Nos. 18-15499, 18-15502, 18-15503, 18-16376

IN THE

United States Court of Appeals for the Ninth Circuit

COUNTY OF SAN MATEO, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15499 No. 17-cv-4929-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
CITY OF IMPERIAL BEACH, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15502 No. 17-cv-4934-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF MARIN, Plaintiff-Appellee, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-15503 No. 17-cv-4935-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding
COUNTY OF SANTA CRUZ, *et al.*, Plaintiffs-Appellees, v. CHEVRON CORPORATION, *et al.*, Defendants-Appellants.	No. 18-16376 Nos. 18-cv-00450-VC; 18-cv-00458-VC; 18-cv-00732-VC N.D. Cal., San Francisco Hon. Vince Chhabria presiding

AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING *EN BANC*

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DISCLOSURE STATEMENTS PURSUANT TO RULES 26.1 AND 29 OF THE FEDERAL RULES OF APPELLATE PROCEDURE

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.

Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, counsel for *amicus curiae* hereby states that (1) no party's counsel authored the brief in whole or in part; (2) no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person — other than the *amicus curiae*, its members, or its counsel — contributed money that was intended to fund the preparation or submission of the brief. An attorney at Shook Hardy & Bacon, Michael Healey, is listed as counsel to a party in this case; neither he nor his client had any part in the preparation or filing of this brief.

Pursuant to Rule 29(a)(2), all parties have provided a blanket consent to the filing of timely-filed *amicus* briefs.

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INTEREST OF *AMICUS CURIAE*

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 12.7 million men and women, contributes $2.71 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. It 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 by state and local governments—here, California localities—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 that developing new technologies to reduce greenhouse gas ("GHG") emissions and make energy more efficient, along with modifying infrastructure to deal with the impacts of climate change have become imperatives across the globe. State lawsuits against the energy sector, though, cannot achieve these objectives, and state courts are not the appropriate forums to decide the critical national energy issues inherent to these lawsuits.

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 and other state law claims against energy manufacturers and sellers.

This case is one of about two dozen nearly identical lawsuits filed since 2017 in carefully chosen states and federal circuits based on this premise. Some cases seek to blame only one or two oil producers, while others, name upwards of thirty producers and sellers. As these permutations demonstrate, these suits are not about any company or community. They are part of a national campaign to recruit governments for this litigation, who make political decisions as to whom to sue. Further, the elements of the claims are interstate and international in scope. To adjudicate these cases, state courts must pass judgment on the rules governing the international production, sale, promotion, and use of fossil fuels as well as emissions from sources around the world over the past 150 years. Defendants removed these cases to federal courts because these issues are beyond any state court's domain.

Amicus requests the Court to grant rehearing *en banc* and determine that these putative state-law claims alleging harm from global climate change are removable because they raise issues arising under federal law. As the Supreme Court explained, 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 the 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 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. *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 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 through its sales and other activities.

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. 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. To be clear, Congress's decision to

displace federal common law in this area in favor of federal regulatory authority does not make GHG emissions any less of a federal issue.

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 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 this 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. The Court should hear this case *en banc* because the ruling here is inconsistent with the lessons from *Kivalina* and *AEP*. Regardless of how climate lawsuits are packaged—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

Lawyers and organizations behind this litigation were undeterred by *AEP* and then *Kivalina* and *Comer*. In 2012, they convened in La Jolla, California to brainstorm on how to re-package the litigation in hopes of using litigation to achieve their 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).[1]

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

Despite the clear pronouncements by the Supreme Court, they said they still believed "the courts offer the best current hope" for imposing their 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 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" 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, Apr. 2016.[2] 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

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

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 local jurisdictions. Editorial, *Climate Lawsuits Take a Hit*, Wall St. J., May 17, 2021.[3]

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, *County of San Mateo*, No. 3:17-cv-04929-VC (Cal. Super. Ct. July 17, 2017) (using variants of this phrase multiple times). The California localities named nearly twenty energy companies in this lawsuit, whereas other lawsuits have named only one or two and some upwards of thirty 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 phony nature of this so-called "campaign of deception."

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

[3] 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.

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[4] (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. The theory of harm is not moored to any plaintiff, defendant, locality or jurisdiction. And, the chain of causation is anything but local. As the Second Circuit stated in a similar lawsuit, "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 was the purposeful packaging of these 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

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

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 federal substance and impact of the allegations, not merely the state law labels the complaint uses.

The state law claims upon which these cases are based also 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).[5] Supporters of this effort have bemoaned their decades-long failure to transform public nuisance into an amorphous tool for creating industry-wide liability over a variety of social, political 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 the campaign to change the tort that would have "[broken] the bounds of traditional public nuisance"). For these reasons, state supreme courts have

[5] *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).

rejected the application of public nuisance theory in situations 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); *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.").

Some of the more recent lawsuits, though not the one at bar, also lean on state consumer protection statutes. As with public nuisance, consumer protection statutes have intentionally broad language to apply to a wide variety of conduct, but only within narrow boundaries, namely to make sure products perform as represented. The allegations here are not within those boundaries. They 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 engagement 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 trying to create expansive theories for subjecting companies to liability for such social, political or environmental issues is understandable: the lawsuits are often funded by non-profit organizations and outside counsel seeking to advance policy agendas, promise funding for local governments, and target largely out-of-state corporations.[6] *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 legal fees were funded by the Institute for Governance and Sustainable Development and a contingency arrangement).[7] But a desire to create a revenue stream does not make lawsuits appropriate, and courts assessing comparable 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, 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

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[6] *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).

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

same dynamics could occur here, as the stated purpose of these lawsuits is to bring out-of-state money to local communities. In Maryland, 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.[8] Hometown recoveries would be highly inappropriate here, 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.

Some federal judges have already seen through these attempts to mischaracterize the federal public policy nature of this litigation. *See*, *e.g.*, Larry Neumeister, *Judge Shows Skepticism to New York Climate Change Lawsuit*, Assoc. Press, June 13, 2018 (Noting Judge Keenan's observation that New York City's climate lawsuit was "trying to dress a wolf up in sheep's clothing" by hiding an emissions case).[9] The California localities here should not be able to avoid federal scrutiny merely by painting federal law claims with a state law brush.

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

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

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

Finally, this Court should not permit plaintiffs to create local liability over global GHG emissions, impose a penalty on the worldwide production of fossil fuel, and raise energy prices on American consumers 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). Here, 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, and national security interests along with climate change.

At the heart of the localities' 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 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.[10] "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.*

Further, in response to the Ukranian invasion the current administration has been urging *increased* oil production. *See* Andrea Shalal and Jeff Mason, *Biden Pushes G20 Energy Producing Countries to Boost Production*, Reuters, Oct. 30, 2021;[11] 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.").[12] State court rulings to curtail fossil fuel production or make these fuels more expensive, therefore, would directly conflict with federal policy efforts to increase fuel production and mitigate escalating energy costs.

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

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

[12] 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 the California 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). What these attorneys general understand is 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. To that end, federal and state programs have already made funds available that can provide local relief now.

The Court should grant the Petition. 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. Only uniform federal law can supply the standards that can be applied here.

CONCLUSION

For these reasons, the NAM respectfully urges this Court to grant rehearing *en banc*.

Respectfully submitted,

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Dated: May 27, 2022

CERTIFICATE OF COMPLIANCE

This amicus brief complies with the type-volume limitation of Court Rule 29-2(c) because it contains 4024 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in proportionally spaced font using Microsoft Word 2016 in 14-point Times New Roman type.

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2022, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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