NO. 19-1644

United States Court of Appeals

for the

Fourth Circuit

MAYOR AND CITY COUNCIL OF BALTIMORE,

Plaintiff-Appellee,

– v. –

BP P.L.C.; BP AMERICA, INC.; BP PRODUCTS NORTH AMERICA, INC.; CROWN CENTRAL LLC; CROWN CENTRAL NEW HOLDINGS LLC; CHEVRON CORP.; CHEVRON U.S.A. INC.; EXXON MOBIL CORP.; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL, PLC; SHELL OIL COMPANY; CITGO PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; MARATHON OIL COMPANY; MARATHON OIL CORPORATION; MARATHON PETROLEUM CORPORATION; SPEEDWAY LLC; HESS CORP.; CNX RESOURCES CORPORATION; CONSOL ENERGY, INC.; CONSOL MARINE TERMINALS LLC,

Defendants-Appellants,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND AT BALTIMORE IN NO. 1:18-CV-02357-ELH, HONORABLE ELLEN L. HOLLANDER, U.S. DISTRICT JUDGE

BRIEF FOR *AMICUS CURIAE* ENERGY POLICY ADVOCATES IN SUPPORT OF DEFENDANTS-APPELLANTS

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– and –

LOUISIANA LAND & EXPLORATION CO.; PHILLIPS 66 COMPANY; CROWN CENTRAL PETROLEUM CORPORATION,

Defendants.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,

Amicus Supporting Appellant,

NATIONAL LEAGUE OF CITIES; U. S. CONFERENCE OF MAYORS; INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION; PUBLIC CITIZEN, INC.; SHELDON WHITEHOUSE; EDWARD J. MARKEY; STATE OF MARYLAND; STATE OF CALIFORNIA; STATE OF CONNECTICUT; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WASHINGTON; MARIO J. MOLINA; MICHAEL OPPENHEIMER; BOB KOPP; FRIEDERIKE OTTO; SUSANNE C. MOSER; DONALD J. WUEBBLES; GARY GRIGGS; PETER C. FRUMHOFF; KRISTINA DAHL; NATURAL RESOURCES DEFENSE COUNCIL; ROBERT BRULLE; CENTER FOR CLIMATE INTEGRITY; CHESAPEAKE CLIMATE ACTION NETWORK; JUSTIN FARRELL; BEN FRANTA; STEPHAN LEWANDOWSKY; NAOMI ORESKES; GEOFFREY SUPRAN; UNION OF CONCERNED SCIENTISTS,

Amici Supporting Appellee.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29 (a)(4)(E), counsel for Amicus certifies that no counsel for any party authored this brief in whole or in part and that no person or entity other than the Amicus and/or its counsel made a monetary contribution intended to fund the brief's preparation or submission.

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INTEREST OF AMICUS CURIAE

Energy Policy Advocates ("EPA") is a nonprofit organization incorporated under the laws of Washington State dedicated to bringing transparency to the actions of government. As part of that mission, EPA has obtained public records that illustrate the genesis of this litigation and similar litigation in other states. EPA has obtained records demonstrating the improper use of public institutions toward these ends and the origins of the veritable tsunami of "climate nuisance" state-court lawsuits — which since the filing of this suit have been retooled elsewhere to focus on state consumer protection claims in a further effort to hide their pursuits from federal jurisdiction, if organized and assisted behind the scenes by the same outside parties — including the one now before this Court. For this reason in particular, EPA is keenly interested in this case and hopes this Court will take the opportunity to consider the record of what is transpiring and how it came about, toward addressing the proper relationship between the state and federal court systems. EPA previously filed amicus briefs at the United States Supreme Court in this matter, at both the petition stage and the merits stage, arguing for reversal and remand.[1] Now that the case has been remanded, EPA has a keen interest in

[1] These amicus briefs are available on the Supreme Court's website at https://www.supremecourt.gov/DocketPDF/19/19-1189/161616/20201123183017306_ScotusMainDoc.pdf (merits stage) and https://www.supremecourt.gov/DocketPDF/19/19-

ensuring this Court has the opportunity to consider the arguments EPA presented to the Supreme Court, as well as the public records relevant to this case which have come to light both prior to that Supreme Court filing and subsequent thereto in the interim.

SUMMARY OF ARGUMENT

As important as climate policy is to both state and federal governments, equally and arguably more important is the principle that the Courts' role is not to make policy judgments. And while federal courts are courts of limited jurisdiction, cases such as the instant one are demonstrably based on the desire of certain activists and parties to obtain national policy, among other improper uses of the judicial system (e.g., prospecting for "sustainable revenue streams" or "new streams of revenue," see, *infra*). Such cases, therefore, are classic candidates for a resolution in the Nation's federal courts.

Recently obtained public records from numerous public institutions demonstrate that the national effort of which this lawsuit is a part involves deep-pocketed private advocacy interests using their resources to enlist local activist groups as their intermediaries, and often law school faculty and attorneys general, to arrange for lawsuits to be filed in state courts against traditional "fossil fuel"

1189/142726/20200430150640415_39742%20pdf%20Hardin.pdf (petition stage), respectively.

energy companies, as well as others involved in energy production and transport, in order to impact national policy. This is true in the City of Baltimore, as well as Annapolis and Anne Arundel County Maryland, all of which have filed similar lawsuits after behind the scenes and until-recently secret lobbying by the same party, which correspondence describes as the "lawyers advising Rockefeller family fund" [sic]("RFF").[2] That same group, the Center for Climate Integrity ("CCI"), pitches these lawsuits in, e.g., correspondence to at least state attorney general by her private Gmail account, as a means to raise "new streams of revenue." Emails show the Rockefeller Family Fund providing its intermediary groups with sample pleadings to lobby these public institutions to file in their own jurisdictions, after having organized the media campaign to support the filing of such lawsuits, as has been established in judicial proceedings in the states of Texas and New York. These documents obtained under state open records laws reveal important details about the expanding, and arguably improper, deployment of municipalities, attorneys general, public law schools, and tax-exempt advocacy groups by or on behalf of private donors in the climate litigation industry, including in the instant

[2] Public records show that CCI, using a local group, is also behind the Annapolis and Anne Arundel suits. See emails at: https://climatelitigationwatch.org/wp-content/uploads/2021/04/CCAN-CCI-Anne-Arundel-lobbying.pdf and https://climatelitigationwatch.org/wp-content/uploads/2021/04/Problematic-Annapolis-withholdings.pdf, and https://eidclimate.org/annapolis-leaders-admit-activist-group-convinced-city-file-climate-lawsuit/.

case. As described by the plaintiffs' own lawyers and advisors, these suits have been brought to impact public policy and to find new sources of revenue for activists and state budgets. As such, these suits belong in federal court. Further, these records also provide strong impetus to acknowledge, as a formal matter, that the "climate nuisance" and "failure to warn" litigation campaign of various, largely copycat (and indeed coordinated) lawsuits is an impermissible use of the courts, seeking the most favorable forum to obtain political ends by judicial means; when removed, these suits must remain in federal court; and, these suits should be dismissed for the same reasons that other suits in this campaign have been dismissed.

ARGUMENT

I. PUBLIC RECORDS AFFIRM THIS CASE BELONGS IN FEDERAL COURT

Thanks to Amicus's tenacious use of public-records laws, this litigation has a now well-documented and very troubling origin. This suit cloaks what is a federal claim in a manufactured state-law cause of action, imported from New York City by the same organizers and financiers of remarkably similar lawsuits, all of which were quietly midwifed by outside attorneys working with and funded by the same sources. Equally troubling, this litigation appears to have had its genesis not in well-founded investigation of various cognizable legal claims, but in

lobbying from ideological activists seeking an outcome that could not be obtained through the political process. Lastly, litigation of this type, urged on and shaped by the same party that the City of Baltimore has acknowledged in open-records judicial proceedings it "worked with" on the instant suit, CCI, has been revealed as motivated by the desire for "new revenue streams" or "sustainable funding streams" rather than out of well-founded claims of environmental damages and responsibility. At least one state court judge has issued a finding of fact that state efforts to target energy companies for ostensible violations of state law in this manner springs from the states' desire "to obtain leverage over these companies… that could eventually lead to… support for legislative and regulatory responses to global warming… Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties."[3] Numerous public records, and statements, affirm this motivation of lawsuit-as-negotiating-leverage (see, *infra*).

[3] Findings of Fact and Conclusions of Law, Exxon Mobil Corporation, Petitioner, Case No. 096-297222-18 (District Court of Tarrant County, TX), Opinion dated April 25, 2018, which is available at https://climatelitigationwatch.org/wp-content/uploads/2019/10/Tarrant-County-Facts-and-Conclusions.pdf

a) Outside Groups Have Instigated and Funded Purported State Law Tort and Consumer Fraud Suits to Obtain Policy Goals

In public records litigation involving the amicus, the City of Baltimore first characterized these activist groups (the Union of Concerned Scientists ("UCS")[4] and Center for Climate Integrity ("CCI")[5]) as "outside energy firms" each of

[4] The Union of Concerned Scientists' role in attempting to influence government actors to pursue a certain agenda is illuminated at, e.g., Findings of Fact and Conclusions of Law, Exxon Mobil Corporation, Petitioner, Case No. 096-297222-18 (District Court of Tarrant County, TX), Opinion dated April 25, 2018, which is available at https://climatelitigationwatch.org/wp-content/uploads/2019/10/Tarrant-County-Facts-and-Conclusions.pdf ¶¶ 11,12, 16. See also, e.g., https://climatelitigationwatch.org/emails-suggest-ucusa-union-of-concerned-scientists-is-at-the-center-of-the-climate-litigation-industry/, https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-42-UCS-says-working-the-state-AGs-copy.pdf, https://climatelitigationwatch.org/fn-51-frumhoff-coordinated-with-ags-in-prior-briefings/, https://climatelitigationwatch.org/fn-71-frumhoff-to-mote-for-ags-briefing-ucs-fundraiser/, https://climatelitigationwatch.org/fn-frumhoff-has-made-this-argument-to-ags-in-prior-briefings/.

[5] The Center for Climate Integrity's role is illuminated at, e.g., https://climatelitigationwatch.org/more-on-the-government-activist-tort-bar-axis/ (Anne Arundel County, MD), https://climatelitigationwatch.org/emails-reveal-coordination-by-network-of-lawyers-ngos-publications-to-find-climate-litigation-clients/, and John Breslin, "Fort Lauderdale says it has no intention of filing suit against fossil fuel companies over climate change," Florida Record, May 6, 2019, https://flarecord.com/stories/512480648-fort-lauderdale-says-it-has-no-intention-of-filing-suit-against-fossil-fuel-companies-over-climate-change. See also, e.g., https://climatelitigationwatch.org/ghost-writers-in-the-sky/, https://climatelitigationwatch.org/rocky-xxv/, https://climatelitigationwatch.org/emails-reveal-coordination-by-network-of-lawyers-ngos-publications-to-find-climate-litigation-clients/, https://climatelitigationwatch.org/of-smoking-guns-and-just-so-stories/.

which the City considered calling as a testifying expert in this matter.[6] The public record makes clear that this in no way accurately characterizes these groups and the City later changed tack to characterize them instead as "outside, for lack of a better way to describe them, environmental groups who are, you know, climate change environmental groups," (*Energy Policy Advocates v. Mayor and City Council of Baltimore*, Circuit Court of Baltimore City, Case No. 24-C-20-001784, Transcript of October 23, 2020 hearing at 4:13 *et seq*.), and "…groups that we were working with and talking to" prior to filing a climate nuisance and product liability lawsuit against nearly two dozen entities (*Id*., at 6:21-7:1). Public records have now revealed that not only did such groups lobby the Plaintiff here to file such suits in an attempt to obtain preferred policy outcomes, but CCI has gone so far as to pay for private attorneys to bring a municipality's suit,[7] and is serving as legal advisors for RFF, which has bankrolled this litigation campaign.

The two aforementioned groups, UCS and CCI, have been revealed in public records to be the two principal outside organizations approaching municipalities

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[6] See, e.g., Defendant Mayor and City Council of Baltimore's Motion To Dismiss, Or In The Alternative, Motion For Summary Judgment and Request For Hearing, *Energy Policy Advocates v. Mayor and City Council of Baltimore*, Circuit Court of Baltimore City, Case No. 24-C-20-001784.

[7] See, William Allison, "Key Documents Raise Troubling Questions About Money Behind Hoboken Climate Lawsuit," Energy In Depth, September 3, 2020, https://eidclimate.org/key-documents-raise-troubling-questions-about-money-behind-hoboken-climate-lawsuit/.

and attorneys general to lobby them to file the purported climate nuisance and similar lawsuits. This role is clear and set forth in numerous to public records productions from coast to coast. Public records and, more specifically, "no records" responses affirm that while CCI is, e.g., raising funds for this venture and lobbying officials alongside ideological fellow travelers at the Rockefeller Family Fund, CCI does not enter consulting arrangements with its recruiting targets. Instead, it lobbies them.

Although the City of Baltimore has refused to produce its correspondence with CCI and UCS, newly released emails from Minnesota illustrate the anatomy of these suits that CCI brings about, in the context of a similar lawsuit now pending before the 8th Circuit: RFF engaged a local activist group to recruit local law faculty, working with its ghost-co-writer attorneys at CCI, to write a memorandum to Minnesota Attorney General Keith Ellison urging him to file what emerged as his June 2020 "climate" lawsuit against fossil fuel companies.[8] That is, a New York donor enlisted a local activist group for this task to recruit public institutions in support of the donor's desired litigation campaign against private parties, working with lawyers provided for by the donor, who edited and ghost co-

[8] *See generally* Government Accountability & Oversight, P.C., "Private Funders, Public Institutions: 'Climate' Litigation and a Crisis of Integrity" (May 18, 2021), available at: https://climatelitigationwatch.org/wp-content/uploads/2021/05/GAO-EPA-CCI-RFF-Climate-Paper.pdf

wrote the (official, University) memorandum to the Attorney General seeking the litigation and outlining what suit the AG should (and did) bring.

More specifically, the donor provided the Minnesota advocacy group's director with pleadings to help prepare him prior to "making initial calls" to enlist University law faculty in "this project,"[9] what the activist called, in another email to RFF's Director, "our joint project."[10] The activist, Michael Noble and his organization called "Fresh Energy," "only accepted a modest amount of money" at the outset, because he did not "want to launch any big effort unless [Ellison] wants to do it."[11] The local activist Noble in turn engaged Ellison transition team members, including another Minnesota Law faculty member, Prentiss Cox, who, public records show, then began using an Office of the Attorney General email account to correspond about, *inter alia*, this matter despite having no publicly acknowledged position with the AG's Office; Noble arranged for a different University of Minnesota Law professor, Alexandra Klass, to work with "lawyers advising the Rockefeller family fund [sic]" so as to learn "what is needed" in the memo to Minnesota's AG urging him to file this lawsuit.[12] The professor then

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[9] *Id*. at pp. 5-6.
[10] June 19, 2019 email from Michael Noble to Lee Wasserman, Subject, "Project Update Call". Available at https://climatelitigationwatch.org/wp-content/uploads/2021/08/aklass_21-319_20210730_LBK_Redacted.pdf.
[11] Private Funders, Public Institutions, at p. 6.
[12] *Id*.

produced a memo with these outside lawyers Center for Climate Integrity but placed on Minnesota letterhead as the scholarship of the professor and four research-assistant students.[13]

Emails show RFF recruited Fresh Energy's Noble and approached him about the idea to file a climate suit in state court almost immediately after Ellison was elected in November 2018.[14] Noble later excitedly boasted on a Zoom call, which was soon posted on YouTube, that his group had been approached by CCI.[15] Public record productions, from both the University of Minnesota Law School and Ellison's Office, affirm this chain of events.

Public records show that CCI, using a local group, also is behind the Annapolis and Anne Arundel suits.[16]

That history in turn helps explain why the outside interests, which began several years ago by seeking out "a single sympathetic attorney general,"[17] and

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[13] *Id*. at p. 11.
[14] *Id*. at p. 5.
[15] *Id*. at pp. 5, 12, and 27 n. 120.
[16] See emails at https://climatelitigationwatch.org/wp-content/uploads/2021/04/CCAN-CCI-Anne-Arundel-lobbying.pdf and https://climatelitigationwatch.org/wp-content/uploads/2021/04/Problematic-Annapolis-withholdings.pdf, and https://eidclimate.org/annapolis-leaders-admit-activist-group-convinced-city-file-climate-lawsuit/.
[17] *In re Exxon Mobil Corporation*, Cause No. 096-297222-B (Tarrant Co., Tex. Dist. Ct.), Findings of Fact and Conclusions of Law (April 24, 2018), ¶¶ 6-10. Available at https://eidclimate.org/wp-content/uploads/2018/07/Findings-Fact-Climate-Lawsuit-Conspiracy.pdf.

arranging for "climate nuisance litigation," employed the above-described model to orchestrate the instant lawsuit, brought about by activists.

All of this raises numerous legal and ethical questions for taxpayers and local courts, but it also makes plain for this Court that this case, like other suits instigated by the private donor/coordinators, began with the desire of private donors to impact national policy through litigation against private parties.

b) This Suit and Others Like it Represent an Attempt to Squeeze a Federally Regulated Industry for Improper Purposes

As Judge R.H. Wallace, Jr. of the District Court of Tarrant County, Texas wrote in Findings of Fact issued April 24, 2018, the wave of state court claims brought against the energy industry appears to have as its goal "to obtain leverage over these companies… that could eventually lead to… support for legislative and regulatory responses to global warming… Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties."[18] Citing to documents written by the parties' and their advisors' own hands, Judge Wallace noted that the plaintiffs in this new breed of state court action appear to target out-of-state companies and appear driven by a desire to punish pro-energy speech.

[18] Id.

Affirming the use of these suits as leverage in coercing private parties to support the national policy agenda, Amicus obtained an email from municipal climate plaintiff Boulder, Colorado, in which a City official admits the City's position in filing its suit, that "the pressure of litigation could also lead companies…to work with lawmakers on a deal" about climate policies.[19] Former Connecticut Attorney General Richard Blumenthal is quoted describing *American Electric Power v. Connecticut*, 564 U.S. 410, 426 (2011), which suit he brought before being elected to the United States Senate, "My hope is that the court case will provide a powerful incentive for polluters to be reasonable and come to the table…We're trying to compel measures that will stem global warming regardless of what happens in the legislature."[20] This Court cannot sanction the use of the courts to force legislative change, and it should be especially zealous in protecting federal policies and legislation from being forced by actions taken in various state court systems.

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[19] January 5, 2018 email from Boulder Chief Sustainability & Resilience officer Jonathan Koehn to Alex Burness of the Boulder Daily Camera, Subject: RE: Follow-up to council discussion. Available at https://climatelitigationwatch.org/boulder-official-climate-litigation-is-tool-to-make-industry-bend-a-knee/.

[20] Editorial, "The New Climate Litigation," Wall Street Journal, December 28, 2009, https://www.wsj.com/articles/SB10001424052748703478704574612150621257422.

Perhaps because their industries have been targeted by this new breed of litigation, states have begun to seek the protection of the federal courts in these matters. Indeed, Indiana and 14 other states recently filed a brief in the First Circuit arguing that that court's previous holding that these suits could proceed in state court (which has now been vacated and remanded by the U.S. Supreme Court) addresses fundamentally federal or even global problems and must, therefore, be heard in federal court.

In that matter, the Plaintiff's own Executive Branch is on record confessing that the ostensibly injured State's true goal in litigation was to obtain "a sustainable funding stream" by "suing big oil in state court" because the state's own legislature "do[es]n't care on env/climate."[21] In an email to Oregon Attorney General Ellen Rosenblum's Gmail account and obtained by Amicus, CCI itself pitches these suits as a possible way to obtain "new streams of revenue".[22] In light of the Texas State court's findings that suits such as the instant suit for damages have the appearance of being a Trojan Horse in a battle to shut down an industry, and the First Circuit

[21] See petition-stage Amicus Brief of Energy Policy Advocates in *BP PLC v. Mayor and City Council of Baltimore*, available at https://www.supremecourt.gov/DocketPDF/19/19-1189/142726/20200430150640415_39742%20pdf%20Hardin.pdf, and citations contained therein.

[22] Email available as released by the Oregon Department of Justice via https://climatelitigationwatch.org/wp-content/uploads/2021/04/Lewis-Clark-Event-Proposal-rev-14-Jan-2021.docx.

Plaintiff's documented admission that the state seeks to sue big oil mostly out of a desire to obtain revenue through means other than taxation and without legislative approval, echoed by none other than the "lawyers advising Rockefeller family fund" behind this and similar suits, this Court should carefully scrutinize the pleadings in this matter and ensure that federal claims remain in the federal forum where they belong.

II. HISTORIC CONCERNS ABOUT STATE COURT BIAS ARE AMPLIFIED IN THIS CASE

A "historic concern about state court bias" is among the fundamental bases for removal jurisdiction. *Savoie v. Huntington Ingalls, Inc.*, 817 F.3d 457, 461 (5th Cir. 2016). The Supreme Court also recognizes bias as a concern justifying removal to federal court. "State-court proceedings may reflect 'local prejudice' against unpopular federal laws or federal officials." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007). Bias exists, as these opinions acknowledge, and there is no reasoned basis for declaring that such bias extends only to parties who are unpopular government officials. Indeed, the Supreme Court has cautioned against "narrow, grudging interpretation" of removal. *Willingham v. Morgan*, 395 U.S. 402, 407 (1969). Simply put, "[t]he removal statute is an incident of federal supremacy." *Murray v. Murray*, 621 F.2d 103, 106 (5th Cir. 1980).

In this suit, Baltimore is effectively engaged in a campaign through the courts to overturn "unpopular federal laws" or to seek climate remedies that have never been authorized by the legislative branch of either the Maryland state or federal governments. Rather than recognizing the U.S. Constitution and federal laws as supreme, governmental "climate nuisance" plaintiffs are applying "narrow, grudging" interpretation of the removal statute to seek to overturn federal law through imposing ostensible tort liability in state courts.

It is hard to imagine a more striking case where fear of state court bias could be a concern than is presented in the instant matter. Stated otherwise and even more affirmatively, the *hope* for state court bias is demonstrably at play in the instant matter, as shown in records obtained by Proposed *Amicus* Energy Policy Advocates through public records laws.

As documented, *supra*, the instant case began when New York-based donors and attorneys advising them, directly and through intermediaries they provided support to, began lobbying states and municipalities to file this suit and similar suits in state courts. This eager desire by out-of-state interests to obtain ostensibly local relief in state courts might seem remarkable, if not for the history of climate litigation efforts that have been addressed in the proper, federal *fora*. For example, and again turning to documents obtained through open records laws, consider the description by a member of the State's outside legal counsel's own team. In June

2018, U.S. District Judge William Alsup dismissed the City of Oakland's "climate nuisance" suit against at least one of the current defendants, and others.[23] At the time, Baltimore's outside counsel in this suit nominally about enforcing the laws of Maryland, California's Sher Edling, LLP, was working with lobbyists hired to assist with recruiting more governmental plaintiffs.[24] One of these lobbyists, hired

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[23] *City of Oakland, et al., v. BP P.L.C., et al.*, Case 3:17-cv-06011-WHA (N.D. Calif.), Order Granting Motion to Dismiss Amended Complaints, Dkt. 283.

[24] The web is somewhat involved. G. Seth Platt is one of the network's consultants, engaged to help lobby Florida municipalities to file suit similar to the City's. At the time of the correspondence cited herein, Platt was a registered lobbyist for the Institute for Governance & Sustainable Development (IGSD)(www.igsd.org) (see searchable index of lobbying registrations at ftlweb01app.azurewebsites.us/Ethicstrac/Lobbyists.aspx). Platt worked with IGSD and others pitching municipalities to file "climate nuisance" litigation against energy interests, with Rhode Island's counsel Sher Edling.

In the wake of Rhode Island's initial (state) Superior Court filing, on July 27, 2018 Fort Lauderdale Interim City Attorney Alain Boileau wrote Mayor Dean Trantalis, copying other aides, in pertinent part:

> "Mayor…I had a positive meeting yesterday with Marco Simons, Esquire of the EarthRights International Group, Matt Edling, Esquire, Vic Sher, Esquire, of SherEdling, and Jorge Mursuli [IGSD]." See https://climatelitigationwatch.org/wp-content/uploads/2020/03/Boileau-explains-to-Mayor-his-mtg-w-Sher-Edling.pdf

That same day, Boileau wrote the same parties: "I suggested they prepare a presentation for the commission. They just need a target date." See https://climatelitigationwatch.org/wp-content/uploads/2020/03/Boileau-explains-to-Mayor-his-mtg-w-Sher-Edling.pdf

When that presentation was arranged, Mr. Mursuli wrote to Mayda Pineda of Fort Lauderdale's government "to include additional co-counsel on the phone during our face-to-face meeting with Mr. Boileau.

> They are:
> Vic Sher 415/595-9969
> Matt Edling 415/531-1829

to recruit Fort Lauderdale, Florida, to file suit, passed along a note of encouragement to Fort Lauderdale officials, whose counsel had expressed concern over that latest failure. This lobbyist/recruiter G. Seth Platt flatly stated (or forwarded an email stating) the team's position that state courts are the "more advantageous venue for these cases."

Mr. Platt then quotes then-UCLA Law professor and also then-consultant to Sher Edling,[25] Ann Carlson, linking in the email to an article quoting her further on this belief that, for whatever reasons, plaintiffs' chances for recovery are much better in state *fora*.[26] And just last year a *Los Angeles Times* news article quoted

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Please let me know if patching them into our meeting is doable. Again, thanks very much."
https://climatelitigationwatch.org/wp-content/uploads/2020/03/Mursuli-seeks-inclusion-ofSherEdling-in-pitching-FTL-litigation.pdf

Mr. Mursuli then wrote Lizardo Corandao of Fort Lauderdale's government seeking to ensure that Sher Edling participation on the pitch call "is doable". See https://climatelitigationwatch.org/wp-content/uploads/2020/03/Mursuli-seeks-inclusion-ofSherEdling-in-pitching-FTL-litigation-II.pdf

EPA has obtained other emails showing Rhode Island, through Special Assistant Attorney General Greg Schultz, referring Sher Edling to Connecticut's Office of Attorney General for similar purposes. See https://climatelitigationwatch.org/wp-content/uploads/2020/03/Pawa-SherEdling-chronology.pdf.

[25] Matt Dempsey, "UCLA Professor's Role In Climate Litigation Raises Transparency Questions," Western Wire, November 27, 2018, https://westernwire.net/ucla-professors-role-in-climate-litigation-raises-transparency-questions/

[26]"" [U.S. District Judge William Alsup's] decision is irrelevant from a legal perspective, 'Carlson said, as long as these cases stay in state courts. Federal courts, like Alsup's, are less favorable to lawsuits like San Francisco and Oakland's, which contend that fossils fuel companies are liable for damages because they've created a public "nuisance," said Carlson." Mark Kaufman, "Judge

Carlson's colleague and also apparently consultant for plaintiffs' counsel, Sean Hecht, on this topic of state courts being "more favorable to 'nuisance' lawsuits."[27]

The Plaintiffs' efforts to hide what were previously admitted to be federal claims, and an effort to impose federal policy, is deliberate and should not be indulged further. This case should remain in an unbiased federal forum, where national policy matters can be addressed without the specter of state court bias.

CONCLUSION

This suit like other similar suits began when financiers and activists took an interest in convincing municipalities and states to file climate tort suits. Proposed Amicus Curiae Energy Policy Advocates respectfully requests this Court consider the information detailing the now-exposed genesis of the instant matter, an

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tosses out climate suit against big oil, but it's not the end for these kinds of cases," mashable.com, June 26, 2018, https://mashable.com/article/climate-change-lawsuit-big-oil-tossed-out/

[27]" Two separate coalitions of California local governments are arguing to have their suits heard in California state courts, which compared to their federal counterparts, tend to be more favorable to "nuisance" lawsuits. …"There is a lot at stake in this appeal," said Sean Hecht, co-executive director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law. "If the cases can move forward in state court, the courts are likely to take the plaintiffs ' claims seriously, and this may affect prospects for cases in other states as well." Hecht's environmental law clinic provided legal analysis for the plaintiffs in some of the cases." Susanne Rust, "California communities suing Big Oil over climate change face a key hearing Wednesday," *Los Angeles Times*, February 5, 2020, https://www.latimes.com/california/story/2020-02-05/california-counties-suing-oil-companies-over-climate-change-face-key-hearing-wednesday.

improper use of the judiciary and other public institutions instigated by deeply troubling means, and conclude that this suit, like all such suits, belongs in federal court. Only the federal court system will be able to properly adjudicate the merits of this matter in an unbiased fashion, without prejudice against "unpopular federal laws" or "unpopular federal officials."

Dated: August 13, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under Federal Rule of Appellate Procedure 29(a)(4)(g), I certify that:

This brief complies with Rule 29(a)(5)'s type-volume limitation because it contains 4097 words, as determined by the word-processing system used to prepare the brief, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with Rule 32(a)(5)'s typeface requirements and Rule 32(a)(6)'s type-style requirements because the text in the body has been prepared in a proportionately spaced typeface using MacBook pages in 14-point Times New Roman Font.

/s/ Matthew D. Hardin
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CERTIFICATE OF SERVICE

I, Matthew D. Hardin, hereby certify that on August 13, 2021, the foregoing document was filed and served through the CM/ECF system.

Respectfully submitted,
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