No. 22-1096

United States Court of Appeals for the Third Circuit

STATE OF DELAWARE, *ex. rel.* KATHLEEN JENNINGS,
ATTORNEY GENERAL OF THE STATE OF DELAWARE

Plaintiff-Appellee,

v.

BP AMERICA INC., BP PLC, CHEVRON CORP., CHEVRON USA INC., CONOCOPHILLIPS, CONOCOPHILLIPS CO., PHILLIPS 66, PHILLIPS 66 CO., EXXON MOBIL CORP., EXXONMOBIL OIL CORP., XTO ENERGY INC., HESS CORP., MARATHON OIL CORP., MARATHON PETROLEUM CORP., MARATHON PETROLEUM CO. LP, SPEEDWAY LLLC, MURPHY OIL CORP., MURPHY USA INC., ROYAL DUTCH SHELL PLC, SHELL OIL COMPANY, CITGO PETROLEUM CORP., TOTAL SA, TOTALENERGIES MARKETING USA INC., OCCIDENTAL PETROLEUM CORP., DEVON ENERGY CORP., APACHE CORP., CNX RESOURCES CORP., CONSOL ENERGY INC., OVINTIV INC., AMERICAN PETROLEUM INSTITUTE

Defendants-Appellants,

Appeal from the U.S. District Court
for the District of Delaware, No. 20-cv-1429

AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, counsel for *amicus curiae* hereby state that the National Association of Manufacturers has no parent corporations and has issued no stock.

Dated: March 22, 2022

/s/ Philip S. Goldberg
Philip S. Goldberg

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae is the National Association of Manufacturers ("NAM"). The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12.5 million men and women, contributes $2.57 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for nearly two-thirds of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NAM is dedicated to manufacturing safe, innovative and sustainable products that provide consumer benefits while protecting human health and the environment, and fully supports national efforts to address climate change and improve public health through appropriate laws and regulations. The NAM has grave concerns, however, about the attempt here to create categorical liability for lawful, beneficial energy products essential to modern life through state law. It has a

[1] The parties consented to the filing of *amicus curiae* briefs. No counsel for a party authored this brief in whole or in part; and no party, party's counsel, or other person or entity—other than *amicus curiae* or their counsel—contributed money intended to fund preparing or submitting the brief. Two attorneys at Shook Hardy & Bacon, Tristan Duncan and Michael Healey, are listed as counsel to parties in this case and neither them nor their clients had any part in the preparation or filing of this brief.

substantial interest in attempts by state and local governments—here, the State of Delaware—to subject their members to unprincipled state liability for harms allegedly associated with climate change. Climate change is one of the most important public policy issues of our time, and one, as the U.S. Supreme Court found in *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011), that plainly implicates federal questions and complex policymaking.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case is part of a coordinated, national litigation campaign over global climate change and the debate as to how to reduce and mitigate impacts of modern energy use. *Amicus* appreciates developing new technologies to reduce greenhouse gas ("GHG") emissions, make energy more efficient, and modify infrastructure to deal with the impacts of climate change has become an imperative across the globe. State lawsuits against the energy sector, though, cannot achieve these objectives, and state courts are not the appropriate forums to decide critical national energy issues.

In *Am. Elec. Power Co. v. Connecticut*, the U.S. Supreme Court addressed the first wave of this litigation campaign. 564 U.S. 410 (2011) (hereafter "*AEP*"). It unanimously held in an opinion written by the late-Justice Ginsburg that claims alleging harms from the effects of global climate change sound in federal common law and Congress displaced such claims when it enacted the Clean Air Act. *See id.* at 424. Soon after, the lawyers and foundations behind the litigation campaign began

developing ideas for trying to circumvent this ruling. They looked for legal theories that would achieve comparable national goals but that might *appear* different from *AEP* to some courts. The heart of this effort, as here, is re-casting the federal public nuisance claims against utilities in *AEP* as state public nuisance, consumer protection act and other state law claims against energy companies.

This case is one of about two dozen nearly identical lawsuits filed since 2017 in carefully chosen states based on this premise. Some cases seek to blame only one or two oil producers, while others, as here, name upwards of twenty producers and sellers. As these permutations demonstrate, these lawsuits are not about any company or community. They are part of a national campaign to recruit governments for this litigation, who then make a political decision of whom to sue. Further, the elements of the claims are interstate and international in scope. To adjudicate these lawsuits, state courts must pass judgment on the rules governing the international production, sale, promotion, and use of fossil fuels as well as emissions from around the world over the past 150 years. Defendants removed these cases to federal courts because these issues are beyond a state court's domain, and the U.S. Supreme Court has required the federal appellate courts to weigh all of the grounds for removal. *See BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021).

Amicus requests the Court to determine that these putative state-law claims, which allege harm from global climate change, are removable because the issues

they raise arise under federal law. As the Supreme Court explained in *AEP*, climate change is a worldwide phenomenon, and the energy policy issues these cases present—energy independence, economic and national security, the stability of the electric grid, and energy affordability along with climate—are of major national significance. As today's geopolitical events demonstrate it would be inappropriate for state courts through this litigation to tie the hands of federal policymakers and interfere with their ability to balance these critical federal interests. The Constitution requires these interstate questions to be decided in a federal forum.

ARGUMENT

I. ADJUDICATING ALLEGATIONS OVER EFFECTS OF GLOBAL CLIMATE CHANGE REQUIRES FEDERAL JURISDICTION

In *AEP*, the Supreme Court unequivocally stated that climate tort litigation raises issues of "special federal interest." 564 U.S. at 424. It explained that federal common law addresses subjects "where the basic scheme of the Constitution so demands," including "air and water in their ambient or interstate aspects." *Id.* at 422 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972)). This rule of law applies to the climate change claims here in equal force as it did in *AEP*.

The factual predicate in *AEP* is the same as here: global climate change is caused by GHG emissions that are "naturally present in the atmosphere and . . . also emitted by human activities," including the use of fossil fuels. *Id*. at 416. These GHG emissions combined with other global sources of GHGs and have accumulated in

the earth's atmosphere for more than a century since the industrial revolution and are creating impacts on the earth. "By contributing to global warming, the plaintiffs asserted, the defendants' carbon-dioxide emissions created a 'substantial and unreasonable interference with public rights,' in violation of the federal common law or interstate nuisance, or in the alternative, of state tort law." *Id.* at 418. Here, the allegations are also that Defendants contributed to global warming by causing or contributing to certain emissions.

In *AEP*, the Supreme Court followed the two-step analysis from *United States v. Standard Oil Co. of Cal.*, 332 U.S. 301 (1947) in dismissing the claims. First, it determined the claims arose under federal common law and that "borrowing the law of a particular State would be inappropriate." *AEP*, 564 U.S. at 422. As the Court explained in *Standard Oil*, there are certain claims that invoke the "interests, powers, and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings." 332 U.S. at 307. Determining rights and responsibilities for global climate change is one of them. As the Supreme Court stated, the production, sale, promotion, and use of fossil fuels as well as emissions from around the world raise inherently federal questions.

Second, and only then, did the Supreme Court hold that Congress displaced remedies that might be granted under federal common law through the Clean Air Act. *See AEP*, 564 U.S. at 425. As a preliminary matter, only the initial inquiry—

whether the subject requires a uniform federal rule—goes to jurisdiction and is before this Court at this time. But, it is also important to point out the nonsensical nature of Plaintiff's position: it argues that *because* Congress spoke on this issue through the CAA and made the EPA the governing authority over GHG emissions that it somehow *undermines* the federal nature of this case. Just the opposite is true.

In addition, Plaintiff argues these cases should face a different fate from *AEP* because they are packaged differently—they target different members of the energy sector and different ways of contributing to global climate change—but these differences have no legal distinctions. When the Supreme Court decided *AEP*, two other climate tort cases were pending against the energy sector. An Alaskan village was suing many of the same energy producers as here under federal law for damages related to sea level rise. *See Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012). In Mississippi, homeowners also sued many of the energy producers in this case under state law for property damage from Hurricane Katrina. *See Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460 (5th Cir. 2013). The allegations, as here, were that the defendants, through their conduct and products, caused certain emissions which, in turn, contributed to climate change and made the hurricane more intense. *See id.* Thus, these cases have direct parallels to the case at bar.

After *AEP*, both cases were dismissed. As the Ninth Circuit explained, even though the legal theories in *Kivalina* differed from *AEP*, given the Supreme Court's

message in *AEP*, "it would be incongruous to allow [such litigation] to be revived in another form." *Kivalina*, 696 F.3d at 857. Climate suits alleging harm from emissions across the globe are exactly the sort of "transboundary pollution" claims the Constitution exclusively committed to federal law. *Id*. at 855. For years, the law has been clear: regardless of how the legal claims are packaged—whether over energy use or products, by public or private plaintiffs, under federal or state law, or for injunctive relief or abatement/damages—litigation alleging harms from the effects of global climate change implicates uniquely federal interests and must be governed by federal law.

II. THIS CASE IS PART OF A LITIGATION CAMPAIGN TO HAVE STATE COURTS UNDERMINE THE U.S. SUPREME COURT'S JURISPRUDENCE ON CLIMATE LAWSUITS

Lawyers and organizations behind this litigation campaign were undeterred by *AEP*, as well as the subsequent dismissals in *Kivalina* and *Comer*. In 2012, they convened in La Jolla, California to brainstorm on how to re-package the litigation once again in hopes of using litigation to achieve their own national policy priorities. *See* Findings of Fact and Conclusions of Law, *In re ExxonMobil Corp.*, No. 096-297222-18 (Tex. Dist. Ct.–Tarrant Cty. Apr. 24, 2018), at 3. Organizers of the conference published their discussions. *See Establishing Accountability for Climate Damages: Lessons from Tobacco Control, Summary of the Workshop on Climate*

Accountability, Public Opinion, and Legal Strategies, Union of Concerned Scientists & Climate Accountability Institute (Oct. 2012).[2]

Despite the clear direction by the Supreme Court and the Courts of Appeals, they said "the courts offer the best current hope" for imposing their national policy agenda over fossil fuel emissions. *Id.* at 28. They discussed "the merits of legal strategies that target major carbon emitters, such as utilities [as in *AEP*], versus those that target carbon producers." *Id*. at 12. They talked through causes of action, "with suggestions ranging from lawsuits brought under public nuisance laws," as here, "to libel claims." *Id.* at 11. Given *AEP* in particular, they emphasized making the lawsuits look like traditional damages claims rather than directly asking a court to regulate emissions or put a price on carbon use. *See id.* at 13. As one person said, "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties." *Id.*

They also discussed "the importance of framing a compelling public narrative," including "naming [the] issue or campaign" to generate "outrage." *Id.* at 21, 28. At a follow up session in 2016, they explained that "creating scandal" through lawsuits would also help "delegitimize" the companies politically. *See Entire January Meeting Agenda at Rockefeller Family Foundation*, Wash. Free Beacon,

[2] https://www.ucsusa.org/sites/default/files/attach/2016/04/establishing-accountability-climate-change-damages-lessons-tobacco-control.pdf.

Apr. 2016.[3] Finally, they decided to pursue claims under state law in hope that state courts would not follow *AEP*, *Kivalina* and *Comer*. In the end, lawsuits have been filed in multiple jurisdictions to try to "side-step federal courts and Supreme Court precedent" and convince state courts to help them advance their preferred national and international policy agenda by awarding money to their local jurisdictions. Editorial, *Climate Lawsuits Take a Hit*, Wall St. J., May 17, 2021.[4]

As discussed above, these lawsuits were meant to look different from *AEP*, which targeted fossil fuel users (utilities) and sought injunctive relief under federal public nuisance law. Accordingly, these cases target energy producers, invoke state laws, and seek abatement and damages. To name the litigation, supporters asserted some widespread "campaign of deception" involving the many, often-changing companies named in the various lawsuits. *See*, *e.g.*, Complaint, *State of Delaware v. BP America*, *Inc.*, No. N20C-09-097 AML CCLD (Del. Super. Ct. Sept. 10, 2020) (using this phrase 25 times). The State of Delaware named about twenty energy

[3] The agenda is available at https://freebeacon.com/wp-content/uploads/2016/04/scan0003.pdf.

[4] A reporter who follows the litigation has observed the incongruity between the way the litigation is presented in and out of court: "State and local governments pursuing the litigation argue that the cases are not about controlling GHG emissions . . . But they also privately acknowledge that the suits are a tactic to pressure the industry." Dawn Reeves, *As Climate Suits Keeps Issue Alive, Nuisance Cases Reach Key Venue Rulings*, Inside EPA, Jan. 6, 2020, at https://insideepa.com/outlook/climate-suits-keeps-issue-alive-nuisance-cases-reach-key-venue-rulings.

companies and a trade association in this lawsuit, whereas City of Hoboken in another case pending in this Circuit named around a half dozen companies, others name only one or two, and some have named around thirty companies including local entities in an effort to keep the cases in state court. This ever-changing list of companies in different aspects of the energy industry alleged to have participated in this so-called "campaign of deception" highlights the phony nature of the narrative.

Supporters of this litigation campaign have used political-style tactics, both to drive the litigation and to leverage the litigation to achieve their true, extrajudicial goals. They have taken out advertisements and billboards blaming energy companies for climate change and urging public officials to file lawsuits, as well as hosted symposiums and press conferences to generate media attention. *See generally* Beyond the Courtroom, Manufacturers' Accountability Project[5] (detailing this litigation campaign). Thus, unlike traditional state tort suits, success here includes merely filing and maintaining state lawsuits they can use for national policy goals.

III. CLAIMS ALLEGING HARMS FROM CLIMATE CHANGE PRESENT UNIQUELY FEDERAL INTERESTS

To be clear, the state law theories in this litigation are mere fig leaves. Unlike traditional local property damage cases, the theory of harm here is not moored to any specific plaintiff, defendant, location or jurisdiction. And, the chain of causation is

[5] https://mfgaccountabilityproject.org/beyond-the-courtroom.

anything but local; it extends far beyond the boundaries of any locality, state or country. As the Second Circuit stated in response to a similar lawsuit by the City of New York, "we are told that this is merely a local spat about the City's eroding shoreline, which will have no appreciable effect on national energy or environmental policy. We disagree. Artful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions." *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021). The same is true here.

As the Second Circuit explained, merely referencing state claims and asking for compensation—which, as discussed above, was the purposeful packaging of this and the other lawsuits—does not make federal matters related to global climate change suddenly suitable for state courts. This litigation, the Second Circuit continued, seeks to subject energy manufacturers to state tort liability "for the effects of emissions made around the globe over the past several hundred years," which includes "conduct occurring simultaneously across just about every jurisdiction on the planet." *Id.* at 92. "Such a sprawling case is simply beyond the limits of state tort law." *Id.* Thus, as the Second Circuit did, this Court should consider the substance and impact of the allegations, not merely the labels the complaint uses.

The state law claims upon which these cases are based clearly do not fit the allegations. Initially, state public nuisance theory was the primary tort of choice for climate litigation because, in large part, its "vague" sounding terms are often

misunderstood. *City of Milwaukee v. Illinois*, 451 U.S. 304, 317 (1981).[6] Supporters of this effort have bemoaned their fifty-year failure to transform public nuisance into an amorphous tool for creating industry-wide liability over a variety of social and environmental issues. *See* Denise E. Antolini, *Modernizing Public Nuisance: Solving the Paradox of the Special Injury Rule*, 28 Ecol. L.Q. 755, 838 (2001) (recounting campaign to change elements of the tort that would have "[broken] the bounds of traditional public nuisance"). Several state supreme courts, including in New Jersey, have rejected the application of public nuisance theory in a situation similar to the one at bar, explaining that such claims "would stretch the concept of public nuisance far beyond recognition and would create a new and entirely unbounded tort antithetical to the meaning and inherent theoretical limitations of the tort of public nuisance." *In re Lead Paint Litig.*, 924 A.2d 484, 501 (N.J. 2007).[7]

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[6] *See also* W. Page Keeton, et al., Prosser & Keeton on the Law of Torts 616 (5th ed. 1984). "In popular speech [nuisance] often has a very loose connotation of anything harmful, annoying, offensive or inconvenient. . . . Occasionally this careless usage has crept into a court opinion. If the term is to have any definite legal significance, these cases must be completely disregarded." Restatement (Second) of Torts § 821A cmt. b (1979).

[7] The Oklahoma Supreme Court recently issued a similar ruling. *See State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. Nov. 9, 2021) ("Public nuisance is fundamentally ill-suited to resolve claims against product manufacturers. . . . [It covers] conduct, performed in a location within the actor's control, which harmed those common rights of the general public. It has historically been linked to the use of land by the one creating the nuisance.").

The more recent lawsuits, including the one at bar, also lean on state consumer protection statutes, which also use highly vague terminology. As with public nuisance, consumer protection acts have intentionally broad language to apply to a wide variety of conduct, but only within narrow boundaries. The goal of these statutes is to make sure products perform as represented, and there is no allegation that any purchaser of a gallon of gasoline, for example, did not get what he or she paid for. By contrast, the claims here relate to interstate and international carbon emissions, the accumulation of GHGs in the atmosphere, sea level rise and other impacts around the world allegedly caused by climate change, and the international promotion and sale of fossil fuels—all of which exist far outside the reach of any state consumer protection act or local or state government's authority. Merely invoking these causes of action do not turn participation in the energy industry or how one engages in the international public policy debate over fossil fuel emissions into state law liability-inducing events. Thus, this attempt to mask federal issues under state law does not stand up to minimal scrutiny.

The allure of such expansive legal theories for subjecting companies to liability for a wide variety of social and environmental issues is understandable: the lawsuits are generally funded by outside counsel and non-profit organizations seeking to advance a policy agenda, promise funding for local governments, and

target largely out-of-state corporations.[8] *See, e.g.*, City of Hoboken Press Release, *Hoboken Becomes First NJ City to Sue Big Oil Companies, American Petroleum Institute for Climate Change Damages*, Sept. 2, 2020 ("Legal fees associated with the lawsuit are funded, in part, by the Institute for Governance and Sustainable Development and, in part, through a contingency arrangement.").[9] But a desire to create a revenue stream does not make lawsuits appropriate, and courts assessing comparable types of cases over the past twenty years have been rightfully skeptical of them. *See, e.g.*, *North Carolina v. Tennessee Valley Auth.*, 615 F.3d 291 (4th Cir. 2010); *see also* Donald G. Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. Cin. L. Rev. 741 (2003) (discussing cases).

Indeed, in climate litigation, federal district judges have seen through these attempts to mischaracterize the federal public policy nature of this litigation as merely seeking state law damages. For example, Judge Keenan, who dismissed New York City's climate lawsuit, observed the City's claims were "trying to dress a wolf up in sheep's clothing" by hiding an emissions case. Larry Neumeister, *Judge Shows*

[8] *See* Phil Goldberg, Christopher E. Appel & Victor E. Schwartz, *Can Governments Impose a New Tort Duty to Prevent External Risks? The 'No-Fault' Theories Behind Today's High Stakes Government Recoupment Suits*, 44 Wake Forest L. Rev. 923 (2009) (discussing the drivers behind this and other similar litigations).

[9] https://www.hobokennj.gov/news/hoboken-sues-exxon-mobil-american-petroleum-institute-big-oil-companies.

Skepticism to New York Climate Change Lawsuit, Assoc. Press, June 13, 2018.[10] As indicated, the Second Circuit affirmed this dismissal. Delaware and other local and state governments should not be able to avoid the federal scrutiny merely by painting their federal law claims with a state law brush.

In the past, the U.S. Supreme Court has expressed concerns that state court proceedings "may reflect 'local prejudice' against unpopular federal laws" or out-of-state defendants. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007). The same dynamics could occur here, as the stated purpose of these lawsuits is to bring out-of-state money to local communities. Indeed, in neighboring Maryland, Annapolis officials in announcing their climate lawsuit expressed unusual confidence that "the Maryland courts will get us there." Brooks Dubose, *Annapolis Sues 26 Oil and Gas Companies for their Role in Contributing to Climate Change*, Cap. Gazette, Feb. 23, 2021.[11] Hometown recoveries would be highly inappropriate in this litigation, as state courts are not positioned to decide who, if anyone, is to be legally accountable for climate change, how energy policies should change to address climate impacts, and how local mitigation projects should be funded.

[10] https://apnews.com/dda1f33e613f450bae3b8802032bc449.

[11] https://www.capitalgazette.com/maryland/annapolis/ac-cn-annapolis-fossil-fuels-lawsuit-20210222-20210223-vs2ff7eiibfgje6fvjwticys2i-story.html.

IV. THE COURT SHOULD MAINTAIN THE INTEGRITY OF THE FEDERAL-STATE DUAL COURT SYSTEM

Finally, this Court should not permit Delaware and the other state and local governments to create local liability over global GHG emissions, impose a penalty on the worldwide production of fossil fuels, or raise energy prices on American consumers and businesses simply by "artfully" pleading claims under state law. *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). "What matters is the crux—or, in legal speak, the gravamen—of the plaintiffs[s]' complaint, setting aside any attempts at artful pleading." *Fry ex rel. E.F. v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 755 (2017). As the U.S. Supreme Court explained in *AEP*, the crux of climate litigation is a set of uniquely federal interests, including the affordability of electricity and gasoline for American consumers, the nation's global competiveness, foreign policy dynamics, and national security interests along with climate.

At the heart of the State's case is the notion America should have reduced the production of fossil fuels years ago because of the impact these fuels have on the climate. *See City of New York*, 993 F.3d at 93 ("If the Producers want to avoid all liability, then their only solution would be to cease global production altogether."). But, the American government does not control the global fossil fuel market. As the *New York Times* reported a few months ago, "Western energy giants like BP, Royal Dutch Shell, ExxonMobil and Chevron are slowing down production as they switch to renewable energy. . . . But that doesn't meant the world will have less oil." Clifford

Krauss, *As Western Oil Giants Cut Production, State-Owned Companies Step Up*, N.Y. Times, Oct. 14, 2021.[12] "This massive shift could . . . make America more dependent on [OPEC], authoritarian leaders and politically unstable countries . . . that are not under as much pressure to reduce emissions." *Id.* "[T]he United States and Europe could become more vulnerable to the political turmoil in those countries and to the whims of their rulers. . . . [And] President Vladimir Putin of Russia uses his country's vast natural gas reserves as a cudgel." *Id.*

A state court, wielding state law cannot simply decide to stop the sale of fossil fuel. As is evident from the current Administration's recent request urging the oil producing countries to produce more oil, it may not be in the national interest to do so. *See* Andrea Shalal and Jeff Mason, *Biden Pushes G20 Energy Producing Countries to Boost Production*, Reuters, Oct. 30, 2021;[13] Jordan Fabian, et al., *Biden Aide Says Oil Companies Can Up Production If They Want*, Bloomberg, Mar. 1, 2022 (quoting White House National Economic Council Deputy Director Bharat Ramamurti: "If folks want to produce more, they can and they should.").[14]

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[12] https://www.nytimes.com/2021/10/14/business/energy-environment/oil-production-state-owned-companies.html

[13] https://www.reuters.com/business/energy/biden-push-g20-energy-producers-boost-capacity-ease-price-pressures-2021-10-30/.

[14] https://www.bloomberg.com/news/articles/2022-03-01/biden-aide-says-energy-companies-can-up-production-if-they-want

In addition, this litigation could hurt efforts by other states and communities to address climate impacts in their jurisdictions. More than fifteen state attorneys general have objected to this litigation because Delaware and other governments are using it to "export their preferred environmental policies and their corresponding economic effects to other states." *Amicus* Brief of Indiana and Fourteen Other States in Support of Dismissal, *City of Oakland v. BP*, No. 18-1663 (9th Cir. filed Apr. 19, 2018). What these attorneys general understand is that there are more fair and less harmful ways to address local impacts of climate change that do not have the downsides associated with this litigation. For example, federal and state programs have already made such funds available and they can provide relief now.

The Court should reverse the order to remand and grant removal to federal court. There are about two dozen climate suits currently pending around the country, with organizers actively recruiting more lawsuits. Lawsuits alleging that energy manufacturers can be subject to untold liability for local harms caused by global climate change should not be the result of state-by-state ad hoc rulings. Only uniform federal law can supply the governing standards that can be applied here.

CONCLUSION

For these reasons, the Court should reverse the district court's remand order.

Respectfully submitted,

/s/ Philip S. Goldberg

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Dated: March 22, 2022

CERTIFICATE OF COMPLIANCE

1. I certify that I am a member of the bar of this Court.

2. I certify that this brief complies with the type-face and volume limitations set forth in Federal Rules of Appellate Procedure 32(a) and 29 as follows: The type face is fourteen-point Times New Roman font, and the word count, as determined by the word-count function of Microsoft Word for Office is 4386, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and the rules of this Court.

3. I certify that the text of the electronic brief is identical to the text in the paper copies.

4. I certify that a virus detection program (McAfee AntiVirus) has been run on the file and that no virus was detected.

Dated: March 22, 2022 /s/ Philip S. Goldberg
Philip S. Goldberg

CERTIFICATE OF SERVICE

I certify that on March 22, 2022, I caused the foregoing to be filed with the Clerk of the Court through the Court's ECF system, which will serve notice of the filing on all filers registered in the case, including all parties required to be served.

/s/ Philip S. Goldberg
Philip S. Goldberg