

United States Senate

WASHINGTON, DC 20510

May 30, 2024

The Honorable Merrick Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Jonathan Kanter
Assistant Attorney General – Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland and Assistant Attorney General Kanter:

We write regarding our serious concerns about alleged collusion and price fixing in the oil industry. While investigating ExxonMobil’s (Exxon) proposed \$60 billion acquisition of Pioneer Natural Resources (Pioneer)¹ – the largest oil-and-gas deal of the 21st century – the Federal Trade Commission (FTC) uncovered evidence that founder and former Pioneer CEO Scott Sheffield colluded with the Organization of Petroleum Exporting Companies (OPEC) to “reduce output of oil and gas, which would result in Americans paying higher prices at the pump, to inflate profits for his company.”² These reports are alarming and lend credence to the fear that corporate avarice is keeping prices artificially high. This is also a national-security concern: this alleged collusion with OPEC may have served to enrich countries like Iran and Russia that are actively seeking to undermine the United States and our allies. The federal government must use every tool to prevent and prosecute collusion and price fixing that may have increased gasoline, diesel fuel, heating oil, and jet fuel costs in a way that has materially harmed virtually every American household and business. We therefore urge the Department of Justice (DOJ) to investigate the oil industry, to hold accountable any liable actors, and to end any illegal activities.

According to the FTC’s complaint, Mr. Sheffield worked to orchestrate “anticompetitive coordinated output reductions” between and among U.S. crude oil producers and OPEC, ultimately to “pad Pioneer’s [and OPEC’s] bottom line[s]...at the expense of U.S. households and businesses.”³ Mr. Sheffield, it seems, was determined to pull off this collusion even if it

¹ Wall Street Journal, “Exxon to Buy Pioneer in \$60 Billion Deal to Create Shale Giant,” Collin Eaton and Benoit Morenne, October 11, 2023, <https://www.wsj.com/business/energy-oil/exxon-buys-pioneer-in-60-billion-deal-to-create-shale-giant-207c168b>.

² Federal Trade Commission, “FTC Order Bans Former Pioneer CEO from Exxon Board Seat in Exxon-Pioneer Deal,” press release, May 2, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-order-bans-former-pioneer-ceo-exxon-board-seat-exxon-pioneer-deal>.

³ Federal Trade Commission, In the Matter of ExxonMobil/Pioneer, Complaint, May 2, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneercomplaintredacted.pdf.

meant ignoring opportunities to drill more oil and sell it at lucrative high prices, which would create more chances for rivals to undercut the industry equilibrium and compete on price. For example, on April 16, 2024, Mr. Sheffield said at a conference: “Even if oil gets to \$200/bl, the independent producers are going to be disciplined.”⁴ It also appeared that Mr. Sheffield was certain that he and his allies could enforce that discipline. He warned competitors that they should be “disciplined” about capacity growth and “stay[] in line,” even threatening that “[a]ll the shareholders that I’ve talked to said that if anybody goes back to growth, they will punish those companies.”⁵ In private WhatsApp communications with senior OPEC officials, Mr. Sheffield assured his company’s competitors that “Pioneer and its Permian Basin rivals were working hard to keep oil output artificially low.”⁶ These private assurances from Mr. Sheffield stretched back to beginning of the COVID pandemic as Pioneer and other American producers sought to “limit Permian oil production in the face of falling oil prices globally.”⁷

The strategy appears to have worked. From pre-pandemic times to current day, industry collusion may have contributed to the 49% decrease in the U.S. oil production growth rate, the increase of \$23.41 in the average crude oil price per barrel, and the \$0.94 increase in the average price of retail gasoline.⁸ That means Pioneer’s and its co-conspirators’ collusion may have cost the average American household up to \$500 per car in increased annual fuel costs⁹ – an unwelcome tax that is particularly burdensome for lower-income families. Meanwhile, Western oil majors collectively earned more than \$300 billion in profits over the last two years,¹⁰ a surge that many market experts believe cannot be explained away by increased production costs from the pandemic or inflation.¹¹

By banning Mr. Sheffield from serving on Exxon’s board following its acquisition of Pioneer, the FTC has taken an important proactive step to prevent further collusive activity.¹² However, only the DOJ can prosecute and fully redress the alleged anticompetitive behavior in the oil sector. Section 1 of the Sherman Act proscribes price fixing and stipulates a fine of up to

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ U.S. Energy Information Administration, “U.S. Regular All Formulations Retail Gasoline Prices,” https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emm_epmr_pte_nus_dpg&f=m.

⁹ NACS, “Who Makes Money Selling Gas?,” Jeff Lenard, November 12, 2021, <https://www.convenience.org/Media/conveniencecorner/Who-Makes-Money-Selling-Gas>.

¹⁰ Reuters, “Big Oil doubles profits in blockbuster 2022,” Ron Bousso, February 8, 2023, <https://www.reuters.com/business/energy/big-oil-doubles-profits-blockbuster-2022-2023-02-08/>; Reuters, “Big Oil offers record returns to lure investors back,” Ron Bousso, February 7, 2024, <https://www.reuters.com/business/energy/big-oil-offers-record-returns-lure-investors-back-2024-02-07/>.

¹¹ New York Times, “Wonking Out: Rockets, Feathers and Prices at the Pump,” Paul Krugman, July 8, 2022, <https://www.nytimes.com/2022/07/08/opinion/inflation-oil-biden-monopoly.html>.

¹² Federal Trade Commission, In the Matter of ExxonMobil/Pioneer, Proposed Consent Order, May 2, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneerorderredacted.pdf.

\$100,000,000 for corporations and a fine of up to \$1,000,000 and 10 years in prison for individuals.¹³

Corporate malfeasance must be confronted, or it will proliferate. These alleged offenses do not simply enrich corporations; hardworking Americans end up paying the price through higher costs for gas, fuel, and related consumer products. The DOJ must protect consumers, small businesses, and the public from petroleum-market collusion, and an important part of that mission means seeking full restitution and imposing all penalties supported by the facts and the law. If any oil corporations or executives have violated the Sherman Act, we urge you to follow the law and seek appropriate punishment.

We appreciate your attention to this serious matter.

Sincerely,



Charles E. Schumer
United States Senator



Amy Klobuchar
United States Senator

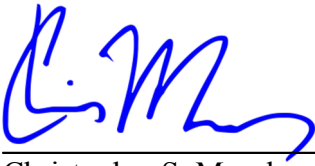


Maria Cantwell
United States Senator

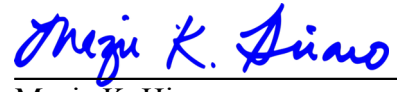


Elizabeth Warren
United States Senator

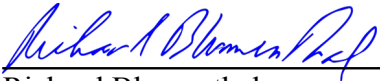
¹³ 15 U.S.C. 1.



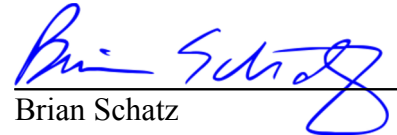
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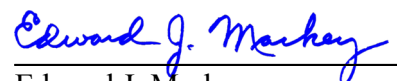
Jacky Rosen
United States Senator



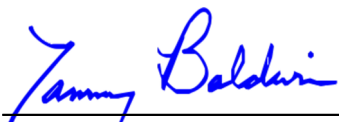
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Tammy Baldwin
United States Senator



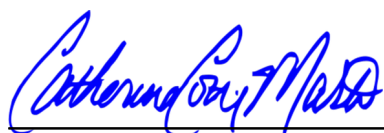
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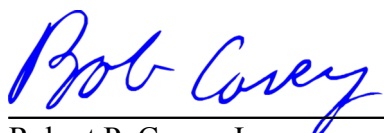
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United States Senator



Catherine Cortez Masto
United States Senator



Sherrod Brown
United States Senator



Robert P. Casey, Jr.
United States Senator



John Fetterman
United States Senator



Sheldon Whitehouse
United States Senator

