

No. 19-1818

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

STATE OF RHODE ISLAND

Plaintiff–Appellee,

v.

SHELL OIL PRODUCTS COMPANY, LLC; CHEVRON CORP.; CHEVRON
USA, INC.; EXXON MOBIL CORP.; BP, PLC; BP AMERICA, INC.; BP
PRODUCTS NORTH AMERICA, INC.; ROYAL DUTCH SHELL PLC;
MOTIVA ENTERPRISES, LLC; CITGO PETROLEUM CORP.;
CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66;
MARATHON OIL COMPANY; MARATHON OIL CORPORATION;
MARATHON PETROLEUM CORP.; MARATHON PETROLEUM COMPANY,
LP; SPEEDWAY, LLC; HESS CORP.; LUKOIL PAN AMERICAS LLC;

Defendants–Appellants, and

GETTY PETROLEUM MARKETING, INC.,

Defendant.

Appeal from the United States District Court
For the District of Rhode Island, No. 1:18-cv-00395-WES-LDA
(The Honorable William Edgar Smith)

**PLAINTIFF-APPELLEE’S OPPOSITION TO MOTION FOR
LEAVE TO FILE UNTIMELY AMICUS CURIAE BRIEF**

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Plaintiff-Appellee, the State of Rhode Island (“State”), hereby opposes Energy Policy Advocates’ (“Energy”) motion for leave to file an untimely amicus curiae brief. *See* Doc. 00117563313 (Mar. 10, 2020) (“Mot.”).

Amicus curiae briefs are due, “accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed.” Fed. R. App. P. 29(a)(6). Defendants-Appellants filed their principal brief on November 27, 2019. *See* Doc. 00117521204. Energy’s motion for leave and amicus brief in support of Defendants-Appellants were therefore due December 4, 2019. Energy’s proposed amicus is months out of time and without justification for the late filing.

Substantively, the proposed amicus brief is not “relevant to the disposition of the case” as required by Fed. R. App. P. 29(a)(3)(B). The District Court below found that there was no federal claim alleged in the State’s Complaint to support removal to federal court, and granted the State’s motion to remand. *See* Joint Appendix at JA420–36; *Rhode Island v. Chevron Corp.*, 393 F. Supp. 3d 142 (D.R.I. 2019). Energy provides unverified, irrelevant hearsay, comprised of personal meeting notes, purportedly drafted by two non-party individuals unaffiliated with the State or any Defendant-Appellant—which Energy interprets as showing the State brought this case for nefarious reasons. *See* Mot. at 3–4; Proposed Amicus Brief, Doc. 00117563314 at 3–7. Energy then argues this somehow shows Rhode Island state

courts may be biased against Defendants-Appellants. Mot. at 3; Proposed Amicus Brief at 9–10.

None of these documents or arguments are supported or relevant to any issue before the Court. Even if the purported contemporaneous notes were accurately recorded, and even if Energy’s conspiratorial interpretation of them were accurate (Energy provides no reason to believe either is the case), they do not represent a position of the State. Even if they did, the notes do not show or purport to show any “bias” against Defendants-Appellants on the part of Rhode Island *courts*. In any event, Energy has not tied its accusations against the State to any legal basis for removal or any argument in support of reversal.

Courts of Appeal have “discretion to accept an untimely filing when the value of the potential *amicus* brief justifies the inconvenience of requiring the judges to review a case multiple times,” but Energy’s brief does not “possess that exceptional quality.” *Fry v. Exelon Corp. Cash Balance Pension Plan*, 576 F.3d 723, 725 (7th Cir. 2009) (Easterbrook, C.J., in chambers). The Court should deny leave.

Respectfully submitted,

STATE OF RHODE ISLAND
PETER F. NERONHA,
ATTORNEY GENERAL

Dated: March 13, 2020

By his Attorneys,

/s/ Victor M. Sher

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was sent by ECF service to all counsel of record on this 13th day of March 2020.

/s/ Victor M. Sher _____

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