

DIVEST NEW YORK: THE CITY OF NEW YORK, C40, FOSSIL FUEL DIVESTMENT, AND CLIMATE LITIGATION

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ABSTRACT

In a case study of the City of New York, this paper explores and analyses civic, municipal narratives about climate activism, local government, fossil fuel divestment and climate litigation. Part 1 considers the integral part of the City of New York in the establishment and the evolution of the C40 Network. Part 2 focuses upon the fossil fuel divestment decision of the City of New York, and its commitment to reinvestment in respect of renewable energy and climate solutions. Part 3 examines the unsuccessful climate litigation by the City of New York against a number of major oil companies for damage caused by climate change, and the prospects of a future appeal. This paper contends that the City of New York provides an exceptional example for other cities seeking to support climate action.

I. INTRODUCTION

In 2012, the City of New York was severely impacted by Hurricane Sandy.² There was flooding of the New York communities and the subway system. The City of New York noted the impact of Hurricane Sandy: ‘Across the five areas—which are home to 685,000 people—physical and economic damage was extensive and long-lasting’.³ There were massive fires in Breezy Point, Queens – with the destruction of many homes. The City of New York reported that Hurricane Sandy resulted in ‘43 deaths’, ‘6,500 patients evacuated from hospitals and nursing homes’, ‘Nearly 90,000 buildings in the inundation zone’, ‘1.1 million New York City children unable to attend school for a week’, ‘close to 2 million people without power’, ‘11 million travellers

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² NYC Special Initiative for Rebuilding and Resiliency (SIRR), *A Stronger, More Resilient New York: Sandy and Its Impacts* (Final Report, 11 June 2013).

³ *Ibid*; 18.

affected daily' and '\$19 billion in damage.'⁴ The New York Stock Exchange – the heart of Wall Street - was closed down.⁵ This disaster prompted the City of New York – and its people - to take a stronger interest in climate policy and action.⁶ The New York Mayor at the time Michael Bloomberg was driven to take action to strengthen New York's resilience to hurricanes and superstorms.⁷

New York has long been a focal point in respect of local, national, and international action in respect of climate change. New York has hosted a number of international events on climate change – and runs an annual Climate Week. New York Climate Week has become a fixture of public policy discussion on climate change. In 2014, the People's Climate March and Flood Wall Street showed popular support for international climate action.⁸ The City of New York hosted the New York Climate Summit at the United Nations in 2014⁹ in the lead-up to the *Paris Agreement* 2015.¹⁰ Under Mayor Mike Bloomberg and his successors, such as Bill de Blasio, New York City has played a key role in pushing for global cities to take networked action in relation to climate change. This city-based climate activism (under the banner of C-40 Cities) has become even more important – since President Donald Trump has promised to withdraw the United States from the *Paris Agreement* 2015. In June 2019, New York City Council members voted to declare a climate emergency.¹¹ In July 2019, the New York

⁴ Ibid; 11.

⁵ Simon Neville, 'New York Stock Exchange Closed by Weather For First Time Since 1985', *The Guardian* (online, 29 October 2012) <<https://www.theguardian.com/business/marketforceslive/2012/oct/29/new-york-hurricane-gloria-sandy-report>>.

⁶ Bill McKibben, 'Sandy Forces Climate Change on US Election Despite Fossil Fuel Lobby', *The Guardian* (online, 1 November 2012) <<https://www.theguardian.com/commentisfree/2012/oct/31/sandy-climate-change-us-election>>.

⁷ Associated Press in New York, 'New York Mayor Unveils \$20bn Flood Defence Plan', *The Guardian* (online, 12 June 2013) <<https://www.theguardian.com/world/2013/jun/12/bloomberg-flood-defence-plan-sandy>>.

⁸ 'People's Climate March 14 September 2015 to 24 August 2019', *Internet Archive Wayback Machine* (Web Page) <https://web.archive.org/web/20161001000000*/http://2014.peoplesclimate.org/>; Tom McCarthy and Amanda Holpunch, 'Flood Wall Street climate change protest holds ground in lower Manhattan', *The Guardian* (online, 23 September 2014) <<https://www.theguardian.com/environment/live/2014/sep/22/climate-change-activists-wall-street-protest>>.

⁹ United Nations Framework Convention on Climate Change (UNFCCC), 'UN Climate Summit: Ban Ki-moon Final Summary', *UNFCCC* (Web Page, 25 September 2014) <<https://unfccc.int/news/un-climate-summit-ban-ki-moon-final-summary>>.

¹⁰ UNFCCC, *Report of the Conference of the Parties on its Twenty-First Session, Addendum, Part two: Action taken by the Conference of the Parties at its twenty-first session* (Report, UN Doc FCCC/CP/2015/10/Add.1, 29 Jan 2016) in referring to *Paris Agreement to the United Nations Framework Convention on Climate Change*, opened for signature 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1 (entered into force 4 November 2016).

¹¹ Scottie Andrew and Saeed Ahmed, 'New York City Declares a Climate Emergency, The First US City With More Than a Million Residents to Do So', *Cable News Network (CNN)* (online, 27 June 2019) <<https://edition.cnn.com/2019/06/27/us/new-york-city-declared-climate-emergency-trnd/index.html>>.

Governor signed the Green New Deal bill passed by the New York legislature, and announced a push for offshore wind power.¹²

This popular activism for climate action has translated into municipal action in terms of fossil fuel divestment and climate litigation. In January 2018, New York City announced that it planned to divest \$5 billion from fossil fuel companies. New York Mayor Bill de Blasio commented: ‘New York City is standing up for future generations by becoming the first major US city to divest our pension funds from fossil fuels.’¹³ In January 2018, the City of New York also launched a complaint against BP, Chevron Corporation, Conoco Phillips, the Exxon Mobil Corporation and Royal Dutch Shell.¹⁴ The Mayor commented: ‘As climate change continues to worsen, it’s up to the fossil fuel companies whose greed put us in this position to shoulder the cost of making New York safer and more resilient’.¹⁵ However, this litigation was rejected at first instance by the District Court.¹⁶ The matter is currently under appeal.¹⁷

As part of a larger symposium in respect of narratives of climate change, this paper considers municipal narratives in respect of climate change and climate action. It considers the role of law in regulating nature.¹⁸ It explores the strengths and limitations of civic environmentalism.¹⁹ This paper connects to the larger academic literature on sub-state actors in climate change governance by Harriet Bulkeley,²⁰ Michelle Betsill²¹ and others. As Patricia Romero-Lankao and her colleagues observe, there is a need to evaluate transformative urban agendas for climate change.²² In particular, there is a need to consider the political economy and the power to act;

¹² Keshia Clukey, ‘New York Passes Its Own Green New Deal with Aggressive Targets’, *Bloomberg* (online, 19 June 2019) <<https://www.bloomberg.com/news/articles/2019-06-19/new-york-passing-its-own-green-new-deal-with-aggressive-targets>>.

¹³ City of New York, ‘Climate Action: Mayor, Comptroller, Trustees Announce First-in-the-Nation Goal to Divest From Fossil Fuels’ (Press Release, 10 January 2018) <<https://www1.nyc.gov/office-of-the-mayor/news/022-18/climate-action-mayor-comptroller-trustees-first-in-the-nation-goal-divest-from#/0>>.

¹⁴ *City of New York v. BP P.L.C.; Chevron Corporation; Conocophillips; Exxon Mobil Corporation; and Royal Dutch Shell PLC*, 18 Civ. 182 (Man. D Ct., 2018).

¹⁵ Above (n 13).

¹⁶ Above (n 14).

¹⁷ Karen Savage, ‘NYC Files Appeal, Challenges Dismissal of Climate Liability Suit’, *Climate Liability News* (Web Page, 12 November 2018) <<https://www.climateliabilitynews.org/2018/11/12/nyc-climate-liability-suit-appeal/>>.

¹⁸ Nicole Rogers and Michelle Maloney (eds), *Law as if Earth Really Mattered: The Wild Law Judgment Project* (Routledge, 1st ed, 2017).

¹⁹ Yael Wolinsky-Nahmias (ed), *Changing Climate Politics: U.S. Policies and Civic Action* (CQ Press, 2014).

²⁰ Harriet A. Bulkeley, Vanesa C. Broto and Gareth A.S. Edwards, *An Urban Politics of Climate Change: Experimentation and the Governing of Socio-Technical Transitions* (Routledge, 1st ed, 2015); Patricia Romero-Lankao, Harriet A. Bulkeley and Mark Pelling et al., ‘Realizing the Urban Transformative Potential in a Changing Climate’ (2018) 8 *Nature Climate Change* 754.

²¹ Harriet Bulkeley and Michele Betsill, ‘Rethinking Sustainable Cities: Multilevel Governance and the ‘Urban’ Politics of Climate Change’ (2005) 14(1) *Environmental Politics* 42; Harriet Bulkeley, *Cities and Climate Change*, (Routledge, 1st ed, 2013).

²² Romero-Lankao (n 20) 754.

multilevel governance; socio-material path dependency; multiscale processes, impacts and actions; and cultures and identities. This paper also builds upon the academic literature in respect of climate law,²³ climate justice,²⁴ and climate litigation.²⁵ It also considers the power of fossil fuel divestment,²⁶ role of cities in clean technology innovation,²⁷ and the development of a Green New Deal. In his work on the right to a healthy environment, David R. Boyd has highlighted the importance of green cities.²⁸ This work also fits into the larger literature on cities and social activism.²⁹

In terms of its methodology, this paper is intended to be polyphonic – and represent the array of competing voices in the debate over climate governance in cities. Part 1 of this paper considers the New York’s leadership role in the C40 initiative. Part 2 examines the symbolic and practical impact of fossil fuel divestment by the City of New York, as well as its decision to reinvest in renewable energy and climate solutions. Part 3 explores the climate litigation by the City of New York against a number of big oil companies. The conclusion examines the strengths and limitations in respect of the narrative of civil, municipal environmentalism and climate activism.

²³ Daniel Bodansky, Jutta Brunnee and Lavanya Rajamani, *International Climate Change* (Oxford University Press, 1st ed, 2017); Daniel Farber and Cinnamon Carlarne, *Climate Change Law (Concepts and Insights)* (Foundation Press, 1st ed, 2017); Benoit Mayer, *The International Law on Climate Change* (Cambridge University Press, 2018).

²⁴ Henry Shue, *Climate Justice: Vulnerability and Protection* (Oxford University Press, 1st ed, 2014); Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer, 2018); Mary Robinson, *Climate Justice: Hope, Resilience, and the Fight for a Sustainable Future* (Bloomsbury Publishing, 1st ed, 2018).

²⁵ Mary Christina Wood, *Nature’s Trust: Environmental Law for a New Ecological Age* (Cambridge University Press, 2013); Jacqueline Peel and Hari M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press, 2015); Geetanjali Ganguly, Joana Setzer and Veerle Heyvaert, ‘If at First You Don’t Succeed: Suing Corporations for Climate Change’ (2018) 38(4) *Oxford Journal of Legal Studies* 841.

²⁶ Bill McKibben, *Oil and Honey: The Education of an Unlikely Activist* (Time Books, 1st ed, 2013); Naomi Klein, *This Changes Everything: Capitalism vs The Climate* (Simon & Schuster, 2014); Jeremy Grantham, ‘The Mythical Peril of Divesting from Fossil Fuels’, *Grantham Research Institute on Climate Change and the Environment* (Web Page, 13 June 2018) <<http://www.lse.ac.uk/GranthamInstitute/news/the-mythical-peril-of-divesting-from-fossil-fuels/>>; Bill McKibben, *Falter: Has the Human Game Begun to Play Itself Out?* (Henry Holt & Co, 2019); Naomi Klein, *On Fire: The (Burning) Case for a Green New Deal* (Simon & Schuster, 2019).

²⁷ Matthew Rimmer, *Intellectual Property and Climate Change: Inventing Clean Technologies* (Edward Elgar Publishing, 2011); Matthew Rimmer (ed), *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice* (Springer, 2018).

²⁸ David R. Boyd, *The Optimistic Environmentalist: Progressing Towards a Greener Future* (Entertainment Culture Writing (ECW) Press, 2015).

²⁹ David Harvey, *Rebel Cities: From the Right to the Urban Revolution* (Verso Books, 2012).

II. THE CITY OF NEW YORK, THE GREEN NEW DEAL, AND C40

A The New York Mayor Mike Bloomberg

In the book *Climate of Hope*, Mike Bloomberg – together with Carl Pope – call for bolder action by cities, businesses, and citizens in respect of climate change.³⁰

In chapter 2 of the book, Michael Bloomberg focuses upon his time as Mayor of New York (2002-2013), and his brand of municipal environmentalism. He contends that ‘cities are actually key to saving the planet.’³¹ He provides several justifications for his position. First, Bloomberg contends: ‘As the primary drivers of climate change, cities must take the lead in tackling it.’³² Second, Bloomberg argued that ‘mayors everywhere tend to be more pragmatic and less ideological than national legislators.’³³ Third, ‘mayors see fighting climate change as a spur to faster economic growth.’³⁴ Fourth, Bloomberg observes that urban density has also prompted mayors to take climate action. Finally, Bloomberg emphasizes the nexus between climate change and public health. He observed that ‘the largest sources of air pollution that threaten public health are also the biggest sources of the greenhouse gases that are warming our planet.’³⁵

Bloomberg was appointed UN Special Envoy on Cities and Climate Change on the 31 January 2014. He was appointed chair of the Financial Stability Board Task Force on climate-related financial disclosures in December 2015. Bloomberg also helped launch America’s Pledge initiative, which will aggregate and quantify the actions of states, cities, businesses, and non-national actors in the United States to drive down greenhouse gas emissions, consistent with the *Paris Agreement* 2015. The new United Nations Secretary-General has appointed Bloomberg as his Special Envoy for Climate Action in March 2018.³⁶

There has been some progressive criticism of Bloomberg’s position. Human geographer David Harvey was critical of Bloomberg’s approach to ruling New York City – suggesting that the billionaire was ‘turning Manhattan in effect into one vast gated community for the rich.’³⁷ Sceptical of top-down action, Naomi Klein has questioned whether billionaires are best placed

³⁰ Mike Bloomberg and Carl Pope, *Climate of Hope: How Citizens, Businesses, and Citizens Can Save the Planet* (St. Martin’s Press, 1st ed, 2017).

³¹ *Ibid*; 20.

³² *Ibid*; 21.

³³ *Ibid*.

³⁴ *Ibid*.

³⁵ *Ibid*; 23.

³⁶ United Nations Secretary-General, ‘Secretary-General Appoints Michael R. Bloomberg of United States Special Envoy for Climate Change’ (United Nations Meetings, Coverage and Press Releases SG/A/1791*-BIO/5069*-ENV/DEV/1836, 5 March 2018).

³⁷ David Harvey, *Rebel Cities: From the Right to the Urban Revolution* (Verso Books, 2012) 23.

to drive climate action. She has highlighted contradictions between Bloomberg's policies and investments: 'While talking a good game about carbon bubbles and stranded assets... Bloomberg has made no discernible attempt to manage his own vast wealth in a manner that reflects these concerns'.³⁸ Noting investments in Willett Advisors, a firm specializing in oil and gas assets', Naomi Klein contends that 'these investment choices do raise uncomfortable questions about Bloomberg's status as a climate hero, as well as his 2014 appointment as a United Nations special envoy for cities and climate change'.³⁹ She suggests: 'At the very least, they demonstrate that seeing the risks climate change poses to financial markets in the long term may not be enough to curtail the temptation to profit from planet destabilization in the short term.'⁴⁰ Klein would suggest that a vibrant civil society in New York has pressed its elected leaders to take action in respect of climate change.

Mike Bloomberg is certainly not without his opponents from the conservative side of politics. Bloomberg has been a critic of Donald Trump – as a Presidential candidate and a President.⁴¹ The relationship between Bloomberg and Trump has soured.⁴² Bloomberg has been critical of Trump's climate denial.⁴³ Bloomberg declared: 'What we need is a president that can lead us forward, instead of trying to drag us backwards.'⁴⁴ There was some discussion as to whether Mike Bloomberg will seek to be a presidential challenger to President Donald Trump in the future.⁴⁵ In March 2019, Bloomberg said that he would not run for President in 2020.⁴⁶ Instead, he launched a new campaign called Beyond Carbon – 'a grassroots effort to begin moving America as quickly as possible away from oil and gas and toward a 100 percent clean energy economy'.⁴⁷

³⁸ Naomi Klein (n 26) 235.

³⁹ Ibid; 236.

⁴⁰ Ibid.

⁴¹ Oliver Darcy, 'Bloomberg Rips Trump with Brutal DNC Speech: 'The richest thing about Donald Trump is his hypocrisy'', *Business Insider Australia* (Web Page, 28 July 2016) <<https://www.businessinsider.com.au/bloomberg-trump-dnc-speech-convention-2016-7?r=US&IR=T>>.

⁴² William Neuman, 'For Trump and Bloomberg, Cordial Ties Have Soured', *The New York Times* (online, 28 July 2016) <https://www.nytimes.com/2016/07/29/nyregion/for-trump-and-bloomberg-cordial-ties-have-soured.html?_r=0>.

⁴³ Erin Durkin, 'Michael Bloomberg Takes Aim at Trump in New Hampshire', *The Guardian* (online, 30 January 2019) <<https://www.theguardian.com/us-news/2019/jan/29/michael-bloomberg-new-hampshire-2020-trump>>.

⁴⁴ Ibid.

⁴⁵ Willie Brown, 'He took on Climate Change. Will Michael Bloomberg take on Trump?', *San Francisco Chronicle* (Web Page, 15 September 2018) <<https://www.sfchronicle.com/bayarea/williesworld/article/He-took-on-climate-change-Will-Michael-Bloomberg-13231408.php>>.

⁴⁶ Michael R. Bloomberg, 'Our Highest Office, My Deepest Obligation', *Bloomberg Opinion* (Web Page, 6 March 2019) <<https://www.bloomberg.com/opinion/articles/2019-03-05/our-highest-office-my-deepest-obligation>>.

⁴⁷ Ibid.

B The New York Mayor Bill de Blasio

At the New York Climate Summit in 2014, the City of New York played a critical role – as a site of popular climate marches and protests; as a host of a number of events; and as an organiser of networked climate action.

At the New York Climate Summit, the New York Mayor Bill de Blasio warned of the existential threat posed by climate change.⁴⁸ Noting the damage caused by Hurricane Sandy, he promised that New York would lead cities around the world in taking climate action: ‘New Yorkers are facing the risks of rising sea levels, increased temperatures and heat waves, and increasing frequency of intense storms’.⁴⁹ The New York Mayor was focused upon civic environmentalism, and promised to improve energy efficiency in the city, and cut carbon emissions. He promised to reduce greenhouse gases produced by the city by 80% by 2050.⁵⁰ (However, the long-term of nature of the target has received mixed reviews).

As the United Nations Special Envoy for Cities and Climate Change, Mike Bloomberg, also made an important report to the United Nations.⁵¹ He maintained that his recent research with the C40 and the Stockholm Environment Institute showed that ‘if all cities took on aggressive new efforts to reduce building, transportation and waste energy use, they could potentially reduce annual greenhouse gas (GHG) emissions by an additional 3.7 Gigatons (Gt) CO₂e by 2030 over what national policies and actions are currently on track to achieve.’⁵²

Bill de Blasio has run as a Presidential contender for the Democrats in 2020; but he is unlikely to progress in a crowded field.⁵³

⁴⁸ Michael M. Grynbaum, ‘At U.N., de Blasio Warns of ‘Existential Threat’ From Climate Change’, *The New York Times* (online, 23 September 2014) <<https://www.nytimes.com/2014/09/24/nyregion/at-un-de-blasio-warns-of-existential-threat-from-climate-change.html>>.

⁴⁹ *Ibid.*

⁵⁰ Matt Flegenheimer, ‘De Blasio Orders a Greener City, Setting Goals for Energy Efficiency of Buildings’, *The New York Times* (online, 20 September 2014) <https://www.nytimes.com/2014/09/21/nyregion/new-york-city-plans-major-energy-efficiency-improvements-in-its-buildings.html?_r=0>.

⁵¹ C40 Cities Organisation, ‘Press Release: New Research Shows Cities Have the Potential to Reduce Annual Greenhouse Gas Emissions by 8 Gigatons by 2050 Over Current National Targets’ (Press Release, 23 September 2014).

⁵² *Ibid.*

⁵³ Erin Durkin, ‘Bill de Blasio Announces 2020 Presidential Bid’, *The Guardian* (online, 16 May 2019) <<https://www.theguardian.com/us-news/2019/may/16/bill-de-blasio-2020-presidential-campaign>>; Emily Stewart, ‘Bill de Blasio’s Inexplicable President Bid, Explained’, *Vox* (Web Page, 21 June 2019) <<https://www.vox.com/policy-and-politics/2019/6/21/18693091/bill-de-blasio-president-debate-new-york>>.

C Green New Deal

At a federal level, Democrats Rep. Alexandra Ocasio-Cortez and Senator Ed Markey have sponsored resolutions for a Green New Deal.⁵⁴ The resolutions sought to achieve the goals of net-zero greenhouse gas emissions; establishing millions of high-wage jobs and ensuring economic security for all; investing in infrastructure and industry; securing clean air and water, climate and community resiliency, healthy food, access to nature, and a sustainable environment for all; and promoting justice and equality. The resolutions called for a 10-year national mobilization effort. Amongst other things, the Green New Deal including building climate-resilient infrastructure; investing in renewable energy upgrading to energy-efficient smart grids; and overhauling transportation systems in the United States.

The initiative has also inspired state-based efforts to achieve a Green New Deal. In June 2019, the New York State Senate and Assembly passed the *New York Climate Leadership and Community Protection Act 2019* (NY).⁵⁵ The legislation acknowledged that ‘Climate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York.’⁵⁶ Senator Jen Metzger declared: ‘This nation-leading legislation puts us on a path to a clean energy economy that will create thousands of good-paying New York jobs, end our dependence on imported fossil fuels, and protect public health and the environment for generations to come.’⁵⁷ The legislation requires that the state generate 70% of its energy from renewable sources by 2030. The legislation has the goal of achieving 100% carbon-free electricity generation by 2040.

In July 2019, the New York Governor Andrew Cuomo signed the Green New Deal bill passed by the New York legislature.⁵⁸ Cuomo stressed: ‘With this agreement, New York will lead the way in developing the largest source of offshore wind power in the nation, and today I will sign

⁵⁴ Recognizing the Duty of the Federal Government to Create a New Green Deal, HR Res 109, 116th Congress (2019-2020); Recognizing the Duty of the Federal Government to Create a New Green Deal, S Res 59, 116th Congress (2019-2020).

⁵⁵ Relates to the New York state climate leadership and community protection act, Senate Bill S6599 A8429, 2019-2020 Legislative Session, Senate Assembly (2019).

⁵⁶ *Ibid.*

⁵⁷ Senator Jen Metzger, ‘Senate and Assembly Pass Climate Leadership and Community Protection Act’, *The New York State Senate* (Web Page, 19 June 2019) <<https://www.nysenate.gov/newsroom/press-releases/jen-metzger/senate-and-assembly-pass-climate-leadership-and-community>>.

⁵⁸ Alexander C. Kaufman, ‘New York State Reaches Landmark Deal on Green New Deal-Style Climate Bill’, *The Huffington Post: Environment* (online, 18 June 2019) <https://www.huffingtonpost.com.au/entry/new-york-climate-bill_n_5c5853d0e4b00187b55346ae>; Keshia Clukey, ‘New York Passes Its Own Green New Deal with Aggressive Targets’, *Bloomberg* (online, 19 June 2019) <<https://www.bloomberg.com/news/articles/2019-06-19/new-york-passing-its-own-green-new-deal-with-aggressive-targets>>; John Timmer, ‘New York Passes Its Green New Deal, Announces Massive Offshore Wind Push’, *Ars Technica* (Web Page, 20 July 2019) <<https://arstechnica.com/science/2019/07/new-york-passes-its-green-new-deal-announces-massive-offshore-wind-push/>>.

the most aggressive climate law in the United States of America.’⁵⁹ Cuomo remarked: ‘As our leaders in Washington fail to take action, New York needs to lead in this time of great crises for our planet.’⁶⁰ New York has still a long way to go before it becomes a zero-carbon city.⁶¹ Nonetheless, the initiative may encourage other states and cities in the United States to adopt Green New Deal legislation; and will provide further impetus for a Federal regime for a Green New Deal.⁶²

D C40

C40 is ‘a global network of large cities taking action to address climate change by developing and implementing policies and programs that generate measurable reductions in both greenhouse gas emissions and climate risks.’⁶³

The C40 Cities Climate Leadership initiative was started back in 2005.⁶⁴ The Mayor of London Kern Livingstone played a key role in the establishment of the organisation in convening representatives from 18 megacities to pursue action and co-operation on reducing greenhouse gases. The meeting resulted in an agreement to cooperate on reducing climate emissions by taking various action, most notably the creation of procurement policies and alliances to accelerate the uptake of clean technologies. London Mayor Livingstone served as C40’s first chair; established the C40 Secretariat and Steering Committee; and initiated the use of C40 workshops to exchange best practices amongst C40 Cities.⁶⁵

Mike Bloomberg was chair of C40 in November 2010. He has since become the President of C40. Bloomberg has emphasized: ‘While international negotiations continue to make incremental progress, C40 Cities are forging ahead.’⁶⁶ He stressed: ‘Collectively they have taken more than 4,700 actions to tackle climate change, and the will to do more is stronger than

⁵⁹ Governor Andrew M. Cuomo, New York State, ‘Governor Cuomo Executes the Nation’s Largest Offshore Wind Agreement and Signs Historic Climate Leadership and Community Protection Act’ (Web Page, 18 July 2019) <<https://www.governor.ny.gov/news/governor-cuomo-executes-nations-largest-offshore-wind-agreement-and-signs-historic-climate>>.

⁶⁰ Victoria Bekiempis, ‘New York To Pass Most Progressive Climate Crisis Plan in US’, *The Guardian* (online, 20 June 2019) <<https://www.theguardian.com/us-news/2019/jun/19/new-york-climate-crisis-emergency-plan-progressive>>.

⁶¹ Paul Chatterton, ‘The Zero-Carbon City’ in Vandana Shiva et al, *This is Not a Drill: An Extinction Rebellion Handbook*, ed Clare Farrell, Alison Green, Sam Knights and William Skeaping (Penguin Random House Press, 2019) 162-171.

⁶² Above (n 26).

⁶³ ‘C40 Cities’, *C40 Cities Organisation* (Web Page, 2019) <<https://www.c40.org/>>.

⁶⁴ ‘History of the C40’, *C40 Cities Organisation* (Web Page, 2019) <<https://www.c40.org/history>>.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

ever'.⁶⁷ Bloomberg noted: 'As innovators and practitioners, our cities are at the forefront of this issue – arguably the greatest challenge of our time.'⁶⁸

The C40 Cities Climate Leadership Group highlighted the range of its services for cities, including: 'direct technical assistance; facilitation of peer-to-peer exchange; and research, knowledge management & communications'.⁶⁹ The C40 group maintained: 'Competitive advantages allow individual cities to pursue a subset of strategies that will lead to meaningful emissions reductions at the local level'.⁷⁰ In its view, 'Cities can be nimble in implementing policy changes, but are also readily accountable to their citizens, local businesses, schools, and institutions for the success or failure of their actions'.⁷¹ The C40 group emphasized: 'To this extent, cities are a test-bed for larger action: policies and programs that work - environmentally, economically and politically – have powerful potential to effect change globally'.⁷²

Cities have made significant progress in curbing carbon emissions.⁷³ There remain significant challenges in fulfilling the United Nations Sustainable Development Goals in the context of mega-cities and rapid, expansive urbanisation.

E *The Paris Agreement 2015*

After winning the election race, in 2017, President Donald Trump said that he would withdraw the United States from the *Paris Agreement 2015*.⁷⁴ Trump explained the rationale for his decision: 'The Paris Climate Accord is simply the latest example of Washington entering into an agreement that disadvantages the United States to the exclusive benefit of other countries, leaving American workers - who I love - and taxpayers to absorb the cost in terms of lost jobs, lower wages, shuttered factories, and vastly diminished economic production'.⁷⁵ Trump said that 'the United States will cease all implementation of the non-binding Paris Accord and the draconian financial and economic burdens the agreement imposes on our country'.⁷⁶ In

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ 'C40 Fact Sheet: Why Cities?', *C40 Cities Organisation* (Web Page, 2015) <https://c40-production-images.s3.amazonaws.com/fact_sheets/images/5_Why_Cities_Dec_2015.original.pdf?1448476459>.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Matt McGrath, 'Cities Lead the Way on Curbing Carbon Emissions', *British Broadcasting Corporation (BBC) News* (online, 14 September 2018) <<https://www.bbc.com/news/science-environment-45515216>>.

⁷⁴ Associated Press, 'Paris Climate Deal: Trump Pulls US Out of 2015 Accord', *BBC News* (online, 1 June 2017) <<https://www.bbc.com/news/world-us-canada-40127326>>.

⁷⁵ Rose Garden, 'Statement on the Paris Climate Accord', *The White House: Energy & Environment* (Web Page, 1 June 2017) <<https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>>.

⁷⁶ Ibid.

particular, he emphasized that this would involve ‘ending the implementation of the nationally determined contribution and, very importantly, the Green Climate Fund which is costing the United States a vast fortune.’⁷⁷ The Trump administration clarified that the United States would abide by the four-year exit process under the Article 28 of the *Paris Agreement 2015*. Thus, the United States withdrawal would take effect at the 4th November 2020 at the earliest. So much will depend upon whether Trump is re-elected for a second term.

In the face of the withdrawal of the United States from the *Paris Agreement 2015* under President Donald Trump, a number of states in the United States have formed a coalition to support the *Paris Agreement 2015*.⁷⁸ The Climate Mayors initiative is a network of United States mayors working together to demonstrate leadership on climate change.⁷⁹ 407 US Climate Mayors – including the New York Mayor - have committed to adopt, honour and uphold the goals of the *Paris Agreement 2015*.⁸⁰ The group promised: ‘We will intensify efforts to meet each of our cities’ current climate goals, push for new action to meet the 1.5 degrees Celsius target, and work together to create a 21st century clean energy economy’.⁸¹

The Climate Mayors vowed to support clean technology by increasing investments in renewable energy, energy efficiency, and electric vehicles.⁸² The Climate Mayors promised: ‘We will increase our efforts to cut greenhouse gas emissions, create a clean energy economy, and stand for environmental justice’.⁸³ The Climate Mayors supported a networked approach to international action on climate change to ‘protect the planet from devastating climate risks.’⁸⁴ This initiative has blossomed – since the departure of the Federal administration from the *Paris Agreement 2015*.⁸⁵

At the Global Climate Action Summit in San Francisco in 2018, United States cities and states vowed to take further action in respect of combatting climate change.⁸⁶ At this event, the Mayor

⁷⁷ Ibid.

⁷⁸ ‘About Us’, *United States Climate Alliance* (Web Page) <<https://www.usclimatealliance.org/about-us/>>.

⁷⁹ ‘Climate Mayors’, *Climate Mayors Organisation* (Web Page) <<http://climatemayors.org/>>.

⁸⁰ Climate Mayors, ‘407 US Climate Mayors Commit to Adopt, Honor and Uphold Paris Climate Agreement Goals: Statement From The Climate Mayors in Response to President Trump’s Withdrawal From The Paris Climate Agreement’, *Medium* (Web Page, 2 June 2017) <<https://medium.com/@ClimateMayors/climate-mayors-commit-to-adopt-honor-and-uphold-paris-climate-agreement-goals-ba566e260097>>.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Oliver Milman, ‘Paris Deal: A Year After Trump Announced US Exit, A Coalition Fights to Fill the Gap’, *The Guardian* (online, 1 June 2018) <<https://www.theguardian.com/us-news/2018/may/31/paris-climate-deal-trump-exit-resistance>>.

⁸⁶ Alison Durkee, ‘How US Cities and States Plan to Push Back Against the Trump Administration on Climate Change’, *Mic* (Web Page, 18 September 2018) <<https://mic.com/articles/191351/how-us-cities-and-states-plan-to-push-back-against-the-trump-administration-on-climate-change#.yf4MISlmt>>.

Bill De Blasio, Comptroller Stringer, and other trustees of New York City's pension funds announced a goal to increase investments of the NYC Funds in climate change solutions to \$4 billion.⁸⁷

Professor Timmons Roberts of Brown University has reflected: 'Action, though, will need to come at the local and state levels, and with efforts by major corporations, small businesses, universities, hospitals, and households'.⁸⁸ He contended: 'Pledges by cities and institutions to go to net zero emissions could make a big difference, as long as they are accompanied by realistic plans and durable resource-allocation decisions'.⁸⁹

In turn, the Trump administration has opposed municipal climate litigation by United States cities in the courts.

III. FOSSIL FUEL DIVESTMENT

A The Fossil Fuel Divestment Movement

As part of the campaign to challenge investments in coal, oil, and gas, 350.org, Bill McKibben, Naomi Klein and others have pushed for a wide range of organisations to engage in fossil fuel divestment.⁹⁰ While the fossil fuel divestment campaign initially focused upon universities and educational institutions,⁹¹ the movement soon targeted towns, cities, and states. The fossil fuel divestment movement has sought to challenge the moral legitimacy of the fossil fuel industry.⁹² A key focus has been encouraging cities and states and governments to engage in fossil fuel divestment. In the United States, a number of cities have committed to fossil fuel divestment by 2018 – including Amherst (MA), Ann Arbor (MI), Ashland (WI), Bayfield (WI), Belfast (ME), Berkeley (CA), Boulder (CO), Brisbane (CA), Cambridge (MA), Concord (MA), Corvallis (OR), Eugene (OR), Framingham (MA), Great Barrington (MA), Ithaca (NY), Madison (WI), Minneapolis (MN), New London (CT), Northampton (MA), Oakland (CA),

⁸⁷ Global Climate Action Summit, 'Mayor and Comptroller Announce Pension Fund Goal to Invest \$4 Billion in Climate Change Solutions By 2021', *Global Climate Action Summit* (Web Page, 13 September 2018) <<https://www.globalclimateactionsummit.org/mayor-announce-pension-fund/>>.

⁸⁸ Timmons Roberts, 'One Year Since Trump's Withdrawal from the Paris Climate Agreement', *Brookings* (Web Page, 1 June 2018) <<https://www.brookings.edu/blog/planetpolicy/2018/06/01/one-year-since-trumps-withdrawal-from-the-paris-climate-agreement/>>.

⁸⁹ *Ibid.*

⁹⁰ Above (n 26); Avi Lewis and Naomi Klein, *This Changes Everything* (Klein Lewis Productions, 2015).

⁹¹ Benjamin Franta, 'Litigation in the Fossil Fuel Divestment Movement' (2017) 39(4) *Law & Policy (University of Denver)* 393.

⁹² Jeremy Moss, 'The Morality of Divestment' (2017) 39(4) *Law & Policy (University of Denver)* 412; Julie Ayling, 'A Contest for Legitimacy: The Divestment Movement and the Fossil Fuel Industry' (2017) 39(4) *Law & Policy (University of Denver)* 349.

Palo Alto (CA), Portland (OR),⁹³ Providence (RI), Provincetown (MA), Richmond (CA), San Francisco (CA),⁹⁴ San Luis Obispo (CA), Santa Fe (NM), Santa Monica (CA), Seattle (WA),⁹⁵ Sudbury (MA), and Truro (MA).⁹⁶ In this context, the push for fossil fuel divestment in respect of the New York City Employees Retirement System and the Teachers Retirement System of the City of New York is significant.

Internationally, a number of other cities have also engaged in fossil fuel divestment. In Australia, the City of Sydney has endorsed fossil fuel divestment,⁹⁷ as has the City of Melbourne.⁹⁸ The coal city of Newcastle has supported fossil fuel divestment.⁹⁹ The port city of Fremantle has supported fossil fuel divestment.¹⁰⁰ There has also been a number of other towns and councils to support fossil fuel divestment – including Albury, Armadale, Ballarat, Leichhardt, Lismore, Marrickville, Melville, Moreland, Stirling, Swan, Vincent, and Wodonga. In New Zealand, Christchurch, Dunedin and Palmerston North have supported fossil fuel divestment.

In the European Union, a number of major cities have embraced fossil fuel divestment – including Copenhagen and Odense in Denmark, Paris and Lille in France, Stuttgart in Germany, Eindhoven in the Netherlands; Stockholm, Malmo, and Uppsala in Sweden; Oxford, Bristol, Derby, Norwich and Sheffield in the United Kingdom. Norway's Pension Fund has

⁹³ Steve Law, 'City, County Join World Fossil Fuels Divestment Movement', *Sustainable Life* (Web Page, 24 September 2015) <<https://pamplinmedia.com/sl/274399-150205-city-county-join-world-fossil-fuels-divestment-movement-%3E>>.

⁹⁴ Reader Contribution By Press Release, 'Resolution Introduced to Push San Francisco to Divest from Fossil Fuels', *Mother Earth News: The Original Guide to Living Wisely* (Web Page, 18 February 2013) <<http://www.motherearthnews.com/renewable-energy/fossil-fuel-divestment-zb0z1302zpit.aspx>>.

⁹⁵ 'Seattle Mayor Orders City to Divest from Fossil Fuels', *350 organisation* (Web Page, 22 December 2012) <<https://350.org/seattle-mayor-orders-city-divest-fossil-fuels/>>.

⁹⁶ 'Overview', *Fossil Free: Divestment Organisation* (Web Page) <<https://gofossilfree.org/divestment/commitments/>>; 'Fossil Fuel Divestment: Cities & States', *Fossil Free: Divestment Organisation* (Web Page) <<https://campaigns.gofossilfree.org/efforts/fossil-fuel-divestment-cities-states-1>>.

⁹⁷ Michael Slezak, 'City of Sydney Council to Divest from Fossil Fuels Regardless of Election Result', *The Guardian* (online, 6 September 2016) <<https://www.theguardian.com/environment/2016/sep/06/city-of-sydney-council-divest-fossil-fuels-regardless-election-result>>.

⁹⁸ Amanda Saunders, 'City of Melbourne Steps Up Anti-Coal Push and Education Union Divests', *The Sydney Morning Herald* (online, 27 October 2015) <<https://www.smh.com.au/business/companies/city-of-melbourne-steps-up-anticoal-push-and-education-union-divests-20151026-gkir66.html>>.

⁹⁹ 'Home to World's Largest Coal Port, Newcastle City Council Divests From Fossil Fuels', *350 Organisation Australia* (Web Page, 26 August 2015) <<https://350.org.au/press-release/home-to-worlds-largest-coal-port-newcastle-city-council-divests-from-fossil-fuels/>>.

¹⁰⁰ 'The City of Fremantle Commits to Fossil-Fuel Divestment', *Fremantle Gazette* (Web Page, 18 November 2014) <<https://www.communitynews.com.au/fremantle-gazette/news/citys-historic-move-to-fossil-fuel-divestment/>>.

engaged in fossil fuel divestment.¹⁰¹ The City of Cape Town has supported fossil fuel divestment in South Africa.¹⁰²

It remains difficult to judge the trajectory of the fossil fuel divestment movement.¹⁰³ It is important to take into account not only the instrumental and pragmatic process of mandating change, but also the symbolic and expressive role of the fossil fuel divestment movement.¹⁰⁴

B *Fossil Free New York*

The New York fossil fuel divestment movement began as grassroots, community activism. Fossil Free New York campaigned for a fast and justice transition to 100% renewable energy; a ban on all new and planned fossil fuel infrastructure; and making corporate polluters pay and fossil fuel divestment.¹⁰⁵ Fossil Free New York was concerned about questions of environmental justice in respect of climate disasters, such as Superstorm Sandy: ‘It’s communities of color and the poor — who have done the least to cause the problem — who are left to bear the brunt of the destruction’.¹⁰⁶ The civil society organisation called for fossil fuel companies to be held accountable for climate harm and damage.

Fossil Fuel New York declared: ‘By showing that a state like New York can go Fossil Free, we can set the bar for any state or city, large or small, to ditch oil, gas and coal and embrace climate solutions.’¹⁰⁷ Fossil Free New York vowed to push for a vision of climate justice: ‘We know a better New York — where all of us can live in healthy communities with clean air and clean water — is possible.’¹⁰⁸ Fossil fuel divestment was a key part of its strategy.¹⁰⁹

Building upon the success of the People’s Climate March in 2014, Fossil Free New York focused upon encouraging the City of New York to divest from fossil fuels and reinvest in renewable energy.¹¹⁰ Fossil Fuel New York was delighted by the ultimate success of its

¹⁰¹ Matthew Rimmer, ‘Investing in the Future: Norway, Climate Change, and Fossil Fuel Divestment’ in Gustavo Sosa-Nunez and Ed Atkins (ed), *Environment, Climate Change and International Relations: Tendencies, Assessments and Perspectives* (E-International Relations, 2016) 206-225.

¹⁰² ‘Cape Town Heeds the Fossil Fuel Divestment Call’, *350.org* (Web Page, 21 July 2017) <<https://www.commondreams.org/newswire/2017/07/21/cape-town-heeds-fossil-fuel-divestment-call>>.

¹⁰³ Neil Gunningham, ‘Review Essay: Divestment, Non-state Governance, and Climate Change’ (2017) 39(4) *Law & Policy* 309.

¹⁰⁴ Neil Gunningham, ‘Building Norms from the Grassroots Up: Divestment, Expressive Politics, and Climate Change’ (2017) 39(4) *Law & Policy* 372.

¹⁰⁵ ‘About Fossil Free New York’, *Fossil Free New York Organisation* (Web Page) <<https://gofossilfree.org/ny/>>.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ 350.org, ‘#ClimateJobsJustice Accountability Forum – Divest New York’ (YouTube, 19 May 2017) 00:00:00-00:01:52 <<https://www.youtube.com/watch?v=why4kZFvBL4>>.

¹¹⁰ *Ibid.*

campaign: ‘After 5 years of campaigning, New York City became the first major city in the USA to announced it was divesting its \$190 billion pension funds from fossil fuels and launching a multi-billion dollar lawsuit against Big Oil.’¹¹¹

It should be noted that a number of other New York institutions have engaged in fossil fuel divestment. Columbia University in the City of New York has divested itself from coal.¹¹² A number of New York based faith organisations have engaged in fossil fuel divestment. The Metropolitan New York Synod of the Evangelical Church in America formulated and passed a divestment resolution in 2017.¹¹³ The New York Conference of the United Methodist Church; the New York Quarterly Meeting; and the Union Theological Seminary in New York City have also engaged in fossil fuel divestment. There has also been a campaign to encourage the American Museum of Natural History – based in New York – to divest from fossil fuels.¹¹⁴ (Ironically enough, the Museum was a staging point for the People’s Climate March in 2014).

C The City of New York Divestment Decision

In January 2018, Mayor Bill de Blasio, Comptroller Scott M. Stringer and trustees of the City of New York’s \$189 billion pension funds announced the goal to divest city funds from fossil fuel reserve owners within five years. New York Comptroller Scott M. Stringer commented: ‘This is a first-in-the-nation step to protect our future and our planet – for this generation and the next.’¹¹⁵ He stressed: ‘Safeguarding the retirement of our city’s police officers, teachers, firefighters and city workers is our top priority, and we believe that their financial future is linked to the sustainability of the planet.’¹¹⁶ Stringer maintained that ‘we are committed to forging a path forward while remaining laser-focused on our role as fiduciaries to the Systems and beneficiaries we serve.’¹¹⁷ Trustees expressed support for the decision.

¹¹¹ Ibid.

¹¹² Columbia University, ‘Columbia Announces Divestment from Thermal Coal Producers’ (Press Release, 13 March 2017).

¹¹³ ‘2018 Metropolitan New York Synod Annual Assembly’, *Metropolitan New York Synod* (Web Page, 2018) <https://www.mnys.org/assets/1/6/section_b.pdf>.

¹¹⁴ Suzanne Goldenberg, ‘US Museums Asked to Sever Ties With Fossil Fuel Industry’, *The Guardian* (online, 24 March 2015) <<https://www.theguardian.com/environment/2015/mar/24/us-museums-asked-to-sever-ties-with-fossil-fuel-industry>>; ‘American Museum of Natural History Slashes Fossil Fuel Holdings as Global Divestment Commitments Hit \$5 Trillion in Assets’, *350 organisation* (Press Release, 12 December 2016) <<https://350.org/press-release/american-museum-of-natural-history-slashes-fossil-fuel-holdings/>>; Maria Gallucci, ‘This Major Museum Wants to Prioritize Renewable Energy Investments’, *Mashable Australia* (Web Page, 13 December 2016) <<https://mashable.com/2016/12/12/museum-natural-history-fossil-fuel-divestment/#MJPtqF7X8sqD>>.

¹¹⁵ New York Comptroller, ‘Climate Action: Mayor, Comptroller, Trustees Announce First-in-the-Nation Goal to Divest from Fossil Fuels’ (Press Release, 10 January 2018).

¹¹⁶ Ibid.

¹¹⁷ Ibid.

The United Federations of Teacher (UFT) President Michael Mulgrew was supportive of ‘our shared goal of divesting from fossil fuels within the next five years.’¹¹⁸ Highlighting the connection between climate change and public health, Jill Furillo, RN, Executive Director, New York State Nurses Association (NYSNA) applauded ‘the Mayor, the Comptroller and the pension trustees for making these bold moves’.¹¹⁹

A number of politicians also lent their support to the decision. Congressman Joseph Crowley contended: ‘This decision is not only environmentally sound, but also financially prudent.’¹²⁰ Congressman Eliot Engel commented: ‘New York City has long been a leader when it comes to fighting climate change, and this decision to divest from fossil fuels is further proof of that.’¹²¹ Rep. Nydia M. Velázquez commented: ‘By ensuring New York’s pension funds divest from polluters, our City will be voting with its dollars for a greener, more sustainable future.’¹²² State Senators Liz Krueger and Brad Hoylman were of the view that fossil fuel divestment sent an important message that New York City would not adopt a business model, which threatened the planet and the city.

A number of Assembly members supported the fossil fuel divestment decision.¹²³ Assemblyman Luis Sepulveda hoped that the City of New York’s divestment policy and climate litigation was ‘a game changer picked up by other municipalities and states across the nation’.¹²⁴ A number of Council Members also supported the decision.

Noting the contribution of various civil society organisations, Naomi Klein was positive about the developments in respect of fossil fuel divestment in New York.¹²⁵ She framed the discussion in terms of climate justice.¹²⁶ Klein thanked ‘Mayor de Blasio for this historic announcement that New York is divesting from fossil fuels and suing five oil majors.’¹²⁷ She emphasized: ‘What’s happening here is not only about changing the economics of energy, speeding the transition from dirty to clean.’¹²⁸ In her view, ‘It’s also about justice.’¹²⁹

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Naomi Klein, ‘Naomi Klein: “This Could Change the World”’, *The Leap* (Web Page, 10 January 2018) <<https://theleap.org/portfolio-items/naomi-nyc/>>.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

In an editorial about the decision, Bill McKibben noted: ‘Our planet’s most important city was now at war with its richest industry’.¹³⁰ He suggested that ‘the battle to save the planet shifted from largely political to largely financial.’¹³¹ McKibben noted that ‘New York and most of the world’s other great cities aren’t viable if the sea keeps rising: they will be destroyed’.¹³² He observed that New York City – a centre of world finance - had decided to ‘use its considerable power to try to hold the oil companies accountable.’¹³³

D Reinvestment in Renewable Energy

In September 2018, the New York Mayor Bill de Blasio joined with London Mayor Sadiq Khan to call on all cities to divest from fossil fuels.¹³⁴ The pair emphasized that there was growing evidence of the link between climate change and extreme weather events: ‘It’s clear that what we think of now as freak weather in our cities is likely to become the new normal, and that climate change poses a huge threat to the futures of our children, and many generations to come.’¹³⁵ The two Mayors expressed the desire to provide international leadership in respect of climate action by cities: ‘As mayors, we are not only committed to taking bold action to tackle climate change and to improve the lives of those we represent, but also to showing others the way.’¹³⁶ The New York and London Mayors wanted to ‘send a clear message to the fossil fuel industry: change your ways now and join us in tackling climate change’.¹³⁷ The two mayors called on other cities to engage in fossil fuel divestment.¹³⁸ de Blasio and Khan also called for a re-investment in renewable energy and green cities. The mayors of New York and London promised to ‘use our economic might to accelerate the transition to a low-carbon economy.’¹³⁹

At the Climate Action Summit in California, Mayor Bill de Blasio, Comptroller Stringer, and other trustees of New York City’s pension funds announced ‘a new goal to double the investments of the NYC Funds in climate change solutions to \$4 billion or 2% of the City’s

¹³⁰ Bill McKibben, ‘New York City Just Declared War on the Oil Industry’, *The Guardian* (online at 11 January 2018) <<https://www.theguardian.com/commentisfree/2018/jan/11/new-york-city-oil-industry-war-divestment>>.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ Bill de Blasio and Sadiq Khan, ‘As New York and London Mayors, We Call on All Cities to Divest from Fossil Fuels’, *The Guardian* (online, 10 September 2018) <https://www.theguardian.com/commentisfree/2018/sep/10/london-new-york-cities-divest-fossil-fuels-bill-de-blasio-sadiq-khan?CMP=share_btn_tw>.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

\$195 billion pension portfolio over the next 3 years'.¹⁴⁰ The City pension systems will 'aim to double the existing \$2 billion investment across all asset classes to reach \$4 billion of investment in renewable energy, energy efficiency, and other climate solutions'.¹⁴¹ Mayor de Blasio commented that the City of New York would play a leadership role: 'We're taking a stand for generations to come with our goal to double our pension investments in job-creating climate solutions.'¹⁴² New York City Comptroller Scott M. Stringer, observed: 'The future is with big ideas in clean technology, not with big polluters.'¹⁴³ He maintained: 'By pledging to double our holdings in climate solutions we're becoming an important part of that solution.'¹⁴⁴ Carolyn Kormann has noted that the divestment movement has come of age, with major cities embracing and adopting fossil fuel divestment as part of their strategies.¹⁴⁵ She has highlighted the importance of re-investment in respect of renewable energy, green transportation, and smart cities: 'The most important outcome of the divestment movement is how it will redirect money into clean-energy and carbon-neutral technology'.¹⁴⁶

There has been significant progress in respect of the fossil fuel divestment movement, more generally. According to a 2018 report by Arabella Advisors, funds committed to fossil divestment total more than \$US 6 trillion.¹⁴⁷ Jeremy Grantham, co-founder of GMO, has commented that there are strong financial arguments for fossil fuel divestment: 'Investors with long-term horizons should avoid oil stocks on investment grounds'.¹⁴⁸ Mary Robinson, former UN high commissioner on human rights and former president of Ireland, observed: 'I commend the divestment movement for its incredible progress.'¹⁴⁹ She has argued that fossil fuel divestment is a useful means of achieving climate justice.¹⁵⁰

¹⁴⁰ 'Mayor and Comptroller Announce Pension Fund Goal to Invest \$4 Billion in Climate Change Solutions By 2021', *Global Climate Action Summit* (Web Page, 13 September 2018)

<<https://www.globalclimateactions summit.org/mayor-announce-pension-fund/>>.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Carolyn Kormann, 'The Divestment Movement to Combat Climate Change is all Grown Up', *The New Yorker* (Web Page, 14 September 2018) <<https://www.newyorker.com/news/dispatch/the-divestment-movement-to-combat-climate-change-is-all-grown-up>>.

¹⁴⁶ Ibid.

¹⁴⁷ Damian Carrington, 'Fossil Fuel Divestment Funds Rise to \$6tn', *The Guardian* (online, 11 September 2018) <https://www.theguardian.com/environment/2018/sep/10/fossil-fuel-divestment-funds-rise-to-6tn?CMP=share_btn_tw>.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid; Mary Robinson, 'Carbon Divestment is a Shining Example', *The Guardian* (online, 18 February 2014) <<https://www.theguardian.com/commentisfree/2014/feb/17/carbon-divestment-emissions-climate-change>>.

¹⁵⁰ Above (n 24); Mary Robinson, *Everybody Matters: My Life Giving Voice* (Walker & Company, 2012); Matthew Rimmer, 'Mary Robinson's Declaration of Climate Justice: Climate Change, Human Rights, and Fossil Fuel Divestment' in Hugh Breakey, Vesselin Popovski, and Rowena Maguire (eds), *Ethical Values and the Integrity of the Climate Change Regime* (Ashgate Publishing Limited, 2015) 189.

IV. CLIMATE LITIGATION

A Map of Climate Litigation

As well as the public policy strategy of fossil fuel divestment, there has been much interest and excitement amongst environmentalists, lawyers and policymakers in climate litigation as a means of advancing climate law and policy. A 2015 study by Professor Jacqueline Peel and Dean Hari Osofsky compares and contrasts the role of climate litigation in Australia and the United States.¹⁵¹ In 2017, the Sabin Center for Climate Change Law at Columbia University and the United Nations Environment Programme published a global map of climate litigation.¹⁵² A 2019 study provides a further update on global trends in climate change litigation.¹⁵³

There are a number of species of climate litigation, which have become prominent in the United States – including federal statutory claims; constitutional claims; state law claims; common law claims; public trust claims;¹⁵⁴ and securities and financial regulation.¹⁵⁵ Inspired by Professor Mary Christina Wood's work on 'Nature's Trust',¹⁵⁶ there has been a concerted effort by youth plaintiffs to use the public trust doctrine to challenge government inaction on climate change in the United States – at a federal level,¹⁵⁷ and at a state level.¹⁵⁸

A striking new branch of climate litigation has been legal action by cities against fossil fuel companies. The New York climate litigation is the focus of this piece – but there are other relevant actions afoot. The City of San Francisco and the City of Oakland brought public

¹⁵¹ Jacqueline Peel and Hari M. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press, 2015).

¹⁵² United Nations Environment Programme and Sabin Center for Climate Change Law at Columbia University, *The Status of Climate Change Litigation: A Global Review* (Report, May 2017).

¹⁵³ Joana Setzer and Rebecca Byrnes, Grantham Research Institute on Climate Change and the Environment, *Global Trends in Climate Change Litigation: 2019 Snapshot* (Report, July 2019); Sandra Laville, 'Governments and Firms in 28 Countries Sued Over Climate Crisis: Report', *The Guardian* (online, 4 July 2019) <<https://www.theguardian.com/environment/2019/jul/04/governments-and-firms-28-countries-sued-climate-crisis-report>>.

¹⁵⁴ Ken Coghill, Charles Sampford and Tim Smith (ed), *Fiduciary Duty and the Atmospheric Trust* (Ashgate Publishing Limited, 2012); Burns Weston and David Bollier, *Green Governance: Ecological Survival, Human Rights, and the Law of the Commons* (Cambridge University Press, 2014).

¹⁵⁵ 'U.S. Climate Change Litigation', *Climate Case Chart* (Web Page) <<http://climatecasechart.com/us-climate-change-litigation/>>.

¹⁵⁶ Above (n 25).

¹⁵⁷ 'Juliana v. United States: Youth Climate Lawsuit', *Our Children's Trust* (Web Page)

<<https://www.ourchildrenstrust.org/juliana-v-us>>; *Juliana v United States*, 217 F. Supp. 3d 1224 (D. Or., 10 November 2016); *In Re: United States*, 895 F. 3d. 1101 (9th Cir, 2018); *Juliana v United States*, 339 F. Supp. 3d 1062 (D. Or., 7 May 2018).

¹⁵⁸ See *Kanuk v State of Alaska, Department of Natural Resources*, 335 P. 3d 1088 (Alaska SC., 2014); Matthew Rimmer, 'Northern Exposure: Climate Change, Indigenous Rights, and Atmospheric Trust Litigation in Alaska', in referring to above (n 27).

nuisance actions in climate litigation against oil companies.¹⁵⁹ Alsup J asked the parties to provide a tutorial on climate science.¹⁶⁰ However, Alsup J dismissed the action.¹⁶¹ While accepting the ‘science behind global warming’, the judge said that climate change deserved a solution fashioned by the co-equal branches of government. Alsup J concluded: ‘The Court will stay its hand in favor of solutions by the legislative and executive branches.’¹⁶² The City of Oakland and the City of San Francisco are appealing the matter.¹⁶³ There has been concern that the judgment of Alsup J fails to recognise that the climate inaction by the legislative and executive branches of the United States Government.

There have been a suite of lawsuits by United States cities and counties and even one state against fossil fuel companies over the damage caused by climate change. In July 2017, San Mateo County, Marin County and Imperial Beach filed lawsuits in the California Superior Court, seeking damages from 37 fossil fuel companies over sea level rise.¹⁶⁴ In December 2017, Santa Cruz and Santa Cruz County filed lawsuits against the California Superior Court against 29 fossil fuel companies, seeking compensation over climate change related damage.¹⁶⁵ In January 2018, the City of Richmond filed a lawsuit against 29 fossil fuel companies.¹⁶⁶ In April 2018, in Colorado, the City of Boulder, Boulder County and San Miguel filed a lawsuit, seeking to hold Exxon and Suncor accountable for costs related to climate change.¹⁶⁷ In May 2018, King County, Washington, filed a climate lawsuit against BP, Chevron, ConocoPhillips, Exxon and Royal Dutch Shell.¹⁶⁸ In July 2018, the State of Rhode Island sued fossil fuel companies over the effects of climate change.¹⁶⁹ In July 2018, Baltimore has brought a similar climate lawsuit to that of New York, alleging that oil companies had engaged in public nuisance, trespass, and violations of Maryland’s Consumer Protection Act.¹⁷⁰

¹⁵⁹ *City of Oakland v. BP P.L.C.*, No. C 18-16663 (ND Cal, 9th Cir, 26 July 2019).

¹⁶⁰ Adam Rogers, ‘In the Courtroom, Climate Science Needs Substance – and Style’, *Wired Magazine* (online, 21 March 2018) <<https://www.wired.com/story/courtroom-climate-science/>>.

¹⁶¹ Above (n 159).

¹⁶² *Ibid.*

¹⁶³ Appeal filed by *City of Oakland v BP P.L.C.*, No. C 18-16663 (Cal. Ct. App., 9th Cir., 4 September 2018).

¹⁶⁴ *County of San Mateo v Chevron Corp.*, No. C 18-15499 (Cal. Ct. App., 9th Cir., 17 July 2017).

¹⁶⁵ *Ibid.*

¹⁶⁶ *City of Richmond v Chevron Corp.*, No. C 18-00055 (Cal. S. Ct., 22 January 2018).

¹⁶⁷ *Board of County Commissioners of Boulder County v Suncor Energy (U.S.A.) Inc.*, No. C 8-01672 (Col. US D Ct., 8 October 2018)

¹⁶⁸ *King County v BP P.L.C.*, No. C 18-00758-RSL (Sea. F. Supp. 2d, 17 October 2018).

¹⁶⁹ *Rhode Island v Chevron Corp.*, No. PC 2018-4716 (S. Ct., 2 July 2018); Nicholas Kusnetz, ‘Rhode Island Sues Oil Companies Over Climate Change, First State in Wave of Lawsuits’, *Inside Climate News* (Web Page, 2 July 2018) <<https://insideclimatenews.org/news/02072018/rhode-island-climate-change-lawsuit-fossil-fuel-industry-rising-sea-levels-heat-waves-storms>>.

¹⁷⁰ *Mayor & City Council of Baltimore v BP P.L.C.*, No. 24-C-18-004219 (MD Bal Cir. Ct., 2018); David Hasemyer and Nicholas Kusnetz, ‘Baltimore Sues 26 Fossil Fuels Companies Over Climate Change’, *Inside Climate News* (Web Page, 20 July 2018) <<https://insideclimatenews.org/news/20072018/baltimore-climate->

In this context, the City of New York action against fossil fuel companies is an important precedent in respect of municipal climate litigation.

B The City of New York Complaint and the Response of the Fossil Fuel Companies

In January 2018, the City of New York launched a legal complaint against BP, Chevron Corporation, Conoco Phillips, the Exxon Mobil Corporation and Royal Dutch Shell PLC.¹⁷¹ Mayor Bill de Blasio commented: ‘As climate change continues to worsen, it’s up to the fossil fuel companies whose greed put us in this position to shoulder the cost of making New York safer and more resilient’.¹⁷² The complaint of the City of New York emphasized: ‘This lawsuit is based upon the fundamental principle that a corporation that makes a product causing severe harm when used exactly as intended should shoulder the costs of abating that harm.’¹⁷³ The complaint alleged three causes of action – public nuisance; private nuisance; and trespass.

The City of New York highlighted the ‘Defendants’ past and ongoing actions are harming New York City now: the City already has suffered damage from climate change, including inundation, erosion, and regular tidal flooding of its property.’¹⁷⁴ Alluding to the Exxon Knew investigations,¹⁷⁵ the City commented: ‘Defendants knew decades ago that the fossil fuel products they produce and sell were altering the atmosphere and would cause a dire global warming problem.’¹⁷⁶ The City requested compensatory damages for past and future costs incurred by the City to protect its infrastructure and property, and to protect the public health, safety, and property of its residents from the effects of climate change.

There was an Amicus brief filed by Niskanen Center in support of the plaintiff, the City of New York.¹⁷⁷ The think-tank emphasized: ‘Climate change imposes significant damage on both public and private property without the consent of the property owners.’¹⁷⁸

change-lawsuit-inner-harbor-coastal-flooding-sea-level-rise-urban-waterfront-revitalization>; Megan Geuss, ‘Judge Says Climate Issues the Purview of Federal Government, Tosses NYC Lawsuit’, *Ars Technica* (Web Page, 21 July 2018) <<https://arstechnica.com/tech-policy/2018/07/judge-dismisses-new-york-city-climate-lawsuit-against-oil-companies/>>.

¹⁷¹ Above (n 14); Complaint of *City of New York v BP P.L.C.*, 2018 WL 345319.

¹⁷² New York Comptroller, ‘Climate Action: Mayor, Comptroller, Trustees Announce First-in-the-Nation Goal to Divest from Fossil Fuels’ (Press Release, 10 January 2018).

¹⁷³ Above (n 171).

¹⁷⁴ Ibid.

¹⁷⁵ Neela Banerjee, John Cushman Jr., David Hasemyer, and Lisa Song, ‘Exxon: The Road Not Taken’, *Inside Climate News* (online at 2015) <<https://insideclimatenews.org/content/Exxon-The-Road-Not-Taken>>.

¹⁷⁶ Above (n 171).

¹⁷⁷ *United States et al v United States Oregon DC and Juliana et al*, No. C 17-71692 (US Ct. App., 9th Cir., 5 September 2017).

¹⁷⁸ Ibid.

In reply, Chevron Corporation, ConocoPhillips, and ExxonMobil Corporation sought to dismiss the complaint of the City of New York.¹⁷⁹ In its preliminary statement, the fossil fuel companies argued that the ‘Plaintiff’s boundless theory of liability has no precedent in either state or federal law’.¹⁸⁰ The fossil fuel companies argued that the ‘Plaintiff seeks to hold Defendants liable under New York nuisance law for their worldwide extraction and production of fossil fuels, the combustion of which by billions of intervening third parties—including Plaintiff itself—has allegedly changed the *Earth’s* climate.’¹⁸¹ The fossil fuel companies argued that ‘[t]his action is a naked attempt to regulate global greenhouse gas emissions through the imposition of a crippling damages award’.¹⁸²

There is a disjuncture between the fossil fuel industry’s seeming acceptance of climate science in this court dispute, and the history of climate misinformation and denial by fossil fuel companies.¹⁸³

Fifteen states - led by Indiana - filed an amicus brief in support of the motion to dismiss.¹⁸⁴ They argued that the claims raised non-justiciable political questions, jeopardized the U.S.’s system of cooperative federalism, and threatened extraterritorial regulation.

C Decision

On the 19th June 2018, Keenan J dismissed the action by the City of New York against the defendants Chevron Corporation, ConocoPhillips and Exxon Mobil Corporation.¹⁸⁵ The judge provided a summary of the state of climate change, noting ‘Climate science clearly demonstrates that the burning of fossil fuels is the primary cause of climate change’.¹⁸⁶ The judge observed that the case of the City of New York was that the ‘Defendants have known for decades that their fossil fuel products pose risks of severe impacts on the global climate through the warnings of their own scientists, or those of the U.S. trade association, American Petroleum Institute.’¹⁸⁷ The judge recounted the arguments of the City of New York that the fossil fuel

¹⁷⁹ Above (n 14).

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Naomi Oreskes and Erik. M. Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth On Issues From Tobacco Smoke to Global Warming* (Bloomsbury Press, 1st ed, 2010); *Merchants of Doubt*, (Sony Pictures Classics, 30 August 2014); Geoffrey Supran and Naomi Oreskes, ‘What Exxon Mobil Didn’t Say About Climate Change’, *The New York Times* (online, 22 August 2017) <<https://www.nytimes.com/2017/08/22/opinion/exxon-climate-change-.html>>; Geoffrey Supran and Naomi Oreskes, ‘Assessing ExxonMobil’s Climate Change Communications (1977-2014)’ (2017) 12(8) *Environmental Research Letters*.

¹⁸⁴ Above (n 171).

¹⁸⁵ Above (n 16).

¹⁸⁶ Ibid; 468.

¹⁸⁷ Ibid; 468.

companies had engaged in a campaign of climate denial and climate doubt, in spite of their knowledge of the risks associated with the exploitation of fossil fuels.

First, in terms of the analysis, the judge held that federal common law displaces the city's state law claims: 'The Court agrees that the City's claims are governed by federal common law.'¹⁸⁸

The judge ruled that 'regardless of the manner in which the City frames its claims in its opposition brief, the amended complaint makes clear that the City is seeking damages for global-warming related injuries resulting from greenhouse gas emissions, and not only the production of Defendants' fossil fuels.'¹⁸⁹ The judge held that 'the City's claims are ultimately based on the "transboundary" emission of greenhouse gases, indicating that these claims arise under federal common law and require a uniform standard of decision.'¹⁹⁰

Second, the judge ruled that the Clean Air Act displaced the city's claim for damages for global warming-related injuries caused by greenhouse gas emissions. The judge commented: 'More importantly, Congress has expressly delegated to the EPA the determination as to what constitutes a reasonable amount of greenhouse gas emission under the Clean Air Act.'¹⁹¹ The judge argued that it was inappropriate and illogical for the City of New York to bring state claims, given that climate change was a matter of national concern. The judge maintained that 'the Clean Air Act displaces claims arising from damages caused by domestic greenhouse gas emissions because Congress has expressly delegated these issues to the EPA'.¹⁹² The judge concluded: 'Climate change is a fact of life, as is not contested by Defendants.'¹⁹³ However, in his view, the judge was not of the opinion that the judiciary had a role to play in such matters: 'But the serious problems caused thereby are not for the judiciary to ameliorate.'¹⁹⁴ The judge concluded: 'Global warming and solutions thereto must be addressed by the two other branches of government.'¹⁹⁵

Third, the judge held that the City's claims interfered with the separation of powers and foreign policy. The judge noted: 'As the City points out, and as courts have recognized, the Clean Air Act regulates only domestic emissions.'¹⁹⁶ The judge was reluctant to intervene in the matter because of the larger implications in terms of foreign policy and international law: 'Thus, to the extent that the City seeks to hold Defendants liable for damages stemming from foreign

¹⁸⁸ Ibid; 471.

¹⁸⁹ Ibid; 471-2.

¹⁹⁰ Ibid; 472.

¹⁹¹ Ibid; 473.

¹⁹² Ibid; 473.

¹⁹³ Ibid; 474.

¹⁹⁴ Ibid; 474-5.

¹⁹⁵ Ibid; 475.

¹⁹⁶ Ibid; 475.

greenhouse gas emissions, the City's claims are barred by the presumption against extraterritoriality and the need for judicial caution in the face of "serious foreign policy consequences."¹⁹⁷ The judge was also worried that such claims were the subject of international agreements such as the *Paris Agreement* 2015 and implicated foreign governments and their laws and policies. The judge maintained that 'the immense and complicated problem of global warming requires a comprehensive solution that weighs the global benefits of fossil fuel use with the gravity of the impending harms.'¹⁹⁹ The judge rejected the arguments of the City of New York that its claims do not present political questions.

Such judicial quietism recalls some of the theoretical work of Mary Christina Wood on the jurisprudence of climate litigation.²⁰⁰ Recognising judicial resistance and opposition to climate litigation, she worries that 'many of today's judges show distaste and fatigue at the prospect of managing the complex details of a meaningful remedy.'²⁰¹ Wood is hopeful of a progressive shift in the future approach of the judiciary to climate litigation.²⁰²

D Appeal

In November 2018, the City of New York filed the brief of its appeal to the United States Court of Appeals for the Second Circuit.²⁰³ In its brief, the City of New York argues: 'The complaint alleges local harms for which the courts can and should provide a remedy.'²⁰⁴ First, the City of New York maintained that New York law recognises nuisance and trespass claims against manufacturers of products, which have caused environmental harm. Second, the City of New York argued that the Federal common law does not displace the city's state law claims. Third, the City of New York insisted that the city's claims were not barred by the Clean Air Act. Finally, the City of New York argued that the city's claims do not implicate separation of powers or foreign policy concerns.

There was a supporting amici curiae brief from a number of states – including New York, California, Maryland, New Jersey, Oregon, Rhode Island, and Vermont – and the District of

¹⁹⁷ *Joseph Jesner et al., Petitioners v Arab Bank, PLC*, 138 S. Ct. 1386, 1407 (2018).

¹⁹⁸ *The City of New York v BP P.L.C.*, 325 F.Supp.3d 466, 475 (S.D.N.Y., 2018).

¹⁹⁹ *Ibid*; 475-6.

²⁰⁰ Above (n 25).

²⁰¹ *Ibid*; 256.

²⁰² *Ibid*; 257.

²⁰³ New York City Law Department, 'New York City Appeals Dismissal of Case Against Oil Companies' (Press Release, 8 November 2018).

²⁰⁴ 'Brief for Appellant in City of New York v BP P.L.C. (United States Court of Appeals for the Second Circuit)', *Columbia Law* (Web Page, 9 November 2018) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181109_docket-18-2188_brief.pdf>.

Columbia in support of the appellants.²⁰⁵ This brief argued that ‘state common law may properly provide a remedy for defendants’ conduct.’²⁰⁶ The National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association also supported the City of New York.²⁰⁷

There was also an amici curiae brief from the Natural Resources Defense Council, the New York City Environmental Justice Alliance, The Point, and Uprose in support of the City of New York.²⁰⁸ This alliance of civil society groups argued that climate change has had extremely local impacts in terms of environmental justice: ‘New York City and its residents, not fossil fuel producers, have shouldered the cost of climate change, and New Yorkers earning low incomes and people of color have borne that cost disproportionately.’²⁰⁹

Professor Catherine Sharkey from the New York University School of Law also provided an amicus curiae brief in support of the City of New York.²¹⁰ She argued that the tort claim represented a ‘natural extension of longstanding theoretical and doctrinal principles of tort law.’²¹¹ There was also a submission from law scholars specializing in conflict of laws and foreign relations in support of the City of the New York.²¹² They maintained that ‘judicial caution’ is not a basis for limiting the geographic scope of New York law.

²⁰⁵ ‘Brief for Amici Curiae States of New York, California, Maryland, New Jersey, Oregon, Rhode Island, Vermont, and Washington, and the District of Columbia in support of Appellant in *City of New York v BP P.L.C.* (United States Court of Appeals for the Second Circuit)’, *Columbia Law* (Web Page, 15 November 2018) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181115_docket-18-2188_amicus-brief-2.pdf>.

²⁰⁶ *Ibid*; 4.

²⁰⁷ ‘Brief of the National League of Cities; the U.S. Conference of Mayors; and the International Municipal Lawyers Association as Amici Curiae in support of Plaintiff-Appellant in *City of New York v BP P.L.C.* (United States Court of Appeals for the Second Circuit)’, *Columbia Law* (Web Page, 15 November 2018) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181115_docket-18-2188_amicus-brief.pdf>.

²⁰⁸ ‘Brief of Amici Curiae Natural Resources Defense Council, New York City Environmental Justice Alliance, The Point, and Uprose in Support of Plaintiff-Appellant in *City of New York v BP P.L.C.* (United States Court of Appeals for the Second Circuit)’, *Columbia Law* (Web Page) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181115_docket-18-2188_amicus-brief-4.pdf>.

²⁰⁹ *Ibid*; 5.

²¹⁰ ‘Brief of Professor Catherine M. Sharkey As Amicus Curiae in Support of Plaintiff-Appellant in *City of New York v BP P.L.C.* (United States Court of Appeals for the Second Circuit)’, *Columbia Law* (Web Page, 15 November 2018) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181115_docket-18-2188_amicus-brief-3.pdf>.

²¹¹ *Ibid*; 3.

²¹² ‘Brief of Conflict of Laws and Foreign Relations Law Scholars as Amici Curiae in Support of Plaintiff-Appellant and Reversal of the District Court’s Decision in *City of New York v BP P.L.C.* (United States Court of Appeals for the Second Circuit)’, *Columbia Law* (Web Page, 15 November 2018) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181115_docket-18-2188_amicus-brief-5.pdf>.

In response, the fossil fuel companies contended that ‘defendants’ lawful commercial activity plays a key role in virtually every sector of the global economy – supplying the fuels that power most forms of transportation, heat countless homes, literally keep the lights on and enable production and innovation across all industries.’²¹³ They argued that ‘the district court properly dismissed this action for failure to state a viable legal claim.’²¹⁴

The Trump Administration supported the fossil fuel companies against the City of New York.²¹⁵ In its argument, the United States Government contended: ‘This Court should affirm the district court’s judgment and hold that the City of New York’s nuisance and trespass claims must be dismissed because they cannot be sustained regardless of whether they arise under state or federal law’.²¹⁶

Alex Lenferna highlights some of the paradoxes involved in such municipal climate litigation by United States cities and counties, given that the United States has been the ‘biggest carbon polluter in history’.²¹⁷

The prospects of the City of New York winning the dispute on appeal seem to be difficult, given the first instance decision. Nonetheless, it should also be noted that there have been unexpected successes in climate litigation elsewhere – such as in the Netherlands.²¹⁸

V. CONCLUSION

Using the City of New York, this paper has highlighted some of the strengths and limitations surrounding the discourse of civic, municipal environmentalism. It has considered the networked climate policies of New York (including efforts for a state Green New Deal); the fossil fuel divestment decision; and climate litigation undertaken by the city.

²¹³ ‘Brief of Defendants-Appellees Chevron Corporation, Exxon Mobil Corporation and ConocoPhillips in City of New York v BP P.L.C. (United States Court of Appeals for the Second Circuit)’, *Columbia Law* (Web Page, 7 February 2019) 1, <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2019/20190207_docket-18-2188_brief.pdf>.

²¹⁴ *Ibid*; 1.

²¹⁵ ‘Brief of the United States As Amicus Curiae in Support of Appellees in City of New York v BP P.L.C. (United States Court of Appeals for the Second Circuit)’, *Columbia Law* (Web Page, 7 March 2019) <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2019/20190307_docket-18-2188_amicus-brief-1.pdf>.

²¹⁶ *Ibid*; 5.

²¹⁷ Alex Lenferna, ‘US Cities Sue Big Oil, But Ignore Their Own Climate Guilt’, *Climate Home News* (online at 30 May 2018) <<http://www.climatechangenews.com/2018/05/30/us-cities-sue-big-oil-ignore-climate-guilt/>>.

²¹⁸ See the victory of the Urgenda Foundation in climate litigation against the State of the Netherlands at first instance and on appeal - *The State of the Netherlands v Urgenda Foundation* [2015] HAZA C/09/00456689 (24 June 2015); *aff’d* (9 October 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal)) in referring to *Urgenda Foundation v Kingdom of the Netherlands* (District Court of the Hague, No. C/09/456689/HA ZA 13-1396, 24 June 2015).

This paper has highlighted the networked approach of cities to tackling climate change. Green New Deal legislative policies could certainly be adopted in other cities and states in the United States, and around the world. The City of New York's fossil fuel divestment has certainly had a broader impact in reinforcing the economic, political, and moral justifications of the fossil fuel divestment movement. While the City of New York has been unsuccessful in the first instance in its climate litigation, it is hopeful that it will improve its position on appeal. The climate litigation has nonetheless had a broader symbolic impact in promoting climate justice. While the municipal forms of United States climate litigation may not be easily translated to foreign jurisdictions, there has certainly been experimentation and innovation in climate litigation in other jurisdictions.²¹⁹

The United Nations Secretary-General Antonio Guterres has emphasized the need for further systematic climate action by national governments, cities, and business: 'If we do not change course by 2020, we risk missing the point where we can avoid runaway climate change, with disastrous consequences for people and all the natural systems that sustain us.'²²⁰

As recommended by Harriet Bulkeley and her colleagues, future research should evaluate experimentation and innovation in respect of the urban politics of climate change.²²¹

²¹⁹ See the Australian decision *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7. While United States precedents were not determinative of the matter, Preston J nonetheless took into account United States climate litigation.

²²⁰ 'UN Secretary-General Antonio Guterres Calls for Climate Leadership, Outlines Expectations for Next Three Years', *United Nations* (Web Page, 11 September 2018) <<https://unfccc.int/news/un-secretary-general-antonio-guterres-calls-for-climate-leadership-outlines-expectations-for-next>>.

²²¹ Above (n 20).