Case Number: PC-2018-4716
Filed in Providence/Bristol County Superior Court
Submitted: 5/5/2020 1:53 PM
Envelope: 2576666
Reviewer: Alexa G.

STATE OF RHODE ISLAND,	*	PROVIDENCE
	*	SUPERIOR COURT
Plaintiff,	*	
v.	*	
	*	Case No. PC-2018-4716
CHEVRON CORP., *et al.*,	*	
	*	
Defendants.	*	

MEMORANDUM OF LAW BY AMICUS CURIAE THE UNITED STATES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

The United States as amicus curiae, by its undersigned attorneys, submits this Memorandum of Law in Support of Defendants' Motion to Dismiss. For the reasons set forth below, this Court should dismiss all claims against Defendants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

State Cases

Constitutions

Statutes

Regulations

Other Authorities

SUMMARY OF ARGUMENT

The State of Rhode Island's novel claims of common-law liability against defendants are preempted by federal law. They should be dismissed.

"It would be extraordinary for Congress, after devising an elaborate permit system that sets clear standards, to tolerate common-law suits that have the potential to undermine this regulatory structure." *International Paper Co. v. Ouellette*, 479 U.S. 481, 497 (1987). The Clean Air Act, like the Clean Water Act, "limits the right to administer the permit system to the EPA and the *source States*." *Id.* at 495 (emphasis added). So the Clean Air Act "pre-empts state law to the extent that the state law is applied to an out-of-state point source." *Id.* at 500.

The claims brought by the State of Rhode Island violate these limits. Rhode Island seeks to impose collective liability on Defendants for "a substantial portion of past and committed sea level rise . . . , as well as for a substantial portion of changes to the hydrologic cycle, because of the consumption of their fossil fuel products," across the entire world. *See*, *e.g.*, Compl. ¶ 7. It would hold Defendants "directly responsible for 182.9 gigatons of CO2 emissions between 1965 and 2015." *Id*. (representing 14.81% of total emissions during that period). Its Complaint does not limit liability to emissions sourced from or acts within the State of Rhode Island. In fact, its novel attempt to impose liability for all Defendants' collective emissions over a 50-year period is *the very premise* of its factual allegations of causation. *See id*. So its emissions-based claim□however labeled or spun□fails without this central pillar. Disposing of similar claims, the Supreme Court of the United States stated, "The critical point is that Congress delegated to EPA the decision whether and how to regulate carbon-dioxide emissions." *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011) ("*AEP"*). So it is not for the courts to set emissions standards under tort law, as Rhode Island seeks to do here.

Allowing Rhode Island's claims to go forward would "penalize[] some private action that the federal [law] . . . may allow, and pull[] levers of influence that the federal [law] does not reach." *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 376 (2000). This suit—premised on imposing liability on out-of-state conduct and including emissions now regulated by EPA—is preempted (or displaced) by federal law and should be dismissed.

1. Rhode Island asserts claims under State common and statutory law based on alleged harms from out-of-state greenhouse gas emissions, including from fossil fuels extracted, sold, and used out-of-state. Those claims are preempted by the CAA. The United States Supreme Court has held that the Clean Water Act (CWA)—which has a structure parallel to the CAA—preempts state common-law nuisance claims that regulate out-of-state pollution sources. *See Ouellette*, 479 U.S. 481. By analogy, every federal court of appeals to consider the question has applied that holding to the CAA, as well. *See*, *e.g.*, *North Carolina, ex rel. Cooper v. Tennessee Valley Authority*, 615 F.3d 291, 306 (4th Cir. 2010). That bars Rhode Island's claims here.

2. Rhode Island's claims also are preempted because they challenge production and consumption of fossil fuels abroad. This interferes with the conduct of foreign commerce and foreign affairs and exceeds the State's authority under the Due Process Clause.

3. If Rhode Island's claims arise under federal common law (as argued by Defendants), they also fail. First, the United States Supreme Court has held that federal common-law claims challenging air pollution as a nuisance are displaced by the CAA. *AEP*, 564 U.S. at 410. Second, the Supreme Court has confirmed that the assertion of federal common law in the international context is even more problematic. *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018).

INTEREST OF THE UNITED STATES

This case presents questions of federal law as to which the United States has a substantial interest. Domestically, the United States Environmental Protection Agency (EPA) has primary

responsibility, pursuant to a delegation from Congress, for administering certain programs under the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 *et seq*. This includes decisions involving the federal regulation of greenhouse gas emissions. Rather than address out-of-state emissions by tort and nuisance claims, "Congress opted instead for an expert regulatory body, guided by and subject to congressional oversight, to implement, maintain, and modify emissions standards and to do so with the aid of the rulemaking process and a cooperative partnership with states." *North Carolina*, 615 F.3d at 306. Internationally, the United States government engages in important and complex questions of diplomacy and foreign affairs relating to climate change. This includes engagement through the United Nations Framework Convention on Climate Change of 1992, an international treaty ratified by the President with the advice and consent of the Senate. United Nations Framework Convention on Climate Change, *opened for signature* June 4, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994).

BACKGROUND

A. The Clean Air Act and related regulations

The CAA establishes a comprehensive program for controlling air pollutants and improving the nation's air quality through both state and federal regulation. After the United States Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007), concluding that greenhouse gas emissions can fall within the definition of "air pollutant" in section 302(g) of the Clean Air Act, 42 U.S.C. § 7602(g), EPA determined that such emissions from motor vehicles "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" under 42 U.S.C. § 7521(a). *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the CAA, 74 Fed. Reg. 66,496 (Dec. 15, 2009). In so determining, EPA considered several effects of climate change. These included

"coastal inundation and erosion caused by melting icecaps and rising sea levels." *AEP*, 564 U.S. at 417 (citing 74 Fed. Reg. at 66,533).

Based on this finding, EPA issued greenhouse gas emissions standards for new motor vehicles. *See, e.g.*, 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012); Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016). EPA and the Department of Transportation also regulate greenhouse gas emissions from mobile sources through fuel economy standards. *See, e.g.*, EPA, The SAFE Vehicles Final Rule for Model Years 2021-2026 (Mar. 30, 2020), (Mar. 30, 2020), https://www.epa.gov/regulations-emissions-vehicles-and-engines/safer-affordable-fuel-efficient-safe-vehicles-final-rule. EPA has also promulgated regulations aimed at reducing such emissions from stationary sources. These include technology-based standards for certain facilities regulated by the CAA's New Source Performance Standards, 40 C.F.R. Part 60. *See, e.g.*, Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 83 Fed. Reg. 65,424 (proposed Dec. 20, 2018). EPA has promulgated emissions guidelines for States to develop plans to address greenhouse gas emissions from existing sources in specific source categories, such as electric utility generating units. *See, e.g.*, Repeal of the CPP; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32,520 (July 8, 2019). Finally, under the Prevention of Significant Deterioration (PSD) program, EPA and States have issued permits containing greenhouse gas emissions limitations based on the best available control technology for new major sources or major modifications to stationary sources.

Consistent with the Act's cooperative federalism approach, *see* 42 U.S.C. § 7401(a)(3), States can play a meaningful role in regulating greenhouse gas emissions from sources within their borders. In particular, States have the initial responsibility to adopt plans (subject to EPA approval) to implement emissions guidelines for greenhouse gas emissions from existing sources (including electric utility generating units). *See id*. § 7411(d). In addition, many States implement the PSD permitting program through a state-run permitting process that is approved by EPA and incorporated into State Implementation Plans (SIPs). *Id*. § 7410(a)(2)(C).

For in-state stationary sources, the Act preserves the ability of States to adopt and enforce certain air pollution control requirements and limitations, so long as those are at least as stringent as the corresponding federal requirements. *See* 42 U.S.C. § 7416. For out-of-state sources, however, the Act provides a more limited role for States, even if the pollution causes harm within their borders. For example, affected States can comment on proposed EPA rules, *see id*. § 7607(d)(5), PSD permits, *see id*. § 7475(a)(2), and other States' SIP submissions to EPA (including any provisions that may address PSD requirements for greenhouse gases), *see id*. § 7410(a)(2)(C); 40 C.F.R. § 51.102(a); seek judicial review if their concerns are not addressed, *see* 42 U.S.C. § 7607(b); and petition EPA to recall another State's previously approved but allegedly deficient SIP, *see id*. § 7410(k)(5) and 5 U.S.C. § 553(e).

B. International climate change-related efforts

The United States has engaged in international efforts to address global climate change for decades. The United States is a party to the United Nations Framework Convention on Climate Change (UNFCCC). This establishes a cooperative multilateral framework for addressing climate change. *See* UNFCCC, *opened for signature* June 4, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107. The United States is engaged in ongoing international relations regarding greenhouse gas emissions and climate change. In this and other fora, the United States actively

participates in international discussions and negotiations related to addressing greenhouse gas emissions around the world. Recently, the United States submitted formal notification of its withdrawal from the Paris Agreement, an agreement negotiated under the auspices of the UNFCCC. Press Statement from Michael R. Pompeo, Secretary of State (Nov. 4, 2019), https://www.state.gov/on-the-u-s-withdrawal-from-the-paris-agreement/. This will become effective on November 4, 2020. *Id*. Secretary Pompeo explained that the Paris agreement imposes an "unfair economic burden" on the United States. *Id*.

C. Rhode Island's Complaint and Allegations

Rhode Island's Complaint and claims seek to directly or indirectly impose liability upon and regulate out-of-state conduct of Defendants that is subject to federal law and policies. Rhode Island seeks to impose liability on Defendants, collectively, for all of their emissions, worldwide—either directly emitted by Defendants or emitted by users of Defendants' products—over a 50-year period. It alleges "Defendants are directly responsible for 182.9 gigatons of CO2 emissions between 1965 and 2015." Compl. ¶ 7.

Rhode Island's allegations of causation are similarly premised on this novel collective theory of multiple defendant liability. Rhode Island alleges these combined emissions:

> represent[] 14.81% of total emissions of that potent greenhouse gas during that period. *Accordingly, Defendants are directly responsible* for a substantial portion of past and committed sea level rise (sea level rise that will occur even in the absence of any future emissions), as well as for a substantial portion of changes to the hydrologic cycle, because of the consumption of their fossil fuel products.

E.g., Compl. ¶ 7 (emphasis added); *see also id.* ¶ 8 ("As a direct and proximate consequence of Defendants' wrongful conduct described in this Complaint . . . .").

Rhode Island also seeks to impose liability on Defendants for emissions of oil, gas, or coal that they did not extract, but which they otherwise touched in international and national commerce. It alleges "Defendants also individually and collectively manufactured, promoted, marketed, and

sold a substantial percentage of all fossil fuel products used and combusted during that period." Compl. ¶ 197. Rhode Island also seeks to impose liability for alleged "leadership roles in campaigns to deny the link between their products and the adverse effects of global warming, to avoid regulation, and to stifle transition away from fossil fuels that would reduce the carbon footprint affecting the world climate system." *Id.*

ARGUMENT

As the United States discusses below, the emissions-based claims Rhode Island asserts in this action are inconsistent with and barred by federal law. With respect to regulation of greenhouse gases, the United States Supreme Court has cautioned that "judges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order." *AEP*, 564 U.S. at 428. This warning is magnified here. Rhode Island is pursuing parties that are even further down the chain of causation than the defendant fossil-fuel fired power plant operators in *AEP*.

For a court to grant relief on these claims would intrude impermissibly on the role of the representative branches of government. It is for those branches to determine what level of greenhouse gas regulation and emission is reasonable. As the Supreme Court observed, the "appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be prescribed in a vacuum." *Id*. at 427. "Along with the environmental benefit potentially achievable, our Nation's energy needs and the possibility of economic disruption must weigh in the balance." *Id*. Such a sensitive and central determination "is appropriately vested in branches of the government which are periodically subject to electoral accountability." *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973); *see also Roch v. Garrahy*, 419 A.2d 827, 830 (1980) (citing *Baker v. Carr*, 369 U.S. 186, 226 (1962)). The novel and intrusive nature of the remedies in this case, which cannot properly be imposed by a single court at the urging of a single plaintiff, as if the rest of the country

and world are not affected by the policies and decisions relating to the regulation of greenhouse gas emissions, further supports the view that such remedies cannot be reconciled with federal law.

I. Federal law preempts Rhode Island's state-law claims.

Rhode Island purports to allege state-law causes of action. It does so on a novel theory of liability. Rhode Island collectivizes multiple Defendants' direct conduct, with indirect liability for the users of Defendants' products, over a fifty-year period, worldwide. It then alleges that Defendants' worldwide conduct over this fifty-year period is sufficiently robust to "represent[] 14.81% of total emissions of that potent greenhouse gas during that [fifty-year] period." Compl. ¶ 7. "As a direct and proximate consequence of" this worldwide, 50-year collective of all such greenhouse gas emissions, Rhode Island alleges that "average sea level will rise substantially along Rhode Island's coast; average temperatures and extreme heat days will increase; flooding, extreme precipitation events . . . , and drought will become more frequent and more severe; and the ocean will warm and become more acidic." *Id.* ¶ 8. These novel claims are preempted by federal law, including the CAA (with respect to interstate emissions). They also are preempted because they interfere with the conduct of foreign commerce and foreign affairs (with respect to international emissions).

A. Rhode Island's common-law claims alleging harm from domestic sources are preempted by the Clean Air Act.

Rhode Island's collectivized claim of liability under Rhode Island common law incorporates indeed, is overwhelmingly a challenge to out-of-state emissions. This novel theory is therefore preempted by the CAA. Three federal courts of appeal have already addressed whether the CAA preempts state common-law claims attempting to impose liability on air emissions. All three extend the United States Supreme Court's holding regarding the federal Clean Water Act in the *Ouellette* case that state common law is preempted to the extent the air emissions

in question originated out-of-state. *North Carolina*, 615 F.3d at 306; *Bell v. Cheswick Generating Station*, 734 F.3d 188, 195 n.6 (3d Cir. 2013); *Merrick v. Diageo Americas Supply, Inc.*, 805 F.3d 685, 693 (6th Cir. 2015). In the one case that sought to apply non-source state law to emissions from outside of the state, as Rhode Island seeks to do here, the court ruled that the claims were preempted by the CAA. *See North Carolina*, 615 F.3d at 301.

The United States Supreme Court's decision in *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987), provided the roadmap for reaching this conclusion. In *Ouellette*, property owners on the Vermont side of Lake Champlain sued a paper company. Its identifiable plant discharged pollutants into the lake from New York that were directly traceable to the paper plant. The plaintiffs alleged the New York facility violated Vermont's nuisance law. *Id.* at 483-84.

The Supreme Court nevertheless explained that the CWA creates a "comprehensive" and "all-encompassing program of water pollution regulation" that leaves available "only state[-law] suits . . . specifically preserved by the Act." *Id*. at 492 (quoting *City of Milwaukee v. Illinois*, 451 U.S. 304, 318 (1981) ("*Milwaukee II*")). Allowing any other suits would "undermine" the comprehensive "regulatory structure" created by Congress in the CWA. *Id; see also Verizon New England, Inc. v. Rhode Island Utilities Commission*, 822 A.2d 187, 192-93 (R.I. 2003) ("Conflict preemption exists when . . . '. . . [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'") (quoting *Crosby*, 530 U.S. at 373) (further internal citations and quotations omitted). Based on the CWA's savings clause, which permits States to impose standards stricter than those in the CWA, 33 U.S.C. § 1370, the Court concluded that the only state-law suits preserved by the CWA are suits "pursuant to the law of the *source* State." *Ouellette*, 479 U.S. at 497 (emphasis added); *see also id*. at 499; *AEP*, 564 U.S. at 429 (explaining that the CWA "does not preclude aggrieved individuals from bringing a 'nuisance claim pursuant to the law of the *source* State' ").

The state-law claims here are preempted by the CAA for the same reasons that the state-law nuisance claims in *Ouellette* were preempted by the CWA.[1] Like the CWA, the CAA contains a comprehensive program of emissions regulation that preempts all state-law suits involving emissions regulation except those preserved by the Act. "Congress in the Clean Air Act opted rather emphatically for the benefits of agency expertise in setting standards of emissions controls, especially in comparison with [] judicially managed nuisance decrees." *North Carolina*, 615 F.3d at 304; *cf. Ouellette*, 479 U.S. at 492 (stating that the only State suits available are those expressly permitted by the CWA). Both the CWA and CAA authorize EPA to promulgate standards addressing water or air pollution, respectively, to enforce the law, and to assess civil and criminal penalties for violations; both include similar savings clauses and citizen suit provisions. *See Ouellette*, 479 U.S. at 492. Recognizing these parallels, each federal court of appeals to have reached the question has applied *Ouellette*'s reasoning to analyze state-law claims related to air emissions. *See North Carolina*, 615 F.3d at 301; *Bell*, 734 F.3d at 194-96; *Merrick*, 805 F.3d at 691-92.

The CAA savings clause generally provides that nothing in the Act "shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution." 42 U.S.C. § 7416. Because this savings clause is virtually identical to the savings clause in the CWA, the best reading of the CAA is that (like the CWA) it preempts state-law suits involving emissions of air pollutants except those "pursuant to the law of the source

[1] In addition to its common-law claims, Rhode Island also alleges that Defendants impaired the public trust, a claim based on the Rhode Island Constitution, and that Defendants violated the State Environmental Rights Act (SERA). Although these are not common-law claims, they would similarly be preempted by the CAA because they are used to the same effect, *i.e.*, to challenge out-of-state emissions.

State." *Ouellette*, 479 U.S. at 497; *see also North Carolina*, 615 F.3d at 303-04. Although the plain language of the clauses preserves certain regulation by the States, Congress did not allow every State affected by air pollution to sue out-of-state sources under its own laws, irrespective of interstate boundaries. Courts "cannot allow non-source states to ascribe to a generic savings clause a meaning that the Supreme Court in *Ouellette* held Congress never intended." *North Carolina*, 615 F.3d at 304. Allowing Rhode Island to apply its law to out-of-state emissions would interfere with the "full purposes and objectives of Congress." *Ouellette*, 479 U.S. at 493. The Supreme Court of Rhode Island has likewise held that, while "a state may regulate the conduct of its citizens outside its boundaries in matters affecting the state's legitimate interests, it can do so only if no conflict with federal law is presented." *See State v. Sterling*, 448 A.2d 785, 786-87 (R.I. 1982) (finding state fishing regulations preempted as inconsistent with federal policies within a zone that stretched from Rhode Island's seaward boundary to 200 nautical miles out, in which the federal government had exclusive management authority).

The structure of the CAA makes plain that only suits under the law of the source State survive. The Act establishes a comprehensive system of federal regulation, *see North Carolina*, 615 F.3d at 301, while preserving a State's role in controlling air pollution within its borders, *see* 42 U.S.C. § 7401(a)(3) ("[A]ir pollution control at *its source* is the primary responsibility of States and local governments." (emphasis added)); *id*. § 7416. Allowing an affected State (here, Rhode Island) to subject sources outside that State's borders to its own pollution laws would disrupt and undermine the source States' authorities under the Act. In this scenario, Rhode Island seeks to have this Court assess penalties upon a source of Defendants in another State—or even a source operated by an independent third-party using the gasoline Defendants produce—even if the source is in compliance with all source state and federal obligations. This financial liability would indirectly impact Defendants' pollution control methods and decisions. Affected States could

thereby "do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Ouellette*, 479 U.S. at 495; *see also North Carolina*, 615 F.3d at 296, 302-04 (noting the "unpredictable consequences and potential confusion" that could flow from application of the nuisance laws of multiple States, with "the prospect of multiplicitous decrees or vague and uncertain nuisance standards"). Allowing States to reach conduct beyond their own borders in this manner also raises due process concerns. *Cf. BMW of North America v. Gore*, 517 U.S. 559 (1996).

Here, Rhode Island did not sue Defendants alleging liability based on the laws of the many States in which their fossil fuels were produced, sold, and combusted. Instead Rhode Island collectively sued Defendants for all emissions, direct and indirect, over fifty years, worldwide, only under its law as an "affected State." *E.g.*, Compl. ¶¶ 7-8. Rhode Island's claims are thus preempted just as the nuisance claim under Vermont law was preempted in *Ouellette*.[2]

Aware of *Ouellette* and the many cases applying its holding to the CAA, Rhode Island purports to disavow any intent to regulate emissions. It tries to suggest its harm comes from the production and sale of fossil fuels, not their emissions. *Compare* Compl. ¶ 12 ("Rhode Island does not seek to impose liability on Defendants . . . for their direct emissions of greenhouse gases.") *with id.* ¶ 10 (identifying "Defendants' production, promotion, marketing of fossil fuel products" and alleged concealment of hazards as the cause of Rhode Island's injuries). This is mere smoke and mirrors. Rhode Island strives to paper over the chain of causation that it pled. It stretches from Defendants' conduct around the world, to alleged harm caused, to remedy sought.

[2] Because Rhode Island's novel collectivized tort is not limited to purely in-state sources, the United States does not address how such claims might be analyzed. Likewise, many States have a wide range of state-level programs relating to climate change. *See* Brief for Amici Curiae Commonwealth of Massachusetts et al., *Shell Oil Products Co., LLC v. Rhode Island*, No. 19-1818 (1st Cir. filed Jan. 2, 2020) at 19-21. This brief is not intended to address those programs or any preemption analysis that might apply to them.

Rhode Island's allegations of injury from Defendants' conduct come from the effects of climate change. Compl. ¶¶ 7-8. This in turn traces through the emission of greenhouse gases from burning fossil fuels, not the mere production and sale. *See, e.g.*, Compl. ¶ 1 (alleging that Defendants knew that "their fossil fuel products create greenhouse gas pollution that warms the planet and changes our climate"); *id.*¶ 19 ("Defendants are responsible for a substantial portion of the total greenhouse gases emitted since 1965."). Without these emissions, Rhode Island has no theory of harm. Thus, Rhode Island seeks to hold Defendants liable based on the same conduct (greenhouse gas emissions) and the same alleged harms (*e.g.*, sea level rise) that the United States Supreme Court in *AEP* concluded conflicted with the Clean Air Act. 564 U.S. at 417, 423-25. As the U.S. District Court for the Northern District of California rightly observed: "If an oil producer cannot be sued under the federal common law for their own emissions, *a fortiori* they cannot be sued for someone else's." *City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017, 1024 (N.D. Cal. 2018), *appeal argued*, No. 19-18663 (9th Cir. Feb. 5, 2020). Indeed, each court that has considered merits arguments like those Rhode Island asserts here has rejected similar attempts to distinguish *AEP*. *See id.*; *County of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934, 938 (N.D. Cal. 2018), *appeal argued*, No. 19-15499 (9th Cir. Feb. 5, 2020); *City of New York v. BP p.l.c.*, 325 F. Supp. 3d 466, 474 (S.D.N.Y. 2018), *appeal argued*, No. 18-2188 (2d Cir. Nov. 22, 2019).

Nor can Rhode Island avoid preemption merely because it seeks various remedies that may not be available under the CAA. The United States Supreme Court has foreclosed that tactic as well. State common law is preempted by the federal government's comprehensive environmental regulatory schemes even when a federal statute does not provide precisely the same remedies. *See Ouellette*, 497 U.S. at 498. Under the regime that Congress established, it is EPA and the source States that determine if and what remedies are appropriate for these emissions. In *Ouellette*, petitioners argued that compensatory damages awarded pursuant to state law would not interfere

with the CWA. It was said that compensatory damages "only require the source to pay for the external costs created by the pollution, and thus do not 'regulate' in a way inconsistent with the Act." 479 U.S. at 498 n.19. The Supreme Court disagreed. A defendant "might be compelled to adopt different or additional means of pollution control from those required by the Act, regardless of whether the purpose of the relief was compensatory or regulatory." *Id*. Such a result is irreconcilable with the CWA's exclusive grant of authority to EPA and the source State. *Id*.

Rhode Island thus cannot distinguish *Ouellette* by framing these claims as targeting production and sale rather than emissions, or by seeking damages in lieu of an injunction. Because Rhode Island seeks to hold Defendants accountable under its law for countless emissions sources outside the State, collectivized, over a fifty-year period, Rhode Island's claims are preempted.

B. Rhode Island's state-law claims alleging harm from sources outside the United States are also preempted by the Foreign Commerce Clause and the foreign affairs power.

Rhode Island's claims are also preempted by the U.S. Constitution's Foreign Commerce Clause and the foreign affairs power. Rhode Island asks this Court to conclude that Defendants' international fossil fuel production and sale, and the resulting emissions in foreign countries, constitute various torts under Rhode Island law. It also brings claims under the Public Trust Doctrine and State Environmental Rights Act (SERA). Where, as here, Rhode Island seeks to project state law into the jurisdiction of other nations, the potential is particularly great for inconsistent legislation and resulting interference with United States foreign policy.

The U.S. Constitution grants authority to Congress to "regulate commerce with foreign nations" (the Foreign Commerce Clause), U.S. Const. art. I, § 8, cl. 3; and to the President to "make Treaties" (among other authorities collectively described as the "foreign affairs" power), *id*. art. II, § 2, cl. 2. By extension of the rule established by the Interstate Commerce Clause, the Foreign Commerce Clause prohibits a State from regulating commerce wholly outside its borders,

whether or not the effects are felt within the State. *See Healy v. Beer Institute*, 491 U.S. 324, 336 (1989).

Here, based on the same elementary principals of logic and economics that the Supreme Court recognized in *Ouellette*, a monetary award to Rhode Island based on Defendants' foreign extraterritorial conduct "would have [Defendants] change [their] methods of doing business and control[] pollution to avoid the threat of ongoing liability." 479 U.S. at 495. This would have the "practical effect" of curbing fossil fuel production in foreign countries an outcome inconsistent with the Foreign Commerce Clause because it "control[s] conduct beyond the boundaries of the [country]." *National Foreign Trade Council v. Natsios*, 181 F.3d 38, 69 (1st Cir. 1999) (quoting *Healy*, 491 U.S. at 336), *aff'd*, 530 U.S. 363 (2000).

Decisions by foreign governments about energy production are a species of "uniquely sovereign" acts. *MOL, Inc. v. Peoples Republic of Bangladesh*, 736 F.2d 1326, 1329 (9th Cir. 1984). Such governments also have their own laws and policies to regulate greenhouse gas emissions. In contrast, the interest of a single American state in foreign energy and environmental regulatory regimes is so attenuated that it raises serious due process concerns. *See, e.g., BMW*, 517 U.S. at 568-73. Such concerns are amplified by the novel nature of these claims, which depend on the collectivized, fifty-year combustion of products and subsequent emissions of greenhouse gases by countless sources in every corner of the globe. *See AEP*, 564 U.S. at 422. Moreover, as discussed in the previous section, the CAA limits the authority of States to apply their laws to air emissions outside their borders, underlining the limited authority of the State in this arena. Because Rhode Island's claims interfere with these foreign regulatory regimes, they are preempted by the Foreign Commerce Clause.

Such interference would further undermine the exclusive grants of authority to the representative branches of the federal government to conduct the Nation's foreign policy. Efforts

to address climate change, including in a variety of multilateral fora, have for decades been a focus of U.S. foreign policy. This includes foreign policy carried out through the UNFCCC. This treaty, ratified by the President with the advice and consent of the Senate, is the law of the land. S. Treaty Doc. No. 102-38. By it, the United States has taken definitive action to establish federal foreign policy with respect to addressing climate change, including as relates to international emissions of greenhouse gases.

In particular, international negotiations related to climate change regularly consider whether and how to pay for the costs to adapt to climate change and whether and how to share costs among different countries and international stakeholders. This is, at its core, the issue raised by Rhode Island's suit. Application of state law to pay for the costs of adaptation—particularly on a theory that imposes that liability through the regulation of production and consumption of fossil fuels overseas—would substantially interfere with the ongoing foreign policy of the United States.

Notably, the policy enshrined in the UNFCCC is to stabilize greenhouse gas concentrations while also enabling sustainable economic development. *Id*. at art. 2. Thus, a particularly contentious aspect of climate-related negotiations has been the provision of financial assistance. In this regard, the UNFCCC calls for the provision of financial resources through a mechanism to assist developing countries in implementing measures to mitigate and adapt to climate change. UNFCCC arts. 4.3, 11. Of particular relevance here, the United States' longstanding position in international negotiations is to oppose the establishment of sovereign liability and compensation schemes at the international level. *See, e.g.*, Special Briefing from Todd D. Stern, Special Envoy for Climate Change (Oct. 28, 2015), https://2009-2017.state.gov/s/climate/releases/2015/248980.htm ("We obviously do have a problem with the

idea, and don't accept the idea, of compensation and liability and never accepted that and we're not about to accept it now.").

Rhode Island's claims conflict with the United States' foreign policy, including the balance of national interests struck by the UNFCCC. *See, e.g.*, *In re Philippine National Bank*, 397 F.3d 768, 772 (9th Cir. 2005) (endorsing "the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder the conduct of foreign affairs") (internal quotation marks omitted). Rhode Island's novel theory of liability and causation seeks compensation for costs of climate adaptation allegedly caused by the production and use of Defendants' products abroad. Such a result would not only conflict with the United States' international position regarding compensation, it also undermines the approach to the provision of financial assistance under the UNFCCC. *See American Insurance Ass'n v. Garamendi*, 539 U.S. 396, 427 (2003); *In re Assicurazioni Generali, S.P.A.*, 592 F.3d 113, 118 (2d Cir. 2010) (applying same principle to invalidate state statutory and common-law claims that sufficiently "conflicted with the Government's policy that [Holocaust] claims should be resolved exclusively through" an international body).

In addition, foreign governments may view an award of damages to Rhode Island based on energy production within their borders as interfering in their own regulatory and economic affairs. This is a recognized infringement on the federal sphere. Other nations could respond to such liability—if sustained and imposed—by similarly seeking to prevent the imposition of these costs, by seeking payment of reciprocal costs, or by taking other action against the interests of the United States as a whole. *See, e.g.*, *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 269 (2010); *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 450 (1979) (explaining that affected foreign nations "may retaliate against American-owned instrumentalities present in their jurisdictions," causing the Nation as a whole to suffer).

Indeed, the emissions at issue here affect Rhode Island only to the extent they add to all other worldwide emissions of greenhouse gas in the Earth's atmosphere. *See Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 867 (9th Cir. 2012) (Pro, J., concurring) ("The 'line of causation' between the defendant's action and the plaintiff's harm must be more than attenuated."); *Washington Environmental Council v. Bellon*, 732 F.3d 1131, 1141-42 (9th Cir. 2013) (same). *See also Juliana v. United States*, 947 F.3d 1159, 1169 (9th Cir. 2020) (identifying a genuine factual dispute as to whether defendants' actions were a "substantial factor" in plaintiffs' injuries). If other countries were to seek transnational compensation or funding for adaptation to climate change, such claims would need to be addressed by the federal government, not one or more States. The approach advanced by Rhode Island would "compromise the very capacity of the President to speak for the Nation with one voice in dealing with other governments." *Crosby*, 530 U.S. at 38.

Because Rhode Island's claims challenging production and consumption of fossil fuels outside the United States have the effect of regulating conduct beyond U.S. boundaries and impermissibly interfere with the conduct of foreign affairs, they are preempted by the Foreign Commerce Clause and the foreign affairs power.

II. Rhode Island likewise has no remedy if its claims arise under federal common law because any applicable federal common law claim is displaced.

The United States submits that, regardless of whether Rhode Island's claims arise under state law or under federal common law (as Defendants allege that Rhode Island's theory of liability must), Rhode Island has no lawful claim. The result is the same under either analysis, requiring dismissal of the State's claims. As discussed above, Rhode Island may not pursue its claims if they are viewed as arising under Rhode Island law. The same is true if these claims are viewed as arising under federal common law. The United States does not concede that Rhode Island has a

cognizable federal common-law claim in this case.[3] But if any federal common-law claims might theoretically exist in the present circumstances, then such claims would necessarily be displaced by the Clean Air Act and by the Constitution's allocation of authority over foreign commerce and foreign affairs to the federal government. The analysis of these displacement issues resembles the preemption analysis set forth above. *See supra* Sections I.A & I.B.

First, the Supreme Court's decision in *AEP* is directly applicable. It holds that the Clean Air Act displaces any federal common-law claim that might apply on these facts. In *AEP*, the Court held that the CAA displaced "any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants." 564 U.S. at 424. The Court explained that "displacement of federal common law does not require the 'same sort of evidence of a clear and manifest [congressional] purpose' demanded for preemption of state law." *Id*. at 423 (quoting *Milwaukee II*, 451 U.S. at 317). "[I]t is primarily the office of Congress, not the federal courts, to prescribe national policy in areas of special federal interest." *Id*. at 424. Instead, the test for whether legislation displaces federal common law is simply whether the statute "speak[s] directly to [the] question." *Id*. (quoting *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978)). *AEP* held that the CAA speaks directly to greenhouse gas emissions from fossil-fuel combustion at power plants, and accordingly found displacement. *Id*.

As explained above, the CAA likewise speaks directly to the regulation of greenhouse gas emissions. *See supra* Section I.A, pp. 10-19. When the Act addresses regulation of the emissions

[3] The United States Supreme Court has held that States may have a remedy under federal common law but only if strict conditions are satisfied. *See, e.g., Rodriguez v. FDIC*, 140 S. Ct. 713, 717 (2020). Judicial fashioning of such an expansive federal common law cause of action as that which Rhode Island alleges here under state law would intrude on Congress' legislative power, expand the traditional role of the federal judiciary, and be inconsistent with principles of judicial restraint — all contrary to United States Supreme Court precedent. *See Bush v. Lucas*, 462 U.S. 367, 389-90 (1983); *United States v. Standard Oil Co.*, 332 U.S. 301, 316-17 (1947).

that would form the basis of a federal common-law claim, the Supreme Court has determined there is "no room for a parallel track." *AEP*, 564 U.S. at 425; *see also Kivalina*, 696 F.3d at 853-57. *AEP* emphasized that displacement did not turn on how EPA exercised that authority. The "relevant question for purposes of displacement is 'whether the field has been occupied, not whether it has been occupied in a particular manner.' " 564 U.S. at 426 (quoting *Milwaukee II*, 451 U.S. at 324)). As set forth in Section I, the fact that Rhode Island's claims purport to target production and sale of fossil fuels, rather than directly targeting the resulting emissions, is immaterial to the analysis. The chain of causation from conduct, to causation of harm, to remedy that Rhode Island pleads traces through such worldwide emissions and effects. Compl. ¶¶ 1, 7-8.

Nor is the remedy sought by Rhode Island relevant to displacement. Rather, the relevant issue is the scope of the challenged statute. *See Middlesex County Sewerage Authority v. National Sea Clammers Association*, 453 U.S. 1, 21-22 (1981) (holding that the "comprehensive scope" of the CWA sufficed to displace federal common-law remedies that have no analogue in that statute, such as claims for compensatory and punitive damages); *see also Kivalina*, 696 F.3d at 857 ("[T]he type of remedy asserted is not relevant to the applicability of the doctrine of displacement.").

Second, the international dimensions of Rhode Island's claims likewise trigger displacement. If a federal common-law cause of action could be fashioned here, it could not be extended to impose liability on production, sale, or combustion of fossil fuels outside the United States. Nuisance claims under federal common law originated in disputes between States, and were premised on the original jurisdiction of the Supreme Court to adjudicate disputes among the states. *See Illinois v. City of Milwaukee*, 406 U.S. 91, 93-98 (1972) (*Milwaukee I*) (discussing history). These disputes are inherently domestic in scope and have a foundation in the Constitution. *See Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 495-96 (1971).

As the Supreme Court recently reaffirmed in *Jesner*, novel remedies like those sought by Rhode Island are all the more out of place in the international context. 138 S. Ct. 1386. There the risk that courts and litigants will encroach on the proper functions of Congress and the Executive Branch is acute. The *Jesner* plurality concluded that it would be inappropriate to extend liability through federal common law fashioned under the Alien Tort Statute (ATS) to corporations: "[J]udicial caution . . . 'guards against our courts triggering . . . serious foreign policy consequences, and instead defers such decisions, quite appropriately, to the political branches.' " *Id.* at 1407 (plurality opinion) (quoting *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 124 (2013)); *accord id.* at 1408 (Alito, J., concurring in the judgment) (endorsing plurality's "judicial caution" rationale); *id.* at 1412 (Gorsuch, J., concurring in the judgment) (agreeing that "the job of creating new causes of action and navigating foreign policy disputes belongs to the political branches"); *see also Kiobel*, 569 U.S. at 116-17 (holding that the presumption against extraterritoriality applies to the fashioning of a federal common-law cause of action under the ATS).

In sum, Rhode Island's novel theories of liability against private defendants for worldwide emissions of greenhouse gases over a fifty-year period cannot be premised on federal common law. Such theories are displaced by the CAA, or irreconcilable with the limited circumstances under which the Supreme Court has recognized such claims.

CONCLUSION

For all of the foregoing reasons, this Court should grant Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted. Rhode Island's expansion of common law and state statutory law to create a novel cause of action, against multiple defendants, for fifty years of emissions, on a worldwide basis, commingled with the emissions of innumerable third parties, is preempted or displaced by federal law.

Dated: May 5, 2020.

Respectfully submitted,

/s/ Lauren S. Zurier
LAUREN S. ZURIER (RI Bar No. 4496)
Assistant U.S. Attorney and Chief of Appeals
U.S. Attorney's Office
50 Kennedy Plaza, 8th Floor
Providence, RI 02903
(401) 709-5000 (phone)
(401) 709-5001 (fax)
Lauren.Zurier@usdoj.gov

JONATHAN D. BRIGHTBILL
Principal Deputy Assistant Attorney General
PAUL E. SALAMANCA
R. JUSTIN SMITH
CHRISTINE W. ENNIS
(admissions *pro hac vice* pending)
Attorneys
Environment and Natural Resources Division
U.S. Department of Justice

Counsel for Amicus Curiae
United States of America

Case Number: PC-2018-4716
Filed in Providence/Bristol County Superior Court
Submitted: 5/5/2020 1:53 PM
Envelope: 2576666
Reviewer: Alexa G.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of May, 2020, I served the above document via the electronic filing system on each counsel of record for the above-mentioned matter and that it is available for viewing and downloading. I also certify that I sent a copy of the above document, with consent, by e-mail to:

Peter F. Neronha Neil F.X. Kelly Tricia Jedele Alison Hoffman Gregory S. Schultz **Department of the Attorney General** 150 South Main Street Providence, RI 02903 pfneronha@riag.ri.gov nkelly@riag.ri.gov tjedele@riag.ri.gov ahoffman@riag.ri.gov gschultz@riag.ri.gov Victor M Scher Matthew K. Edling Katie H. Jones Martin D. Quinones Nicole E. Teixeira Corrie Yackulic **Sher Edling LLP** 100 Montgomery Street, Suite 1410 San Francisco, CA 94104 vic@sheredling.com matt@sheredling.com katie@sheredling.com marty@sheredling.com nicole@sheredling.com corrie@sheredling.com *Counsel for Plaintiffs*	Jason C. Preciphs **Roberts, Carroll, Feldstein & Pierce, Inc.** 10 Weybosset Street, Suite 800 Providence, RI 02903 jpreciphs@rcfp.com J. Scott Janoe Matthew Allen **Baker Botts L.L.P.** 910 Louisiana Street Houston, TX 77002 scott.janoe@bakerbotts.com matt.allen@bakerbotts.com Megan Berge Thomas C. Jackson **Baker Botts L.L.P.** 1299 Pennsylvania Ave, NW Washington, DC 20004-2400 megan.berge@bakerbotts.com thomas.jackson@bakerbotts.com *Counsel for Defendant Hess Corp.*

Case Number: PC-2018-4716
Filed in Providence/Bristol County Superior Court
Submitted: 5/5/2020 1:53 PM
Envelope: 2576666
Reviewer: Alexa G.

Jeffrey B. Pine
Patrick C. Lynch
Lynch & Pine
One Park Row, 5th Floor
Providence, RI 02903
jpine@lynchpine.com
plynch@lynchpine.com

Shannon S. Broome
Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, CA 94111
sbroome@huntonak.com

Shawn Patrick Regan
Jennifer L. Bloom
Hunton Andrews Kurth LLP
200 Park Avenue, 52nd Floor
New York, NY 10166
sregan@huntonak.com
jbloom@huntonak.com

Ann Marie Mortimer
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
amortimer@HuntonAK.com

Counsel for Defendants Marathon Petroleum Corporation, Marathon Petroleum Company, LP, and Speedway LLC

Gerald J. Petros
Robin L. Main
Ryan M. Gainor
Hinckley, Allen & Snyder LLP
100 Westminster Street, Suite 1500
Providence, RI 02903
gpetros@hinckleyallen.com
rmain@hinckleyallen.com
rgainor@hinckleyallen.com

Theodore J. Boutrous, Jr.
Gibson, Dunn & Crutcher LLP
333 S. Grand Avenue
Los Angeles, CA 90071
tboutrous@gibsondunn.com

Joshua S. Lipshutz
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
jlipshutz@gibsondunn.com

Anne Champion
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
achampion@gibsondunn.com

Neal S. Manne
Johnny W. Carter
Erica W. Harris
Susman Godfrey LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
nmanne@susmangodfrey.com
jcarter@susmangodfrey.com
eharris@susmangodfrey.com

Counsel for Defendants Chevron Corp. and Chevron USA, Inc.

Case Number: PC-2018-4716
Filed in Providence/Bristol County Superior Court
Submitted: 5/5/2020 1:53 PM
Envelope: 2576666
Reviewer: Alexa G.

John E. Bulman
Stephen J. MacGillivray
Pierce Atwood LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
jbulman@pierceatwood.com
smacgillivray@pierceatwood.com

Nathan P. Eimer
Pamela R. Hanebutt
Lisa S. Meyer
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
neimer@eimerstahl.com
phanebutt@eimerstahl.com
lmeyer@eimerstahl.com

Counsel for Defendant Citgo Petroleum Corporation

Michael J. Colucci, Esq.
Krista J. Schmitz
Olenn & Penza, LLP
530 Greenwich Avenue
Warwick, RI 02886
mjc@olenn-penza.com
kjs@olenn-penza.com

Steven M. Bauer
Margaret A. Tough
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
steven.bauer@lw.com
margaret.tough@lw.com

Sean C. Grimsley
Jameson R. Jones
Bartlit Beck Herman Palenchar & Scott LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
sean.grimsley@bartlitbeck.com
jameson.jones@bartlit-beck.com

Counsel for Defendants ConocoPhillips and ConocoPhillips Company

Jeffrey S. Brenner
Justin S. Smith
Nixon Peabody LLP
One Citizens Plaza, Suite 500
Providence, RI 02903-1345
jbrenner@nixonpeabody.com
jssmith@nixonpeabody.com

Counsel for Defendant Motiva Enterprises, LLC

Robert G. Flanders
Timothy K. Baldwin
Whelan, Corrente, Flanders, Kinder & Siket LLP
100 Westminster Street, Suite 710
Providence, RI 02903
rflanders@whelancorrente.com
tbaldwin@whelancorrente.com

Steven M. Bauer
Margaret A. Tough
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
steven.bauer@lw.com
margaret.tough@lw.com

Counsel for Defendant Phillips 66, ConocoPhilips, and ConocoPhillips Company

Stephen M. Prignano
Robert S. Parker
McIntyre Tate LLP
321 South Main Street, Suite 400
Providence, RI 02903
sprignano@mcintyretate.com
rparker@mcintyretate.com

Catherine Y. Lui
Orrick Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
clui@orrick.com

James Stengel
Orrick Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
jstengel@orrick.com

Robert Reznick
Orrick Herrington, & Sutcliffe LLP
Columbia Center
1152 15th Street, N.W.
Washington, DC 20005
rreznick@orrik.com

Counsel for Defendants Marathon Oil Corp. and Marathon Oil Co.

Jeffrey S. Brenner
Justin S. Smith
Nixon Peabody LLP
One Citizens Plaza, Suite 500
Providence, RI 02903-1345
jbrenner@nixonpeabody.com
jssmith@nixonpeabody.com

David C. Frederick
Brendan J. Crimmins
Grace W. Knofczynski
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, DC 20036
dfrederick@kellogghansen.com
bcrimmins@kellogghansen.com
gknofczynski@kellogghansen.com

Daniel B. Levin
Munger, Tolles & Olson LLP
350 South Grand Avenue, 50th Floor
Los Angeles, CA 90071
daniel.levin@mto.com

Jerome C. Roth
Elizabeth A. Kim
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
jerome.roth@mto.com
elizabeth.kim@mto.com

Counsel for Defendants Shell Oil Co. and Royal Dutch Shell, PLC

Case Number: PC-2018-4716
Filed in Providence/Bristol County Superior Court
Submitted: 5/5/2020 1:53 PM
Envelope: 2576666
Reviewer: Alexa G.

Matthew T. Oliverio
Raymond A. Marcaccio
Santiago H. Posas
Oliverio & Marcaccio LLP
55 Dorrance Street, Suite 400
Providence, RI 02903
mto@om-rilaw.com
ram@om-rilaw.com
shp@om-rilaw.com

Theodore V. Wells, Jr.
Daniel J. Toal
Jaren Janghorbani
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
twells@paulweiss.com
dtoal@paulweiss.com
jjanghorbani@paulweiss.com

Counsel for Defendant ExxonMobil Corporation

John A. Tarantino
Patricia K. Rocha
Nicole J. Benjamin
Adler Pollock & Sheehan P.C.
One Citizens Plaza, Eighth Floor
Providence, RI 02903
jtarantino@apslaw.com
procha@apslaw.com
nbenjamin@apslaw.com

Philip H. Curtis
Nancy G. Milburn
Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019
philip.curtis@arnoldporter.com
nancy.milburn@arnoldporter.com

Matthew T. Heartney
Arnold & Porter Kaye Scholer LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
matthew.heartney@arnoldporter.com

Counsel for Defendants BP PRODUCTS NORTH AMERICA INC., BP p.l.c., and BP AMERICA INC.

/s/ Lauren S. Zurier