STATE OF RHODE ISLAND *Plaintiff,* v. CHEVRON CORP.; CHEVRON U.S.A. INC.; EXXONMOBIL CORP.; BP P.L.C.; BP AMERICA, INC.; BP PRODUCTS NORTH AMERICA, INC.; ROYAL DUTCH SHELL PLC; MOTIVA ENTERPRISES, LLC; SHELL OIL PRODUCTS COMPANY LLC; CITGO PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; MARATHON PETROLEUM CORP.; MARATHON PETROLEUM COMPANY LP; SPEEDWAY LLC; HESS CORP.; MARATHON OIL COMPANY; MARATHON OIL CORPORATION; LUKOIL PAN AMERICAS, LLC.; GETTY PETROLEUM MARKETING, INC.; AND DOES 1 through 100, inclusive, *Defendants.*	PROVIDENCE SUPERIOR COURT Case No. PC-2018-4716

BRIEF OF FORMER U.S. GOVERNMENT OFFICIALS AS *AMICI CURIAE* SUPPORTING PLAINTIFF AND DENIAL OF DEFENDANTS' MOTION TO DISMISS

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INTEREST OF *AMICI CURIAE*[*]

Amici curiae Susan Biniaz, Antony Blinken, Carol M. Browner, William J. Burns, Stuart E. Eizenstat, Avril D. Haines, John F. Kerry, Gina McCarthy, Jonathan Pershing, John Podesta, Susan E. Rice, Wendy R. Sherman, and Todd D. Stern are former U.S diplomats and other United States government officials who have worked under presidents from both major political parties on diplomatic missions to mitigate the dangers of climate change. The Appendix lists their qualifications.

Amici take no position on the merits of this suit. They submit this brief solely to respond to the Justice Department's assertion that Rhode Island's claims will disrupt U.S. climate diplomacy and foreign policy. *Amici* explain why, based on their decades of experience, this assertion reflects a factual misunderstanding of U.S. climate diplomacy. *Amici* submit that, if properly managed, this state court lawsuit can redress the alleged corporate misbehavior and tortious deception without interfering with or disrupting United States foreign policy.

SUMMARY OF ARGUMENT

The State of Rhode Island has sued 21 fossil fuel companies ("Defendants"), bringing claims under Rhode Island's common law of public nuisance, private nuisance, products liability, and trespass, as well as under Rhode Island's Environmental Rights Act and the Rhode Island Constitution's Public Trust Doctrine. Rhode Island has alleged the following facts, which at this stage of litigation must be accepted as true:

- Defendants' deceptive promotion and marketing of fossil fuels have caused Rhode Island and its citizens harm.

[*] Counsel for *amici* certify that no party's counsel authored the brief in whole or in part and that no one other than *amici* and their counsel contributed money that was intended to fund the preparation or submission of this brief.

- In 1990, the United Nations' assessment body for climate change science, the Intergovernmental Panel on Climate Change ("IPCC"), reported a global scientific consensus that climate change is both dangerous and caused by human activities.[1]
- Aware of this consensus, Defendants nevertheless undercut the IPCC's findings through a decades-long misinformation campaign to deceive the public about the effects of fossil fuels on the climate.[2]
- Climate change, through its impact on severe storms and flooding, as well as substantial increases in average sea level, will cause the State of Rhode Island and its residents to incur significant expenses from current and future damage related to the injury.[3]

Rhode Island does not seek to regulate Defendants' emissions; instead, it asks for, *inter alia*, compensatory damages and spending on measures to abate future climate change harms.

Amici express no view on whether Rhode Island can or will prove its allegations. *Amici* file this brief instead to disagree with the assertions, made in the United States' amicus brief in support of Defendants' Motion to Dismiss, that the complaint should be dismissed without examination of

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[1] Compl. ¶ 149.d-e, *State of Rhode Island v. Chevron Corp.*, No. PC-2018-4716.

[2] *E.g.*, Compl. ¶ 155 ("A 1994 Shell report entitled 'The Enhanced Greenhouse Effect: A Review of the Scientific Aspects' by Royal Dutch Shell environmental advisor Peter Langcake stands in stark contrast to the company's 1988 report on the same topic. . . . While the report recognized the IPCC conclusions as the mainstream view, Langcake still emphasized scientific uncertainty, noting, for example, that 'the postulated link between any observed temperature rise and human activities has to be seen in relation to natural variability, which is still largely unpredictable.'"); Compl. ¶ 167 ("The Global Climate Coalition ('GCC'), on behalf of Defendants and other fossil fuel companies, funded advertising campaigns and distributed material to generate public uncertainty around the climate debate, with the specific purpose of preventing U.S. adoption of the Kyoto Protocol, despite the leading role that the U.S. had played in the Protocol negotiations.").

[3] *E.g.*, Compl. ¶ 269 ("As a direct and proximate result of Defendants' and each of their acts and omissions, Plaintiff State of Rhode Island has sustained and will sustain other substantial expenses . . . .").

evidence because: first, adjudication of Rhode Island's claims will interfere with the conduct of foreign affairs, specifically international climate negotiations; and, second, because this action would impair the federal government's "one voice" in foreign policy.

The United States' overstated foreign affairs concerns do not require dismissal at this very early stage of litigation. Because the United States' international climate negotiations involve neither corporations nor corporate civil liability, there is no reason to believe that ongoing diplomatic discussions or U.S. foreign policy regarding climate change would be disrupted by well-managed state adjudication of corporate liability for deceptive conduct. In *amici*'s experience, the United States has no foreign policy interest in immunizing from judicial review corporate deception, misconduct, and concealment of the kind alleged by Rhode Island. A state court could thus try and issue a tort judgment to that effect without disrupting the federal "voice" on foreign policy. Nor are well-managed state tort lawsuits likely to provoke an international backlash, because the international community supports subnational abatement efforts and because Rhode Island would need to clear a series of procedural hurdles before any foreign company might be held liable. To the contrary, such suits are consistent with an emerging worldwide consensus that legal action is needed on climate change, and that it is wise to allow each nation, and its subnational entities, to respond to that common climate crisis in their own variegated ways.

ARGUMENT

Amici express no view on whether any of Rhode Island's allegations can eventually be proved. They note only that there is no basis for suggesting that either the process of proving those allegations or the judicial relief requested would undermine U.S. foreign policy, international climate diplomacy, existing international commitments, or relations with foreign governments.

The U.S. Government argues that "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."[4] But, based on long experience, *amici* believe that a state court finding of corporate liability for deceptive conduct will not disrupt any of the United States' international climate negotiations with respect to national costs. Climate negotiations involve neither corporations nor corporate civil liability.

Nor, in *amici*'s experience, is there any reason to believe that a state court adjudicating or granting liability for corporate deception would prevent the United States from speaking with "one voice" on the world stage.[5] America has consistently opposed corporate amnesty for deceptive conduct. Particularly at this early stage of the litigation, it is premature to conclude that liability for fossil fuel companies would cause other nations to retaliate against the United States in any way.[6] If anything, the international community—and the United States as a party to the UNFCCC—supports subnational abatement efforts.

I. Corporate liability for deceptive conduct will not disrupt the United States' international climate negotiations, which involve neither corporations nor corporate civil liability.

Contrary to the United States' claims, the judicial relief sought in this case would not disrupt U.S. climate diplomacy. Payments from private companies to subnational governments for climate-related injuries are not addressed by either of the two agreements at the heart of international climate diplomacy: the United Nations Framework Convention on Climate Change ("UNFCCC") and the Paris Agreement. These agreements—which some *amici* helped to negotiate—were expressly designed to apply only to countries and regional economic integration

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[4] Memorandum of Law by Amicus Curiae the United States in Support of Defendants' Motion to Dismiss at 16, *State of Rhode Island v. Chevron Corp.*, No. PC-2018-4716 [hereinafter "Amicus Curiae Br. of United States of America"].

[5] *See* Amicus Curiae Br. of United States of America, *supra* note 4, at 18.

[6] *See* Amicus Curiae Br. of United States of America, *supra* note 4, at 17-18.

organizations like the European Union, not to corporate entities like Defendants here.

Furthermore, contrary to the Government's assertion, Rhode Island's tort claims do not "undermine[] the approach to the provision of financial assistance under the UNFCCC."[7] Neither the UNFCCC nor the Paris Agreement subjects private companies to climate-related obligations. The UNFCCC financial assistance provisions were not intended to preclude domestic state tort lawsuits against a private company for climate-related damages.[8] Although the Paris Agreement includes provisions relating to financial contributions to cover "mitigation and adaptation" costs, these provisions are limited to the payment[9] and mobilization[10] of *intergovernmental* assistance that flows either directly between countries or through intermediary financial institutions like the World Bank. These provisions funnel assistance almost exclusively from developed to developing countries and thus have nothing to do with the claims in this lawsuit, which seek a transfer of funds

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[7] Amicus Curiae Br. of United States of America, *supra* note 4, at 17.

[8] The United States improperly invokes *In re Assicurazioni Generali, S.P.A.*, 592 F.3d 113, 118 (2d Cir. 2010) for the proposition that Rhode Island's action somehow undermines the U.S. approach to the provision of financial assistance under the UNFCCC. *See* Amicus Curiae Br. of United States of America, *supra* note 4, at 17. But in *Assicurazioni*, the United States government explicitly stated that the international body at issue—the International Commission of Holocaust Era Insurance Claims (ICHEIC), whose founding one of *amici* (Eizenstat) helped negotiate—was the "exclusive forum and remedy for claims within its purview" (those of private citizens against private insurance companies for damages related to the Holocaust). Moreover, the state claims there fell squarely "within the category United States policy seeks to address." *Assicurazioni* at 117. But here, the UNFCCC is not—and never has been—a forum for subnational tort claims against private companies, nor, in our understanding, is it that body's intention ever to become such a forum.

[9] *E.g.*, Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 13, 2015, art. 9, in Rep. of the Conference of the Parties on the Twenty-First Session, U.N. Doc. FCCC/CP/2015/10/Add.1, annex (2016) [hereinafter Paris Agreement] ("Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.").

[10] *See* Joint Statement, 18 Donor States Determined To Commit 100 Billions for Climate Finance (Sept. 7, 2015), https://unfccc.int/news/18-industrial-states-release-climate-finance-statement (defining "public finance" to include "de-risking instruments" such as loan guarantees for the private sector).

from a private company to a subnational government located in the United States. In sum, nothing in Rhode Island's complaint conflicts with the United States' foreign policy approach regarding UNFCCC financial assistance provisions.

Nor is there any basis to conclude that a judgment in this case would affect ongoing intergovernmental climate negotiations or invoke "important and complex questions of diplomacy and foreign affairs relating to climate change."[11] At this writing, the United States has asked to withdraw from the Paris Agreement and so is not participating in any meaningful ongoing intergovernmental climate negotiations.[12] And in *amici*'s experience, given the intergovernmental nature of multilateral discussions, countries involved in international climate negotiations over the last two decades have addressed neither questions of legal blame with regard to fossil fuel corporations, nor the narrower issue of whether corporations should be shielded from liability in their domestic courts for misleading practices.

The Paris Agreement certainly does not even address intergovernmental liability. In fact, those *amici* who took part in negotiating the Paris Agreement specifically took care to ensure that the Agreement's Article 8, which addresses "loss and damage," was agnostic regarding the issue of legal blame; as such, Article 8 explicitly "does not involve or provide a basis for any liability or compensation."[13] The United States would have opposed any provisions establishing the liability of itself or its constitutive state governments to other countries based on historical emissions, and in any event, Rhode Island's lawsuit raises an entirely different issue, because any payments ordered would flow to, not from, governments in the United States. For this reason, the

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[11] Amicus Curiae Br. of United States of America, *supra* note 4, at 3.
[12] Amicus Curiae Br. of United States of America, *supra* note 4, at 5-6.
[13] Rep. of the Conference of the Parties on the Twenty-First Session ¶ 51, U.N. Doc. FCCC/CP/2015/10/Add.1 (Jan. 29, 2016) [hereinafter Decision Adopting Paris Agreement].

Government is incorrect to rely on a quotation from *amicus* Special Envoy for Climate Change Todd Stern regarding the United States' opposition to intergovernmental "compensation and liability" in other litigation.[14] The government misleadingly equates *amicus* Stern's discussion of the United States' traditional opposition to its *own* liability with the very different suggestion that U.S. government foreign policy also opposes the imposition of all corporate liability whatsoever, including in judgments rendered after fully tried state tort actions.

Of course, there are well-established international standards for dealing with fraudulent and deceptive commercial practices. For example, the Organisation for Economic Co-operation and Development's ("OECD") guidelines expect member countries (including the United States) to have domestic laws that effectively address fraud.[15] *Amici* know of no aspect of U.S. foreign policy that seeks to exonerate companies for knowingly misleading consumers about the dangers of their products. To the contrary, federal policy expressly prohibits companies from misleading the public.[16] The Trump Administration's own recent renegotiation of the North American Free

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[14] Amicus Curiae Br. of the United States of America, *supra* note 4, at 16-17.

[15] OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders 11 (2003), https://www.oecd.org/sti/consumer/2956464.pdf (calling for "[e]ffective mechanisms to stop businesses and individuals engaged in fraudulent and deceptive commercial practices" and "mechanisms that provide redress"). Neither past nor ongoing international climate negotiations have ever suggested that countries should depart from these standards in the climate change context.

[16] *E.g.*, Federal Trade Commission Act § 5(a), 15 U.S.C. § 45(a) (2018) ("Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful."); Securities and Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (2018) ("It shall be unlawful for any person . . . [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe . . . ."); 15 U.S.C. § 717c-1 (2018) ("It shall be unlawful for any entity . . . to use or employ, in connection with the purchase or sale of natural gas . . . any manipulative or deceptive device or contrivance . . . in contravention of such rules and regulations as the Commission may prescribe . . . ."); 18 C.F.R. § 1c.1(a) (2018) ("It shall be unlawful for any entity . . . in connection with the purchase or sale of natural gas . . . [t]o make any untrue statement . . . or to omit to state a material

Trade Agreement (the U.S.-Mexico-Canada Agreement or "USMCA") simply confirms the continuity of federal policy on this point.[17]

Finally, there is nothing about state tort lawsuits that implies they will necessarily interfere with federal negotiations on even closely related subject matters. During the Obama Administration, for example, the United States participated in the negotiation and signature of the Arms Trade Treaty, an international treaty that seeks to eradicate illicit trade and diversion of conventional arms by establishing international standards governing arms transfers. Yet no one ever seriously suggested that the ongoing treaty negotiations or the final treaty occupied the field, such that state courts needed to dismiss all lawsuits against gun manufacturers.[18] And in 2006, Congress showed that it could enact legislation to limit state tort actions when it deems necessary by passing legislation that immunized firearms manufacturers from most—but not all—state tort claims.[19] Moreover, if well-managed by state courts, state tort lawsuits would neither require a factfinder to evaluate the reasonableness of U.S. foreign policy nor impair the uniformity of that policy. But where, as here, Congress has *not* expressly chosen to limit the availability of state tort causes of action, the ordinary availability of state tort claims should not be interpreted to implicate,

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fact necessary in order to . . . not [be] misleading.").

[17] Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada, art. 21.4, Nov. 13, 2019, https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between ("Each Party shall adopt or maintain national consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities, recognizing that the enforcement of those laws and regulations is in the public interest.").

[18] *See, e.g., Soto v. Bushmaster Firearms Int'l*, 202 A.3d 262 (Conn. 2019), *cert. denied sub nom. Remington Arms Co., LLC v. Soto*, 140 S. Ct. 513 (2019) (allowing lawsuit for wrongful marketing and advertising of AR-15 assault rifle to proceed beyond pleading).

[19] *See* Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901-03 (2018) (prohibiting "qualified civil liability action[s]," defined as lawsuits against gun manufacturers or sellers for the criminal misuse of their products, but establishing an exception for negligent entrustment tort claims).

much less harm, uniquely federal interests.

In any event, international negotiations on climate change are substantially grounded in the work of the IPCC.[20] If anything has disrupted America's international climate negotiations, it has not been state tort lawsuits, but rather what Rhode Island charges are Defendants' deceptive attacks on the global scientific consensus regarding the causes of climate change.

II. Adjudicating corporate deception claims would not prevent the United States from speaking with "one voice" on the world stage.

U.S. foreign policy does not immunize corporations who deceive consumers regarding the effects of their products. Rhode Island's lawsuit to protect local property and the public trust, abate a public nuisance, and protect consumers from the deceptive marketing of fossil fuels addresses a traditional state-law responsibility that is not preempted by either U.S. foreign policy or Foreign Commerce Clause concerns. When state law addresses a traditional state responsibility,[21] such as the tort liability of entities that advertise and sell in-state,[22] it is preempted only if it conflicts with

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[20] *See, e.g.*, Decision Adopting Paris Agreement, *supra* note 13, ¶ 21 (inviting the IPCC to publish a special report on the impacts of planetary warming by 1.5 degrees Celsius); Paris Agreement, *supra* note 9, art. 13.7 (requiring Parties to inventory greenhouse gas emissions and removals using methodologies accepted by the IPCC, the very international body that Defendants allegedly seek to discredit).

[21] *DiPetrillo v. Dow Chem. Co.*, 729 A.2d 677, 682 (R.I. 1999) (adopting the standard from *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 605 (1991), that "[a]bsent express language . . . courts 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress'"); *see also Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) ("In all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947))); *Callaghan v. Darlington Fabrics Corp.*, 2017 R.I. Super. LEXIS 88, at 42 ("[T]here is a presumption against preemption . . . in cases involving powers traditionally delegated to the states" (citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. at 230.

[22] *See Medtronic*, 518 U.S. at 491 (describing negligent design defect claims as "traditional" state common-law claims).

either a comprehensive treaty or an explicit federal policy.[23] Courts have required similar showings of express congressional intent to invalidate state action under the dormant Foreign Commerce Clause.[24] If no actual conflict were required for federal preemption, the proliferation of international agreements addressing traditionally domestic concerns—ranging from labor to anti-discrimination—would obliterate much of states' historic police powers.[25]

Here, no aspect of U.S. foreign policy seeks to exonerate companies for knowingly misleading consumers about the dangers of their products. As *amici* have noted, the federal policy embodied in the USMCA and the OECD Guidelines expressly *prohibits* companies from

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[23] *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 419 n.11 (2003) ("Where . . . a State has acted within what Justice Harlan called its 'traditional competence,' but in a way that affects foreign relations, it might make good sense [for the doctrine of foreign affairs preemption] to require a conflict, of a clarity or substantiality that would vary with the strength or the traditional importance of the state concern asserted." (quoting *Zschernig v. Miller*, 389 U.S. 429, 459 (1968) (Harlan, J., concurring) (citation omitted)); *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1071–72 (9th Cir. 2012) ("[A] state law must yield when it conflicts with an express federal foreign policy . . . . [or] if it intrudes on the field of foreign affairs without addressing a traditional state responsibility.").

[24] *E.g.*, *Bd. of Trs. v. Mayor & City Council of Balt. City*, 562 A.2d 720, 756 (Md. 1989) ("[E]ven when state legislation relates to questions of foreign policy, the legislation violates the negative implications of the foreign Commerce Clause only 'if it either implicates foreign policy issues which must be left to the Federal Government or violates a clear federal directive.'" (quoting *Container Corp. v. Franchise Tax Bd.*, 463 U.S. 159, 194 (1983))); *cf. Barclays Bank Int'l, Ltd. v. Franchise Tax Bd.*, 829 P.2d 279, 300 (Cal. 1992) ("[W]e cannot turn away from the substantial evidence of Congress's repeated refusal to intervene in the regulation of state division of income methods for tax purposes, even one that provokes continuing international complaint. . . . To invest a paper trail of executive aspiration with the dignity of a 'clear federal directive' would . . . 'turn dormant Commerce Clause analysis entirely upside down.'" (quoting *Wardair Canada, Inc. v. Fla. Dep't of Revenue*, 477 U.S. 1 (1986))), *applied on remand*, 10 Cal. App. 4th 1742 (1992), *cert. granted sub nom.*, *Barclays Bank Plc v. Franchise Tax Bd.*, 510 U.S. 942 (1993), *aff'd*, 512 U.S. 298, 329-30 (1994) ("The Constitution expressly grants Congress, not the President, the power to 'regulate Commerce with foreign Nations.' . . . Executive Branch communications that express federal policy but lack the force of law cannot render unconstitutional California's otherwise valid, congressionally condoned, use of worldwide combined reporting." (internal citations omitted)).

[25] *See, e.g.*, North American Agreement on Labor Cooperation, Can.-Mex.-U.S., Sept. 14, 1993, 32 I.L.M. 1499; International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969).

misleading the public about their products.[26] Nor has the current administration made any statements requiring corporate amnesty or immunity from state lawsuits that could fairly be read to constitute federal policy with the "force of domestic law" required to preempt state or subnational action.[27]

Rhode Island's complaint centers on claims of corporate deception and the effects of such deception on the State of Rhode Island, not on the lawful sale of fossil fuels, nationally or internationally.[28] Providing a remedy in Rhode Island would not imply nationwide or international liability, as tort law remains largely a matter of state law.[29] Careful judges have successfully managed very expensive and diplomatically sensitive cases—including those that challenged

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[26] See *supra* text accompanying notes 15-17.

[27] *Medellin v. Texas*, 552 U.S. 491, 529 (2008). Even an explicitly presidentially-directed "commitment to negotiate under certain conditions and according to certain principles" would not constitute a federal policy sufficient to displace contrary state law. *Cent. Valley Chrysler-Jeep, Inc. v. Goldstone*, 529 F. Supp. 2d 1151, 1186 (E.D. Cal. 2007); *see Garamendi*, 539 U.S. at 416, 420 (requiring a "clear conflict" between a state law and an executive agreement that is "fit to preempt state law"); *Zschernig*, 389 U.S. at 459 (Harlan, J. concurring) ("States may legislate in areas of their traditional competence . . . ."); *Cent. Valley Chrysler-Jeep, Inc.*, 529 F. Supp. 2d at 1186-87 ("In order to conflict or interfere with foreign policy within the meaning of *Zschernig* [and] *Garamendi* . . . the interference must be with a policy . . . [enacted in a] negotiated agreement, treaty, partnership or the like" and "not simply with the means of negotiating a policy."). In a parallel case, when litigants challenged a Baltimore ordinance condemning South African apartheid, the Maryland Court of Appeals stated: "we disagree with the Trustees and Intervenors that the City's voice, as expressed in the Ordinances, undermines the federal government's ability to prescribe uniform regulations governing trade with South Africa. By virtue of their moral condemnation of apartheid, the Ordinances are 'broadly consistent' with federal policy towards South Africa . . . . Furthermore, as repeatedly mentioned, the federal government has not taken the position that divestment legislation interferes with the Nation's ability to achieve its foreign policy objectives."). *Bd. of Trs.*, 562 A.2d at 757.

[28] Amicus Curiae Br. of United States of America, *supra* note 4, at 20.

[29] *Compare Santa Clara v. Atl. Richfield Co.*, 40 Cal. Rptr. 3d 313 (Cal. Ct. App. 2006) (recognizing the viability of public nuisance actions under California law for promotion of a lead paint with knowledge of the hazard), *with In re Lead Paint Litig.*, 924 A.2d 484, 501 (N.J. 2007) (dismissing public nuisance for promotion of lead paint in part because New Jersey law requires continued "control of the nuisance").

deception by the tobacco industry[30] and sought recovery of Holocaust assets[31]—by using their broad discretion to craft equitable remedies.

Finally, even if adjudicating tort liability for deceptive corporate conduct could disrupt America's international relationships or create an international backlash, it would be entirely premature to reach that conclusion at this moment, based solely on the U.S. government's vague and speculative challenges to the allegations in Rhode Island's complaint.[32] There is no reason, at this juncture, to exaggerate the international impact of this and future cases, or their potential to spark international backlash. As always, this and future litigation remain subject to a suite of limiting principles of civil procedure, such as personal jurisdiction, *forum non conveniens*, foreign sovereign immunity, the act of state doctrine, equitable discretion, and practical limits on which assets may be recovered by Rhode Island.

Based on our detailed knowledge of world leaders and foreign ministers engaged in climate diplomacy, *amici* are aware of no current diplomatic protests criticizing or even addressing state tort litigation for corporate deception. To the contrary, the nearly two hundred parties to the Paris

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30 *See* Tobacco Master Settlement Agreement (1998), Public Health Law Center at Mitchell Hamline School of Law, https://publichealthlawcenter.org/sites/default/files/resources/master-settlement-agreement.pdf (providing for payments from the tobacco industry of $9 billion per year in perpetuity and precluding future state and subnational litigation).

31 *See* Swiss Bank Settlement Agreement (1999), Holocaust Victim Assets Litigation (Swiss Banks), http://www.swissbankclaims.com/Documents/Doc_9_Settlement.pdf (providing for $1.25 billion in payments from Swiss Banks to victims of Nazi persecution and looting, including for slave labor).

32 *Compare, e.g.*, *Bd. of Trs.*, 562 A.2d at 756 ("[T]he likelihood of retaliation would appear to be remote, given the record in this case and the absence of any clear indication from the federal government that [the challenged] legislation interferes with the Nation's foreign policy."), *with* Amicus Curiae Br. of United States of America, *supra* note 4, at 17 ("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.").

Agreement (including the United States[33]), do not oppose, but rather support, subnational abatement efforts.[34] In *amici*'s experience, any diplomatic backlash against the United States in recent years has been caused not by state court adjudication of civil liability for corporate deception, but rather by the current administration's decision to withdraw from the Paris Agreement.[35] Far from interfering with diplomacy, prudent adjudication of claims of corporate liability for deception might even enhance U.S. diplomatic efforts by reinforcing U.S. credibility with respect to the climate problem.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to deny Defendants' Motion to Dismiss, insofar as it disallows the State's claims based upon concerns regarding supposed interference with U.S. foreign policy.

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[33] The Trump Administration announced that it was beginning the process to withdraw from the Paris Agreement on November 4, 2019. A notice of withdrawal takes effect one year after it is submitted, i.e. November 4, 2020. Paris Agreement, *supra* note 9, art. 28.1-2 ("At any time after three years from the date on which this Agreement has entered into force for a Party [for the United States, November 4, 2016], that Party may withdraw from this Agreement by giving written notification to the Depositary. . . . Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal. . . .").

[34] Decision Adopting Paris Agreement, *supra* note 13, ¶¶ 133-34 ("Welcom[ing] the efforts of all non-Party stakeholders to address and respond to climate change, *including those of . . . cities and other subnational authorities* . . . [and] [i]nvit[ing] the non-Party stakeholders . . . to scale up their efforts and support actions to . . . build resilience and decrease vulnerability to the adverse effects of climate change and demonstrate these efforts via the Non-State Actor Zone for Climate Action platform . . . .") (emphasis added).

[35] *E.g.*, Nadeem Muaddi & Sarah Chiplin, *World Leaders Accuse Trump of Turning His Back on the Planet*, CNN (June 1, 2017), https://edition.cnn.com/2017/06/01/world/trump-paris-agreement-world-reaction/index.html (aggregating critical statements from countries including Brazil, Canada, and Sweden); Somini Sengupta et al., *As Trump Exits Paris Agreement, Other Nations Are Defiant*, N.Y. Times (June 1, 2017), https://www.nytimes.com/2017/06/01/world/europe/climate-paris-agreement-trump-china.html (describing disapproval by the United Kingdom, France, Germany, Italy, and Belgium).

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Antony Blinken served as Deputy Secretary of State from 2015 to 2017. He previously served as Deputy National Security Advisor to the President from 2013 to 2015.

Carol M. Browner served as Director of the White House Office of Energy and Climate Change Policy from 2009 to 2011 and previously served as Administrator of the Environmental Protection Agency from 1993 to 2001.

William J. Burns served as Deputy Secretary of State from 2011 to 2014. He previously served as Under Secretary of State for Political Affairs from 2008 to 2011, as U.S. Ambassador to Russia from 2005 to 2008, as Assistant Secretary of State for Near Eastern Affairs from 2001 to 2005, and as U.S. Ambassador to Jordan from 1998 to 2001.

Stuart E. Eizenstat served as Under Secretary of State for Economic, Business and Agricultural Affairs, and Deputy Secretary of the Treasury, Under Secretary of Commerce for International Trade, and U.S. Ambassador to the European Union from 1993 to 2001, during which time he negotiated agreements relating to sanctions, the Kyoto Protocol, and Holocaust assets.

Avril D. Haines served as Deputy National Security Advisor to the President from 2015 to 2017. From 2013 to 2015, she served as Deputy Director of the Central Intelligence Agency.

John F. Kerry served as Secretary of State from 2013 to 2017.

Gina McCarthy served as Administrator of the Environmental Protection Agency from 2013 to 2017. She is currently the President and CEO of NRDC.

Jonathan Pershing served as United States Special Envoy for Climate Change from 2016 to early 2017.

John Podesta served as Counselor to the President with respect to matters of climate change from 2014 to 2015 and White House Chief of Staff from 1998 to 2001.

Susan E. Rice served as U.S. Permanent Representative to the United Nations from 2009 to 2013 and as National Security Advisor to the President from 2013 to 2017.

Wendy R. Sherman served as Under Secretary of State for Political Affairs from 2011 to 2015.

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[*] Institutional Affiliations provided for identification purposes only.

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I hereby certify that on May 26, 2020, I filed and served this document through the Court's Electronic Filing System on the following parties:

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