

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRIENDS OF THE EARTH, et al.,

Plaintiffs,

v.

DEBRA A. HAALAND, et al.,

Defendants,

and

STATE OF LOUISIANA,

Intervenor-Defendant.

Case No. 21-cv-02317-RC

**MEMBERS OF CONGRESS' MOTION FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS**

Members of the United States Congress respectfully move this Court for leave to participate as *amici curiae* by filing an *amicus curiae* brief in support of the plaintiffs in this action pursuant to Local Civil Rule 7(o).

Counsel for members of Congress contacted counsel for the parties to determine whether they would consent to the filing of this motion. Counsel for the plaintiffs represented that they support the filing of this motion. Counsel for the federal defendants and counsel for proposed defendant-intervenor American Petroleum Institute (API) stated that those parties take no position on this motion. Counsel for defendant-intervenor state of Louisiana stated that it

opposes this motion. For the foregoing reasons, members of Congress' motion to file an *amicus curiae* brief should be granted.¹

Interests of the Proposed *Amici Curiae*

The proposed *amici curiae* are members of Congress and the House Committee on Natural Resources that, among other things, oversees and monitors the development of oil and gas on onshore and offshore federal lands. The members of Congress are also committed to promoting smart, sustainable development of the country's fossil fuel resources which requires federal agencies to strictly comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, *et seq.*, and its fundamental requirement that a federal agency is fully informed of the environmental consequences of its decisions before they are made.

The members of Congress have an informed perspective on and strong interest in the Bureau of Ocean Energy Management's (the Bureau) decision to hold the largest offshore oil and gas lease sale in the country's history without fully evaluating the environmental impact of Lease Sale 257. The members of Congress are actively working on federal policies and laws intended to promote the reduction of greenhouse gas emissions and promote sustainable energy development. As part of those efforts, the members of Congress work to gather, disseminate, and promote current, accurate information and data on climate science and the environmental, societal, and economic impacts of greenhouse gas emissions, which is critical to understanding and solving the crisis of climate change in the United States and globally. The members of Congress rely on the enforcement of environmental laws currently in place—including NEPA—

¹ The members of Congress seeking to participate as *amici curiae* include Representatives Alan Lowenthal, Raúl Grijalva, and Jared Huffman, and more members of the House of Representatives may join the *amicus curiae* brief if this motion for leave is granted.

to ensure that climate change is adequately addressed in federal decisions, which enables Congress to focus its effort on what additional laws and measures are needed to advance the nation's climate change policy.

NEPA's "hard look" requirement ensures that federal decisions are made in concert with, and do not thwart, Congress' effort to address climate change. The members of Congress are particularly concerned with the Bureau's failure to explain its greenhouse gas emissions analysis in the environmental review of Lease Sale 257, as required by NEPA and the federal Administrative Procedure Act (APA), 5 U.S.C. § 702. The members of Congress are also concerned with the Bureau's failure to consider the growing, substantial amount of new information regarding the crisis of climate change that has developed since the Bureau's 2017 environmental analysis on which the Bureau unlawfully relied in issuing Lease Sale 257, in violation of both NEPA and the APA.

The Bureau's failure to fulfill the objectives and requirements of NEPA in its management of public lands and mineral development—including fully informed federal agency decisions based on current, reliable information—undermines Congress' actions intended to solve the climate change crisis. The Bureau's decision to hold Lease Sale 257 without adequately considering the environmental impact of its decision is in direct conflict with the policies that the members of Congress are working to promote and the laws Congress has already enacted.

This Court has "broad discretion" in deciding whether to allow the members of Congress to file an *amicus curiae* brief. *Mashpee Wampanoag Tribe v. Bernhardt*, Civil Action No. 18-2242, 2020 U.S. Dist. LEXIS 93125, *1 (D.D.C. May 28, 2020) (citation omitted) (granting members of Congress' leave to file a brief as *amici curiae* in support of the plaintiff). The

“filing of an amicus brief should be permitted if it will assist the judge ‘by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties’ briefs.’” *Id.* (quoting *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)).

Here, the members of Congress can provide a unique perspective as policymakers who are working to develop policy and solve the crisis of climate change and as legislators who have insight regarding federal agencies’ compliance with NEPA, the APA, and other federal environmental laws. *See Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1185 (9th Cir. 2008) (“NEPA expresses a Congressional determination that procrastination on environmental concerns is no longer acceptable.”) (citation omitted). Congress’ interests in lease sales decisions and the adequacy of environmental review is expressly recognized in the Outer Continental Shelf Lands Act, which requires that the Secretary of the Interior submit any proposed leasing program to Congress at least 60 days prior to approving the program. 43 U.S.C. § 1344(d).

Although the members of Congress support the plaintiff environmental organizations’ legal challenge to the Bureau’s decision to issue Lease Sale 257, the environmental organizations cannot represent the broader policymaking and legislative interests of the members of Congress.

The members of Congress have sought to participate as *amici curiae* following submission of briefs by the federal defendants, intervenor-defendant state of Louisiana, and proposed intervenor-defendant API on November 10, 2021. The members of Congress are concerned with and oppose the defendants’ collective attempt to undermine the critical role of NEPA at the lease sale stage, as intended by Congress, and the Bureau’s attempt to provide a post-hoc rationale for the Bureau’s failure to adequately conduct an environmental review of Lease Sale 257. Affording the members of Congress an opportunity to submit an *amicus curiae*

brief would not disrupt the existing summary judgment briefing schedule or prejudice any party. The members of Congress have sought to participate as *amici curiae* within one week of the defendant's and defendant-intervenors' cross-motions for summary judgment. The members of Congress propose that the Court grant them leave to file an *amicus curiae* brief on or before December 3, 2021, at least one week before the filing deadline for the defendant's and defendant-intervenors' replies in support of their cross-motions for summary judgment.

CONCLUSION

Accordingly, the members of Congress request that this Court grant them leave to file an *amicus curiae* brief in support of plaintiffs.

Respectfully submitted November 17, 2021.

/s/ W. Eric Pilsk
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CERTIFICATE OF SERVICE

I certify that on this 17th day of November, 2021, I filed the above motion for leave with the Court's CM/ECF system, which provided notice of this filing by email to all counsel of record.

/s/ W. Eric Pilsk

W. Eric Pilsk