SCAP NO. _____

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CITY AND COUNTY OF HONOLULU and HONOLULU BOARD OF WATER SUPPLY,

Petitioners/Plaintiffs/Appellees,

vs.

SUNOCO LP; ALOHA PETROLEUM, LTD.; ALOHA PETROLEUM LLC; EXXON MOBIL CORP.; CHEVRON CORP; CHEVRON USA INC.; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY LLC; BHP GROUP LIMITED; BHP GROUP PLC; BHP HAWAII INC.; BP PLC; BP AMERICA INC.; MARATHON PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; AND DOES 1 through 100, inclusive,

Respondents/Defendants/Appellants

APPEAL NO. CAAP-22-0000429

CIVIL NO. 1CCV-20-0000380 (JPC)
(Other Non-Vehicle Tort)

APPEAL FROM: ORDERS DENYING JOINT MOTIONS TO DISMISS

FIRST CIRCUIT COURT

HON. JEFFREY P. CRABTREE

PETITIONERS/PLAINTIFFS/APPELLEES' APPLICATION FOR TRANSFER TO THE SUPREME COURT OF THE STATE OF HAWAI'I

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PETITIONERS/PLAINTIFFS/APPELLEES' APPLICATION FOR TRANSFER TO THE SUPREME COURT OF THE STATE OF HAWAI‘I

Petitioners, Plaintiff-Appellees City & County of Honolulu and the Honolulu Board of Water Supply, pursuant to HRAP 40.2 and HRS §§ 602-58(a)(1), (b)(1), request that the appeal pending in the above-captioned matter be transferred from the Intermediate Court of Appeals to the Supreme Court of the State of Hawai‘i. The appeal involves questions of imperative public importance, as well as questions of first impression and novel legal issues, concerning (1) the Hawai‘i judiciary's authority to exercise personal jurisdiction over large corporations with deep

and long-standing operations within the state, and (2) the judiciary's authority to remedy harms to Hawaii's environment and citizenry from those corporations' alleged misleading and deceptive conduct.

Statement of Prior Proceedings

Petitioner City and County of Honolulu brought this action in the Circuit Court for the First Circuit in March 2020, alleging that Respondents, major publicly listed oil and gas corporations, worked individually and collectively for decades to mislead consumers and the public about the reality and dangers of climate change, and about the central role Respondents' fossil-fuel products play in causing it. Petitioners allege that Respondents have known for more than 60 years based on their own detailed research that their fossil fuel products, when used as intended, create greenhouse gas pollution that warms the oceans and atmosphere, alter climate patterns, increase storm frequency and intensity, and cause sea levels to rise. *See* First Amended Complaint ¶¶ 1, 5, 7, 49–87, Cir. Ct. Dkt. 45 (Mar. 22, 2021) ("FAC"); *see also* Complaint, Cir. Cr. Dkt. 1 (Mar. 9, 2020). Yet they failed to warn of these and other dire climate-related effects, and instead embarked on a multi-decadal campaign of deception and disinformation that succeeded in delaying the transition to a lower carbon economy that in turn could have avoided the worst of such impacts.

Respondents removed the case to federal court on multiple grounds; the United States District Court for the District of Hawai‘i granted the City's motion to remand to state court, rejecting all of Respondents' theories of federal jurisdiction. *See City & Cnty. of Honolulu v. Sunoco LP*, No. 20-cv-00163-DKW-RT, 2021 WL 531237, at *1 (D. Haw. Feb. 12, 2021). The United States Court of Appeals has since affirmed. *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101, 1106 (9th Cir. 2022). After remand, Petitioners filed the operative complaint, which adds the Honolulu Board of Water Supply as a plaintiff. *See generally* FAC.

Respondents filed joint motions to dismiss the First Amended Complaint for lack of personal jurisdiction and failure to state a claim, both of which the Circuit Court (Crabtree, J.) denied. *See* Order Denying Defendants' Joint Motion to Dismiss for Failure to State a Claims, Cir. Ct. Dkt. 618 (Mar. 29, 2022) ("12(b)(6) Order"); Order Denying Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction, Cir. Ct. Dkt. 622 (Mar. 31, 2022) ("12(b)(2) Order"). Respondents moved for leave to seek interlocutory appeal from the denials of both motions, which the Circuit Court granted. *See* Order Granting Motion for Leave, Cir. Ct. Dkt. 688 (June 3, 2022).[1] The Circuit Court also granted Respondent's motion to stay proceedings pending appeal, with enumerated exceptions for preliminary discovery matters, selection of a discovery master, and certain related motion practice. *See* Order Regarding Defendants' Motion to Stay Action Pending Appeal, Cir. Ct. Dkt. 684 (June 1, 2022).

Pursuant to the order granting leave, Respondents brought this appeal from the orders denying their motions to dismiss. The appeal is fully briefed as of February 13, 2023. *See* Defendants-Appellants' Joint Opening Brief, ICA Dkt. 50 (Nov. 9, 2022) ("OB"); Plaintiffs-Appellees' Answering Brief, ICA Dkt. 65 (Jan. 18, 2023); Defendants'-Appellants' Joint Reply Brief, ICA Dkt. 81 (Feb. 13, 2023).

Statement of Relevant Facts

The facts relevant to this appeal are the allegations of Petitioners' First Amended Complaint, which are unrebutted and thus taken as true. *See, e.g.*, *Shaw v. N. Am. Title Co.*, 76 Hawai'i 323, 327 & n.2, 876 P.2d 1291, 1294, 1295 & n.2 (1994).

[1] Two respondents separately moved to strike or dismiss Petitioners' complaint pursuant to California's anti-SLAPP statute, which the Circuit Court also denied. *See* Order Denying Chevron Defendants' Special Motion to Strike and/or Dismiss, Cir. Ct. Dkt. 585 (Feb. 15, 2022). That order is subject to a separate appeal and is not at issue in this application. *See City & County of Honolulu v. Sunoco LP, et al.*, No. CAAP-22-0000135.

Petitioners allege that Respondents, among them several of the largest and most profitable corporations in the world, have misled consumers and the public for many years, in Hawai‘i and elsewhere, about the known, severe consequences of climate change, and their products' role in causing those dangers. *See, e.g.*, FAC ¶¶ 1–9, 49–147. Because of that long-running campaign of deception, Honolulu residents are facing and will continue to face a variety of environmental harms, including rising sea levels, increased atmospheric temperatures and more frequent heatwaves, more frequent and more severe storm systems, increased erosion rates, and other impacts. *See, e.g.*, *id.* ¶¶ 10, 34–42. Those problems in turn have caused and will cause injuries to public infrastructure owned and operated by Petitioners for the benefit of their residents and ratepayers. *See id.* ¶¶ 11, 148–54. As the Circuit Court summarized, Petitioners' "state law tort claims include failures to disclose and deceptive promotion," "alleg[ing] that [Respondents] had a duty to disclose and not be deceptive about the dangers of fossil fuel emissions, and breached those duties," which "exacerbated the costs to Plaintiffs adapting to and mitigating impacts from climate change and rising sea levels." *See* 12(b)(6) Order at 3 (emphasis omitted).

In their motions to dismiss, Respondents "frame[d] [Petitioners'] claims very differently, saying Plaintiffs actually seek to regulate global fossil fuel emissions, or alternatively, that the claims amount to *de facto* regulation," relief that they argued in turn would be preempted by multiple federal statutory or constitutional provisions. *See* 12(b)(6) Order at 4–5. The Circuit Court concluded that Petitioners' "framing of their claims in this case is more accurate," and that the complaint "do[es] not ask this court to limit, cap, or enjoin the production and sale of fossil fuels." *Id.* at 4. The court thus held that Petitioners' claims satisfied Hawaii's notice pleading standard and were not preempted by federal law. *See id.* at 5–10. The Court also held that Respondents'

extensive business and marketing activities in Hawai‘i were sufficiently related to Petitioners’ claims for the Court to exercise personal jurisdiction over Respondents. 12(b)(2) Order at 3–6.

Points of Error Asserted by Appellants

Respondents assert the following points of error in the Circuit Court’s opinions denying their motions to dismiss:

“1. The Circuit Court erred in denying Defendants’ Joint Motion to Dismiss for Lack of Personal Jurisdiction. [12(b)(2) Order], at 2. Specifically, the Circuit Court erred in asserting specific personal jurisdiction over non-resident Defendants for harms that Plaintiffs allege result from global climate change. *See id.* at 2–6. Plaintiffs’ claims are based on alleged injuries from global emissions and global climate change. Such claims cannot arise from or relate to any in-state activities because Hawai‘i accounts for only a de minimis amount of emissions. Global climate change would occur on the same scale even if Defendants never produced, promoted, or sold fossil fuels in Hawai‘i. In accepting Plaintiffs’ jurisdictional theory, the Circuit Court’s decision threatens to expand dramatically the bounds of specific jurisdiction and erase the distinction between specific and general jurisdiction.” OB at 5.

“2. The Circuit Court erred in denying Defendants’ Joint Motion to Dismiss for Failure to State a Claim. [12(b)(6) Order], at 1–2. Specifically, the Circuit Court erred by failing to recognize that Plaintiffs’ claims are, under the U.S. Constitution’s structure, governed exclusively by federal law. *Id.* at 5–9. Plaintiffs’ claims seek damages and other relief for alleged harms resulting from worldwide greenhouse gas emissions leading to global climate change, and therefore can be governed only by federal law. ‘[T]he basic scheme of the Constitution . . . demands’ that federal law govern cases ‘deal[ing] with air and water in their ambient or interstate aspects.’ [*Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011)] (quoting *Illinois v. City of Milwaukee*, 406

U.S. 91, 103 (1972) ("*Milwaukee I*")). As every federal court to consider similar motions to dismiss has concluded, state law cannot govern such claims." OB at 6.

Petitioners contend that the Circuit Court committed no error, and that its denials of Respondents' motions to dismiss should be affirmed.

Statutory Qualifications for Transfer

This application satisfies the requirements of Rule 40.2 of this Court and should be granted. First, the application is timely because it has been filed "no later than 20 days after the last brief [wa]s filed" in the intermediate court of appeals. *See* Rule 40.2(a)(2). Respondents submitted their reply brief on February 13, 2023, and briefing is now closed. *See* ICA Dkt. 81.

Second, transfer of the appeal for this Court's review is mandatory under HRS § 602-58(a) because the appeal presents one or more "question[s] of imperative or fundamental public importance." Article XI, section 1 of the Hawai'i Constitution provides, for example:

> For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

This appeal implicates the authority of political subdivisions to seek remedies for injuries to their residents' constitutionally guaranteed interests in the State's natural resources caused by corporate misconduct. The jurisdictional and merits issues presented in this appeal present critical questions as to whether Hawai'i state law provides relief to political subdivisions for local environmental and environmentally-related harms alleged caused by corporate misrepresentations. This Court has previously accepted transfer under HRS § 602-58(a) of cases implicating the environmental rights of residents, especially with respect to land use and conservation. *See, e.g.*, *Nuuanu Valley Ass'n v. City & Cnty. of Honolulu*, 119 Hawai'i 90, 194 P.3d 531 (2008).

This appeal also presents "question[s] of first impression" or "novel legal question[s]" as to both personal jurisdiction and Hawai‘i tort law, such that the Court should grant the application in its discretion under HRS § 602-58(b)(1). On the jurisdictional issues, the decision below primarily concerns whether Petitioners' causes of action here sufficiently "relate to" Respondents' contacts with Hawai‘i to satisfy the due process guarantees of the federal constitution's fourteenth amendment. This court recently stated it has "had few occasions" to consider personal jurisdiction questions. *Yamashita v. LG Chem, Ltd.*, 152 Hawai‘i 19, 21 518 P.3d 1169, 1171 (2022). Especially relevant here, the Court has not had an opportunity to consider the fourteenth amendment's application in cases alleging Hawai‘i common law causes of action since the United States Supreme Court's recent decision in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S.Ct. 1017 (2021), which clarified the constitutional relatedness standard for exercising specific personal jurisdiction.

On the merits, the Circuit Court denied Respondents' motion to dismiss for failure to state a claim, noting in relevant part that Petitioners' "causes of action seem new . . . due to the unprecedented allegations involving causes of effects of fossil fuels and climate change," but that the claims "in fact are common" and "[c]ommon law historically tries to adapt to such new circumstances." 12(b)(6) Order at 11. In granting Respondents' motion for leave to seek interlocutory appeal, moreover, the Circuit Court stated that "[t]his case is unprecedented," and that the "complexity, scope, time, and cost of discovery and motion practice, let alone trial, will be enormous." Cir. Ct. Dkt. 688 at 2. While Petitioners agree that their claims here are reasonable and well-founded applications of Hawai‘i common law, the Circuit Court was explicitly of the opinion that the case presents questions of first impression and novel legal issues, which is in part

why it granted Respondents leave to seek interlocutory appeal. For these reasons, the Court should grant the application pursuant to HRS § 602-58(b)(1).

Conclusion

The Court should grant this application and transfer this appeal from the jurisdiction of the Intermediate Court of Appeals pursuant to HRS §§ 602-58(a) & (b).

Respectfully submitted,

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Dated: March 3, 2023

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a copy of the foregoing document was duly served electronically through JIMS/JEFS and a copy sent via email to counsel for all parties to this appeal.

Respectfully submitted,

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