No. 22-495

United States Court

CHEVRON CORPORATION, ET AL.,
Petitioners,

v.

SAN MATEO COUNTY, CALIFORNIA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONERS

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December 27, 2022

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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 12.9 million men and women, contributes $2.77 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.[2]

The NAM is dedicated to manufacturing safe, innovative and sustainable products that provide essential benefits to consumers while protecting human health and the environment. Climate change is one of the most important public policy issues of our time, and the NAM fully supports national efforts to address climate change and improve public health through appropriate laws and regulations. Developing new technologies to reduce greenhouse gas emissions, make energy more efficient, and modify infra-

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[1] Pursuant to Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of the brief. The parties received timely notice of the intent of *amicus curiae* to file this brief, and provided blanket consent to the filing of briefs of *amici curiae*.

[2] To learn more about the NAM, including its Board members, please see https://www.nam.org/about/ and https://www.nam.org/about/board-of-directors/.

structures to deal with the impacts of climate change has become an international imperative.

The NAM has grave concerns about this attempt to create liability over sales of lawful, beneficial energy products essential to modern life through state law. As the Court found in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011), climate litigation plainly implicates federal questions and complex policymaking. State tort suits against the energy sector cannot achieve these public policy objectives, and state courts are not the appropriate forums to decide these critical national issues. For these reasons, the NAM has a substantial interest in attempts by Respondents and other localities to subject its members to unprincipled state liability for harms associated with climate change.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is part of a coordinated, national litigation campaign over global climate change and an unapologetic effort to circumvent this Court's ruling in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) (hereafter "*AEP*"). In *AEP*, the Court addressed an earlier wave of this climate litigation campaign. It held unanimously that the climate claims there sounded in the federal common law and that Congress displaced any such claims when it enacted the Clean Air Act. *See id.* at 424. The Ninth and Fifth Circuits then dismissed versions of the climate suits pending in their courts. *See Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849

(9th Cir. 2012) and *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460 (5th Cir. 2013). The law was settled.[3]

As this brief will show, strategists behind this litigation campaign then began developing ideas for circumventing the Court's ruling. Lawyers involved in this effort said they were looking for ways to repackage the litigation so their new lawsuits would achieve comparable national goals as *AEP*, but would appear different and appeal to parochial interests of local courts to provide money to local constituencies. So, they re-cast the federal public nuisance claims for injunctive relief against the utilities in *AEP* as state public nuisance lawsuits for local abatement funds against energy manufacturers, among several other state law claims. Since 2017, more than two dozen of these lawsuits have been filed in carefully chosen state jurisdictions around the country.

On the few occasions where federal courts have reached the substance of these claims, the federal courts properly applied *AEP* and concluded that the claims arise under federal common law and are displaced. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021); *City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017 (N.D. Cal. 2018) (vacated pursuant to an order to remand the case to state court, *see* 960 F.3d 570 (9th Cir. 2020)). What has become clear is that the state law packaging for these claims is solely a veneer. As the Second Circuit stated, the lawsuits seek to subject a handful of energy companies to state liability "for the effects of emissions made around the globe over the past several

[3] The Court reaffirmed *AEP* in *West Virginia v. Environmental Protection Agency*. *See* 142 S. Ct. 2587, 2613 (2022); *see also id.* at 2636 (Kagan, J., dissenting).

hundred years." *City of New York*, 993 F.3d at 92. It concluded that "[s]uch a sprawling case is simply beyond the limits of state tort law," *id.,* echoing this Court's statement in *AEP* that this litigation raises issues of "special federal interest." 564 U.S. at 424.

Accordingly, the linchpin for this litigation campaign is the ability of the plaintiffs to avoid the federal judiciary. When the companies removed the cases to federal courts, the plaintiffs developed two particularly novel theories that they argue ties the hands of federal courts and requires them to remand the cases to state courts—even when, as here, a substantive review of the claims would find the claims to be necessarily and exclusively governed by federal law. First, the plaintiffs assert the claims become viable under state law and un-removable when Congress exercises its authority and displaces the federal common law by speaking directly to the federal law question at issue—a notion the Second Circuit called "too strange to seriously contemplate." *City of New York*, 993 F.3d at 98-99. Second, the plaintiffs argue that, under the well-pleaded complaint rule, federal courts are not permitted to look behind the veneer of the claims' state law labels even when the labels are clearly masking federal law claims.

Here, the Ninth Circuit acknowledged that "plaintiffs raise novel and sweeping causes of action," but concluded it was obligated to affirm the remand order merely because plaintiffs pled these sweeping allegations under a state law coating. *County of San Mateo v. Chevron Corp.*, 32 F.4th 733, 764 (9th Cir. 2022). Other federal circuits have similarly asserted they are hamstrung by their understanding of the well-pleaded complaint rule, as well as this Court's

ruling that federal common law no longer exists in this area due to Congress's displacement. *See, e.g.*, *Mayor and City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 204 (4th Cir. 2022) (stating federal common law cannot control the case because it "ceases to exist"), *petition for cert. filed*, Oct. 14, 2022; *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1260 (10th Cir. 2022) (same), *petition for cert. filed*, July 8, 2022.

In addition to implicating a split with the Second Circuit, these rulings create a playbook for using state courts to usurp federal law on climate change and other federal issues. The exclusive federal nature of climate policy, in particular, has been on display this year. State law rulings making the production, sale, promotion and use of oil and gas a liability-inducing event for the American, Canadian, and European energy companies named in these cases would directly contradict the federal government's efforts to encourage an increase in their production in order to reduce costs and enhance America's and Europe's energy security given the war in Ukraine.

For these reasons, as discussed in more detail below, *amicus* respectfully requests that the Court hold the Petition pending a decision on the petitions in *Mayor and City Council of Baltimore v. BP P.L.C.*, No. 22-361, and *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550, or grant the Petition and vacate the order to remand these federal law issues to state court. With two dozen climate cases pending, it is a matter of judicial efficiency that the Court resolve this question.

ARGUMENT

I. THE COURT SHOULD UPHOLD ITS RULING IN *AMERICAN ELECTRIC POWER* THAT CLIMATE CHANGE CLAIMS INVOKE FEDERAL COURT JURISDICTION

The Court should hold or grant the Petition to reinforce the principle that climate litigation raises issues of "special federal interest." *AEP*, 564 U.S. at 424. In *AEP*, the Court 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 claims here in equal force as it did in *AEP*.

The factual foundation in *AEP* is the same here: global climate change is caused by GHG emissions "naturally present in the atmosphere and . . . emitted by human activities," including the use of fossil fuels all over the world. *Id.* at 416. GHG emissions from fossil fuels have 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 of interstate nuisance, or in the alternative, of state tort law." *Id.* at 418. Here, the allegations are also that Petitioners contributed to global warming by causing or contributing to GHG emissions through the production, marketing and sale of their fuels.

In *AEP*, the 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, the Court 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 *Standard Oil* instructs and affirmed in *AEP*, certain claims invoke the "interests, powers, and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings." *Standard Oil*, 332 U.S. at 78. Determining rights and responsibilities for global climate change is one of them. As the Court stated, the production, sale, promotion, and use of fossil fuels as well as global GHG emissions raise inherently federal questions, including over national security.

Second, and only after determining the claims arose under federal common law, did the Court hold Congress displaced through the Clean Air Act remedies that might be granted under federal common law. *See AEP*, 564 U.S. at 425. Only the initial inquiry—whether the subject requires a uniform federal rule—goes to jurisdiction and is before this Court at this time. Any conclusion 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 is nonsensical and should be reviewed. Congress's decision to displace federal common law in favor of federal regulatory authority does not make GHG emissions any less of a federal issue.

At the time *AEP* was decided, two other climate 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 rising sea levels. *See Kivalina*, 696 F.3d at 849. In Mississippi, a purported class of homeowners sued a multitude of energy producers under state tort law for property damage from Hurricane Katrina. *See Comer*, 718 F.3d at 460. The allegations were that defendants, through their conduct and products, caused certain emissions which contributed to climate change and made the hurricane more intense. *See id.* These cases parallel the case at bar; San Mateo and Marin Counties, and the City of Imperial Beach are also alleging that the defendants' conduct and products caused or exacerbated emissions.

After *AEP*, both cases were dismissed. As the Ninth Circuit explained, even though the legal theories in *Kivalina* differed slightly from *AEP*, given the Court's message, "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 GHG emissions across the country and globe are exactly the sort of "transboundary pollution" claims the Constitution exclusively commits to federal law. *Id.* at 855. This is true regardless of how the suits are packaged—over energy use or products, by public or private plaintiffs, under federal or state law, or for injunctive relief, abatement, or damages.

The Court should grant the Petition because the ruling here conflicts with *AEP*, namely that claims over the effects of climate change implicate uniquely federal interests and are governed by federal law.

II. THE LOWER COURT'S RULING PROVIDES A PLAYBOOK FOR PEOPLE SEEKING TO ABROGATE FEDERAL AUTHORITY

The advocacy groups and lawyers behind this litigation campaign have explicitly stated that they developed the litigation strategy employed in this case to circumvent this Court's ruling in *AEP*. In 2012, the year after *AEP* was decided, they convened in California to brainstorm on how to re-package the litigation in hopes of using the cases to achieve their national policy priorities. 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 Inst. (Oct. 2012).[4]

They said, despite the Court's clear pronouncements in *AEP*, they still believed "the courts offer the best current hope" for imposing their national public 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," such as the one here, "to libel claims." *Id.* at 11. Given *AEP* in particular, they emphasized making the lawsuits look like traditional

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

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 at the conference 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" in an effort 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. *Entire January Meeting Agenda at Rockefeller Family Foundation*, Wash. Free Beacon, Apr. 2016.[5] They have since tried to scandalize the fact that companies knew about potential risks of climate change—something widely known by governments around the world—and still produced fossil fuels.

To name the litigation, supporters asserted some widespread "campaign of deception" involving the many, often-changing companies named in the lawsuits. Here, Respondents allege more than two dozen entities should be subject to liability for their climate damages, whereas other localities named five or six and others several dozen companies, including local entities in an effort to keep the cases in state court. This ever-changing list of defendants in different aspects of the energy industry highlights the specious nature of this conspiracy-like narrative and the lack of any principled basis for liability.

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[5] https://freebeacon.com/wp-content/uploads/2016/04/Entire-January-meeting-agenda-at-RFF-1-1.pdf.

Outside of the courtroom, the advocates—including those involved in this case—have acknowledged that the desired effect of this litigation is to penalize the worldwide production, promotion, sale and use of fossil fuels—what they call imposing the "true cost" of fuels on consumers. Kirk Herbertson, *Oil Companies vs. Citizens: The Battle Begins Over Who Will Pay Climate Costs*, EarthRights, Mar. 21, 2018. They want to use the litigation to force Americans into "cutting back" on fossil fuel use and energy manufacturers to raise their prices "so that if they are continuing to sell fossil fuels, that the cost of [climate change] would ultimately get priced into them." Julia Caulfield, *Local Lawsuits Asks Oil and Gas to Help Pay for Climate Change*, KOTO, Dec. 14, 2020.[6] They believe that because the "companies are agents of consumers . . . holding oil companies responsible *is* to hold oil consumers responsible." Jerry Taylor & David Bookbinder, *Oil Companies Should be Held Accountable for Climate Change*, Niskanen Center, Apr. 17, 2018.[7]

In filing the claims, the advocates are partnering with local governments seeking money to deal with local impacts of climate change. These governments

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[6] https://coloradosun.com/2021/02/01/boulder-climate-lawsuit-opinion/.

[7] A reporter who follows the litigation has observed the incongruity between the ways the cases are 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, https://insideepa.com/outlook/climate-suits-keeps-issue-alive-nuisance-cases-reach-key-venue-rulings.

often disclaim any attempt to regulate emissions, but artful pleading and disclaimers cannot mask the true federal nature of this litigation. The lawsuits are being funded by non-profit organizations *because* the litigation raises inherent federal legal and energy issues. *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 (noting the legal fees would be paid by the Institute for Governance and Sustainable Development).[8] In addition, these groups are using political-style tactics to leverage the litigation to hinder the energy companies politically. *See generally Beyond the Courtroom*, Manufacturers' Accountability Project (detailing this litigation campaign).[9] Unlike traditional state lawsuits, success here includes filing and maintaining state lawsuits they can use for their national goals, which underscores the need for the Court to grant the Petition.

Overall, about two dozen of these climate lawsuits have been filed since 2017 in carefully chosen jurisdictions in an effort to "side-step federal courts and Supreme Court precedent" and convince local state courts to help them advance their preferred national and international policy agenda by awarding money to local jurisdictions. Editorial, *Climate Lawsuits Take a Hit*, Wall St. J., May 17, 2021.

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

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

III. MERELY PASTING STATE LAW LABELS ON FEDERAL LAW CLAIMS SHOULD NOT BE A MEANS FOR EVADING FEDERAL SCRUTINY

To be clear, the state law theories in the litigation are mere fig leaves. The theory of harm is not moored to any plaintiff, defendant, or jurisdiction, as the permutations of the cases show. And, the chain of causation, as the Court observed in *AEP*, is anything but local. In this regard, the predictions of the Obama administration in *AEP* have been born out. The Solicitor General, in opposition to that lawsuit, cautioned that there would be "almost unimaginably broad categories of both potential plaintiffs and potential defendants." Brief for the Tennessee Valley Authority, *AEP* at 15 (filed Jan. 31, 2011). It would be "impossible to consider the sort of focused and more geographically proximate effects that were characteristic of traditional nuisance suits." *Id.* at 17.

In a lawsuit similar to the one here, the Second Circuit saw through the claim's state law veneer: "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*, 993 F.3d at 91. The same is true here; referencing state claims and asking for compensation—the purposeful packaging of these suits—does not make federal matters of global climate change suddenly suitable for state courts. "Such a sprawling case is simply beyond the limits of state tort law." *Id.* at 92.

To this end, in the climate case brought by San Francisco and Oakland, the district judge initially denied the remand motion and dismissed the claims on the merits for the same reasons: "Their theory rests on the sweeping proposition that otherwise lawful and everyday sales of fossil fuels, combined with an awareness that greenhouse gas emissions lead to increased global temperatures, constitute a public nuisance." *City of Oakland*, 325 F. Supp. 3d at 1022. It attempts to "reach the sale of fossil fuels anywhere in the world." *Id*. The fact that this ruling was vacated when the district judge's order denying remand was overturned *underscores* the reason the Court should grant the Petition and instruct the circuits to consider the federal substance and impact of the claims, not just their state law labels.

As these courts saw, the state law labels do not fit these allegations. Consider state public nuisance law, which has been the primary tort of choice for climate litigation because, in large part, its "vague" sounding terms are often misunderstood.[10] *City of Milwaukee v. Illinois*, 451 U.S. 304, 317 (1981). Supporters of this effort have bemoaned their decades-long failure to transform public nuisance into an amorphous tool for industry-wide liability over a variety of social, political, and environmental issues. *See* Denise E. Antolini, *Modernizing Public Nui-*

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[10] *See* W. Page Keeton, et al., Prosser & Keeton on the Law of Torts 616 (5th ed. 1984). "In popular speech it 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).

sance: Solving the Paradox of the Special Injury Rule, 28 Ecol. L.Q. 755, 838 (2001) (recounting with frustration their unsuccessful efforts to break "the bounds of traditional public nuisance").

For these reasons, many state and federal courts have widely rejected applying public nuisance to situations comparable 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); *see also State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021) ("Public nuisance is fundamentally ill-suited to resolve claims against product manufacturers."); *North Carolina v. Tennessee Valley Auth.*, 615 F.3d 291, 296 (4th Cir. 2010) (stating such lawsuits would "encourage [state] courts to use vague public nuisance standards to scuttle the nation's carefully created system of accommodating the need for energy product and the need for clean air").[11]

Here, merely invoking state law labels does not turn the production, sale, promotion and use of fossil fuels into state law liability events. As the Court has appreciated, "[w]hat matters is the crux—or, in legal speak, the gravamen—of the plaintiff's complaint, setting aside any attempts at artful pleading." *Fry ex rel. E.F. v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 755

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[11] *See also* 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 additional cases).

(2017); *see also Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998).

One concern is that state courts "may reflect 'local prejudice' against unpopular federal laws" or defendants. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007). These dynamics are certainly at risk here, as the desired effect of these lawsuits is to bring private, out-of-state money to local communities. In Maryland, when asked about the legal shortcomings of climate lawsuits, Annapolis officials 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.[12]

There is no doubt that if any state court allows a hometown recovery, there will be a race to state courthouses across this country to file more of these lawsuits. State courts are simply not positioned to be arbiters of who, if anyone, is to be legally accountable for global climate change. The Court should not allow Respondents and these other governments to avoid federal scrutiny merely by painting their federal law claims with state law brushes.

IV. THE COURT SHOULD AFFIRM THAT CLAIMS ALLEGING HARM FROM CLIMATE CHANGE RAISE UNIQUELY FEDERAL INTERESTS

Finally, as recent events have demonstrated, subjecting selected American, Canadian and European

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

energy manufacturers to liability for global climate change would directly interfere with exclusive federal interests. At the heart of these claims is the notion that America should reduce the production of fossil fuels because of the impact these fuels are having 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."). Some may consider this to be a sensible solution to the climate crisis, but it is not the role of state courts to force such a transition.

For starters, state governments do not control the global fuel market, so forcing a reduction in western oil production would not reduce GHG emissions. As the *New York Times* reported many of these companies are already "slowing down production as they switch to renewable energy. . . . But that doesn't mean 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.[13] "[S]tate-owned oil companies in the Middle East, North Africa and Latin America are taking advantage of the cutbacks . . . by cranking up their production." *Id.* "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 Russian President Vladimir Putin "uses his country's vast natural gas reserves as a cudgel." *Id.*

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

In response to the Ukrainian invasion, the current administration is taking measures that would be directly contradicted by these state lawsuits. Specifically, President Biden has released oil from the nation's strategic reserves, urged American energy manufacturers to *increase* their production of oil, tried to decrease energy prices, and invested in new energy technology. *See* Zack Colman & Ben Lefebvre, *Biden To Tap Oil Reserves, Press Oil Sector To Hike Production*, Politico, Mar. 31, 2022.[14] State court rulings to curtail fossil fuel production, make fuels more expensive, and hinder innovation would conflict with this strategic national security response.

In addition, this litigation raises federalism concerns. More than fifteen state attorneys general have objected to this litigation because the localities 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). It also would hurt efforts by other communities to address climate impacts in their own jurisdictions by draining their resources.

To pay for any award in this case, people and businesses in every state would have to pay higher energy prices for projects in San Mateo and Marin Counties, and the City of Imperial Beach, even though their communities may have comparable needs. As one New Jersey coastal leader said in response to a lawsuit from Hoboken, New Jersey: "Ho-

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[14] https://www.politico.com/news/2022/03/31/biden-to-tap-oil-reserves-use-wartime-powers-to-limit-fuel-shocks-00022020.

boken is sticking the rest of us with the bill" as the litigation "will make it much more expensive for us to put gas in our cars and turn on our lights." Michael Thulen, *Why Hoboken's Climate Change Lawsuit Is Bad for New Jersey*, NJBiz, Oct. 11, 2021 (Thulen served as President of the Point Pleasant Borough Council).[15] There are less harmful ways to address impacts of climate change that do not have the downsides associated with this litigation. Federal and state programs have already made funds available that can provide local relief now.

The Court should grant the Petition. Only uniform federal law supplies the standards that can be applied here. Yet, there are two dozen climate suits pending around the country, with organizers actively recruiting more lawsuits. Lawsuits alleging energy manufacturers can be subject to untold liability for harms stemming from global climate change should not be the result of state-by-state ad hoc rulings. Also, as a matter of judicial efficiency, it is important for the Court to provide guidance now before these proceedings begin in state courts around the country and more suits are filed.

* * *

Ultimately, *amicus* believes the best way to address the impact that energy use is having on the climate is for Congress, federal agencies, and local governments to work with manufacturers and other businesses on developing public policies and technologies that can reduce emissions and mitigate damages. *See* Ross Eisenberg, *Forget the Green New Deal. Let's Get to Work on a Real Climate Bill*, Politico,

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[15] https://njbiz.com/opinion-wrong-course/.

Mar. 27, 2019. The challenge facing society is to affordably and reliably provide this energy while mitigating its climate impacts. It is not to blame providers for selling energy people need to heat their homes, fuel their cars, build schools, places of worship and workplaces, and turn on lights.

CONCLUSION

For these reasons, *amicus curiae* respectfully request that this Court hold the Petition pending a decision on the petitions in *Mayor and City Council of Baltimore v. BP P.L.C.*, No. 22-361, and *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 21-1550, or grant the Petition and vacate the order to remand these federal issues to state court.

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