After Local Activism and Public Citizen Lawsuit, Nopetro Energy Cancels LNG Export Facility

BY PATRICK DAVIS

Nopetro Energy, the company behind a controversial liquified natural gas export facility in Port St. Joe, Fla., announced in July it would “no longer pursue the opportunity due to market conditions.” This announcement marked a major victory for the citizens of Port St. Joe who worked tirelessly to stop this project, and for Public Citizen, which petitioned federal regulators, pursued legal action and supported the efforts of local community activists.

Nopetro’s decision to end the project comes in the wake of grassroots activism by community members in Port St. Joe and a lawsuit filed by Public Citizen against the Federal Energy Regulatory Commission (FERC), alleging that the commission had fallen short of its duty to regulate fossil fuel export facilities by failing to require Nopetro to undergo an environmental impact assessment ahead of construction.

The lawsuit is set for oral argument in early October in front of the U.S. Court of Appeals for the District of Columbia.

“I was relieved to hear Nopetro decided not to pursue the construction of a liquified natural gas storage and export facility in Port St. Joe, Florida,” said Dannie Bolden, one of the leaders of Port St. Joe’s opposition to the LNG project. “The coalition took action and spoke loudly and with one voice, ‘Just Say No to Nopetro.’ We were successful, but we must remain steadfast to ensure there are no LNG facilities constructed along Florida’s Panhandle.”

Nopetro’s LNG plant would have taken gas from a pipeline and cooled the fossil fuel to minus-260 degrees Fahrenheit, turning it into a liquid. Then the liquified gas would be piped into large tanks in shipping containers and brought by truck 1,300 feet, or a quarter of a mile, to a crane that would place it on ships bound for the Caribbean and Latin America. Nopetro and FERC argued that because the containers of liquified gas were going to be taken a short distance by truck, rather than loaded directly onto ships, it should not be required to conduct an environmental review.

In the first six months of 2022, see Nopetro, page 8

Shining Light on Dark Money is Good for Democracy

BY U.S. SEN. SHELDON WHITEHOUSE

I have concluded, based on considerable observation and evaluation, that a band of right-wing billionaires has its hooks deep into our government. It uses these hooks to thwart climate action, putting American and global safety at risk. The good news? We can fix the climate threats if we can get their hooks out.

When I got to the Senate in 2007, climate change was a bipartisan issue. There were serious bipartisan climate bills in the Senate. Republican John McCain was running for president on a significant climate platform. All that progress and bipartisanship was also noticed by fossil fuel companies. Industry groups then prevailed on the Supreme Court to overthrow decades of precedent and allow unlimited corporate political spending. The 5-4 Citizens United decision, in January of 2010, gave the industry the weapon to kill climate bipartisanship. Republicans quickly caved on climate – and were rewarded with massive, secret money from oil and gas behemoths.

Citizens United’s upheaval of politics and elections remains profound. 501(c)(4) organizations became fountains of dark political money. Armadas of dark-money front groups were created or co-opted to obscure the hand of the fossil fuel industry. New political creatures like Super PACs proliferated. A Public Citizen study found that “just 25 ultra wealthy donors made up nearly half (47%) of all individual contributions to Super PACs between 2010 and 2018.” Negative advertising surged – a “tsunami of slime.” And behind the billions in secret political spending came the hidden threats and promises that big companies at bargain prices.

An August study by Public Citizen and the Private Equity Stakeholder Project identified

Private Equity Takeover Artists Drill for Oil on Federal Lands

BY ALAN ZIBEL

Predatory corporate takeover artists are getting into the oil and gas business, putting the public at risk.

In recent years, these companies, also known as private equity firms, have snapped up dozens of U.S. oil-drilling companies, taking advantage of the dramatic plunge in oil prices in 2020 to buy companies at bargain prices.

An August study by Public Citizen and the Private Equity Stakeholder Project identified

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GET TO KNOW PUBLIC CITIZEN
NICOLAS SANSONE

An ongoing series profiling Public Citizen leaders and staffers

Nicolas "Nick" Sansone, an attorney at Public Citizen Litigation Group since November 2022, is a well-traveled individual with an unusual career path. After growing up in a small town near Champaign, Ill., he moved to New York City to pursue acting. An interruption in his acting studies led him to swerve and become a wildland firefighter in Denver. He then began college, but continued to act, including with the Moscow Art Theatre in Russia for a short period. While Sansone has always been passionate about acting, he also began to think about law school for the first time, as a way of using his writing skills to advocate for social change. After four years of teaching, he enrolled in law school.

After graduating from Harvard Law School, he clerked for judges in Portland, Maine, New York City, and Washington, D.C. He spent time as an appellate advocacy instructor at Georgetown University Law Center and as an attorney at the Equal Employment Opportunity Commission before coming to Public Citizen. Each day, as an attorney at the Equal Employment Opportunity Commission, he helps people fight for their rights to work free from discrimination.

Sansonemoves on to the next challenge: defending consumer rights. While he doesn’t have a specific substantive focus, much of his work involves defending the work of government agencies like the Food and Drug Administration, Securities and Exchange Commission, and Federal Trade Commission that work to protect the public against unfair or unsafe conditions. He also recently argued a case addressing the question of whether companies that violate data privacy laws through their online activities can be held accountable everywhere they operate online, or whether injured consumers must be limited to suing them in their place of incorporation.

How would you describe the work that you do for Public Citizen?
Sansonemoves on to the next challenge: defending consumer rights. While he doesn’t have a specific substantive focus, much of his work involves defending the work of government agencies like the Food and Drug Administration, Securities and Exchange Commission, and Federal Trade Commission that work to protect the public against unfair or unsafe conditions. He also recently argued a case addressing the question of whether companies that violate data privacy laws through their online activities can be held accountable everywhere they operate online, or whether injured consumers must be limited to suing them in their place of incorporation.

Are there any overlooked aspects of the legal field that you want to bring more attention to? Sansone: The news lately has been full of reports about the crises that ambitious right-wingers have been provoking in all sorts of areas, from the environment to health care to racial and gender justice. These crises are well worth our attention and deep concern. But it’s important that we don’t lose sight of the less headline-grabbing ways that corporations have accumulated economic and political power. It’s right and necessary to feel rage over the racist immigration policies that our political leaders from both major parties have implemented or the cravinnesses with which they have failed to confront climate disaster or the shocking levels of gun violence in our country.

How would you describe yourself in one word? Sansone: Enthusiastic. I have a wide range of interests, and I pursue them as vigorously as I can. I think I take the same approach to my personal relationships. During the pandemic, I came to realize how important it is to be proactive about maintaining social ties, so I try to be good about frequently letting the people in my life know how much they mean to me and going out of my way to ensure that we can spend quality time together.

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Public Citizen is a national nonprofit membership organization based in Washington, D.C. Since its founding by Ralph Nader in 1971, Public Citizen has fought for corporate and government accountability to protect the individual’s right to safe products, a healthy environment and government agencies.

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People Power Progress
The Risks of AI and What We Can Do

Big Tech companies are deploying generative Artificial Intelligence (AI) technologies—like ChatGPT—at a pace that is vastly outstripping the ability of regulators even to monitor what is happening, let alone address emerging risks. And risks are extraordinary.

You may have heard of some of the science fiction-sounding scenarios, like AI becoming self-aware (“sentient”) and prioritizing its own needs over those of humans. Those frightening scenarios can’t be dismissed out of hand, but there are many more immediate, and much more certain threats that these new technologies pose.

Drawing on our longstanding work to defend consumer rights and hold corporations accountable, protect and expand our democracy, and take on Big Tech companies, we’re building a robust campaign to meet the AI moment.

A quick explanation of generative AI: Computers trained to identify lots pictures, sounds or words, and the relationship between them, are able to generate their own content in response to natural-language instructions. You can ask ChatGPT or programs like it to write you a sonnet on climate change, and it will do so instantly. You can ask an image generator to draw you pictures of dogs playing a game of baseball, and it will. And you can instruct a video generator to develop a video of Barbara Streisand singing in the voice of Daffy Duck.

If you use any of these new tools, you’ll be amazed. And they are lots of fun. They also have a lot of potential positive uses, from facilitating drug development to empowering people with disabilities.

But these technologies are very powerful and come with immense risks and potential problems. They can make it easier to design new bioweapons or for people to figure out how to build nuclear weapons. They may potentially displace millions of jobs—tens of millions by some estimates—in the United States alone, and severely intensify wealth inequality. By creating lots of junk content, they may pollute the internet to such an extent it ceases to be the knowledge-sharing tool it now is.

One overarching problem is the ability of AI to create content that seems real. Consider the problem of “deepfake” videos, audio or pictures—AI-generated content that appears real.

In upcoming elections, we face the prospect of candidates and committees using AI technology to create a video or audio clip that, for example, purports to show an opponent making an offensive statement, speaking gibberish, falling down drunk or accepting a bribe.

A blockbuster deepfake video released shortly before an election could go “viral” on social media and be widely disseminated, with no ability for voters to determine that it is fake, no time for a candidate to deny it, and possibly no way for a candidate to show convincingly that it is fake. In addition, the public may become quickly conditioned to doubt the authenticity of real video or audio recordings. For example, it’s a near certainty that Candidate Trump would have denied the veracity of the Access Hollywood audio recording if deepfake technology had been pervasive and widely understood at the time.

But the problem extends far beyond deepfakes in elections, as momentous as that is. AI may generate more sophisticated disinformation than anything humans could produce; for example, it takes almost no time for AI tools to create a legitimate-appearing website that may spread falsehood, and those same tools could generate emails, texts and social media posts directing people to look at the website. A corporation could deploy AI tools that appear to be human to market to you, customizing their marketing strategy based on the data they hold about your likes and preferences. Fake content could be used to manipulate the stock market. And on and on.

Topping all this off, there’s a potentially cumulative harm: the destruction of the social trust that undergirds a functioning society. If you’re not sure when you’re dealing with humans, if you can’t believe the things you see in front of you, what exactly are you to do? These risks are very real. But they are not inevitable. At this moment of proliferation of generative AI technologies, we still have an opportunity to establish norms, standards and laws to prevent or mitigate the dangers we can foresee.

Which is exactly what we’re aiming to do. Here’s a brief overview of some of what we have done and are working on related to AI:

• We petitioned the Federal Election Commission for a rule making the use of deepfakes illegal in elections. The petition has generated lots of attention and after an initial positive vote in August will be considered in October. We’re also supporting federal and state legislation to ban election deepfakes.
• In April, we held a vital “Hit Pause” convening on generative AI with Rep. Ted Lieu of California and policy experts.
• We pulled together a wide-ranging group of public interest allies to coordinate on AI issues.
• Our researchers are preparing investigative reports on AI and consumer protection, health care, financial markets, military applications and more.
• We are planning separate convenings on AI and democracy, consumer protection, legal issues and more—with the aim of developing public interest community consensus and strategies around ways to alleviate AI-related risks.
• We are urging the Food and Drug Administration to demand scientific backing for AI tools that claim to provide therapy or other health care services to consumers.
• We are developing campaign plans against new Pentagon budget lines for AI weaponry and the whole idea of “autonomous” weapons making decisions about use of lethal force without human intervention.
• Our trade team is campaigning against trade deal terms that would inhibit countries from regulating AI.
• We are preparing a major effort to require all AI-generated content to be labeled, an effort we think could meaningfully counter AI’s impact on social trust.

And that’s only a small sampling of the work underway!

We’re proud of what we’ve done so far. We identified a major new area of corporate-created risk. We leveraged our relevant expertise and have built out new expertise on the topic. We’ve pulled allies together, developed innovative solutions, lobbied policy makers, and more.

Proud, but not satisfied or complacent. We know very well the perils of letting the corporate purveyors of powerful and hazardous technologies operate without meaningful public safeguards—and we’re determined to make sure the necessary protections are put in place.
special interests can make when they have the power to secretly spend billions. Their reward: from January of 2010 to now, no Senate Republican has supported a serious climate bill.

The fossil fuel industry climate blockade operation ran in parallel with a longstanding dark-money plan to capture the Supreme Court. The waypoints of this Court-capture effort were the infamous Lewis Powell memo laying out the Court-capture strategy (written for the U.S. Chamber of Commerce immediately before Powell’s appointment to the Court); the bipartisan Senate rejection of nominee Robert Bork (engendering burning far-right fury); the subsequent revenge of the right, block- ing Bush nominee Harriet Miers to open the door for billionaire-friendly Justice Sam Alito; Mitch McConnell’s Senate stiff-arm to Obama nominee Judge Merrick Garland; and then whatever deal Trump cut with the Koch political organization around his so-called “Federalist Society list” of proposed Court appointees. Citizens United was the crowning achievement of this Court-capture effort: fossil fuel billionaires could now protect in Congress fossil fuel’s $660 billion annual U.S. subsidy.

With that big a prize at stake, there was no restraint. Existing far-right front groups were repur- posed and repowered. Stables of fossil-fuel stooges were funded to parrot phony science. Pop-up fossil-fuel stooges were funded to parrot phony science. Pop-up fossil-fuel stooges were funded to parrot phony science. Pop-up fossil-fuel stooges were funded to parrot phony science. Pop-up fossil-fuel stooges were funded to parrot phony science. Pop-up fossil-fuel stooges were funded to parrot phony science. Pop-up fossil-fuel stooges were funded to parrot phony science.

The U.S. Chamber of Commerce took undisclosed masses of dark money and became a “worst climate obstruc- tor” in America; others at best offer deafening silence. The effect is lethal.

To fix this, we need to peel back the secrecy. This will not be easy, because a Supreme Court built by dark money is busily construct- ing a constitutional right to dark money, so any effort at disclosure would be tangled in years of litiga- tion. But voluntary gatherings like the United Nations Conference of the Parties, or the elite corporate gathering at Davos, can require disclosure by corporations seek- ing to participate. So could environ- mental groups and universities that work with corporations. So could the White House, for high- level meetings sought by corporate interests.

Audited corporate climate political disclosure statements should be required. Here’s what they should have to report: one, campaign contributions, which are already disclosed, so you’d weight them to a ranking of the recipient on climate issues; two, lobbying, also already disclosed by topic, so you’d assess whether climate-related lobbying is pro or con; three, all funding of trade associations, ranked by climate opposition (hint: Chamber = toxic); and most important, dark-money “outside” spending into 501(c)(4)- s, Super PACs and other political weaponry – all the way through, piercing shell corporations, Cypriot bank accounts, Cayman Islands law firms, or Dakota trusts. No trickery, honest full report- ing, signed by the CEO and COO. These revelations will cause mas- sive embarrassment in C-suites and boardrooms across the coun- try as shareholders and custom- ers learn about companies’ real climate posture. But we’d get the climate disaster solved far more quickly as a result.

Is it un-American to require this? Precisely the opposite. We are a democracy. The essential foundation of a democracy is a well-informed citizenry. Providing citizens the basic understanding of who’s doing what in the politi- cal arena may be bad for the bad actors, but it’s good for citizens and good for democracy, and that’s good for America.

Senator Whitehouse serves as Chairman of the Senate Budget Committee and as a member of the Senate Judiciary Committee, the Senate Finance Committee, and the Senate Environment and Public Works Committee. A gradu- ate of Yale University and the University of Virginia School of Law, Whitehouse served as Rhode Island’s U.S. Attorney and state attorney general before being elected to the Senate. His most recent book, The Scheme, explores the secretive right-wing operation to capture the United States Supreme Court.

“Armadas of dark-money front groups were created or co-opted to obscure the hand of the fossil fuel industry. New political creatures like Super PACs proliferated.”

— U.S. Sen. Sheldon Whitehouse (D-R.I.)
Communities Forge Ahead Against the Relentless Growth of the Houston Ship Channel

BY ERANDI TREVIÑO

Communities along the massive Port of Houston in Texas are some of the most environmentally vulnerable in the U.S. One — Pleasantville — is so severely underserved and overburdened that it ranks in the 0.1 percentile of the U.S. Environmental Protection Agency’s vulnerability index.

Despite, or because of, those challenges, residents in Pleasantville and neighboring port communities stand firm against the risk of additional threats.

And now they are facing a big challenge: the Port Houston Authority and U.S. Army Corps of Engineers (USACE) are planning an expansion of the Houston Ship Channel. The expansion, named Project 11, will widen and deepen the channel.

But as with previous expansions, there is a risk that port communities will be left to sacrifice their health for the sake of the bigger ships that will be able to come to port.

As a Healthy Port Communities Coalition (HPCCC) member, Public Citizen is working with Port communities to push back against the plan and demand, at minimum, that construction plans address identifiable risks to the people living near the port.

Houston’s port is one of the largest in the world and the largest in the country by foreign tonnage, and its shores are lined with refineries and petrochemical facilities that have spewed oil and chemicals into the channel for decades.

With any number of unknown substances settling on the ship channel floor, it is understandable that nearby residents worry that the dredged spoils will migrate to their neighborhood with insufficient safeguards to protect people and property.

Impacts on neighboring communities from the expansion plans also include air pollution from dredging equipment such as barges and support vessels. Additionally, the placement of the dredged materials, also known as spoils, raises issues of toxicity and flooding.

It’s this multitude of threats that convinced advocates that the Port Authority and the Army Corps of Engineers needed to tour some of the communities that face the most potential harm during and after the expansion project. In June, Public Citizen arranged just such a tour.

The tour provided an opportunity for significant dialogue that followed years of strained communication between the agencies on one side and advocates and, most importantly, community members on the other.

While essential in advancing the community’s concerns with the project, the tour came with its frustrations. As community members shared their experiences, we felt that our voices were not heard. Agency representatives mostly disagreed with our presentation of the facts.

We couldn’t agree, for example, on whether material dredged from the bottom of the ship channel was likely to be toxic and threaten communities. It was evident that both sides must understand the facts to move forward with a meaningful conversation and accomplish priorities.

By the end of the tour, the Port and the Army Corps of Engineers committed to a technical meeting facilitated by the EPA, and the Port agreed to host community meetings to offer the clarity required with a risk of this magnitude.

September and October will be critical for these ongoing efforts because they will allow the community’s technical experts to meet with the Army Corps and Port engineers. We hope to agree on the facts before the Port Authority hosts community meetings to share the risks and how to address them.

The leadership of the Army Corps of Engineers and EPA know the port is an economic engine for the Houston region. This tour was a chance for advocates and residents to show them firsthand the human cost that comes with that economic activity.

Following the 2016 Panama Canal expansion, Houston, like many other Ports, faced pressure to expand to accommodate the larger ships now crossing the canal. The Port of Houston, as the owner and operator of the Ship Channel’s eight public facilities and two of the busiest container terminals in the nation, plans to do just that. As the local sponsor of this major federal waterway in Houston, the Port Authority has partnered with the USACE for Project 11, the Ship Channel’s eleventh major expansion.

The project is divided into six sections. The first three are to be handled by the Port, while the Army Corps of Engineers will be in charge of managing the other three sections of the project. When complete, the channel will be 170 feet wider along its Galveston Bay and deepen the channel to as much as 46.5 feet.
Bitcoin Colonialists Sue Honduras for Rejecting Their Libertarian Paradise Proposal

BY SARAH STEVENS AND ZEMYA ILAHI

The Honduran government is currently facing a staggering $11 billion lawsuit—nearly two-thirds of the country's annual national budget—at the hands of a single U.S. corporation.

As mind-boggling as it may seem, foreign corporations often can use trade agreements to sue governments outside of domestic courts over laws they claim diminish their profits. It's a special protection awarded to them through outdated trade deals; Public Citizen has long led the charge to eliminate these measures from trade deals around the world. U.S. corporations are taking advantage of these special measures to seek outlandish sums from taxpayers in other countries for common sense regulation.

The shocking $11 billion lawsuit was filed by Próspera, a Delaware-based company, in response to Honduras' decision to repeal the unpopular Zones for Employment and Economic Development (ZEDE) law, an undemocratic policy permitting foreign corporations to purchase Honduran land and form independent "zones" with their own fiscal, legal, and administrative systems.

These zones, approved under the leadership of corrupt previous officials—including former President Juan Orlando Hernández, who has since been indicted on drug trafficking and firearms charges—essentially allowed for the privatization of entire cities. The zones allowed foreign corporations to build their own privately run governance structures, tax laws, and court systems. Próspera, the U.S. company behind the lawsuit, is partnered with a libertarian organization promoting privatized "charter" cities all over the world.

Próspera has been using the ZEDE law to allow investors to evade regulation both in the United States and Honduras. The company has adopted Bitcoin as legal tender, with critics coining the term “Crypto-Colonialism” to describe its shady activities. “Biohacking” companies are also using Próspera’s lax regulatory framework to host gene therapy experimentation possibly to evade FDA regulation, raising alarm bells about medical ethics.

Honduran communities fear that these ZEDEs will permit a crypto-libertarian paradise free from regulation, transparency, and public oversight, at the expense of the Honduran people and the environment. In response to the overwhelming opposition to the ZEDEs, the new and democratically elected Honduran government recently repealed the law. Instead of respecting the will of the people, Próspera launched the outrageous $11 billion claim against the Honduran government.

In collaboration with Honduran nongovernmental groups, Public Citizen has sounded the alarm over the Próspera case.

In May, U.S. Sen. Elizabeth Warren (D-Mass.) and Rep. Lloyd Doggett (D-Texas), alongside 31 other members of Congress, spearheaded a letter to U.S. Trade Representative Katherine Tai expressing their solidarity with the Honduran people. The letter stated that Próspera’s lawsuit is proof of an effort to “bully the Honduran government into allowing [Próspera] to continue operating under the abolished ZEDE framework.” The letter called for the Biden administration to intervene in support of the Honduran people and work to remove these extreme investor rights from all trade agreements that allow U.S. corporations to sue foreign governments over common sense regulation.

Thousands of trade and investment agreements allow wealthy multinational corporations to sue taxpayers over public interest policies that interfere with company profits. Lawsuits can be filed for a variety of reasons, including protecting the environment, banning toxic substances, raising the minimum wage, opening up access to critical medicines, refusing to bail out irresponsible banks, and so much more. Public Citizen just released a report outlining some of the more egregious examples of these corporate lawsuits.

The little-known trade rule that enables all these suits is called investor-state dispute settlement, or ISDS. ISDS gives wealthy multinational corporations the power to sue governments—in international arbitration systems, outside of regular, domestic courts—for “unfair treatment” when voters and policymakers enact policies that challenge corporate interests, even if the policies apply equally to domestic companies. The companies can seek unlimited amounts of taxpayer money, including for lost future profits. Awards can amount to billions of dollars. At the same time, governments don’t have the same power under these trade agreements to sue foreign corporations and hold them accountable to communities and workers.

Even if an ISDS tribunal decides in favor of the country, taxpayers are often still left on the hook to pay millions of dollars in legal defense fees and half the cost of the tribunal itself. This can lead to a “chilling” effect, where policymakers hold off on passing important laws out of fear that they may trigger a costly ISDS lawsuit.

While the situation in Honduras is particularly shocking, these lawsuits are not uncommon. Just this year, Public Citizen has been mobilizing around the $15 billion ISDS claim filed against the United States after President Biden rightly halted the expansion of the notorious Keystone XL pipeline over public health and environmental concerns. U.S. taxpayers are now possibly on the hook to pay a Canadian gas company billions of dollars because the federal government chose to put people and the planet before corporate profits.

While these cases stand as alarming examples of the power wielded by wealthy multinational corporations, there is still hope. Public Citizen’s global campaigning has made a difference.

Ecuador, South Africa, Indonesia, and other countries have shown that it is entirely possible to challenge this system by getting rid of trade agreements. The European Union even recently proposed an exit from the Energy Charter Treaty over concerns about how corporations have used that agreement’s ISDS provisions to undermine climate policy. All these examples show that progress can be made in dismantling the investor-state dispute settlement system once and for all.

President Biden has expressed his disapproval of ISDS, committing to exclude it from any future trade agreements. However, it still exists in most U.S. trade agreements and in roughly 3,300 agreements globally.

Public Citizen has been ramping up the fight both against Próspera’s case and the ISDS system as a whole. More than 30 unions and civil society organizations, including the AFL-CIO, Labor Council for Latin American Advancement, and National Lawyers Guild, have joined our call for solidarity with the Honduran people.

ISDS is “a very radical element of our past trading system, so much so that it is no longer considered to be a viable thing to include in trade agreements,” says Melinda St. Louis, director of Public Citizen’s Global Trade Watch.

Public Citizen and our allies “are calling on the Biden administration to weigh in on behalf of Honduras in this case, so that it does not bankrupt the country, and also to seek to remove these extreme investor rights from all trade agreements.”

Photo courtesy of Shutterstock.
Four Fall Supreme Court Cases

BY ALLISON ZIEVE

Public Citizen Litigation Group handles cases at all levels of the court system, from trial courts to the U.S. Supreme Court. In the Supreme Court, we file briefs both as counsel for a party in the case and as amicus curiae – that is, as a non-party with an interest in the case. For cases being heard by the Supreme Court this fall, we filed amicus briefs ranging from judicial review of federal agency actions, to access to the civil justice system, to disability rights.

Acheson Hotels v. Laufer

A regulation issued by the Department of Justice under the Americans with Disabilities Act (ADA) requires that hotel reservation systems, including online systems, provide enough information about the nature of a hotel's facilities to allow a person with a disability to determine whether a room would accommodate her disability. In this case, the plaintiff sued an inn in Maine that did not provide the information. In response, the hotel argued that she lacked standing — that is, an actual injury caused by the challenged act — because she did not intend to reserve a room and had accessed the website only to “test” its compliance and file a lawsuit if she found that the website did not comply with the ADA regulation.

The U.S. Court of Appeals for the First Circuit held that the plaintiff had standing under a longstanding Supreme Court precedent, Havens Realty v. Coleman, which affirmed tester standing under the Fair Housing Act. The hotel then sought Supreme Court review, which the Court granted to consider whether a tester plaintiff seeking to enforce the ADA’s requirements concerning reservation systems has standing.

Public Citizen filed an amicus brief supporting standing. The brief explains that informational injuries are “injuries in fact” under the Supreme Court’s decisions, and that no injury other than the denial of information to which a plaintiff claims a substantive entitlement under a statute or regulation is necessary to support Article III standing. This case has vast implications, because testers are a crucial means to enforce civil rights, including fair housing rights and disability rights, and because informational standing is crucial to the ability to pursue cases under statutes such as the Freedom of Information Act.

CFPB v. Consumer Financial Services Association

In 2017, the Consumer Financial Protection Bureau issued a rule to protect consumers against abuses by payday lenders offering high-interest, short-term loans. A national trade group called the Consumer Financial Services Association challenged the rule, arguing, among other things, that the rule was void because the statute that provides funding for the CFPB violates the Constitution’s Appropriations Clause.

That clause provides that the federal government may spend money to fund an activity only when Congress has passed a law “appropriating” funds for that activity. According to the industry challenger, the 2010 Dodd-Frank Wall Street Reform Act, which says the CFPB may fund its activities by requesting a transfer of funds from the Federal Reserve System (subject to a cap set by the law), does not satisfy that requirement.

The Fifth Circuit Court of Appeals struck down the rule. That court held that the CFPB funding statute is not a valid “appropriation” under the Constitution because it is “self-actualizing” and “perpetual” and frees the agency from having to rely on annual appropriations bills passed by Congress. The court further held that the funding problem affects everything the agency has done — including its promulgation of the payday lending rule — and requires that those actions be set aside. The Supreme Court granted the CFPB’s petition for certiorari.

Public Citizen, on behalf of itself and nine other consumer advocacy groups, filed an amicus brief supporting the CFPB. The brief explains that the CFPB’s funding statute satisfies the requirements of the Appropriations Clause: It specifies the source from which the CFPB may draw funds, the amount it may draw, and the purposes for which the funds may be spent. That the funds come from a source other than general federal revenues poses no constitutional concern.

Congress has long appropriated funds to include any “government or agency” authorized to fill gaps in a regulatory scheme created by statute. Our brief will explain that Congress has long appropriated funds to include any “government or agency” authorized to fill gaps in a regulatory scheme created by statute. Our brief will explain that Congress has long appropriated funds to include any “government or agency” authorized to fill gaps in a regulatory scheme created by statute.

Kirtz v. U.S. Dept of Agriculture Rural Development Housing Service

In this case, the plaintiff alleges that the U.S. Department of Agriculture violated the Fair Credit Reporting Act (FCRA) by failing to investigate and correct erroneous information that it submitted to Trans Union, a credit reporting agency. As a general rule, federal agencies are immune from suit under a principle called sovereign immunity. Congress, however, by statute may waive the government’s sovereign immunity. In FCRA, Congress gave consumers a right to file suit against any “person” who negligently or willfully violates the statute, and it defined “person” to include any “government or governmental subdivision or agency.” One question in this case is whether FCRA waives the government’s sovereign immunity from suit. The district court held that it does not and dismissed the case.

Public Citizen, co-counseling with Matthew Weisberg, represented the plaintiff on appeal, arguing that FCRA waives the government’s sovereign immunity by unambiguously authorizing suit against federal agencies. In a unanimous opinion, the Third Circuit agreed with us that the FCRA unambiguously authorizes suits for civil damages against the federal government. In March 2023, the government filed a petition asking the Supreme Court to review the Third Circuit’s decision, and in June 2023 the Court granted the petition. The Supreme Court will hear argument in the fall, and we are currently preparing the Supreme Court brief.

Loper Bright Enterprises v. Raimondo, Secretary of Commerce

In 1984, in a decision called Chevron U.S.A., Inc. v. Natural Resources Defense Council, the Supreme Court held that courts, when considering a challenge to a federal agency action, should defer to the agency if the statute is ambiguous and the agency’s action is reasonable. Since then, courts have used so-called “Chevron deference” as one tool of statutory interpretation in countless cases.

Sometimes, when a statute’s meaning is not clear, it is clear that Congress left a gap for the agency to fill, in light of the agency’s expertise and experience with the particular substantive area. Sometimes, resolving a statute’s ambiguity is a policy call, perhaps reconciling conflicting policies. As Justice Stevens observed in Chevron, the Constitution vests the political branches, not the judicial branch, with the responsibility for making policy choices.

Chevron deference helps agencies to issue and enforce regulations to implement laws enacted to protect public health and safety, consumer finances, and the environment.

In recent years, business and conservative groups, generally opposed to regulation, have increasingly challenged that Chevron deference. Last spring, the Supreme Court granted a petition asking it to reconsider the doctrine.

Public Citizen is filing an amicus brief to support judicial deference to an agency’s reading of a statute where Congress gave the agency authority to fill gaps in a regulatory scheme created by statute. Our brief will explain that Chevron deference is fully consistent with the requirement that courts interpret statutes. Chevron commands deference only when a court has determined that a law gives an agency discretion to rely on its experience and expertise to resolve an ambiguity through regulations or other actions.
Paxton’s Impeachment Trial Showed the Weakness of Texas’ Campaign Finance and Ethics Laws

BY JOSE MEDINA

T

exas Lt. Gov. Dan Patrick’s announcement in September that he would not accept any campaign contributions during state Attorney General Ken Paxton’s impeachment trial amounted to a public relations stunt that underscored the need for campaign finance and ethics reforms the State Legislature must address in the next legislative session.

Still, it was a victory for the Texas office of Public Citizen, which had called for a moratorium on campaign contributions to the elected officials involved in the trial.

Patrick’s late announcement came four days before the start of Paxton’s trial, but Public Citizen called it insufficient. The announcement was missing a pledge to return the $3 million contribution from a pro-Paxton PAC he accepted weeks before, even as the trial approached.

“It was hard to take Patrick’s pledge seriously after he took $3 million from a PAC whose goal was to see Paxton walk,” said Adrian Shelley, Texas director of Public Citizen. “His fundraising pause during the trial should have been accompanied by a refund check to the pro-Paxton PAC to reassure Texans he would remain impartial. In any other context, handing out cash to the judge or jury would be corruption. Patrick gave Texans a reason to doubt the trial’s outcome by creating the appearance that stacks of cash could tip the scales.”

In June, Patrick accepted $3 million – a $1 million donation and a $2 million loan – from Defend Texas Liberty PAC, a pro-Paxton group whose leader had threatened to spend heavily on primary challenges to Republicans who voted for a conviction.

“Anyone that votes against Ken Paxton in this impeachment is risking their entire political career and we will make sure that is the case,” Defend Texas Liberty PAC’s leader posted to X, the platform formerly known as Twitter, just two weeks before the trial.

Patrick made the announcement via a spokesperson who told the Texas Tribune that the lieutenant governor would not accept donations or engage in fundraising for the duration of a trial that began on Sept. 5 and was expected to last for the better part of the month. As of this writing, the trial is ongoing.

Shortly after Patrick’s announcement the Senate Republican and Democratic caucuses self-imposed the same moratorium, as did the Texas House impeachment managers prosecuting the case. By this time, however, millions of dollars in campaign cash had already switched hands.

Before the start of the trial, Texans for Public Justice and the Texas office of Public Citizen issued a study detailing the large amounts of cash donated to most of the senators who would decide Paxton’s political future. The study found that just three “billionaires” moved $12 million in campaign funding to 17 officials directly involved Attorney General Ken Paxton’s” trial.

“A few ultra-wealthy Texans are exploiting our state’s weak ethics law like we’ve never seen before.”

— Adrian Shelley, Texas director of Public Citizen

As members of the community planned for the future, Nopetro silently eyed the site for a LNG export facility, and in March 2021, petitioned FERC to exempt it from the commission’s oversight.

While Nopetro’s project has been stopped, projects like the one planned for Port St. Joe could continue to escape oversight unless FERC’s decision to avoid oversight is reversed.

As Public Citizen’s lawsuit challenging FERC’s decision was filed, Slocum repeatedly traveled to Florida to build a community coalition to fight the project. Since 2022, Port St. Joe residents and Public Citizen have hosted three community meetings challenging the proposed project.

“Nopetro wanted to cut corners and rush the project past the community with little to no notice,” said Slocum. “Public Citizen has been privileged to work with so many dozens of incredible Port St. Joe residents who courageously took a stand for their community.”

Public Citizen’s work on Nopetro’s facility began in May 2021, when Slocum urged the Federal Energy Regulatory Commission to reject the company’s request to escape FERC oversight over the project and avoid comprehensive federal environmental impact review.

Prior to Slocum’s early trips to Port St. Joe, community members had not been widely informed of the massive energy project being planned in their backyards.

The proposed site of the LNG export facility once was home to a paper mill which closed down in 1999, and was also once the economic engine of the city. The contaminated former mill property, which was adjacent to a historically African American community, has been subject to several community-driven redevelopment plans, the most recent of which looked toward tourism to bring in jobs.

As St. Joe residents who courageously fought the project. Since 2022, Port St. Joe residents and Public Citizen have hosted three community meetings challenging the proposed project.

“They don’t want to deal with our political system, starting with campaign contribution limits, enforceable conflict of interest provisions, and recusal laws, and a ban on donations during an impeachment proceeding.”

“Rarely in American history have so few tycoons spent so much to keep aloof so tainted a politician,” added Texans for Public Justice Research Director Andrew Wheat.

Public Citizen is preparing a package of needed reforms ahead of the next legislative session that commences in January 2025. The legislative session will include a scheduled evaluation of the Texas Ethics Commission, which enforces campaign finance laws and gathers information on political spending.
Public Citizen Leads Fight to Remove Poison Pills from the Annual Spending Bills

BY DAVID ROSEN

Must-pass spending bills should not be vehicles for corrupt paybacks to Big Business and ideological extremists, but that’s exactly what they’re becoming under the House Republican majority.

In May, weeks before the debt ceiling deal was finalized, appropriators in the U.S. House of Representatives added at least 17 new poison pill policy riders to draft spending bills they marked up in subcommittee. These unpopular and controversial poison pills attack women’s health, harm consumers, help spread disinformation, and more.

But that was just the beginning. Another 96 poison pills were added in June attacking drag queens and Critical Race Theory, wresting local control from the District of Columbia, and blocking urgently needed measures to combat the climate crisis.

By the time Congress headed home for the August recess, House Republicans had added close to 300 poison pills to their draft appropriations bills. None of these measures have anything to do with funding our government, and none of them could become law on their own merits.

Unscrupulous lawmakers are trying to get these policies into the text of the final FY 24 appropriations bills without discussion or debate — hoping nobody would notice or fight to remove them. But they didn’t count on Public Citizen and its allies in the Clean Budget Coalition tracking these harmful add-ons and sounding the alarm.

“Enough is enough. The public deserves a 2024 budget for people to vote. Access to Voting with certain exceptions, making it harder for people to vote.

Poison Pills We Can’t Swallow

Here are some of the poison pill riders Public Citizen is fighting to remove from the final text of the annual spending package:

- The Anti-Voting Rider would block implementation of the Executive Order on Promoting Access to Voting with certain exceptions, making it harder for people to vote.
- The IRS Free Filing Prohibition Rider would prohibit the IRS from developing free tax filing software that would allow any taxpayer to file their taxes for free without prior approval from key financial committees in both chambers of Congress.
- The Crypto Rider would block the U.S. Treasury Department from issuing its own legitimate digital currency that might compete with private cryptocurrencies. It also would block any hypothetical attempt to end the use of paper currency as legal tender in the U.S., which no one is trying to do.
- The ESG Retirement Investing Rider would prohibit the Thrift Savings Plan from developing free tax filing software that would allow any taxpayer to file their taxes for free without prior approval from key financial committees in both chambers of Congress.
- The Climate Disclosure Rider would prohibit the provision of consumer protection bureau (CFPB) from its director and vest it in a five-member commission, two of whom must have private sector experience in the provision of consumer financial products and services.
- The Climate Disclosure Rider would prohibit the use of funds to finalize or enforce the U.S. Securities and Exchange Commission’s proposed climate disclosure rule. That rule would require climate-related disclosures in corporate registration statements, periodic reports, and audited financial statements — including information about climate-related risks that are likely to have a material impact on their business, results of operations, or financial condition. This also would include disclosure of greenhouse gas emissions.
- The ESG Retirement Investing Rider would block the Thrift Savings Plan — a retirement savings and investment plan for federal employees and uniformed service members similar to a 401(k) in the private sector — from investing in mutual funds that consider environmental, social, and governance (ESG) criteria.

Visit CleanBudget.org for a full list of poison pill riders.
Public Citizen’s Advocacy Drives Success

BY LIZA BARRIE AND MEGAN WHITEMAN

In a remarkable stride towards fostering health justice, the mRNA Technology Transfer Program, established by the World Health Organization (WHO), has defied expectations by successfully establishing a robust pathway for equitable access to vital health technologies. This groundbreaking initiative is propelling low- and middle-income countries towards self-sufficiency in mRNA vaccine development. Backed from the outset by Public Citizen, the program is charting a course towards a more just and secure future for vulnerable populations worldwide.

The program aims to establish sustainable mRNA manufacturing capabilities in regions with limited or no capacity, thereby promoting health security and autonomy in the sphere of mRNA vaccine development, production, and distribution. Inventors, developers, researchers, and experts are working together to facilitate the transfer of mRNA-based knowledge and technology to vaccine manufacturers across Africa, Asia, and the Americas on an industrial scale. The unique partnership model focuses on fostering global collaborations, while empowering local workforces.

This mRNA program emerged in 2021 as a direct response to the extreme vaccine inequity that defined the global response to the COVID-19 pandemic. WHO and its consortium partners hope to correct a fundamental imbalance that has kept the global south dependent on the north.

Just as with the HIV epidemic in the early 2000s, when perhaps millions died needlessly in developing countries due to limited access to life-saving treatment widely available in the United States and Europe, these nations found themselves at the end of the line for receiving mRNA vaccines to safeguard against COVID-19.

“The lessons from the COVID-19 pandemic and preceding HIV crisis have left a lasting impact,” said Peter Maybarduk, Public Citizen’s Access to Medicines director, who joined 200 international participants working with the program for its official launch in Cape Town in April. “Uniting from Africa, Asia, Europe, and South America, researchers pledged to never again be vulnerable to wealthy nations during a lethal virus outbreak in their regions.”

— Peter Maybarduk, director of Public Citizen’s Access to Medicines

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— Peter Maybarduk, director of Public Citizen’s Access to Medicines

The distinctive feature of the WHO-led program lies in its commitment to technology and knowledge sharing. This is a departure from the traditional competitive approach seen in drug development, where companies often guard their discoveries in secrecy. The strategy aims to ensure that the capacity is viable and ready to tackle future pandemics effectively. Equity, knowledge sharing, and sustainability serve as guiding principles.

Renowned U.S. immunologist Barney Graham, a leading figure in mRNA vaccine creation at the National Institutes of Health (NIH), is advising the program. In August, a team of seven Afrigen experts spent two weeks training alongside scientists at the National Institute of Allergy and Infectious Diseases’ (NIAID) Vaccine Research Center in Frederick, Md.

WHO Director-General Tedros Adhanom Ghebreyesus presided at the mRNA Technology Transfer program’s inaugural Cape Town meeting. According to Maybarduk, participants focused on the challenges that lie ahead for the program. He said that national health systems and procurement and supply chains need to be strengthened. The program needs reliable financing mechanisms, and the problems of corporate control of vaccine recipes and vaccine hesitancy must be overcome, or at least mitigated.

Maybarduk said he is optimistic. “South African and Brazilian teams are making mRNA vaccines. Scientists across the global south are contributing toward vaccines against HIV and tuberculosis. Researchers worldwide are sharing technology and knowledge. It’s an amazing and heartening program already, and the only question is just how far it can go.”

Public Citizen’s Peter Maybarduk joins WHO Director-General Tedros Adhanom Ghebreyesus and 200 international participants in Cape Town to formally launch the mRNA Technology Transfer Program. Photo courtesy of MPP Photo Hub.
Oil and gas drilling has been an extremely profitable business since the start of the war in Ukraine, which drove up crude oil prices. Nevertheless, the study found that if the oil and gas industry experienced another major downturn, cleaning up these oil and gas operations could end up saddling U.S. taxpayers with a bill of up to $380 million.

“Corporate takeover firms are notorious cut-and-run operations, buying up businesses in declining industries, extracting profits while they can, and then filing for bankruptcy once the assets become worthless,” said Public Citizen President Robert Weissman. “When it comes to overseeing the notoriously shoddy business of oil and gas drilling, federal and state officials must do everything they can to ensure that the public isn’t left holding the bag.”

Private equity-backed drilling firms were among the oil and gas industry players who most benefited from the Trump administration’s “energy dominance agenda” of giveaways and favors to fossil fuel polluters. Under Trump, the U.S. oil and gas industry leased millions of acres of public lands for exploitation, stockpiling thousands of permits for future drilling.

The Biden administration has attempted to reverse this trend, scaling back oil and gas leasing and drilling on public lands and waters, but it has run into intense opposition from the oil and gas industry and its allies in Congress.

The 19 private equity firms named in the report, including Blackstone, Carlyle Group, Apollo Global Management, KKR, and Warburg Pincus, have invested billions of dollars in fossil fuel companies that drill on public lands. These firms have invested in 35 different oil and gas companies that received permits to drill on federal and tribal lands since 2017.

Colorado currently has the largest potential cleanup bill from private equity-backed oil and gas companies, the study found. The state could see potentially a significant shortfall of $161 million when the time comes to deal with abandoned wells on federal and tribal lands alone. More than 75% of Colorado’s wells on federal lands are on lands leased by private equity-backed drillers.

Many private equity firms pitch themselves as environmentally responsible owners and claim to focus on reducing emissions and mitigating impacts on nearby communities. However, many of these problems have proven to be little more than meaningless greenwashing, the report found.

A case in point is the private equity industry’s role in efforts to develop bogus certification schemes for methane gas that purportedly meet environmental standards. This greenwashing strategy would promote production of methane gas far into the future, undermining the transition away from fossil fuels.

The U.S. oil and gas industry has long benefited from numerous subsidies and industry-friendly regulations. A key example is the antiquated rules incentivizing oil and gas corporations to shirk their obligation to clean up the mess they create, leaving old, rusty wells across the nation.

In July 2023, the U.S. Bureau of Land Management released a long-overdue proposal to strengthen oil and gas cleanup requirements for federal lands by imposing realistic financial requirements on fossil fuel corporations to pay for the remediation of old, decrepit wells, as federal law requires.

Once made final, these regulations will ensure that oil and gas drillers cannot evade the cost of cleanup — a welcome change from the longstanding status quo of policies that provide giveaways to the oil and gas industry.

“While these rules are helpful, the Biden administration’s proposal continues the climate-destroying practice of leasing federal lands for drilling, which is entirely out of sync with the administration’s climate goals,” Weissman said. “But as long as drilling exists on public property, corporate polluters should be held to a high standard for operating and cleaning up their wells.”

Despite record-high oil and gas profits in 2022, there are numerous signs that the business model for U.S. onshore production of oil and gas will become more challenging in the coming years as production is expected to plateau.

With the long-term future of the oil and gas industry uncertain, federal and state governments must work to make sure that non-producing oil and gas wells are properly decommissioned, and that funding is put in place in advance to ensure that wells at high risk of being abandoned can be decommissioned properly.

Rules for federal wells alone, even if robust and aggressively enforced, are not enough. For states such as West Virginia and Texas, where most drilling is on private lands, a broader approach is needed.

One approach would be to set up a national trust fund to pay for the cleanup of abandoned wells, funded by an industry-wide production fee. Other reforms can include requirements that state officials examine whether a company is financially solvent — and has enough financial capacity to plug a well — before it starts drilling. At the federal level, Congress should consider changes to the bankruptcy code to give higher priority to oil well decommissioning and environmental remediation claims.

Restrictions on new oil and gas drilling and infrastructure on public lands and waters are crucial to reducing carbon pollution. Public Citizen and its allies are pushing the Biden administration to update outdated federal leasing and permitting programs to align with the nation’s climate commitments and ensure that polluters, rather than the public, pay to clean up the fossil fuel industry’s mess.
Insurance and the Climate Crisis

BY PATRICK DAVIS

In the runup to the hottest July on record, State Farm General Insurance Company, Allstate Insurance Company and American International Group Inc. (AIG) announced major cutbacks on accepting new homeowners insurance applications, saying the extreme impacts of climate change are making it impossible to insure homes in California, Florida, and more than 200 zip codes around the country.

Yet, as the impacts of climate change deepen for homeowners, renters, and auto owners, insurance companies have doubled down on their investment and insurance coverage for the primary instigator of the climate crisis: fossil fuel companies.

Insurers are major contributors to the climate crisis, not only by continuing to underwrite and invest in existing fossil fuels, but by supporting the expansion of fossil fuel production. Public Citizen has helped lead the charge in demanding insurers end their support for fossil fuels, and Public Citizen and allies have secured more than 100 companies to divest from Dirty Energy sources.

As they undermine consumers and their own markets, insurers create financial risks that are passed from consumers to taxpayers, impacting the rest of the economy.

“During a summer when the climate crisis has spared no part of the world, the ongoing insurance crisis won’t be limited to places like California or Florida,” said Carly Fabian, insurance policy advocate with Public Citizen’s Climate Program. “Insurers pulling out of vulnerable markets continue to prioritize fossil fuels over homeowners and auto insurance policyholders, creating a crisis. This is reckless behavior by an industry that the public will be increasingly reliant on as the climate crisis gets worse.”

While an increasing number of insurers have made public commitments about curtailing their support for oil and gas in the future, no major insurance companies have walked away from insuring or investing in fossil fuels. The contradiction between insurers’ dropping coverage for homeowners and maintaining their fossil fuel clients and investments has caught the attention of Congress.

In June, the Senate Budget Committee opened an investigation into seven insurance companies, seeking answers about how each company invests in, underwrites, and profits from the fossil fuel industry.

In letters sent to the insurers, the U.S. Sens. Sheldon Whitehouse (D-R.I.), Bernie Sanders (I-Vt.), and Ron Wyden (D-Ore.) asked for disclosure of how each company invests in, underwrites, and profits from the fossil fuel industry.

“The combination of a climate crisis and an insurance industry retreat could create a crisis that threatens Americans’ homes, life savings, and the economies of already vulnerable regions,” said Fabian. “Without these companies waking up to the crisis their underwriting of the fossil fuel industry is causing, they could undermine the global economy. But the long-term impacts of climate change have yet to undermine the short-term greed at the heart of the insurance industry.”

Trump’s Arraignment Makes For Historic Moment

BY ALICIA VALLETE

On August 3, former President Donald Trump was arraigned in federal court following the decision by a grand jury, composed of everyday Americans, to criminally indict him for his efforts to overturn the legitimate results of the 2020 Election – an election which he knew he lost.

Following his arraignment, over 70 communities hosted rapid response rallies and press events across the country. From San Diego to Boston, grassroots activists mobilized their neighbors in support of accountability, justice, and the fundamental principle that regardless of one’s wealth or power, no one is above the law. The nationwide mobilization was organized by the Not Above the Law Coalition, which is spearheaded by Public Citizen and made up of more than 150 organizations committed to protecting American democracy and fighting for the rule of law. A dedicated team of Public Citizen Democracy Campaign staff, organizers, and interns spent months recruiting and training hosts, preparing sample outreach materials, and collaborating with coalition partners to ensure that the rapid response network was ready for an indictment.

On display at the rallies were a menagerie of colorful signs, including “Not Above the Law” placards and “Remember Jan. 6” posters featuring haunting imagery from that day the U.S. Capitol was besieged by MAGA insurrectionists.

Many of the rapid response events were covered by local broadcast and digital media outlets. The flagship event in Washington, D.C., at the Capitol yielded significant press coverage and was broadcast by C-SPAN. Public Citizen Executive Vice President Lisa Gilbert provided remarks at the D.C. event; other participants included allies from People for the American Way, National Organization of Women, National Accountability Center, Stand Up America, DC Vote, Citizens for Responsibility and Ethics in Washington, End Citizens United/Let America Vote.
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To become a leadership supporter, please contact Amanda Fleming at (202) 588-7734 or afleming@citizen.org.
IN THE SPOTLIGHT

The following are highlights from our recent media coverage.

Robert Weissman, Public Citizen president


Lisa Gilbert, executive vice president of Public Citizen


Melina St. Louis, director of Public Citizen’s Global Trade Watch

On the privatization of Honduran cities by U.S. investors: Democracy Now!

Dr. Robert Steinbrook, director of Public Citizen’s Health Research Group


Peter Maybarduk, director of Public Citizen’s Access to Medicines Program


Tyson Slocum, Director of Public Citizen’s Energy Program


Adrian Shelley, Director of Public Citizen’s Texas office


Craig Holman, government affairs lobbyist with Public Citizen’s Congress Watch division


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Report Shows Alarming Disparities Between State Rates of Serious Physician Disciplinary Actions

BY SAMIA MERS

Many states are doing a poor job of protecting patients from dangerous doctors, an August Public Citizen report finds. There was a significant decline in disciplinary actions between 2019-2021 in comparison to those taken between 2017-2019.

The study, which was conducted by Public Citizen’s Health Research Group, calculated the rate of disciplinary actions taken per 1,000 physicians in each state. The report used data from the National Practitioner Data Bank (NPDB), a national flagging system that cannot be accessed by the public.

Disciplinary actions are mandated by medical practice laws in every state with medical boards being responsible for taking appropriate action against doctor misconduct through methods such as license revocation and suspension. The report could not account for the effects, if any, of the COVID-19 pandemic.

Amongst the states and the District of Columbia, Michigan proved to have the most robust rate of disciplinary action in the nation with an annual average of 1.74 disciplinary actions per 1,000 physicians.

The states of Ohio, North Dakota, and Colorado followed; however, 24 states had rates that were less than half of Michigan’s. The District of Columbia, for example, was ranked the lowest with only 0.19 serious disciplinary actions per 1,000 physicians; that is, Michigan’s rate was nine times higher than that of the District of Columbia’s.

New York, New Hampshire, Georgia, Indiana, Nebraska, and South Carolina, among other states, had only marginally higher rates than the District of Columbia. The average total number of disciplinary actions taken by all states each year was 1,281,165 actions per year lower than the average of 1,446 from 2017-2019.

“There is no evidence that physicians in any state are, overall, more or less likely to be incompetent or miscreant than the physicians in any other state,” said Robert Oshel, Ph.D., former Associate Director for Research of the National Practitioner Data Bank and Advisor to Public Citizen’s Health Research Group, of the glaring disparities between state disciplinary action rates. “Thus, differences in discipline rates between states reflect variances in boards’ enforcement of medical practice laws, domination of licensing boards by physicians, and inadequate budgets rather than differences in physician incompetence or misbehavior.”

In other words, states with higher doctor discipline rates are doing a better job of protecting patients. Higher rates of discipline do not indicate more misconduct. Disparities between state-by-state disciplinary action are dramatic. California and New York have the highest number of licensed physicians, but their discipline rates are far apart.

New York had the seventh-highest disciplinary action rate at 1.25 per 1,000 physicians annually. California ranked twenty-seventh with only 0.83 serious actions per 1,000 physicians.

If all states had increased their rate of serious disciplinary actions to match that of Michigan’s for 2019-2021, the annual number of disciplinary actions would have increased to 2,414, nearly double the actual number.

“Michigan’s rate of serious disciplinary actions against physicians is an issue that demands criticism,” said Dr. Robert Steinbrook, director of Public Citizen’s Health Research Group. “All state medical boards could do a far better job of protecting the public from dangerous doctors and improving the quality of medical care.”

Of the 16,287 physicians reported to the NPDB, only 51.3% have had action of any sort taken against them. A variety of regulations have been suggested to improve the performance of state medical boards, including federal legislation requiring boards to use the data in the NPDB when licensing all physicians and renewing their licenses.

The report also calls for opening the physician-specific data in the NPDB to the public to allow greater transparency to those who are the most at risk of experiencing physician misconduct.

Public Citizen Recommends ...

‘Your Face Belongs to Us: A Secretive Startup’s Quest to End Privacy as We Know It’

By Kashmir Hill, "$28.99; Random House

New York Times technology reporter Kashmir Hill has made a career of covering the uses and abuses of technology. She has reported on lawyers at certain firms being banned from Madison Square Garden through facial recognition technology (because the Garden’s owner didn’t like the lawyers) as well as — more worryingly — people being misidentified by the technology and arrested for crimes committed by a doppelganger.

Since 2019, Hill has assiduously tracked the ways that one company in particular, Clearview AI, hoovers up publicly available images of people’s faces to aid law enforcement in apprehending criminals. The larger implications for people’s privacy are chilling, as Hill makes clear in her engrossing and meticulously researched book.

Clearview AI was founded by Hoan Ton-That, an Australian computer engineer, and Richard Schwartz, a former policy advisor to Rudy Giuliani. Drawing on in-depth interviews with Ton-That, Hill traces the arc of his improbable rise as a tech savant. That and Schwartz’s brand was ethical arbitrage,” Hill writes. “For a while, half of his face was paralyzed.”

The facial recognition technology that helped build Ton-That and Schwartz’s brand was astoundingly powerful; by 2018, it was so advanced that it could even function “under poorly lit conditions. It could identify a person even if he donned a hat, put on glasses, and sprouted facial hair. It could identify a person in a crowd — or in the background of someone else’s photo. The person could be looking away from the camera. It could tell sisters apart.”

Clearview AI boasted that it could identify virtually anyone with “99% accuracy.” At various points in its startup history, it drew investor interest from high-profile figures such as billionaire and Donald Trump booster Peter Thiel.

Ruthlessly predictably, Clearview AI’s vaunted technological supremacy opened a Pandora’s box of questions and concerns about people’s right to privacy. Not for nothing did Facebook — which at one time “had the world’s largest global face biometric database” and had worked on its own facial recognition software — ultimately decide to abandon plans for developing it further. “The significance of what Clearview had done was not a scientific breakthrough, it was ethical arbitrage,” Hill writes.

“Ton-That and his colleagues had been willing to cross a line that other technology companies feared, for good reason.”

Hill’s interviews with privacy advocates, lawyers, and senators further underscore the point that even the most advanced facial recognition technology is not infallible; indeed, such technology has been implicated in wrongful arrests in both the U.S. and other countries — many involving people of color.

One of the book’s most devastating chapters tells of the experience of a Black man, Robert Williams, who was arrested in front of his wife and children for stealing watches. His face (sourced from his driver’s license photo) had been erroneously matched to that of the shoplifter on the store’s grainy security footage. Williams was innocent and even had an alibi, but nonetheless was sent to jail. With the help of the ACLU, he was ultimately cleared and had his fingerprint data expunged. Yet, as Hill writes, “the stress of what had happened wore on him. At the end of 2020, he had a series of strokes. For a while, half of his face was paralyzed.”

At the end, Hill paints a properly dystopian picture of the threat posed by untrammeled facial recognition technology: “Technology such as Clearview’s will make possible a new era of discrimination, allowing businesses to turn away customers based on what is knowable about them from an internet search of their faces.”

— Rhoda Feng

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Protecting Elected Officials from Threats

BY LONDYN WIGGINS

Free and fair elections are the foundation of a healthy democracy, but across the United States, the systems and the people responsible for facilitating elections are under threat.

Public Citizen is working across the country to put safeguards in place to protect elections and election officials. Thanks in large part to the rise of Trump authoritarianism, the once-staid work of election administration has now become a zone of threats and intimidation.

An April 2023 study by the Brennan Center found that nearly one in three election officials have been abused, threatened, or harassed because of their jobs. One in three election officials surveyed in 2022 knew someone who left their job running elections because they didn’t feel safe. One in five election officials surveyed last year planned to leave their jobs before 2024.

Election deniers and bad actors with access to election equipment, software, and data endanger the integrity and security of elections and jeopardize their ability to administer future elections. Our elections have hindered already underfunded election offices and have many counties and cities.

Meanwhile, election threats are also coming from inside the house: from election deniers who are serving as election officials. In Mesa County, Colo., for example, the county elections clerk and deputy snuck someone into the county elections offices to copy the hard drives of Dominion Voting Systems machines. The clerk was found guilty of tampering with voting equipment, violating election rules, illegally copying data and sharing it with unauthorized individuals in an attempt to prove a conspiracy theory about the 2020 presidential election. She was sentenced to four months of home detention, incurred a $750 fine and 120 hours of community service and was removed from overseeing the 2022 election. Colorado responded by passing new legislation to prevent election sabotage.

To address these multiple threats to election security and integrity, Public Citizen has drafted and is promoting model legislative language to:

1. Prevent harassment and intimidation of election workers;
2. Prevent or limit the impact of doxing (publishing home addresses and similar information about election workers);
3. Address increasing insider threats to elections; and
4. Encourage robust funding of elections offices in general.

Public Citizen has had movement calls with celebrities, partners, and activists speaking to the importance of protecting elections, as well as many smaller calls to support state and local leaders and activists. We are working with activists to pass legislation in many states and municipalities, including Alabama, Arizona, California, Florida, Illinois, Michigan, Missouri, Mississippi, New Hampshire, North Carolina, New Mexico, Pennsylvania, South Carolina, Texas, and Wisconsin.

“It is almost unfathomable that in today’s America, we have to defend the integrity of the election process itself,” said Public Citizen President Robert Weissman. “But that’s the reality in which we live. Public Citizen is doing everything in our power to protect this most foundational requirement for a working democracy: a system that truly and accurately counts every vote.”

Charitable Gift Annuity

A gift that gives back to you!

A charitable gift annuity is a simple contract between you and Public Citizen Foundation that supports us while providing you (and another individual) with a charitable deduction and payments on a quarterly basis for the rest of your life. The minimum gift to establish this annuity is $10,000 using cash or securities, and the minimum age is 65. The following are some of the payments we offer for one individual. Payments for two people are available upon request.

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<th>AGE WHEN ESTABLISHED</th>
<th>SINGLE LIFE ANNUITY RATE</th>
<th>SINGLE LIFE ANNUAL PAYMENT</th>
<th>TWO LIVES ANNUITY RATE</th>
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For a confidential, free sample illustration, or more information, please contact Amanda Fleming at 202-588-7734 or afleming@citizen.org.