

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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June 4, 2024

Attorney General Merrick Garland
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Assistant Attorney General Jonathan Kanter
Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Garland and Assistant Attorney General Kanter:

As members of the House committee charged with oversight of the nation's antitrust laws, we write to express our alarm about price fixing in the U.S. oil industry. Major oil producers appear to be colluding with each other and foreign cartels to keep prices high, padding their profits at the expense of American consumers. We urge you to use the full authority of the Department of Justice to investigate and, where necessary, prosecute this anticompetitive conduct.

By any measure, these are good times for oil companies in the United States. Last year, the two largest U.S. oil companies, Exxon Mobil Corp. ("Exxon") and Chevron Corp. ("Chevron"), both earned their biggest annual profits in a decade.¹ But apparently, instead of passing those profits through to consumers in the form of cheaper products, the oil giants have been lining their own pockets while conspiring to keep prices high.

In a recent complaint, the Federal Trade Commission ("FTC") outlined an outrageous scheme by the oil executive Scott D. Sheffield to coordinate pricing between U.S. oil companies and foreign producers.² Mr. Sheffield is the former CEO of Pioneer Natural Resources ("Pioneer"), the largest crude oil producer in the Permian Basin.³ Amid record-high U.S. oil production,⁴ Mr. Sheffield and Pioneer were in a position to provide more competition to the foreign cartels that produce a majority of global crude.

Instead, the FTC alleges that Mr. Sheffield worked to keep U.S. producers in line with the cartels. The Commission compiled "voluminous evidence" of Mr. Sheffield's communications with

¹ Stanley Reed, *Oil Giants Pump Their Way to Bumper Profits*, N.Y. TIMES (Feb. 2, 2024), <https://www.nytimes.com/2024/02/02/business/oil-gas-companies-profits.html>.

² Complaint, *In re Exxon Mobil Corp.*, FED. TRADE COMM. https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneercomplaintredacted.pdf.

³ *Id.* ¶ 1.

⁴ *Crude Oil Production*, U.S. ENERGY INFO. ADMIN., https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbb1_a.htm.

leaders of the 12-member Organization of Petroleum Exporting Countries (“OPEC”) and an affiliated group of 10 other nations, including Russia, known as OPEC+.⁵ In private messages to OPEC, Mr. Sheffield allegedly provided assurances that Pioneer and its rivals were working to suppress oil output from the Permian Basin to protect the cartels from price competition that might eat into their market share.⁶

Mr. Sheffield put those promises into motion by pressuring his U.S. competitors to coordinate output reductions and threatening those who do not go along. Speaking of his competitors, Mr. Sheffield said, “Everybody’s going to be disciplined” and, “[I]f anyone goes back to growth,” shareholders “will punish those companies.”⁷ Mr. Sheffield has also disparaged the prospects of U.S. shale oil production against OPEC.⁸

Taken together, the FTC’s allegations suggest a potentially widespread conspiracy among U.S. oil producers to keep prices high by artificially suppressing production. Under the Sherman Antitrust Act, price fixing is a criminal offense.⁹ Further, the Supreme Court has held that price-fixing schemes are “plainly anticompetitive” and are therefore “conclusively presumed illegal” under the Act regardless of any claimed procompetitive rationale.¹⁰ And while the government need not show harm to prosecute price fixing, in a scheme like this one—where people across the country feel the effects in higher prices at the pump—the potential harms are difficult to overstate.

Gas prices today average \$3.60 per gallon, up from last year.¹¹ As Americans contend with the rising cost of living, prices at the pump play a major role. In a single month last year, rising gas prices made up more than half of the overall increase in the rate of inflation.¹² Moreover, by raising production and transportation costs, higher oil prices raise prices across the economy.¹³ For the average American, high oil prices can make the difference in whether they can afford to take a family trip by car or how far their dollar will stretch at the grocery store.

We applaud the Biden administration for the steps it has taken steps to lower gas prices, including the recent release of 1 million barrels of gasoline from U.S. reserves.¹⁴ Americans will be less likely to see the results of these actions, however, if companies are apparently colluding to

⁵ Complaint, *In re Exxon Mobil Corp.* ¶ 20.

⁶ *Id.* ¶ 5.

⁷ *Id.* ¶ 27.

⁸ *Id.* ¶ 28.

⁹ 15 U.S.C. § 1.

¹⁰ *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*, 441 U.S. 1 (1979).

¹¹ Matthew Daley, *Biden releasing 1 million barrels of gasoline from Northeast reserve in bid to lower prices at pump*, ASSOCIATED PRESS (May 21, 2024), <https://apnews.com/article/gas-prices-biden-northeast-reserve-6fa669ef3c963d212852513e4b312060>.

¹² Christopher Rubarger, *High gas prices push up inflation, but prices overall are slowly moving in the right direction*, ASSOCIATED PRESS (Sept. 13, 2023), <https://apnews.com/article/inflation-economy-unemployment-federal-reserve-d4db7a2177f785c4ff1587cc6ef22b43>.

¹³ Harun Alp, Matthew Klepacz, & Akhil Saxena, *Second-Round Effects of Oil Prices on Inflation in the Advanced Foreign Economies*, FED. RESERVE BOARD OF GOVERNORS (Dec. 15, 2023), <https://www.federalreserve.gov/econres/notes/feds-notes/second-round-effects-of-oil-prices-on-inflation-in-the-advanced-foreign-economies-20231215.html>.

¹⁴ *Biden releasing 1 million barrels of gasoline*, *supra* note 11.

raise prices so they can pay out billions to their shareholders in dividends and stock buybacks.¹⁵

Troublingly, the full extent of this price-fixing conspiracy may never have come to light had Exxon not acquired Pioneer. The FTC learned of Mr. Sheffield's price-fixing scheme only through its mandatory review of the transaction under the Hart-Scott-Rodino Act.¹⁶ Without this merger review, the American public and our frontline antitrust enforcers, the FTC and DOJ, would have no insight into these potentially criminal actions. This raises obvious questions: What else do we not know? How are foreign cartels and domestic conspiracies affecting the price of gas? What is the full impact on the American people? While the Commission rightly barred Mr. Sheffield from serving on the board of the combined company as part of its review,¹⁷ the antitrust enforcement authorities must immediately open full investigations into this illegal scheme. Because DOJ has sole authority for criminal antitrust enforcement, your Department must take the lead in this effort.

We urge you to immediately open an investigation into a potential antitrust conspiracy among U.S. oil producers, OPEC, and OPEC+. We strongly encourage you to use every tool at the Department's disposal, including criminal penalties, to uncover and punish wrongdoing. If U.S. oil companies are colluding with each other and foreign cartels to manipulate global oil markets and harm American consumers who then pay more at the pump, Congress and the American people deserve to know. We therefore request you contact House Judiciary Committee staff and schedule a briefing and respond to the following questions no later than June 18, 2024:

1. Does the Department of Justice have sufficient tools and resources to uncover and punish price fixing and other anticompetitive schemes by U.S. oil producers, OPEC, and OPEC+?
2. To what extent does existing law limit your ability to prosecute OPEC and OPEC+ for anticompetitive schemes that harm U.S. consumers? Would bills like the bipartisan No Oil Producing and Exporting Cartels ("NOPEC") Act of 2023,¹⁸ which would prohibit foreign states from coordinating their actions regarding oil in the United States, enhance the Department's ability to enforce the law against foreign oil producers?
3. How is the Department coordinating with the Federal Trade Commission to enforce the nation's antitrust laws in the oil and gas industry?

Thank you for your prompt attention to this matter.

¹⁵ *Oil Giants Pump Their Way to Bumper Profits*, *supra* note 1.

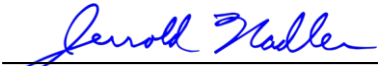
¹⁶ 15 U.S.C. § 18a.

¹⁷ Consent Order, *In re Exxon Mobil Corp.*, FED. TRADE COMM.

https://www.ftc.gov/system/files/ftc_gov/pdf/2410004exxonpioneerorderredacted.pdf.

¹⁸ H.R. 3801, No Oil Producing and Exporting Cartels Act of 2023 or "NOPEC" (118th Cong.).

Sincerely,



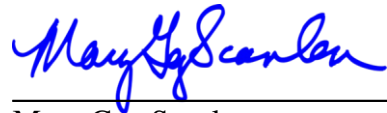
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Member of Congress
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Henry C. "Hank" Johnson, Jr.
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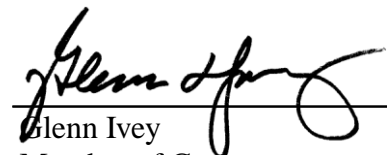
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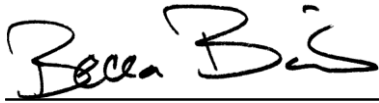
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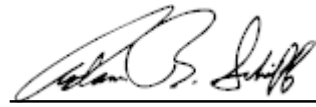
Steve Cohen
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Glenn Ivey
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Becca Balint
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Adam B. Schiff
Member of Congress

cc: The Honorable Jim Jordan, Chairman

The Honorable Thomas Massie, Chairman
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Lina Khan, Chair, Federal Trade Commission