

July 13, 2026

SENT VIA EMAIL

Senator Chuck Grassley, Chairman
Senate Committee on the Judiciary

Senator Dick Durbin, Ranking Member
Senate Committee on the Judiciary

Senator Ted Cruz, Chairman
Subcommittee on Federal Courts,
Oversight, Agency Action and Federal
Rights

Senator Sheldon Whitehouse, Ranking
Member, Subcommittee on Federal
Courts, Oversight, Agency Action and
Federal Rights

**Re: Letter to Senate Judiciary Committee Leadership Regarding Justice Kagan's
Conflicted Interests in Upcoming Case**

Dear Senator Grassley, Senator Durbin, Senator Cruz, and Senator Whitehouse,

We write to you to express our deep concerns about U.S. Supreme Court Justice Elena Kagan's inconsistent history of recusals from cases from which her participation should be foreclosed under long-standing federal law, given her prior public statements on the subject of litigation that leave no doubt about her partiality.

Her irregular recusal practice in cases on which she has staked a position in public undermines confidence in the impartiality of the Court.¹ This would not occur were she to adhere to accepted ethics standards against adjudicating cases where her impartiality might reasonably be questioned. As such, we urge the Senate Judiciary Committee to swiftly investigate whether Justice Kagan has violated federal law (28 U.S.C. § 455) and the Court's adopted code of conduct.

On February 23, 2026, Justice Kagan failed to recuse when the Court granted a petition for a writ of certiorari brought by oil companies Suncor Energy ("Suncor") and ExxonMobil Corp. in *Suncor Energy Inc., et al. v. County Commissioners of Boulder County et al.* The case is likely to be heard during the Court's October 2026 term and it involves a challenge to a Colorado state tort judgment against oil and gas companies for their alleged contributions to climate change.

On December 31, 2025, Justice Kagan authored the foreword to the Fourth Edition of the *Reference Manual on Scientific Evidence* published by the National Academies of Science,

¹ Carrie Severino, *Elena Kagan: The Justice Who Knew Too Much*, Judicial Crisis Network (2011), <https://judicialnetwork.com/wp-content/uploads/2011/11/justice-who-knew-too-much.pdf>.

Engineering, and Medicine, in which she specifically addressed the underlying claims of this and related climate litigation.²

The lawsuit originally initiated against Suncor and ExxonMobil in the state of Colorado by the Board of County Commissioners of Boulder County is one of dozens of orchestrated lawsuits brought by municipal and state governments against oil and gas companies under state tort law. (These cases will hereafter be collectively referred to as “state and local climate lawfare.”)³

At the heart of these cases is whether or not state courts may apply state tort law to assess damages against oil and gas companies for contributions to global climate change that are allegedly attributable to those individual companies.

As these state and local climate lawfare cases are undeniably interlinked legally, and due to Justice Kagan’s obvious and public prejudgment of the material legal questions as described below, the only ethical option for Justice Kagan is a blanket recusal from participating in any one of them.

Justice Kagan’s Conflicts of Interest

On December 31, 2025, the National Academies of Sciences, Engineering, and Medicine published the Fourth Edition of the *Reference Manual on Scientific Evidence*. Unlike the previous three editions of the *Reference Manual*, the Fourth Edition included a chapter entitled “Climate Science.” As has been catalogued at length, that chapter was riddled with bias.⁴ Among its many problems was a section on so-called “attribution theory” whereby scientific modeling is used to “attribute” the effects of climate change to specific greenhouse-gas emitters. This section was designed to persuade “skeptical” judges in state and local climate lawfare, authored by two individuals who advocate for and support that litigation, largely lifted word-for-word from an academic article the authors wrote alongside a plaintiff lawyer in many of those cases, and provided to that plaintiff lawyer for feedback prior to publication. Indeed, the *Reference Guide* itself was “made . . . possible” by financial support from an entity that funds plaintiff lawyers in state and local climate lawfare.⁵

² National Academies of Sciences, Engineering & Medicine & Federal Judicial Center, *Reference Manual on Scientific Evidence: Fourth Edition* (2025), <https://www.nationalacademies.org/read/26919/chapter/1>.

³ Jessica Wentz & Radley Horton, *Reference Guide on Climate Science*, in *Reference Manual on Scientific Evidence: Fourth Edition*, 1563 (2025), <https://www.nationalacademies.org/read/26919/chapter/21>.

⁴ Kyle Brosnan, *How Left-Wing Climate Plaintiffs Have Hijacked the Federal Judiciary*, Daily Signal (May 18, 2026), <https://www.dailysignal.com/2026/05/18/climate-hijacked-federal-judiciary/>.

⁵ Phil Goldberg & Christopher Appel, *Judicial Science Manual Under Fire: The FJC–NASEM Controversy That Won’t Go Away*, Wash. Legal Found. (Apr. 15, 2026), <https://www.wlf.org/2026/04/15/publishing/judicial-science-manual-under-fire-the-fjc-nasem-controversy-that-wont-go-away/>.

The chapter was so biased that the Federal Judicial Center, which produced the *Reference Manual* with the National Academies, withdrew it from the version it publishes in response to complaints from multiple state attorneys general and Congress.^{6, 7, 8, 9}

Justice Kagan penned an introduction to the *Reference Manual*. In it she observes, “In the coming years, judges will confront lawsuits relating, for example, to artificial intelligence, *climate science*, and epidemiology” (emphasis added). She continues, “Enter this manual.” Because “case in and case out, the instruction that the manual offers in scientific principles and methods can improve the quality of judicial decision making.”¹⁰

Given the rank bias of the climate-science chapter in favor of climate plaintiffs, it is outrageous that Justice Kagan would promote the chapter as a solution to the challenges judges “will confront” in “lawsuits relating ... to ... climate science.” This is exactly the issue confronting the Court in *Suncor* and the plaintiff-authored answers provided by the climate-science chapter leave no doubt how a judge should resolve it.

As Notre Dame Law School scholar of legal ethics, Fr. Bill Dailey, C.S.C., observed, “I’m surprised sitting judges would put their names on a document that seems to operate like an amicus brief. That [Justice] Kagan did so when there are doubtless climate cases pending on cert., that the Manual would seem to resolve in favor of the plaintiffs, arguably raises serious [questions].”¹¹

Justice Kagan’s participation in the *Suncor* case is indefensible given her public endorsement of climate-lawfare plaintiff theories.

Justice Kagan’s Inconsistent Recusal History

This is not the first time that Justice Kagan has refused to recuse herself from cases in which her impartiality may be reasonably questioned.

Justice Kagan argued the case *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), while solicitor general of the United States. She lost. Soon after, however, the efforts to reverse *Citizens United* began. In *American Tradition Partnership, Inc. v. Bullock*, 567 U.S. 516

⁶ National Academies of Sciences, Engineering & Medicine & Federal Judicial Center, *Reference Manual on Scientific Evidence: Fourth Edition vol. II* at vi (FJC version 2025), https://www.fjc.gov/sites/default/files/materials/15/Reference%20Manual_Vol_II_March_2026.pdf (“The FJC omitted *Reference Guide on Climate Science* on February 6, 2026.”).

⁷ Charles Creitz, ‘Shocking and Inappropriate’: Legal Experts Slam Judges’ Guide over Climate Bias Claims, Fox News, Jan. 29, 2026, reprinted in H. Comm. on the Judiciary, <https://judiciary.house.gov/media/in-the-news/shocking-and-inappropriate-legal-experts-slam-judges-guide-over-climate-bias>.

⁸ [Letter of 27 State Attorneys General](#) to Judge Robin L. Rosenberg, Director of the Federal Judicial Center, Jan. 29, 2026.

⁹ [State Attorneys General Letter to U.S. House Judiciary Committee](#), Feb. 2, 2026.

¹⁰ National Academies of Sciences, Engineering & Medicine & Federal Judicial Center, *Reference Manual on Scientific Evidence: Fourth Edition* at xiii (2025), <https://www.nationalacademies.org/read/26919/chapter/1#xiii>

¹¹ <https://x.com/wrdcsc/status/2012589225237991676?s=10>.

(2012), the Court applied its holding in *Citizens United* to reverse a decision by the Montana Supreme Court, which ignored the decision in a shocking act of judicial resistance against binding Supreme Court precedent. Justice Kagan, in that case, joined Justice Breyer's dissent which observed, "I disagree with the Court's holding [in *Citizens United*] for the reasons expressed in Justice Stevens' dissent in that case." On one hand, of course Justice Kagan disagreed with that holding: she argued against it as the attorney for the government. On the other, how can anyone possibly dispute that her partiality in *American Tradition Partnership* would be in question given that fact? That did not deter her participation in the case.

Justice Kagan also participated in *NFIB v. Sebelius*, 567 U.S. 519 (2012), the case on the constitutionality of the Affordable Care Act. This, too, came on the heels of her time as Solicitor General. While *NFIB* was argued by her successor, Donald Verrilli, it strains credulity to assert—as Justice Kagan did—that she did not substantially participate in the defense of President Obama's signature legislation while Solicitor General. Indeed, evidence suggests otherwise. Nevertheless, Justice Kagan participated in the case casting the deciding vote to save the Affordable Care Act. Even Gabe Roth, president of the liberal Fix the Court observed, "surely Justice Kagan's experience in the Obama administration constituted 'significant involvement' in the Affordable Care Act cases."¹² The fact is that Justice Kagan was personally involved in the defense of the Affordable Care Act and yet failed to recuse herself in *NFIB*.¹³

Or take the case of *United States v. Briones*, 141 S. Ct. 2589 (2021) (No. 19-720). There, the Court granted, vacated, and remanded the case to the Ninth Circuit on May 3, 2021. Justice Kagan, however, did not recuse despite having participated in an earlier iteration of the same case as Solicitor General.¹⁴ As with *NFIB*, the liberals at Fix the Court emailed the Clerk on May 6, 2021 about it, and that afternoon the Court issued a letter to the parties noting the error.

A similar situation occurred in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). There, Justice Kagan recused, but only after the case had been argued twice and she presumably knew how the other justices voted at conference.

This checkered history of participation in cases where Justice Kagan's partiality could be and was reasonably questioned makes clear that she should recuse herself from further participation in *Suncor et al. v. Boulder et al.* and all related climate-lawfare cases.

Conclusion

If Justice Kagan will not take it upon herself to follow the law, which requires her recusal from any proceeding in which her "impartiality might reasonably be questioned," 28 U.S.C. § 455, the Senate Committee on the Judiciary must step in. The Committee should investigate and hold

¹² Gabe Roth, *The Supreme Court Is Being Hypocritical*, N.Y. Times, Oct. 11, 2016, <https://www.nytimes.com/2016/10/11/opinion/the-supreme-court-is-being-hypocritical.html>.

¹³ Ed Whelan, *Justice Kagan's Non-Recusal in Obamacare Case*, Nat'l Rev. (Oct. 21, 2016), <https://www.nationalreview.com/bench-memos/kagan-obamacare-recusal/>.

¹⁴ *Briones v. United States*, 559 U.S. 1038 (2010) (No. 09-1044).

hearings in order to uphold the public's substantial interest in ethical rigor from the justices on our nation's highest court.

Sincerely,

Carrie Campbell Severino, President, JCN

Kevin Roberts, President, The Heritage Foundation

Greg Sindelar, CEO, Texas Public Policy Foundation and Interim President and CEO, AFPI

Michael Thielen, Executive Director, Republican National Lawyers Association

David Bossie, President, Citizens United

Ken Blackwell, Senior Advisor, America First Policy Institute

Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action

Ed Corrigan, President, Conservative Partnership Institute

Hon. David McIntosh, U.S. House of Representatives, Fmr., Indiana

Grover Norquist, President, Americans for Tax Reform

Terry Schilling, President, American Principles Project

Tom Jones, President, American Accountability Foundation

Mike Howell, President, Oversight Project

Hon. Bob McEwen, U.S. House of Representatives, Fmr., Ohio

Hon. Jason Isaac, President, American Energy Association

James Taylor, President, Heartland Institute

Lori Roman, President, American Constitutional Rights Union Action

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