or intimidate citizens by subjecting them to costly and lengthy litigation."¹²

Democracy is built on the premise that everyone has the right to voice their concerns and hold those in power accountable for their actions. The United States is a litigious society—almost every major societal debate ends up in the courts. However, SLAPPs cross an ethical line, turning the courts into a blunt instrument that the powerful can use to trample on the rights of the less powerful. A SLAPP, especially one brought by a multimillion-dollar corporation, can be an effective way to stop people from raising concerns about environmental pollution, public health, human rights, corruption, and other issues that are in the public interest.

/// We identified 152 cases in the past ten years where the fossil fuel industry used SLAPPs and related tactics against its critics.

Companies and individuals file hundreds of SLAPPs each year in state and federal courts. They target community leaders, journalists, activists, and everyday citizens from across the political spectrum who speak up about a wide range of issues.¹³

In this policy brief, EarthRights examines a subset of SLAPPs—those that the fossil fuel industry has brought against its critics in the United States.¹⁴ EarthRights has provided legal representation for numerous organizations and activists in SLAPP cases brought by fossil fuel companies worldwide. As the impacts of climate change become more apparent, the fossil fuel industry has responded to growing political pressure in part by retaliating against those who challenge its practices. SLAPPs are one of the tactics that fossil fuel companies have repeatedly used.

Through open-source research and interviews, we identified 152 cases in the past ten years where the fossil fuel industry used SLAPPs and related tactics against its critics. Based on the patterns that emerged, we recommend steps that policymakers, civil society, and the private sector can take to end the use of SLAPPs in the United States.

WHAT IS A SLAPP?

The term SLAPP refers to a lawsuit whose intention is to silence or punish those who exercise their constitutionally protected First Amendment rights to speak up about a matter of public concern.¹⁵ Professors Penelope Canan and George Pring, who coined the term, observed: “The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so. SLAPPs send a clear message: there is a ‘price’ for speaking out politically. The price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings.”¹⁶

SLAPPs are difficult to detect because they masquerade as legitimate lawsuits and can appear in different forms. Most SLAPPs appear as defamation claims but can also appear as other claims such as invasion of privacy, conspiracy, or interference with contract.¹⁷ See Box 1 for examples of telltale signs that help to distinguish a SLAPP from a legitimate lawsuit.

Courts will eventually dismiss most SLAPPs because a person cannot be held liable in court for exercising their constitutionally protected rights. However, the damage occurs well before this point. Many concerned citizens, activists, journalists, and community leaders cannot afford a prolonged fight against a large corporation in court. Most do not want to spend years of their lives tied up in litigation with the threat of losing their homes, savings, jobs, or reputations hanging over their heads.

Many SLAPP victims choose to quietly end their advocacy rather than go through litigation. They reach settlement agreements with their attackers, signing away their First Amendment rights. As Tammie Carson, an activist targeted with a SLAPP for protesting the Keystone XL pipeline, explained, “I had no choice but to settle or lose my home and everything I’ve worked for my entire life.”¹⁸



A group of demonstrators gather outside the Morton County Sheriff office in Mandan, North Dakota, October 11, 2016, waiting for fellow water protectors to be released from jail. The protesters were arrested the day before during a peaceful demonstration against the construction of the Dakota Access Pipeline. Photo by: Cayla Nimmo

Box 1: Telltale Signs of a SLAPP

SLAPPs generally have one or more telltale signs:¹⁹

- **Nature of the defendant:** SLAPPs usually target activists, nonprofit organizations, journalists, media organizations, and concerned citizens who speak up about a matter of public concern.
- **Track record of the plaintiff:** Certain individuals, companies, and law firms have a track record of repeatedly using SLAPPs and other judicial harassment tactics against their critics.
- **Nature of the activity targeted:** SLAPPs often accuse the defendant of a “wrongful activity” that is actually an activity protected under the First Amendment of the U.S. Constitution, such as journalism or nonviolent protest.
- **Power imbalance between the parties:** SLAPPs often occur when the plaintiff has significantly more resources for a legal battle than the defendant. This includes financial resources, as well as political resources that can be used to influence the behavior of law enforcement and other government officials.
- **Disproportionate claims of damages:** SLAPP filers often seek disproportionately high damages from the defendant to “send a message,” even if they do not have evidence to show that they suffered any harm. In cases where the defendant caused minor damage during civil disobedience, the SLAPP filer often seizes the opportunity to “destroy” their opponent and put them at risk of losing their homes and life savings.
- **Use of the litigation process itself to punish the defendant:** Litigation is often costly and psychologically stressful. Legitimate plaintiffs typically want to conclude their cases as quickly and efficiently as possible because their goal is to win their case. Many SLAPP filers, however, take advantage of the stresses of this process to drag out the case as long as possible, drive up the costs for the defendant, embarrass the defendant in public, or bankrupt the defendant.²⁰
- **Attempts to create a broader chilling effect:** SLAPP filers often try to use a lawsuit to send a message to a broader community of people by naming multiple people who are only loosely connected to the alleged wrongdoing as defendants, sending subpoenas to a wide range of people involved in a network or community, or singling out members of the community who are most vulnerable to intimidation due to their personal circumstances.

SLAPP TRENDS IN THE FOSSIL FUEL INDUSTRY

We reviewed 152 cases over the past ten years where the fossil fuel industry has used SLAPPs and related tactics to target its critics in the United States. The Annex describes these cases in more detail. Several patterns emerged in our review of these cases.

Fossil fuel companies are using both lawsuits and subpoenas to intimidate their critics.

The term “SLAPP” often refers specifically to lawsuits. However, activists do not need to be defendants in a lawsuit to be targeted. Fossil fuel corporations have also used subpoenas and other strategies to intimidate and harass their critics. Box 2 describes some of the judicial harassment tactics used by the industry that we encountered in our research.

Plaintiffs and defendants in civil lawsuits regularly use subpoenas to obtain information from third parties, requiring them to turn over documents or answer questions under oath during a deposition. This is an important part of the litigation process but is vulnerable to abuse.

Subpoenas are abusive primarily when they seek records of a person’s protected free speech, assembly, or association under the guise that these activities are wrongful. Abusive subpoenas can arise out of an underlying SLAPP lawsuit, or they can arise out of a legitimate lawsuit. Subpoenas can force a person to turn over personal information. They can pressure organizations to turn over membership lists, donor lists, and internal strategy documents, even if that information has only tangential relevance to the underlying lawsuit. For example, Exxon has responded to several climate change lawsuits by attempting to subpoena a wide range of government officials and civil society organizations in pursuit of a debunked theory that these actors are all part of a “conspiracy” against the company.

Courts have dismissed most of the fossil fuel industry’s abusive subpoenas or limited them on First Amendment grounds. However, even the threat of a subpoena can have a chilling effect. Responding can take hundreds or thousands of hours of time and substantial resources. Abusive subpoenas are also an effective way to target an entire network of people through a single lawsuit. As with SLAPPs, this tactic can fracture a movement and alienate individuals, as people become more hesitant to communicate or share information.²¹

Of the 152 cases that we reviewed, 53 were abusive subpoenas. ExxonMobil and Chevron are the most prolific users of this tactic. For example, in 2012, Chevron tried to obtain the private communications of dozens of activists, lawyers, and scientists in retaliation for criticism of

its environmental pollution in the Amazon region. Likewise, in 2016, Exxon retaliated against investigations into its climate change practices. In 2015 and 2016, the attorneys general of New York, Massachusetts, and the U.S. Virgin Islands opened investigations into allegations that Exxon had made fraudulent statements about climate change risks to investors. Exxon responded by suing the attorneys general,²² targeting nonprofit organizations and climate change experts with broad-ranging subpoenas, and threatening to depose 17 other state attorneys general.²³

Box 2: Examples of Judicial Harassment

Examples of judicial harassment include:

- **SLAPP lawsuits** that attempt to drag critics through lengthy, costly, and stressful litigation.
- **Abusive subpoenas** that attempt to access critics' private information by portraying their legitimate First Amendment activities as part of a conspiracy or other wrongdoing.
- **Abusive cease-and-desist letters** that threaten to sue critics for exercising their legitimate First Amendment rights, leading them to self-censor themselves.
- **Improper funding arrangements with local police** that co-opt the public security role of police and incentivize disproportionate targeting of the company's critics.

Fossil fuel companies have tried to use judicial harassment to prevent activists from joining together to form larger social justice movements.

Many people are responding to the growing climate change crisis by joining "movements," in which civil society organizations, activists, and communities from diverse backgrounds join coalitions to protest or campaign against emblematic fossil fuel projects. Movements have political power, attract significant media attention, and threaten the fossil fuel industry's ability to influence lawmakers, the media, and public perception.²⁴ Fossil fuel companies have attempted to use SLAPPs and other judicial harassment tactics to stop large movements from forming around their projects.

To discourage collaboration among activists, the fossil fuel industry has included conspiracy claims as part of its lawsuits and legal actions. Conspiracy claims are a standard part of lawsuits and allow someone to be held liable for harm even if they are not the primary actor. If used successfully to target nonviolent advocacy, however, this legal strategy could allow an organization or individual activist to be held liable for damage that occurs during a protest that is outside of their control.²⁵ This would deter many people from joining or organizing protests.

To date, the fossil fuel industry has not been successful in using judicial harassment to target movements. The Dakota Access Pipeline SLAPPs relied initially on conspiracy claims brought under RICO. In its complaint, the Energy Transfer Partners tried to portray nonviolent advocacy as mafia-like racketeering: "This case involves a network of putative not-for-profits and rogue eco-terrorist groups who employ patterns of criminal activity and campaigns of misinformation to target legitimate companies and industries with fabricated environmental claims and other purported misconduct, inflicting billions of dollars in damage."²⁶

In 2018 and 2019, the federal court dismissed Energy Transfer Partners' lawsuits, ruling that the company's interpretation of RICO was "dangerously broad," and that the law cannot be used to connect public criticism to remote criminal activities.²⁷ The court wrote, "Otherwise, the Government, individuals, corporations, and interest groups could use criminal and civil liability under RICO to curtail almost any disagreeable, arguably protected speech."²⁸

Nevertheless, the threat remains. The company, which rebranded itself as "Energy Transfer LP" in 2018, refiled its SLAPP against several Greenpeace entities in North Dakota state court. Meanwhile, in 2018, Exxon attempted to force California local government officials and their attorneys to submit to depositions, alleging that the climate change lawsuits filed by these governments were part of a conspiracy.²⁹ Texas's Supreme Court disagreed.³⁰

Fossil fuel companies are combining judicial harassment with counterinsurgency tactics to target protesters.

In several cases, fossil fuel companies have used judicial harassment in combination with other tactics, including counterinsurgency-like operations.³¹ In response to the protests against the Dakota Access Pipeline, for example, Energy Transfer Partners allegedly sent undercover agents to infiltrate protest camps, used aerial and audio surveillance, tracked the movements of individual protesters, developed propaganda to shift public opinion against the protesters, and attempted to convince law enforcement authorities to apply anti-terrorism laws against the protesters.³² The company appears to have used information collected from these operations to file its SLAPPs.³³ As the litigation proceeded, it became apparent that the company's information was often inaccurate, perhaps skewed by the private security forces' preconceived biases of the protesters as "terrorists" and "jihadists."³⁴

Multiple pipeline companies have also entered improper arrangements with public law enforcement units, effectively co-opting them to serve in private security functions and use the power of the state to target protesters who are deemed problematic by the company.³⁵ This has blurred the line between public and private security forces and has led to troublesome reports of human rights violations against those who are arrested and detained.³⁶

For example, Enbridge—the Canadian company that built the Line 3 pipeline in Minnesota—provided more than \$3 million in funding to local police departments in the counties along the pipeline through an escrow account. Police officers were able to bill hours, at overtime rates, to the escrow account for their work surveilling, harassing, and arresting protesters. Unsurprisingly, records showed a disproportionately heavy police presence along the pipeline.³⁷

Additionally, fossil fuel companies have lobbied for anti-protest laws that impose stricter penalties on protesters.³⁸ For example, some laws have turned minor offenses that sometimes happen during protests and civil disobedience, such as trespassing on private property, into felonies if they occur near "critical infrastructure."³⁹ To date, 17 states have passed such measures into law.⁴⁰

Demonstrators march in protest of the Line 3 pipeline construction in Minnesota. Photo by: Ben Hoffman



Fossil fuel companies are receiving support for these attacks from industry associations.

Some fossil fuel companies act alone when targeting their critics, but others receive the support of industry associations. Many fossil fuel companies in the United States are members of associations—including national associations such as the American Petroleum Institute, the National Association of Manufacturers, the Independent Petroleum Association of America, and the Association of Oil Pipelines, as well as state and regional associations. These associations lobby on behalf of the industry's interests and provide companies with public communications support.

Industry associations have set up numerous communications initiatives across the country that are anonymously funded and intended to create the impression that the fossil fuel companies enjoy more public support on controversial issues than they do (a practice known as “astroturfing”).⁴¹ In 2020, the New York Times documented how many of these initiatives link back to the public relations firm FTI Consulting, especially in service of its main client, Exxon Mobil.⁴²

These initiatives have sometimes become involved in smear campaigns against SLAPP victims. For example, in Pennsylvania, the industry supported several local blogs that targeted landowner Ray Kemble, a prominent critic of Cabot Oil and Gas Corporation's fracking projects.⁴³ The smear campaign coincided with a SLAPP that Cabot filed against Kemble.

Similarly, in conjunction with Exxon's attempts to depose California local government officials who filed climate change lawsuits against the company, the Manufacturers Accountability Project—an initiative of the National Association of Manufacturers, where Exxon sits on the board—launched personal attacks against Mayor Serge Dedina of Imperial Beach, California, one of the prominent public officials bringing these lawsuits.⁴⁴

The involvement of fossil fuel industry associations in these attacks is worrisome, not only because of their expansive reach and political influence but also because it shows a broader acceptance within the industry of the use of these tactics.

What is happening in the United States is part of a global trend.

What is happening in the United States is not unique. Each year, thousands of people worldwide suffer attacks for speaking up about human rights and environmental issues.

In many countries, well-connected business leaders and politicians order attacks and assassinations of their critics with impunity. Human rights organizations are tracking these killings. Front Line Defenders, for example, documented 358 killings of human rights defenders in 2021, and 331 killings in 2020.⁴⁵ Those who speak up about environmental, land, and Indigenous issues face higher levels of violence than any other group.⁴⁶

However, most attacks are not killings. Human rights organizations have only recently started to track non-lethal attacks. The initial results are alarming. For example, the Business and Human Rights Resource Center identified 615 attacks in 2021 on human rights defenders who spoke up about business-related issues worldwide. The five most dangerous sectors all related to natural resources. Three out of five attacks involved judicial harassment, including SLAPPs.⁴⁷



During the Dakota Access Pipeline protests, unarmed Indigenous Water Protectors engineered a makeshift wooden pedestrian bridge over the Cantapeta Creek to access ancestral burial grounds they believed were being damaged by construction. As law enforcement officials pulled the bridge apart with boats, the Water Protectors swam and used their own boats to cross the water, where they were met with tear gas, pepper spray and rubber bullets. Incidents such as this one between the Water Protectors and law enforcement occurred throughout the Dakota Access Pipeline protests. Photo by: Richard Bluecloud Castaneda/Greenpeace

RECOMMENDATIONS

The fossil fuel industry has a long history of using retaliatory tactics to silence its critics but is not the only offender. SLAPPs and other types of judicial harassment are an ever-present threat to many people in the United States who speak up on political and social issues. This affects people across the political spectrum. Fortunately, numerous efforts are underway—on a bipartisan basis in some cases—to protect the First Amendment rights that are so foundational to American democracy. Box 3 summarizes our key recommendations.

Box 3: Strategies for Ending the Use of SLAPPs and Judicial Harassment

- Promote broader public awareness of the threat.
- Provide at-risk people and organizations with access to legal support.
- Adopt anti-SLAPP laws for all federal and state courts.
- Hold lawyers accountable for using abusive tactics.
- End the fossil fuel industry’s practice of treating protesters like terrorists.

Promote broader public awareness of the threat.

Civil society and media organizations should seek opportunities to build public awareness of the threat posed by SLAPPs and other types of judicial harassment. Many people understand how retaliatory lawsuits are wrong but having a common language to describe these cases makes it easier to condemn their use. Some of the nation’s most prominent SLAPP filers, such as Congressman Devin Nunes⁴⁸ and the late West Virginia coal baron Robert Murray,⁴⁹ have inadvertently raised public awareness through their outrageous lawsuits. Murray famously made the mistake of suing comedian John Oliver, only to have his SLAPP become the focus of an episode on Oliver’s *Last Week Tonight* that has garnered over 20 million YouTube views.⁵⁰

While public awareness of SLAPPs is growing, civil society organizations should continue to support victims in sharing their stories. Journalists can also help build public awareness when reporting on these cases by explaining what SLAPPs are and describing these cases as part of a broader pattern rather than isolated incidents.

Provide at-risk people and organizations with access to legal support.

Civil society and media organizations should provide support for at-risk people and organizations before attacks occur. Civil society organizations, including members of the Protect the Protest Task Force, provide training for activists and journalists to help protect against judicial harassment. They are helping smaller organizations, community leaders, activists, and independent journalists to connect with public interest lawyers and communications teams to ensure that they do not become isolated. Through “Know Your Rights” training and access to pro bono legal defense, people who speak up about corporate wrongdoing are less susceptible to intimidation and more confident that they are acting within their rights. Efforts should continue to ensure that this training is available to those most at risk.

Adopt anti-SLAPP laws for all federal and state courts.

Congress and state legislatures should adopt strong anti-SLAPP laws that cover all federal and state courts. Anti-SLAPP legislation has proved to be one of the most effective ways to protect those who exercise their First Amendment rights in the public interest. These laws allow defendants to file a special motion to get a SLAPP quickly thrown out of court. If the court concludes that the lawsuit is a SLAPP, the plaintiff generally must pay the defendant’s legal fees. This “fee-shifting” serves several purposes: it punishes the SLAPP filer, helps to minimize the damage imposed on the SLAPP victim, and helps to deter future SLAPPs.

Most state anti-SLAPP statutes have bipartisan support. The nonpartisan Public Participation Project reviewed the voting records for state anti-SLAPP laws and found that all but four passed with unanimous support or minimal opposition.⁵¹

Currently, 32 states and the District of Columbia have anti-SLAPP statutes, but these vary in quality and scope.⁵² There is no federal anti-SLAPP legislation providing consistent coverage in federal courts.⁵³ This inconsistency across federal and state courts opens the door to “forum shopping,” where SLAPP filers can bring their cases in locations where anti-SLAPP laws are weak. Virginia, for example, has gained a reputation as a jurisdiction that attracts “libel tourism.”⁵⁴

In 2020, the nonpartisan Uniform Law Commission adopted a model state anti-SLAPP statute and is currently advocating for more consistent anti-SLAPP protections across the country.⁵⁵ The Uniform Law Commission’s model statute provides a useful starting point on which states can build their anti-SLAPP statutes.

Trial lawyers’ associations should engage actively in anti-SLAPP legislative efforts to ensure a balanced approach between plaintiffs’ and defendants’ rights. Most existing anti-SLAPP laws rely on mechanisms such as mandatory fee-shifting that can be found in “tort reform” efforts.⁵⁶ Tort reform is a corporate-backed movement to make the courts less accessible to plaintiffs, including the victims of harm by corporations, which is usually framed in terms of discouraging a flood of frivolous lawsuits.⁵⁷ Indeed, under most state anti-SLAPP laws, even the world’s largest corporations can claim to be victims of SLAPPs and can recover fees from much smaller, less-resourced plaintiffs.

At the federal level, debates over tort reform are divisive. The Republican Party generally supports tort reform and the Democratic Party generally supports increased access to justice for victims of corporate abuse. Accordingly, federal anti-SLAPP legislation needs to be based on a careful balancing of plaintiffs' and defendants' rights in order to be passed on a bipartisan basis.

Trial lawyers' associations—which represent the interests of plaintiff-side attorneys—have started to engage in the design of anti-SLAPP laws. At the state level, engagement by trial lawyers' associations has resulted in more balanced anti-SLAPP statutes in both Washington State and Texas. These efforts should continue as the Uniform Law Commission works to update anti-SLAPP laws around the country.

Hold lawyers accountable for using abusive tactics.

Courts and bar associations should discipline lawyers who take SLAPP cases. SLAPPs and judicial harassment do not occur without the support of lawyers. In many SLAPP cases, law firms not only help their clients to bring the lawsuits but also provide public relations advice to amplify the effect of the SLAPP. Stronger disciplinary action could disincentivize lawyers from taking these cases.

Rule 11 of the Federal Rules of Civil Procedure allows federal courts to impose sanctions on lawyers and parties to a lawsuit.⁵⁸ Courts can sanction lawyers with penalties, fees, disbarment, and other consequences. In practice, however, courts are hesitant to discipline lawyers under this rule. More vigorous guidance for applying Rule 11 sanctions in SLAPP cases would help to make this a more effective deterrent.⁵⁹

Likewise, bar associations could discipline attorneys who help to bring SLAPP cases. Rule 3.1 of the American Bar Association's Model Rules of Professional Conduct prohibits lawyers from bringing frivolous lawsuits where there is no basis in law or fact.⁶⁰ Every state has adopted this rule or a related standard.⁶¹ Lawyers tend to be reluctant to bring complaints against other lawyers, however, so bar associations should have automatic mechanisms to review conduct in suits that have been dismissed under an anti-SLAPP statute. Disciplinary actions should also "flow to the top," considering that junior lawyers sometimes bring SLAPPs under the direction of senior partners.

Federal judicial conferences and state judicial oversight bodies should sanction those who use abusive subpoenas. Abusive subpoenas are already a sanctionable offense in federal court, at least in theory. According to Rule 45 of the Federal Rules of Civil Procedure, "A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply."⁶² As with Rule 11, however, courts rarely impose sanctions under Rule 45.

The Judicial Conference, the national policy-making body of the federal courts, should conduct a review of judicial harassment practices that allow parties to use the courts to stifle First Amendment protections. A result of this review could be adding additional protections into Rule 45 that instruct judges to monitor for and sanction the use of abusive subpoenas, SLAPPs, and other judicial harassment tactics. States could follow a similar process.

End the practice of treating protesters like terrorists.

Companies should adopt policies of non-retaliation against their critics. Globally, corporate leaders are paying more attention to the importance of protecting civic space and human rights defenders.⁶³ A robust civic space helps safeguard against corruption, opaque government processes, and other challenges that make it more difficult for American businesses to compete in global markets.

Fossil fuel companies, supported by the industry associations that lobby on their behalf, should adopt non-retaliation policies in which they put in place safeguards against the use of violence, judicial harassment, counterinsurgency tactics, and smear campaigns against their critics and local communities that host their projects.⁶⁴ BP, for example, has already taken an initial step in this direction, including a commitment in their 2020 human rights policy not to tolerate or contribute to attacks, including physical and legal attacks, against people who exercise their human rights to freedom of expression, peaceful protest, assembly, or association.⁶⁵

Non-retaliation commitments should extend to companies' dealings with public and private security forces. Companies should not encourage, fund, or tolerate efforts by law enforcement agencies to criminalize people who exercise their fundamental rights to express their views.

Federal and state law enforcement agencies should stop treating protesters like terrorists. Fossil fuel companies are not acting alone. As discussed in this policy brief, some oil and gas pipeline companies are collaborating with law enforcement agencies to harass and criminalize protesters. There is a "revolving door" between public and private security forces, such that the internal culture of one affects the other. The U.S. government should take steps to ensure that its law enforcement and security agencies do not perpetuate myths that treat environmental activists and social justice leaders as terrorists.⁶⁶

The federal government should catalyze reforms in the fossil fuel industry by placing conditionalities on the various forms of government support that prop up the industry. Finally, history suggests that the fossil fuel industry will not change its environmental or human rights performance unless compelled to do so. The U.S. government can help to catalyze these reforms by placing conditionalities on licenses, subsidies, federal leases, financing, and other forms of support for the fossil fuel industry. The fossil fuel industry's business model relies heavily on support from the federal government to sustain itself. There is no reason that taxpayer dollars should encourage the use of these tactics.

CONCLUSION

In this policy brief, we examined the fossil fuel industry's use of SLAPPs and other forms of judicial harassment in the United States. The fossil fuel industry is not alone in its use of these tactics but stands out for the brazenness and scale of its attacks.

Civil society organizations across the United States are working together to end this threat, reaching across the aisle for bipartisan action where possible. Protecting the First Amendment remains a critical issue for Democrats and Republicans alike.

In the coming decades, debates over the future of energy will continue as climate change affects more communities across the United States. People must be able to add their voice, without fear of retaliation, to the public debates that will determine the future direction of our country and our planet.

For questions or comments about this policy brief, please contact Kirk Herbertson, Senior Policy Advisor, at kirk@earthrights.org. To learn more about EarthRights' work supporting environmental defenders worldwide, follow us on Twitter @EarthRightsIntl and visit our website at <https://www.earthrights.org>.

*EarthRights is a member of the **Protect the Protest Task Force**, a coalition of organizations that provides legal and communication support for activists and nonprofit organizations that are targeted by SLAPPs. For more information about Protect the Protest, please follow the coalition on Twitter @SLAPPTaskForce and visit <https://www.protecttheprotest.org>.*

ANNEX:

Examples of the Fossil Fuel Industry's Use of SLAPPs and Related Tactics 2012-2022

This annex identifies examples of SLAPPs and other forms of judicial harassment brought by members of the fossil fuel industry during the last ten years, 2012-2022. The information we used to assess each case is included in the citations. Because there is not a universally accepted definition of “SLAPP” or “judicial harassment” by which to evaluate these cases, we invite readers to review the citations and draw their own conclusions.

This annex includes 152 cases, including a total of 93 SLAPP lawsuits and 53 subpoenas:

- 93 examples of SLAPP lawsuits, including 30 anonymous defendants.
- 49 examples of abusive subpoenas directed at individuals or organizations, including ten anonymous recipients.
- Two examples of abusive subpoenas directed at technology companies attempting to access individuals' private accounts, including one that sought information on 101 individuals.
- Three examples where a SLAPP lawsuit was combined with another tactic, including two that used an abusive subpoena.
- Five examples of other types of judicial harassment tactics.

We included the following data points for each case:

- **Year** — The year that the attack was initiated. Most cases continue for several years. We did not include cases that were initiated before 2012 unless the fossil fuel actor took additional steps to scale up its attack between 2012 and 2022.
- **Fossil fuel actor** — The name of the business or individual who led the attack. Most cases involve an oil, gas, or mining company, but we also listed cases involving other actors (such as individual plaintiffs or investment companies) if the attack arises in response to fossil fuel-related advocacy, journalism, or public policy reforms. For purposes of this policy brief, “fossil fuel” refers to oil, gas, or coal activities.
- **Targeted individual or organization** — The name of the person or organization targeted by the attack. We listed each target separately, except in some cases where we list anonymous individuals as a group. In many cases, the fossil fuel actor has attempted to cast a wide net by targeting multiple individuals and organizations as part of a single legal action.
- **Targeted activity** — The constitutionally-protected activity that the targeted individual or organization was undertaking that involved criticizing the fossil fuel actor.
- **Type of attack** — The type of legal mechanism used. Most attacks take the form of a lawsuit or subpoena. We use the term “subpoena” to refer to any effort to compel the targeted individual or organization to turn over private information or communications or submit to a deposition, recognizing that this might not be the specific term used to describe the action in each state jurisdiction.

In selecting which cases to include, we also made several value judgments:

- We only included cases already in the public domain.
- We listed each individual or organization as a separate case. With anonymous cases, we indicated the number of defendants and confirmed this information with the relevant legal teams.
- When a fossil fuel company has targeted a large group of anonymous individuals via a subpoena to a technology company, such as Facebook, we counted it as a single case.
- Generally, we do not consider legal action against governments or government officials acting in their official capacity to be SLAPPs. We have made the policy assumption that governments cannot be “intimidated” into silence by a lawsuit, just as large corporations cannot be intimidated and should not be able to claim to be victims of SLAPPs. Nevertheless, we included attacks on government officials in the list of cases when there is a personalized element to the attack.
- Where relevant, we included an additional explanation of how we evaluated the cases in the endnotes.

YEAR	FOSSIL FUEL ACTOR	TARGETED INDIVIDUAL OR ORGANIZATION	TARGETED ACTIVITY	TYPE OF ATTACK
2012	Chevron	Anonymous: 101 environmentalist activists, journalists, and attorneys	Criticizing the company's oil drilling in the Amazon region in Ecuador and its targeting of Steven Donziger	Subpoenas of emails via Google, Yahoo, and Microsoft ⁶⁷
2012	Chevron	Amazon Watch	Criticizing the company's environmental and human rights practices in the Amazon	Subpoena ⁶⁸
2012	Chevron	Simon Billenness	Criticizing the company's environmental and human rights practices in the Amazon	Subpoena ⁶⁹
2012	Chevron	Thomas DiNapoli, New York State Comptroller	Sending investor letters to the company and raising concerns about its conduct in the Amazon	Ethical complaint ⁷⁰
2012	Chevron	Rainforest Action Network	Criticizing the company's environmental and human rights practices in the Amazon	Subpoena ⁷¹

2012	Chevron	Trillium Asset Management	Conducting shareholder oversight of the company's environmental and human rights practices in the Amazon	Subpoena ⁷²
2012	Range Resources	Sharon Wilson	Writing blogs criticizing the company's targeting of a community activist with a SLAPP	Subpoena ⁷³
2012	Robert E. Murray and the Murray Energy Corporation	Charleston Gazette	Publishing a blog critical of the company's environmental and labor practices in West Virginia	Lawsuit ⁷⁴
2012	Robert E. Murray and the Murray Energy Corporation	Ken Ward	Writing a blog critical of the company's environmental and labor practices in West Virginia	Lawsuit ⁷⁵
2012	TransCanada	Tammie Carson	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁷⁶
2012	TransCanada	Eleanor Fairchild	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁷⁷
2012	TransCanada	Rising Tide North America	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁷⁸
2012	TransCanada	Rising Tide North Texas	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁷⁹
2012	TransCanada	Ron Seifert	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁸⁰
2012	TransCanada	Ramsey Sprague	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁸¹

2012	TransCanada	Tar Sands Blockade Group	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁸²
2012	TransCanada	Anonymous: 22 Other Defendants	Protesting against the Keystone XL pipeline in Texas	Lawsuit ⁸³
2013	Cabot Oil and Gas Corporation	Vera Scroggins	Documenting fracking-related issues in Pennsylvania	Injunction ⁸⁴
2013	George Lindemann Jr. and Lake Point Restoration	Maggy Hurchalla	Raising concerns to local authorities about the environmental impacts of a mining project	Lawsuit ⁸⁵
2013	Robert E. Murray and the Murray Energy Corporation	Chagrin Valley Times	Reporting on a protest against the company in Ohio	Lawsuit ⁸⁶
2013	Robert E. Murray and the Murray Energy Corporation	H. Kenneth Douthit	Reporting on a protest against the company in Ohio	Lawsuit ⁸⁷
2013	Robert E. Murray and the Murray Energy Corporation	Ron Hill	Reporting on a protest against the company in Ohio	Lawsuit ⁸⁸
2013	Robert E. Murray and the Murray Energy Corporation	David Lange	Reporting on a protest against the company in Ohio	Lawsuit ⁸⁹
2013	Robert E. Murray and the Murray Energy Corporation	Sali McSherry	Reporting on a protest against the company in Ohio	Lawsuit ⁹⁰
2013	Robert E. Murray and the Murray Energy Corporation	Todd Nighswonger	Reporting on a protest against the company in Ohio	Lawsuit ⁹¹

2013	Robert E. Murray and the Murray Energy Corporation	Patriots for Change	Reporting on a protest against the company in Ohio	Lawsuit ⁹²
2013	Robert E. Murray and the Murray Energy Corporation	Huffington Post	Publishing an article criticizing the company's labor and political practices	Lawsuit ⁹³
2013	Robert E. Murray and the Murray Energy Corporation	Jason Cherkis	Publishing an article criticizing the company's labor and political practices	Lawsuit ⁹⁴
2013	Robert E. Murray and the Murray Energy Corporation	Ariana Huffington	Publishing an article criticizing the company's labor and political practices	Lawsuit ⁹⁵
2013	Robert E. Murray and the Murray Energy Corporation	Roy Sekoff	Publishing an article criticizing the company's labor and political practices	Lawsuit ⁹⁶
2013	Robert E. Murray and the Murray Energy Corporation	Michael Stark	Writing an article criticizing the company's labor and political practices	Lawsuit ⁹⁷
2013	Robert E. Murray and the Murray Energy Corporation	Stuart Whatley	Publishing an article criticizing the company's labor and political practices	Lawsuit ⁹⁸
2014	Cardno Chemrisk LLC	Cherri Foytlin	Writing an article criticizing the company's role in responding to the Deepwater Horizon oil spill in the Gulf of Mexico	Lawsuit ⁹⁹
2014	Cardno Chemrisk LLC	Karen Savage	Writing an article criticizing the company's role in responding to the Deepwater Horizon oil spill in the Gulf of Mexico	Lawsuit ¹⁰⁰

2014	Robert E. Murray and the Murray Energy Corporation	James Ciocia	Protesting against the company's labor, health, and environmental practices in Ohio	Lawsuit ¹⁰¹
2014	Robert E. Murray and the Murray Energy Corporation	Lisa Ciocia	Protesting against the company's labor, health, and environmental practices in Ohio	Lawsuit ¹⁰²
2014	Robert E. Murray and the Murray Energy Corporation	Public Citizen	Creating a radio advertisement criticizing the company's efforts to block environmental and health regulations	Lawsuit ¹⁰³
2015	Dewey Homes and Investment Properties, LLC	Clean Air Council	Suing to challenge a zoning amendment that would have allowed fracking and drilling near a residential area	Lawsuit ¹⁰⁴
2015	Dewey Homes and Investment Properties, LLC	Delaware Riverkeeper Network	Suing to challenge a zoning amendment that would have allowed fracking and drilling near a residential area	Lawsuit ¹⁰⁵
2015	Dewey Homes and Investment Properties, LLC	Anonymous: 4 Other Defendants	Criticizing a zoning amendment that would have allowed fracking and drilling near a residential area	Lawsuit ¹⁰⁶
2015	Drummond Company, Inc.	Terrence Collingsworth	Suing the company for alleged collaboration with paramilitary groups in Colombia	Lawsuit ¹⁰⁷
2015	Drummond Company, Inc.	Francisco Ramirez Cuellar	Suing the company for alleged collaboration with paramilitary groups in Colombia	Lawsuit ¹⁰⁸
2015	Drummond Company, Inc.	International Rights Advocates	Suing the company for alleged collaboration with paramilitary groups in Colombia	Lawsuit ¹⁰⁹
2015	Drummond Company, Inc.	Ivan Alfredo Otero Mendoza	Suing the company for alleged collaboration with paramilitary groups in Colombia	Lawsuit ¹¹⁰

2015	Drummond Company, Inc.	William Scherer	Suing the company for alleged collaboration with paramilitary groups in Colombia	Lawsuit ¹¹¹
2015	Drummond Company, Inc.	Albert Van Bilderbeek	Suing the company for alleged collaboration with paramilitary groups in Colombia	Lawsuit ¹¹²
2015	Chris Faulkner and Breitling Energy	Sharon Wilson	Writing a series of blogs documenting federal criminal investigations into the plaintiff's activities	Lawsuit ¹¹³
2016	California Independent Petroleum Association	Center for Biological Diversity	Using legal action to stop oil and gas drilling in California neighborhoods	Lawsuit ¹¹⁴
2016	California Independent Petroleum Association	South Central Youth Leadership Coalition	Using legal action to stop oil and gas drilling in California neighborhoods	Lawsuit ¹¹⁵
2016	California Independent Petroleum Association	Youth for Environmental Justice	Using legal action to stop oil and gas drilling in California neighborhoods	Lawsuit ¹¹⁶
2016	Exxon	350.org	Conducting climate change advocacy related to state attorneys general investigations of Exxon	Lawsuit ¹¹⁷
2016	Exxon	Sharon Eubanks	Participating in discussions about climate litigation against the fossil fuel industry	Subpoena ¹¹⁸
2016	Exxon	Dr. Peter Frumhoff, Union of Concerned Scientists	Conducting climate change advocacy related to state attorneys general investigations of Exxon	Subpoena ¹¹⁹
2016	Exxon	Maura Healey, Massachusetts Attorney General	Investigating allegations of climate change-related fraud by the company	Lawsuit and Subpoena ¹²⁰
2016	Exxon	Carroll Muffett, Center for International Environmental Law	Investigating the company's disinformation campaigns	Subpoena ¹²¹

2016	Exxon	Michael Northrup	Funding climate change advocacy related to state attorneys general investigations of Exxon	Subpoena ¹²²
2016	Exxon	Rockefeller Brothers Fund	Funding climate change advocacy related to state attorneys general investigations of Exxon	Subpoena ¹²³
2016	Exxon	Rockefeller Family Fund	Funding climate change advocacy related to state attorneys general investigations of Exxon	Subpoena ¹²⁴
2016	Exxon	Eric Schneiderman, New York Attorney General	Investigating allegations of climate change-related fraud by the company	Lawsuit and Subpoena ¹²⁵
2016	Exxon	Union of Concerned Scientists	Conducting climate change advocacy related to state attorneys general investigations of Exxon	Subpoena ¹²⁶
2016	Green Group Holdings & Howling Coyote, LLC	Esther Calhoun - Black Belt Citizens Fighting for Health	Raising concerns about the health impacts of a coal ash landfill in Alabama	Lawsuit ¹²⁷
2016	Green Group Holdings & Howling Coyote, LLC	Benjamin Eaton - Black Belt Citizens Fighting for Health and Justice	Raising concerns about the health impacts of a coal ash landfill in Alabama	Lawsuit ¹²⁸
2016	Green Group Holdings & Howling Coyote, LLC	Ellis Long - Black Belt Citizens Fighting for Health and Justice	Raising concerns about the health impacts of a coal ash landfill in Alabama	Lawsuit ¹²⁹
2016	Green Group Holdings & Howling Coyote, LLC	Mary Schaeffer - Black Belt Citizens Fighting for Health and Justice	Raising concerns about the health impacts of a coal ash landfill in Alabama	Lawsuit ¹³⁰
2017	Cabot Oil and Gas Corporation	Ray Kemble	Criticizing the company after signing a settlement agreement over contaminated water supplies in Pennsylvania	Lawsuit ¹³¹
2017	Energy Transfer	BankTrack	Raising concerns about the Dakota Access Pipeline with banks financing the project.	Lawsuit ¹³²

2017	Energy Transfer	Charles Brown	Working at Greenpeace on other pipeline issues	Lawsuit ¹³³
2017	Energy Transfer	Earth First Movement	Participating in protest actions against the Dakota Access Pipeline	Lawsuit ¹³⁴
2017	Energy Transfer	Greenpeace US (and Greenpeace Fund, Inc. and Greenpeace International)	Participating in protest actions against the Dakota Access Pipeline	Lawsuit ¹³⁵
2017	Energy Transfer	Cody Hall	Participating in protest actions against the Dakota Access Pipeline	Lawsuit ¹³⁶
2017	Energy Transfer	Ruby Montoya	Participating in protest actions against the Dakota Access Pipeline	Lawsuit ¹³⁷
2017	Energy Transfer	Jessica Reznicek	Participating in protest actions against the Dakota Access Pipeline	Lawsuit ¹³⁸
2017	Energy Transfer	Krystal Two Bulls	Participating in protest actions against the Dakota Access Pipeline	Lawsuit ¹³⁹
2017	Kentucky Fuel Corporation	Allen Luttrell, Kentucky Department for Natural Resources Commissioner	Seeking to collect unpaid fines from the company in Kentucky	Lawsuit ¹⁴⁰
2017	Kentucky Fuel Corporation	John Small, Kentucky Department for Natural Resources Deputy Commissioner	Seeking to collect unpaid fines from the company in Kentucky	Lawsuit ¹⁴¹
2017	Millennium Pipeline Company	Scott Martens	Investigating and protesting against the Valley Lateral Pipeline in New York	Lawsuit ¹⁴²

2017	Robert E. Murray, the Murray Energy Corporation, and the Marshall County Coal Company	John Oliver	Criticizing the company in an episode on its health, safety, and labor performance	Lawsuit ¹⁴³
2017	Robert E. Murray, the Murray Energy Corporation, and the Marshall County Coal Company	Charles Wilson	Producing an episode on the company's health, safety, and labor performance	Lawsuit ¹⁴⁴
2017	Robert E. Murray and the Murray Energy Corporation	New York Times	Criticizing the company for its role in a deadly mine collapse	Lawsuit ¹⁴⁵
2017	SG Interests	Pete Kolbenschlag	Publishing a Facebook comment about the company's plans to sue the government	Lawsuit ¹⁴⁶
2018	Energy Transfer	Ellen Gerhart	Protesting against the Mariner East Pipeline in Pennsylvania	Lawsuit and Criminal Charges ¹⁴⁷
2018	Extraction Oil and Gas	Brian Hedden	Reporting on and collecting video footage during a protest against one of the company's fracking sites in Colorado	Lawsuit ¹⁴⁸
2018	Extraction Oil and Gas	Anonymous: 4 Other Defendants	Protesting against one of the company's fracking sites in Colorado	Lawsuit ¹⁴⁹
2018	ExxonMobil Corporation	John Beiers, San Mateo County Counsel, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵⁰
2018	ExxonMobil Corporation	Martin Bernal, City Manager for the City of Santa Cruz, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵¹

2018	ExxonMobil Corporation	Anthony Condotti, City Attorney for the City of Santa Cruz, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵²
2018	ExxonMobil Corporation	Serge Dedine, Mayor of Imperial Beach, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵³
2018	ExxonMobil Corporation	Andy Hall, City Manager of Imperial Beach, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵⁴
2018	ExxonMobil Corporation	Dennis Herrera, City Attorney of San Francisco, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵⁵
2018	ExxonMobil Corporation	Matthew Hymel, County Administrator of Marin County, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵⁶
2018	ExxonMobil Corporation	Sabrina Landreth, City Administrator of Oakland, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵⁷
2018	ExxonMobil Corporation	Jennifer Lyon, City Attorney for Imperial Beach, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵⁸
2018	ExxonMobil Corporation	John Maltbie, San Mateo County Manager, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁵⁹
2018	ExxonMobil Corporation	Dana McRae, County Counsel for County of Santa Cruz, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁶⁰
2018	ExxonMobil Corporation	Carlos Palacios, Assistant County Administrative Officer, County of Santa Cruz, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁶¹
2018	ExxonMobil Corporation	Barbara Parker, City Attorney of Oakland, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁶²

2018	ExxonMobil Corporation	Matthew Pawa, Attorney	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁶³
2018	ExxonMobil Corporation	Edward Reiskin, Director of Transportation, San Francisco Municipal Transportation Agency	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁶⁴
2018	ExxonMobil Corporation	Brian Washington, County Counsel for Marin County, California	Helping to bring local government's climate change lawsuit against the company	Subpoena ¹⁶⁵
2018	Martin Marietta Materials	Cliff Willmeng	Organizing protests against fracking projects in Colorado	Subpoena ¹⁶⁶
2018	Martin Marietta Materials	Anonymous: 5 other anti-fracking activists	Organizing protests against fracking projects in Colorado	Subpoena ¹⁶⁷
2019	Cabot Oil and Gas Corporation	Bill Huston	Protesting against the company's fracking operations in Pennsylvania	Subpoena ¹⁶⁸
2019	Chevron Corporation	Steven Donziger	Representing communities in Ecuador in a lawsuit against the company for environmental pollution	Private prosecution for criminal contempt, arising out of lawsuit ¹⁶⁹
2019	Christiana Tah and Randolph McClain	Global Witness	Publishing a report alleging corruption in the sale of an oil license in Liberia	Lawsuit ¹⁷⁰
2019	Chevron Corporation, Exxon Mobil Corporation, and Phillips 66	Consumer Watchdog	Publishing articles alleging that the companies engaged in manipulation of gas prices	Subpoena ¹⁷¹
2020	Sunoco (owned by Energy Transfer)	Delaware River Keeper Network	Bringing a citizen suit against the company under the Clean Water Act	Motion for fees ¹⁷²
2020	Sunoco (owned by Energy Transfer)	Maya van Rossum	Bringing a citizen suit against the company under the Clean Water Act	Motion for fees ¹⁷³

2020	Chevron Corporation, Exxon Mobil Corporation, and Phillips 66	Jamie Court, Consumer Watchdog	Publishing articles alleging that the companies engaged in manipulation of gas prices	Subpoena ¹⁷⁴
2020	Energy Transfer	The Ruckus Society	Participating in protests against the Dakota Access Pipeline	Subpoena ¹⁷⁵
2021	Energy Transfer	Freshet Collective	Providing legal services to activists at Dakota Access Pipeline protests	Subpoena ¹⁷⁶
2021	Energy Transfer	Niko Georgiades	Reporting for Unicorn Riot on the Dakota Access Pipeline protests	Subpoena ¹⁷⁷
2021	Energy Transfer	Indigenous Peoples Power Project	Participating in protests against the Dakota Access Pipeline	Subpoena ¹⁷⁸
2021	Energy Transfer	Unicorn Riot	Reporting on the Dakota Access Pipeline protests	Subpoena ¹⁷⁹
2021	Energy Transfer	Water Protector Legal Collective	Providing legal services to activists at Dakota Access Pipeline protests	Subpoena ¹⁸⁰
2021	Energy Transfer	Anonymous: 5 other individuals and entities	Protesting or supporting protests against the Dakota Access Pipeline	Subpoena ¹⁸¹
2021	Mountain Valley Pipeline LLC	Appalachians Against Pipelines	Setting up a Facebook page that allegedly had connections to protests against the Mountain Valley Pipeline	Subpoena via Facebook ¹⁸²
2022	Kelcy Warren, CEO of Energy Transfer	Beto O'Rourke	Criticizing the company's alleged profiting from Texas's 2021 power grid collapse	Lawsuit ¹⁸³

ENDNOTES

- 1 For a map of the pipeline's pathway, see Rebecca Hersher, "Key Moments In The Dakota Access Pipeline Fight," NPR, 22 Feb. 2017, <https://www.npr.org/sections/thetwo-way/2017/02/22/514988040/key-moments-in-the-dakota-access-pipeline-fight>. The U.S. Army Corps of Engineers provided consent for the project to cross the Missouri River and proceed under Lake Oahe, a reservoir that serves as the water supply for the Standing Rock Sioux Tribe, after reviewing Energy Transfer's environmental assessment that claimed it would have minimal impact on the river or surrounding federal lands. The Army Corps made this decision despite objections from the U.S. Department of Interior, Environmental Protection Agency, and the Advisory Council on Historic Preservation. After this decision, the company still needed to obtain an easement to build across the river. Final Environmental Assessment: Dakota Access Pipeline, prepared by Dakota Access LLC on behalf of the U.S. Army Corps of Engineers, Aug. 2016, <https://www.documentcloud.org/documents/3036302-DAPLSTLFINALEAandSIGNEDFONSI-3Aug2016.html>; Phil McKenna, "Dakota Pipeline Was Approved by Army Corps Over Objections of Three Federal Agencies," Inside Climate News, 30 Aug. 2016, <https://insideclimatenews.org/news/30082016/dakota-access-pipeline-standing-rock-sioux-army-corps-engineers-ap-proval-environment>.
- 2 Kailea Frederick, "The Dakota Access Pipeline is a stark violation of Indigenous sovereignty," Prism, republished in DailyKos, 27 May 2001, <https://www.dailykos.com/stories/2021/5/27/2032212/-The-Dakota-Access-Pipeline-is-a-stark-violation-of-Indigeno-us-sovereignty>.
- 3 For more background on the Standing Rock protests against the Dakota Access Pipeline, see Democracy Now, "Video: Dakota Access Pipeline Company Attacks Native American Protesters with Dogs and Pepper Spray," 4 Sept. 2016, <https://www.democracynow.org/2016/9/4/dakota-access-pipeline-company-attacks-native>; Rebecca Hersher, "Key Moments In The Dakota Access Pipeline Fight," NPR, 22 Feb. 2017, note 1; Wikipedia, "Dakota Access Pipeline Protests," https://en.wikipedia.org/wiki/Dakota_Access_Pipeline_protests; Sam Levin, "Dakota Access pipeline: the who, what and why of the Standing Rock protests," The Guardian, 3 Nov. 2016, <https://www.theguardian.com/us-news/2016/nov/03/north-dakota-access-oil-pipeline-protests-explainer>; Alexander Sammon, "A History of Native Americans Protesting the Dakota Access Pipeline," Mother Jones, 9 Sept. 2016, <https://www.motherjones.com/environment/2016/09/dakota-access-pipeline-protest-timeline-sioux-standing-rock-jill-stein>; Greenpeace, *Too Far Too Often: Energy Transfer Partners' Corporate Behavior On Human Rights, Free Speech, and the Environment*, Oct. 2018, <https://www.greenpeace.org/usa/wp-content/uploads/2018/10/greenpeace-report-still-too-far.pdf>; The Intercept, Oil and Water Series, available at <https://theintercept.com/series/oil-and-water>.
- 4 Rebecca Hersher, "Key Moments In The Dakota Access Pipeline Fight," NPR, 22 Feb. 2017, note 1.
- 5 Energy Transfer (then called Energy Transfer Partners) sued various Greenpeace entities, the Dutch NGO BankTrack, the EarthFirst! Movement (which does not exist as a formal organization), and individuals. The complaint also names nine other organizations as members of the alleged "criminal enterprise" but did not name most of these as defendants. Complaint, Energy Transfer Equity L.P. and Energy Transfer Partners L.P. v. Greenpeace International et al., U.S. District Court, District of North Dakota Western Division, 22 Aug. 2017, <https://earthrights.org/wp-content/uploads/ETP-complaint.pdf>. Note that EarthRights provided legal defense for BankTrack.
- 6 In 2019, the federal court dismissed all of the cases filed by Energy Transfer, but the company promptly refiled its SLAPP in North Dakota state court against Greenpeace; that case is still pending. In addition to representing BankTrack, EarthRights provided legal defense for Krystal Two Bulls, who was added as a defendant in December 2018. For more details and legal documents related to the case, see EarthRights, "Energy Transfer Partners v. Krystal Two Bulls," <https://earthrights.org/case/etp-v-krystal-two-bulls>.

- 7 As the litigation proceeded, it became apparent that Energy Transfer’s estimate of \$900 million in damages was not based on any real evidence.
- 8 KVLV, Valley News Live, “Energy Transfer Partners CEO, Kelcy Warren, says DAPL was about a money raise,” 31 Aug. 2017, <https://www.valleynewslive.com/content/misc/Energy-Transfer-Partners-CEO-Kelcy-Warren-says-DAPL-was-about-a-money-raise-442409553.html>.
- 9 In 2016, the law firm Kasowitz, Benson & Torres LLP—the same firm representing Energy Transfer in its SLAPP against Greenpeace—filed a similar \$300 million RICO lawsuit against Greenpeace, Stand.earth, and individual activists on behalf of a Canadian timber company called Resolute Forest Products. In that case, Resolute attempted to use a forum shopping strategy, bringing the lawsuit in federal court in Georgia where SLAPP protections are weak. The defendants successfully transferred the case to federal court in California. In 2018, the federal court dismissed 294 of the 296 claims brought by Resolute Forest Products, including the RICO claims, but allowed the case to proceed on two narrow defamation claims. In April 2020, the federal court ordered Resolute Forest Products to pay Greenpeace almost \$1 million for bringing this SLAPP. See Valentina Stackl, “Judge Orders Resolute Forest Products to Pay Almost 1 Million Dollars to Greenpeace,” Greenpeace, 23 Apr. 2020, <https://www.greenpeace.org/usa/news/resolute-to-pay-almost-1-million-dollars-to-greenpeace>.
- 10 Paul Barrett, “How a Corporate Assault on Greenpeace is Spreading,” Bloomberg, 28 Aug. 2017, <https://www.bloomberg.com/news/articles/2017-08-28/how-a-corporate-assault-on-greenpeace-is-spreading>. Mr. Bowe told Bloomberg that “I know others who are considering having to do so, and would be shocked if there are not many more.” Since that time, no other companies have brought similar RICO-based SLAPP lawsuits, perhaps because Mr. Bowe’s efforts were defeated repeatedly in federal court.
- 11 Amicus Brief of the American Civil Liberties Union et al., Energy Transfer v. Greenpeace International et al., 5 Dec. 2017, <https://www.aclu.org/legal-document/etp-v-greenpeace-amicus-brief>.
- 12 According to the Uniform Law Commission’s prefatory note to the Uniform Public Expression Protection Act (model state anti-SLAPP legislation): “In the late 1980s, commentators began observing that the civil litigation system was increasingly being used in an illegitimate way: not to seek redress or relief for harm or to vindicate one’s legal rights, but rather to silence or intimidate citizens by subjecting them to costly and lengthy litigation. These kinds of abusive lawsuits are particularly troublesome when defendants find themselves targeted for exercising their constitutional rights to publish and speak freely, petition the government, and associate with others. Commentators dubbed these kinds of civil actions ‘Strategic Lawsuits Against Public Participation,’ or SLAPPs. SLAPPs defy simple definition. They can be brought by and against individuals, corporate entities, or government officials across all points of the political or social spectrum. They can address a wide variety of issues—from zoning, to the environment, to politics, to education. They are often cloaked as otherwise standard claims of defamation, civil conspiracy, tortious interference, nuisance, and invasion of privacy, just to name a few. But for all the ways in which SLAPPs may clothe themselves, their unifying features make them a dangerous force: Their purpose is to ensnare their targets in costly litigation that chills society from engaging in constitutionally protected activity.” See Uniform Law Commission, Uniform Public Expression Protection Act, Oct. 2020, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=46a646fa-5ef6-8dd0-7b0a-ce95c59f0d14&forceDialog=0>.

- 13 Anecdotal evidence suggests that the SLAPP problem is widespread, but the scale of the threat is difficult to quantify. One indicator is the number of anti-SLAPP motions filed and granted by courts each year. Unfortunately, most state courts do not track this information. The California court system consistently reports that over 400 anti-SLAPP motions are filed in trial courts each year, although it does not report on how many of these motions are granted. For examples of the diversity of SLAPPs, see Reporters Committee for Freedom of the Press, “Understanding Anti-SLAPP Laws,” <https://www.rcfp.org/resources/anti-slapp-laws/#antislappstories>. For an analysis of SLAPPs and other judicial harassment tactics being used against journalists, see Nicole J. Ligon, “Protecting Local News Outlets from Fatal Legal Expenses,” *New York University Law Review*, Dec. 2020, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6746&context=faculty_scholarship.
- 14 For purposes of this policy brief, we define “fossil fuel industry” to include actors that are involved in the extraction, processing, distribution, transport, marketing, and sale of oil, gas, and coal. This also includes industry associations and communications initiatives that lobby on behalf of the industry and attempt to shift public opinion about the industry, as well as law firms and other consulting entities that support the industry.
- 15 SLAPPs are not a new tactic. The ACLU has identified cases in the United States dating back to 1802 where concerned citizens were sued in retaliation for petitioning the government. In the 1960s and 1970s, SLAPPs became a frequent response to the growing political power of social movements. In the 1960s, for example, local government officials and police officers filed libel lawsuits to silence journalists and media outlets from covering the violent crackdowns on civil rights demonstrators in the South. One of the first major SLAPPs against the environmental movement took place in 1972, when a forestry company countersued the Sierra Club for \$1 million in response to a lawsuit trying to prohibit logging in a wilderness area. In 1989, Penelope Canan and George Pring, two professors at the University of Denver, first began to use the term SLAPP to describe these retaliatory lawsuits. Canan and Pring defined SLAPP as a retaliatory lawsuit against someone for exercising their First Amendment right to petition the government by participating in or trying to influence government decision-making. Over time, the term expanded beyond its original meaning, especially as it became evident that people were not just facing retaliatory lawsuits for communicating with the government, but also for exercising other types of First Amendment rights to speak up about matters of public concern. This might include, for example, an activist protesting a corporation’s environmental or labor practices, or a journalist reporting on a corruption scandal. However, courts have struggled to decide which issues are “matters of public concern” in the context of anti-SLAPP laws. See ACLU Ohio, *SLAPPed: A Tool for Activists* (2014), “Part 3: A Brief History of SLAPP Suits,” <https://www.acluohio.org/en/brief-history-slapp-suits>; Aimee Edmonson, *In Sullivan’s Shadow: The Use and Abuse of Libel Law During the Long Civil Rights Struggle*, University of Massachusetts Press (2019); Timothy Zick, William and Mary Law School, “The Rising Costs of Dissent: Public Protest and Civil Liabilities,” May 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3511233; Order, Sierra Club v. Butz, U.S. District Court for the Northern District of California, 17 Oct. 1972, available at <https://law.justia.com/cases/federal/district-courts/FSupp/349/934/1501440>; Penelope Canan & George W. Pring, “Strategic Lawsuits Against Public Participation,” *Social Problems*, 1988; George W. Pring, “SLAPPs: Strategic Lawsuits Against Public Participation,” *Pace Environmental Law Review*, Sept. 1989, <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1535&context=pelr>; Penelope Canan, “The SLAPP from a Sociological Perspective,” *Pace Environmental Law Review*,

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- 16 Pring, "SLAPPs: Strategic Lawsuits Against Public Participation," *Pace Environmental Law Review*, Sept. 1989, note 15, at pp. 5-6.
- 17 First Amendment Project, *Guarding Against the Chill: A Survival Guide for SLAPP Victims*, undated, <https://www.thefirstamendment.org/media/Guarding-Against-the-Chill.pdf>.
- 18 Lauren McCauley, "David vs. Goliath: Keystone XL Multinational Bullies Pipeline Protestors into Settlement," *Common Dreams*, 29 Jan. 2013, available at <https://archive.globalpolicy.org/ngos/role-of-ngos-in-the-international-arena/52225-david-vs-goliath-keystone-xl-multinational-bullies-pipeline-protestors-into-settlement.html%3Fitemid=id.html>.
- 19 These factors are based on Protect the Protest Task Force, *An Activist's Guide: Reducing Exposure to SLAPP Lawsuits* (2019), <https://protecttheprotest.org/wp-content/uploads/2019/03/Protect-the-Protest-Activists-Guide-to-SLAPPs-March2019.pdf>, and S. Sean Tu & Nicholas Stump, West Virginia University College of Law, "Free Speech in the Balance: Judicial Sanctions and Frivolous SLAPP Suits," *Loyola Los Angeles Law Review*, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3537637.
- 20 The U.S. legal system's high costs and complicated procedures favor larger companies and well-resourced individuals. A SLAPP filer can maximize the financial burden on an opponent by bringing the case in a remote jurisdiction, alleging a large number of claims, filing numerous motions and procedural requests to complicate and delay the litigation, bringing wide-ranging subpoenas to intimidate the critic's allies, and working with industry associations to wage public smear campaigns against the victims. In some cases, well-connected companies have also worked with local law enforcement to encourage criminal prosecutions alongside the SLAPP.
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- 25 A troublesome precedent has emerged in Louisiana that threatens to hold protest organizers accountable for the actions of protesters, which could have a significant chilling effect on people's ability to protest. In March 2022, the Louisiana Supreme Court decided that Black Lives Matter organizer DeRay Mckesson could be sued by a police officer who is seeking damages for injuries obtained when a protester allegedly threw an object during a demonstration in Baton Rouge, even though Mr. Mckesson did not encourage or commit violence against the police himself. See Kevin McGill, "Louisiana court: Protest leader can be sued for cop's injury," *Associated Press*, 25 Mar. 2022, available at <https://abcnews.go.com/US/wireStory/louisiana-court-protest-leader-sued-cops-injury-83675538>; ACLU Louisiana, "Comment on Louisiana Supreme Court Decision That Protest Organizers Can Be Held Liable for Third Party Actions During Protest," 28 Mar. 2022, <https://www.laclu.org/en/press-releases/aclu-comment-louisiana-supreme-court-decision-protest-organizers-can-be-held-liable>; Scott Shackford, "Louisiana Supreme Court Allows Police Officer's Lawsuit Against Black Lives Matter Organizer," *Reason*, 29 Mar. 2022, <https://reason.com/2022/03/29/louisiana-supreme-court-allows-police-officers-lawsuit-against-black-lives-matter-organizer>; Lawrence Hurley, "U.S. Supreme Court hands narrow win to Black Lives Matter activist over protest incident," *Reuters*, 2 Nov. 2020, <https://www.reuters.com/article/uk-usa-court-blacklivesmatter-idUKKBN2711XR>.
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- 28 Order, *Energy Transfer Equity L.P. and Energy Transfer Partners L.P. v. Greenpeace International et al.*, U.S. District Court, District of North Dakota Western Division, 24 July 2018, note 27.
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including private property, backyards, public sidewalks, playgrounds, vital groundwater sources, and critical watersheds. Nor do pipelines have the high-security status of a military base, prison, or nuclear plant. And given their track record of causing severe environmental damage, there are strong grounds for public opposition to these projects. As a result, it is ludicrous to impose severe penalties for “trespass” near pipelines, especially when the penalties are disproportionately more severe than the penalties for other types of trespass. Yet most critical infrastructure laws have ambiguous wording, creating a significant risk of abuse. Kaylana Mueller-Hsia, “Anti-Protest Laws Threaten Indigenous and Climate Movements,” Brennan Center for Justice, 17 Mar. 2021, <https://www.brennancenter.org/our-work/analysis-opinion/anti-protest-laws-threaten-indigenous-and-climate-movements>. See also, Gabrielle Colchete & Basav Sen, *Muzzling Dissent: How Corporate Influence over Politics Has Fueled Anti-Protest Laws* (Oct. 2020), note 38.

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global business and a long-term investor, we value open societies, characterized by the rule of law,
good governance and respect for civic freedoms. In respect of our activities, we will not tolerate
or contribute to attacks, or physical or legal threats, against those safely and lawfully exercising
their human right to freedom of expression, peaceful protest or assembly, including where they
are acting as human rights defenders (HRDs), or against workers seeking to exercise their right to
freedom of association. We respect the human rights of HRDs and recognize the important role
they can play in advancing the fulfilment of universally recognized human rights in the societies
where we operate. Where we believe it could be beneficial to do so, we may choose to act in
coordination with other stakeholders and, as appropriate to the nature of any leverage available
to us, to support HRDs in the exercise of those human rights.”

66 In many countries, “terrorism” can be a highly politicized designation used by those in power to
encourage the legal system to impose harsh penalties on their opponents. Many government
leaders around the world continue to portray environmental and social justice leaders as
terrorists. For much of the first decade of the 2000s, federal law enforcement agencies in the
United States repeatedly made public statements indicating that “eco-terrorism”—and not white
supremacism—was the nation’s top domestic terrorism concern, despite a lack of evidence
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