



**Testimony of Phil Goldberg
Special Counsel, Manufacturers' Accountability Project**

Before the New York Assembly Standing Committee on Environmental Conservation

**Hearing to “examine how best to address the impacts of climate change
on communities and the work force”**

May 17, 2019

Chairman Englebright, Ranking Member Stec and members of the Standing Committee on Environmental Conservation, thank you for the opportunity to provide testimony on the important issue of global climate change. My name is Phil Goldberg and I serve as Special Counsel to the Manufacturers' Accountability Project (MAP), an effort led by the Manufacturers' Center for Legal Action, which is the legal arm of the National Association of Manufacturers (NAM) and the voice of manufacturers in the courts. The NAM is the nation's largest industrial trade association, representing nearly 14,000 manufacturers of all sizes in every industrial sector and in all 50 states. I am also a partner at Shook Hardy & Bacon L.L.P., where I co-chair of the firm's Public Policy Group.

The MAP was initiated under the auspices of the NAM to engage with state legislatures and other interested parties on innovative ways to address global climate change outside of the courts. The NAM takes the threats posed by global climate change very seriously and believes that all stakeholders—including manufacturers—have a role to play in mitigating these impacts by reducing greenhouse gas (GHG) emissions. Manufacturers in America are leading the way when it comes to reducing emissions while simultaneously increasing output through innovations in technology that improve the energy efficiency and sustainability of their operations. Importantly, manufacturers have reduced their GHG emissions by 10 percent while increasing value to the economy by 19 percent over the past decade.

Climate change is a society-wide issue that requires a society-wide response. Unfortunately, some cities and states, including New York City, are looking to cast blame and point fingers through climate change lawsuits against manufacturers, rather than work together to solve this global problem.

They want to blame America's energy manufacturers, even though they are only selling us the energy that we want and need. These energy products are staples of modern life that advance people's health and safety, including in New York City homes, office buildings, theaters, sports arenas, roadways and hospitals. Yet, lawsuits such as New York City's seek to impose civil liability related to the sale and use of oil, gas and other types of energy products, regardless of their utility to modern society.

From a legal perspective, this litigation makes as little sense as blaming farmers for obesity or sugar manufacturers for tooth decay. From a practical perspective, it would impose a dramatic penalty on the production and use of energy irrespective of the ability of families and businesses to pay more for their energy, the impact on the State's economy or the other factors Congress, states and federal agencies consider when presented with such public policy choices. Setting energy policy often involves balancing an array of state, national and international concerns, including energy independence.

The courts have understood both the legal and factual deficiencies with climate change lawsuits and have dismissed them. In 2011, the U.S. Supreme Court dismissed *AEP v. Connecticut*, 564 U.S. 410 (2011), issuing a broad warning against climate change lawsuits, explaining there is "no room for a parallel track" of litigation over climate change public policy. The Ninth Circuit, and federal judges in California and New York, similarly refused to create category liability over the sale and use of fossil fuels. They dismissed cases seeking money from energy companies for climate change-related injuries because no legal wrong has been committed. In dismissing New York City's lawsuit, Judge John F. Keenan explained that setting global climate change policy "require[s] a uniform, national solution."

Where New York can have an impact on reducing climate change impacts is to work with manufacturers and the broader business community in America on new technologies that reduce emissions and make energy more efficient and environmentally friendly. The federal government has many programs, such as Energy Star, U.S. Green Building Council's LEED certification, Sustainable Materials Management (SMM) initiative and E3 community partnerships, to spur these advancements. We support similar efforts at the state level in New York. Mayor de Blasio's recent comment that the number-one cause of GHG emissions in New York City is its buildings underscores the importance of these types of programs. Innovation, not litigation, has been the proven way America has brought about society-wide technological advancement, and that is the proper path forward here.

It is from this perspective that we find the current effort to amend the New York State Constitution to add an “environmental rights” clause particularly alarming. To be clear, the NAM believes that every citizen should have access to clean air and clean water. The proposed constitutional amendment’s broad entitlement to “clean air” and “clean water,” though, opens the door to more unsound litigation. One of the sponsors of the amendment recently told the *New York Law Journal* that one of the benefits of this effort would be the ability to file such litigation. These lawsuits, as with the current New York City suit that is on appeal, would be highly political, as claimants could choose whom to sue over which projects and seek to create, not enforce, their own regulatory standards.

For instance, the New York City government has taken aggressive action to transition to low-sulfur oil and natural gas to heat buildings. According to the New York City Department of Environmental Protection, “Upon full implementation, these regulations will reduce the amount of fine particles emitted from heating buildings by at least 63%. They could lower the overall concentration of fine particles in the city’s air from all sources by 5%. We estimate that these air quality improvements could prevent approximately 200 deaths, 100 hospitalizations, and 300 emergency room visits for illnesses caused by air pollution each year. The regulations will also reduce carbon dioxide by approximately one million metric tons.” As currently written, even this change—one that has clear environmental and public health benefits—could be challenged under the proposed constitutional amendment as not going far enough.

New York should have an interest in protecting its manufacturers from baseless lawsuits. As a sector, in 2017 manufacturers accounted for nearly five percent of the total economic output in New York state or nearly \$73 billion. In addition, there were 436,600 manufacturing employees in New York that year earning a family-sustaining wage. The proposed “environmental rights” amendment would threaten these jobs, as manufacturing companies would be forced to consider relocating to other states that have not taken such an unsound, litigation-based approach to climate change and other pressing issues.

NAM Vice President of Energy and Resources Policy Ross Eisenberg said it best in a recent *Politico* Op-Ed: “One path leads to further climate gridlock, the other to the serious prospect of real climate solutions actually becoming law—and that is where we think Congress’ focus should be now.” Thank you again for the opportunity to submit this testimony, and we look forward to working with New York and its communities on productive, meaningful opportunities to mitigate climate change.