

Any scientist who has a question about how to engage in consulting, including serving as an expert witness, can call the Climate Science Legal Defense Fund, where we provide free and confidential counsel to scientists with legal questions related to their work. Call us at **(646) 801-0853** or send an email to lawyer@csldf.org.



The Climate Science Legal Defense Fund (CSLDF) works to protect the scientific endeavor by helping defend climate scientists against politically and ideologically motivated attacks. CSLDF is a non-profit organization under section 501(c)(3) of the Internal Revenue Code.

CSLDF produced this guide to help scientists understand the legal strategies they should know when consulting or serving as an expert witness. This guide concerns only U.S. federal law, and certain common state corporate laws (New York and Delaware specifically). Nothing in it should be construed as legal advice for your individual situation.

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A POCKET GUIDE FOR SCIENTISTS

Creating an LLC and Other Legal Strategies for Consulting or Expert Witness Work



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Legal Defense Fund

INTRODUCTION

Many scientists in the United States are interested in consulting or are already engaged in consulting as a complement to their other employment. Scientific consulting can offer the freedom of working independently, the chance to participate in new and possibly meaningful projects, and/or the opportunity to make additional income.

However, it's important for scientists to understand how to protect themselves from liability when offering consulting services, including when acting as expert witnesses.

This guide addresses some of the potential risks that scientists may face and provides legal strategies to mitigate those risks, including the creation of corporate forms like an LLC or C-Corp, the importance of managing and disclosing conflicts of interest, and the role of engagement letters in clarifying terms and reducing liability.

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Or send an email to
lawyer@cslidf.org

I. POTENTIAL RISKS OF OFFERING SCIENTIFIC CONSULTING SERVICES IN AN INDIVIDUAL CAPACITY, INCLUDING ACTING AS AN EXPERT WITNESS

Scientists may be interested in offering consulting services, including acting as an expert witness, for a variety of reasons, and in a variety of situations—from providing expertise in climate litigation cases to offering scientific services to film and TV productions. However, there are potential legal risks involved with offering these services that scientists should understand, including potential monetary penalties and reputational harm. This Section explains these risks while Section III explains legal strategies to mitigate them.

A. Legal Liability Resulting in Monetary Damages

While scientists with the appropriate expertise, acting diligently and in good faith, are unlikely to experience liability issues, it's important to note that scientists providing consulting services can be held personally responsible for mistakes or misconduct, including reckless or negligent errors.

Even honest mistakes can result in legal costs associated with defending oneself, including attorneys' fees, costs associated with court proceedings, and penalties that may have to be paid by the scientist themselves or any entity they are working for or under.

Expert witnesses typically enjoy greater legal protections than scientists who provide general consulting services. Historically, expert witnesses in civil cases have received immunity from liability, although this is changing. For example, a handful of states now hold that the doctrine of witness immunity does not protect expert witnesses who are negligent in forming their opinions, which can subject scientists to lawsuits from the parties that retained them to produce testimony, among others.

B. General Legal Risks

While being a consultant may heighten the legal concerns, scientists should be aware of the legal risks they generally face. More information about such legal

risks can be found in CSLDF's [Pocket Guide to Handling Political Harassment and Intimidation](#) and, in the expert witness context, [What to Expect When You're an Expert Witness, Part 2: Risks and How to Avoid Common Pitfalls](#).

Some general legal risks that scientists may face:

- Subpoenas may require scientists to appear in court or share certain documents with the subpoenaing party, consuming a significant amount of time and potentially requiring the disclosure of private, proprietary, or confidential information.
- Scientists who receive public funding, including professors at public universities, may be required to turn over records under state public records laws or the federal Freedom of Information Act. All scientists should be cognizant of whether open records laws apply to them—or any of their collaborators. Review CSLDF's [resources on open records laws](#), or contact us for more information about your individual situation.
- Less commonly, both scientists themselves and their associates (including their employers or affiliated institutions) may receive cease-and-desist letters which instruct recipients to stop allegedly wrongful conduct.
- Scientists may also face baseless lawsuits—or threatened lawsuits—which, instead of addressing a legitimate wrong, are intended to silence or prevent scientists from participating in the public domain. Such SLAPP (Strategic Lawsuits Against Public Participation) lawsuits can be expensive and time-consuming to defend against, even if the defendants ultimately prevail.

A scientist who encounters any of these situations should immediately seek advice from a lawyer, at CSLDF or another entity. Scientists can and oftentimes should also contact the general counsel's office of their affiliated institution, but it's important to remember that an institution's lawyer represents the institution, and institutional interests may diverge from an individual scientist's interests.

C. Other Risks

Conflicts of interest—particularly undisclosed conflicts of interest—can also expose scientists to risks, such as having articles retracted or otherwise repudiated, having their expert testimony discredited, or even legal consequences. Conflicts of interest can arise from personal or familial relationships, financial interests, or a scientist's historic body of work, research agenda, or even publicly shared opinions,¹ which may make it appear that a scientist is biased in favor of a scientific outcome.

Particularly with respect to consulting, any confusion about agreement terms or payment could result in a scientist not receiving expected compensation or having a different scope of work than agreed.

More on other risks—including being subjected to negative publicity, receiving threats, or becoming the target of negative or harassing messages—can be found in CSLDF's [Pocket Guide to Handling Political Harassment and Intimidation](#).

II. RECOMMENDATIONS FOR BEST PRACTICES & MITIGATING STEPS

A. Create a Corporate Form

By creating a business entity through which to perform consulting services, an individual can limit potential financial liability to the assets of the entity. A scientist looking to form a consulting firm may choose from a variety of entity structures, the two most common options being a limited liability company (LLC) and a C-Corporation (C-Corp).² An overview and comparison of key elements of both is provided below. Before taking any concrete steps, an individual should consult a lawyer and accountant to discuss the best entity structure for them and how varying state law may affect that decision. Also, note that while forming a business entity can help mitigate potential financial exposure, it may not eliminate potential for reputational damage or other non-monetary risks of providing consulting services.

The key benefit provided by both the LLC and the C-Corp is a limitation on the liability of its owners (also known as the “members” of an LLC or the “shareholders” or “stockholders” of a C-Corp). An owner of either an LLC or a C-Corp will not be personally liable for the debts or other liabilities of the entity, including debts arising out of a lawsuit against the entity. Any creditor’s source of recovery for liabilities of the entity will be limited to assets of the entity.

However, this limitation on liability is subject to the owners observing proper protocols, such as maintaining separate financial accounts for the entity, including keeping funds separate and not using entity assets for personal use or vice-versa. Failure to observe these protocols can result in a court viewing an entity as an extension of an owner’s personal assets, and potentially subjecting the owner to liability after all (called “piercing the corporate veil”).

Further, forming an entity may not prevent a client or a third party from bringing a lawsuit directly against a scientist in his or her individual capacity. Having an engagement letter in place between the entity and the client (as discussed in Section III.B below) under which: (i) the client agrees to bring any claim arising out of the services performed solely against the entity, and not the individual, and (ii) the client agrees to indemnify the entity and its owner (e.g., the scientist) from any claims brought by third parties resulting from the engaged services will help alleviate those risks.

LLCs typically do not pay taxes at the entity level, but instead income/loss is reported on the personal tax returns of the owners. For U.S. federal income tax purposes, an LLC with a single member (SMLLC) is considered synonymous with its owner, while an LLC with more than one member is treated as a partnership for federal income tax purposes. An LLC can also file a “check-the-box” election to be treated as a corporation for U.S. federal income tax purposes, which is discussed in the following paragraph.

Unlike an LLC, a C-Corp subjects its owners to two levels of taxation. This means the C-Corp’s income is taxed at the entity level, and any remaining income (after payment of such corporate-level tax) distributed to its owners will also be reported on their personal tax returns and taxed as dividends. (An LLC that has elected to “check the box” to be treated as a corporation for U.S. federal income tax purposes would also be subject to this two-level taxation.)

In terms of governance structures, there is flexibility in how an LLC is managed. It can be member-managed by its owners, or manager-managed by a person (or persons) appointed by the owners to run the business (this manager could also be a designated officer or member of the LLC). A C-Corp is managed by a board of directors, typically appointed by the owner(s).

When it comes to investment opportunities, C-Corps are more commonly used for outside investments. LLCs, while less common for this purpose, can still accept outside investments, but might require additional legal assistance to convert into a form suitable for such investments. Exhibit A, Exhibit B-1, and Exhibit B-2 of this guide also include an overview of steps to take to form these entities and typical contents of some of their governing documents.

B. Create an Engagement Letter That Seeks Indemnification and Advances Defense Costs

A scientific consultant or expert witness should always enter into an engagement letter with any client. An engagement letter is a contract between the scientist/the scientist’s legal entity and a client, and having a signed engagement letter will greatly help reduce risks relating to non-payment, disputes over scope of work, and potential legal action.

Components of an engagement letter should include: the scope of work, the amount of compensation, payment terms, and any protection from liability that the other party may provide, also known as an indemnity. As noted above, an indemnity provision is key to ensure that any litigation brought as a result of the services provided under the engagement letter will be brought against the contracting party (i.e., if applicable, the business entity and not the individual scientist); moreover, to the extent such litigation is brought by a third party, that the client will cover such costs and exposure. An indemnity provision should be discussed with a lawyer. A list of the essential elements of an engagement letter is attached to this guide as Exhibit C.

C. Disclose Conflicts of Interest

Scientific consultants or expert witnesses can greatly reduce risk stemming from conflicts of interest by proactively disclosing any of which they are aware, whether that interest be financial, familial, or some other type of bias, real

or perceived. Importantly, disclosing a potential conflict of interest will not necessarily disqualify the scientist from participating in the matter but will help, for example, head off efforts to disqualify an expert witness. Conflicts are typically evaluated based on the relative connection to the activity or project (i.e., whether the conflict is tangential or involves a family member of the scientist and not the scientist themselves), the amount of financing involved, and the date and duration of the conflict.

Certain groups may have conflict of interest disclosure forms for the scientist to fill out before beginning their work. These are common with federal agencies or more complex business entities.³

CONCLUSION

It is critical that scientists feel equipped to provide consulting and expert witnesses services. Scientific voices are an essential part of the conversation, whether it be in climate litigation cases, environmental engineering work, or another area that benefits from scientific know-how. However, it is also vital that scientists follow the best practices (including those outlined in this guide), and that they otherwise use sound judgment when offering consulting services or acting as expert witnesses. This is particularly true for scientists who work at public universities or other public institutions, or who are employed by the federal government or receive even partial government funding.

ADDITIONAL RESOURCES

Science,

["Consulting – The Career Path Not \(Of\) Taken"](#)⁴

Science,

["The Science Careers Guide to Consulting Careers for Ph.D. Scientists"](#)⁵

Science,

["Consulting on the Side Can Satisfy Scientists' Appetite for Something More"](#)⁶

Climate Science Legal Defense Fund,

["What to Expect When You're an Expert Witness Part I"](#)⁷

Climate Science Legal Defense Fund,

["What to Expect When You're an Expert Witness Part II"](#)⁸

Climate Science Legal Defense Fund,

["Handling Political Harassment and Intimidation"](#)⁹

EXHIBIT A:

Steps for Formation of an LLC or C-Corp¹⁰

1. Hire a Lawyer: To help you through the following. To help find a lawyer, scientists can try any State Bar referral service, or to seek references from their university or employer.

2. Choose a Business Name: Select a name for your LLC or C-Corp. The name must typically end with a designation like “Limited Liability Company” or an abbreviation like “LLC” or “L.L.C.” for an LLC, and must typically end with a designation like “Corporation,” “Incorporated,” or “Company,” or an abbreviation like “Inc.” or “Corp.” for a C-Corp. Check for the availability of the name in your state’s Secretary of State office (or equivalent body).

3. File the Articles of Organization/Certificate of Incorporation:¹¹ This document needs to be filed with your state’s Secretary of State office (or equivalent body). For an LLC, this document typically includes only limited information (e.g., the company name, its principal business address, and sometimes the purpose of the LLC). For a C-Corp, this document may be more complex, including additional information such as classes of equity and their relative preferences, etc. Many states have a form for this document that can be used as a starting point.

4. Pay a Filing Fee: There is typically a fee for filing the Articles of Organization.

5. Create an Operating Agreement or Bylaws: For an LLC, the owners should create an operating agreement (in certain states, an LLC operating agreement can be unwritten, but formalizing this agreement to writing is best practice). For a C-Corp, bylaws are required to be adopted by the company. These documents provide the governance structure for the entity, as well as the roles, rights, and responsibilities of the owners of the entity. See Exhibits B-1 and B-2 for more information.

6. Additional Organizational Actions: After forming an entity, discuss with a lawyer any additional organizational actions that should be taken immediately. For example, typically the incorporator of a C-Corp will be required to appoint the initial board of directors, adopt bylaws of the corporation, etc.

7. Shares or Membership Interests: Once your LLC or C-Corp is established, you’ll need to issue equity interests to the owners/investors in the entity. For an LLC, these are typically called membership interests, and for a C-Corp, these are typically called shares. Depending on the laws in your state, these may be represented by certificates, or they may be issued in uncertificated form. Make sure to keep accurate records of who owns these shares or membership interests.

8. Obtain an Employer Identification Number (EIN): An LLC with multiple owners or C-Corp needs an EIN for tax purposes. This is obtained by submitting a Form SS-4 to the IRS, often online. A single-member LLC may not need an EIN unless it plans to hire employees or take other action that specifically requires an EIN.

9. Comply with Other Legal Requirements: Depending on the nature of your business and its location, you might need to fulfill additional requirements, such as obtaining business licenses or permits, notice of publication, or registering with your state’s tax department.

10. Register in Other States (if applicable): If your LLC or C-Corp will be conducting business in states other than the one in which it’s registered, it may need to register as a foreign LLC or C-Corp in those states.

11. Comply with the Corporate Transparency Act: Beginning January 1, 2024, certain LLCs and C-Corps will be required to report information about the persons who own or control their businesses to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. This submission will be made through an online portal. Make sure to discuss with an attorney to ensure you understand your reporting obligations, if any, under the Corporate Transparency Act.

EXHIBIT B-1:

Key Elements of an LLC Operating Agreement

1. Formation and Name:

- » The name of the LLC and the state of its formation.
- » Confirmation of compliance with all legal requirements for formation.

2. Purpose and Business Activities:

- » The primary business activities in which the LLC intends to engage. For example, “the provision of consulting services.”
- » The scope and nature of permitted business operations that can be undertaken by the LLC. Typically, this is broader than the stated purpose, so as to permit the LLC to undertake actions outside of its primary purpose without violating its operating agreement. Often listed as “all lawful purposes.”

3. Members Equity and Ownership:

- » Identification of initial members and each of their ownership percentages of the LLC.
- » Procedures for admitting new members and issuing additional membership interests.
- » Overview of financial, time, and other contributions and skills by members.
- » Treatment of equity upon termination, resignation, or death of a member.

4. Management and Decision-Making:

- » Identification of the LLC as either member-managed or manager-managed.
- » Appointment of manager (if applicable).
- » Roles and responsibilities of members and managers.
- » Decision-making processes, including voting rights and requirements.

5. Meetings and Resolutions:

- » Frequency, notice requirements, and procedures for member and manager meetings.

- » Approval options for resolutions, including when action by written consent is permitted, and whether consent must be unanimous.

6. Allocations and Distributions of Profits:

- » Allocation of profits, losses, and distributions among members.
- » Special allocations or distributions, if applicable.
- » Policies and procedures for distributing profits to members.
- » Distribution preferences, if any, among members.

7. Transfer of Membership Interests:

- » Rules and restrictions around how ownership in the company can be transferred from one person to another.
- » Right of first refusal granting existing owners (like the scientist who started the company) the first opportunity to buy any membership interests in the LLC that another owner wants to sell.
- » “Buy-Sell” provisions to govern how an owner’s membership interests in the LLC will be bought and sold in certain situations, such as if the owner dies, becomes disabled, or leaves the company.
- » “Drag-along” rights which allow majority owners to force minority owners to join in a sale of the company.
- » “Tag-along” rights which allow minority owners to sell a portion of their membership interests alongside a sale by a majority owner.

8. Dissociation and Dissolution:

- » Procedures for voluntary or involuntary departure of members.
- » Grounds and procedures for termination of the LLC.
- » Plan for distribution of assets upon dissolution or liquidation of the LLC.

9. Books and Records:

- » Maintenance of company books, financial records, and member lists.
 - Keeping records clear and separate from personal records is especially important to avoid taking on any liability through piercing of the corporate veil.

- » Access rights and inspection provisions for members who may choose to inquire as to the business activities of the LLC.

10. Indemnification and Liability:

- » Possibility of the LLC compensating for the loss incurred by, otherwise known as indemnifying, members, managers, and officers in their capacity as such.
- » Limitation of liability to the extent permitted by law.
- » LLCs in certain states may modify or eliminate fiduciary duties otherwise owed by managers or officers of an LLC under state law.

11. Amendments and Governing Law:

- » Procedures for amending the operating agreement.
- » Statement governing or determining where any potential dispute will be heard (choice of law).

12. Restrictive Covenants Binding on Members (if desired):

- » Non-disclosure and confidentiality obligations.
- » Covenants restricting members from competing with the LLC, from soliciting or hiring employees of the LLC, from soliciting customers of the LLC, or from disparaging the LLC.
- » Ownership and protection of intellectual property rights.

13. Miscellaneous Provisions:

- » Severability, waiver, and entire agreement clauses.

This outline serves as a summary of essential elements typically found in an LLC Operating Agreement. It provides a starting point for further discussions and negotiations, but it is important to consult with legal professionals to draft a comprehensive operating agreement that complies with applicable laws and regulations as well as the specific needs and circumstances of the LLC.

EXHIBIT B-2: Key Elements of C-Corp Bylaws¹²

1. Name and Formation:

- » The name of the C-Corp and the state of its formation.
- » Confirmation of compliance with all legal requirements for incorporation.

2. Purpose and Business Activities:

- » Stating the primary business activities in which the C-Corp intends to engage. For example, “the provision of consulting services.”
- » The scope and nature of permitted business operations that can be undertaken by the C-Corp. Typically this is broader than the stated purpose, so as to permit the C-Corp to undertake actions outside of its primary purpose without violating its bylaws. Often listed as “all lawful purposes.”

3. Capitalization:

- » Authorized shares of stock and classes (common, preferred, etc.).
- » Issuance, transfer, and ownership rights of shares.
- » Shareholder restrictions, if any.

4. Governance and Management:

- » Roles and responsibilities of directors, officers, and shareholders.
- » Appointment, and removal procedures for directors.
- » Decision-making processes, including voting rights and requirements.

5. Meetings and Resolutions:

- » Frequency, notice requirements, and procedures for shareholder and director meetings.
- » Approval mechanisms for resolutions, including written consent and unanimous consent.

6. Equity and Ownership:

- » Procedures for equity issuance of new shares and transfers of existing shares.
- » Treatment of equity upon termination, resignation, or death of a shareholder.

7. Distribution of Profits and Dividends:

- » Policies and procedures for distributing profits and declaring dividends to be distributed to shareholders.
- » Distribution preferences, if any, for preferred stockholders who might receive higher dividends or other special rights.

8. Books and Records:

- » Maintenance of corporate books and financial records.
 - Keeping corporate records clear and separate from personal records is especially important to avoid taking on any liability through piercing of the corporate veil.
- » Access rights and inspection provisions for shareholders who may choose to inquire as to the business activities of the C-Corp.

9. Dissolution and Exit:

- » Procedures for voluntary or involuntary dissolution.
- » Distribution of assets upon dissolution or liquidation.
- » Restrictions on transfer of ownership upon dissolution or exit.

10. Intellectual Property and Confidentiality:

- » Ownership and protection of intellectual property rights.
- » Non-disclosure and confidentiality obligations.

11. Amendments and Governing Law:

- » Procedures for amending the bylaws.
- » Determination of where any potential dispute will be heard (choice of law).

This outline is intended to provide an overview of essential elements typically found in C-Corp bylaws. It serves as a starting point for further discussions and negotiations, and the final bylaws should be drafted by legal professionals to ensure compliance with applicable laws and regulations as well as the specific needs and circumstances of the C-Corp.

EXHIBIT C:

Key Elements of Engagement Letter

Typically, different contracting parties will have different forms of engagement letters and it is not practical to prepare a universal template engagement letter. Instead, this outline is intended to provide an overview of essential elements typically found in an engagement letter for the provision of service, and to serve as a starting point for further discussions and negotiations. The final engagement letter should be drafted by legal professionals to ensure compliance with applicable laws and regulations, and should address the specific needs and circumstances of the service provider.

1. Scope of Services:

- » Describe the scope of services to be provided in detail, including specific tasks, deliverables, and timelines.

2. Fees and Payment Terms:

- » Specify whether the fee structure is a fixed fee, hourly rate, or other arrangement.
- » Outline the payment terms, including any retainer or upfront payment requirements.

3. Responsibilities of the Client:

- » Describe the client's responsibilities, such as providing necessary information, documents, and cooperation in a timely manner.
- » Specify any other expectations or requirements from the client during the engagement.

4. Confidentiality:

- » Highlight the commitment to maintain the confidentiality of all client information and materials.
- » Explain the steps and measures taken to ensure the protection of confidential information.

5. Term and Termination:

- » Specify the term of the engagement and any provisions for termination.
- » Outline the procedures for termination, including notice periods and obligations upon termination.

6. Governing Law and Dispute Resolution:

- » Specify the governing law and jurisdiction applicable to the engagement to ensure correct resolution of any legal action arising from the services provided.
- » Describe the preferred method of dispute resolution, such as mediation or arbitration.

7. Independent Contractor Status:

- » To avoid the required formalities of employer-employee relationships, clarify that the engagement does not create an employer-employee relationship.
- » Confirm that the engaged party will act as an independent contractor, responsible for their own taxes and benefits.

8. Indemnification and Limitation of Liability:

- » Make clear that the client will indemnify, hold harmless, and reimburse the service providing entity and its officers, directors, employees, managers, equity-holders, advisors and other representatives against any losses (including costs, fees and expenses of defending against any claim or proceeding) that arise out of or result from the provision of services under the Engagement Letter.
- » Make clear that any liability under the Engagement Letter will be limited to liability of the service providing entity, and shall not extend to (and client shall bring no claim against) any officer, director, manager, employee, equity-holder, advisor, or other representative of the service providing entity.
- » Consider including an aggregate dollar cap on the service provider's potential liability to the client for services provided under the Engagement Letter (for example, capped at the amount of fees actually received by the

service provider under the Engagement Letter) and/or limiting service provider's liability to actual and direct damages incurred by the client, and not any consequential, special or other types of damages.

9. Entire Agreement:

- » State that the Engagement Letter, together with any subsequent formal engagement agreement, constitutes the entire agreement between the parties.
- » Further state that any subsequent agreements must be in a writing signed by both parties.

Endnotes

¹ For more information on how scientists can improve their digital hygiene, see: Climate Science Legal Defense Fund, "Safeguarding Online Communications," December 2018, <https://www.csldf.org/resource/pocket-guide-to-safeguarding-online-communications/>.

² This guide focuses on LLCs and C-Corps due to their popularity and general applicability to a wide range of businesses. S-Corporations, another type of business entity, have specific eligibility requirements and tax implications that make them less universally applicable, and thus are not covered in this guide. Similarly, because the requirements are more stringent and generally not a good fit for consulting purposes (B-Corps must achieve a certain score on the B Impact Assessment; undergo an evaluation of the company's impact on its workers, customers, community, and environment; make their B Impact Report transparent through the Certified B Corporation website; and, among other things, be continually overseen by a governing body, the B Lab), we do not go into the details of B-Corp creation in this guide. For information on S-Corporations, B-Corporations, or other types of business entities, please consult with a legal or business advisor.

³ For example, see: "Guidelines for Declaration of Interests (WHO Experts)," <https://www.emro.who.int/images/stories/polio/doi-guidelines.pdf?ua=1>.

⁴ David Bomzer, "Consulting – the Career Path Not (Oft) Taken," *Science*, December 13, 2002, <https://www.science.org/content/article/consulting-career-path-not-oft-taken>.

⁵ Vijaysree Venkatraman, "The Science Careers guide to consulting careers for Ph.D. scientists," *Science*, September 3, 2014, <https://www.science.org/content/article/science-careers-guide-consulting-careers-phd-scientists>.

⁶ Beryl Lief Benderly, "Consulting on the side can satisfy scientists' appetite for something more," *Science*, November 1, 2017, <https://www.science.org/content/article/consulting-side-can-satisfy-scientists-appetite-something-more>.

⁷ Climate Science Legal Defense Fund, "What to Expect When You're an Expert Witness Part I," December 2022, <https://www.csldf.org/resource/pocket-guide-to-what-to-expect-when-youre-an-expert-witness/>.

⁸ Climate Science Legal Defense Fund, "What to Expect When You're an Expert Witness Part II," December 2022, <https://www.csldf.org/resource/expert-witness-guide-part-2/>.

⁹ Climate Science Legal Defense Fund, "Handling Political Harassment and Intimidation," November 2018, <https://www.csldf.org/resource/pocket-guide-to-handling-political-harassment-and-legal-intimidation/>.

¹⁰ Note that these steps vary by state. Please consult advisors and applicable Secretary of State offices for state-specific details.

¹¹ Note that, depending on the state, the name of this document might change.

¹² Note that unlike an LLC Operating Agreement, which is signed by each individual owner of the LLC, C-Corp bylaws are typically adopted by the board on behalf of the company. Therefore, if there are specific covenants to which a C-Corp wants its shareholders to individually agree to (e.g., confidentiality, non-competition, non-solicitation, or non-disparagement obligations; rights of first refusal; buy-sell provisions, drag-along or tag-along rights, etc.—each as discussed in Exhibit B-1), a separate “Shareholders Agreement” should be negotiated and signed by the individual shareholders.

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