SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-1641-24

MATTHEW J. PLATKIN, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY; NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND CARI FAIS, ACTING DIRECTOR OF THE NEW JERSEY DIVISION OF CONSUMER AFFAIRS, Plaintiffs-Appellants, v. EXXON MOBIL CORP.; EXXONMOBIL OIL CORP.; BP P.L.C.; BP AMERICA INC.; CHEVRON CORP.; CHEVRON U.S.A. INC.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; SHELL PLC; SHELL OIL COMPANY; and AMERICAN PETROLEUM INST., Defendants-Respondents.	:	Civil Action On Appeal from an Order of The Superior Court of New Jersey, Civil Division Docket No. MER-L-1797-22 Sat Below: Hon. Douglas H. Hurd, PJ. Cv.

BRIEF OF <u>AMICUS</u> <u>CURIAE</u> NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF DEFENDANTS/RESPONDENTS

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STATEMENT OF INTEREST

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 all 50 states and in every industrial sector. Manufacturing employs 13 million men and women, contributes $2.94 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States, including in New Jersey.

The NAM is dedicated to manufacturing safe, innovative, and sustainable products that provide benefits and protect the environment and human health. Climate change is a major public policy issue, and the NAM fully supports national efforts to address climate change through appropriate laws and regulations. The NAM is concerned about attempts, as here, to impose state liability over the production, promotion, and sale of lawful, beneficial energy products. These claims, no matter how pleaded or framed, do not provide appropriate vehicles for deciding these critical federal public policy issues.

ARGUMENT

The trial court properly recognized that, regardless of how pleaded or framed, claims that are "about addressing the injuries of global climate change" from interstate and international emissions cannot be adjudicated under New Jersey law. No state can reach outside its boundaries to govern, let alone impose liability on, the production, promotion and sale of fossil fuels, as well as the use of those fuels in other states and countries that have no nexus to that state. Further, the trial court rightfully recognized that this climate lawsuit is governed and barred by the U.S. Supreme Court's jurisprudence in American Electric Power Co. v. Connecticut, 564 U.S. 410 (2011) (hereafter "AEP"). In doing so, the trial court aligned its reasoning with other courts that have dismissed similar lawsuits under various state laws. The Court should affirm the trial court's order and reinforce its reasoning.

In AEP, New Jersey and others sought to impose liability on energy companies for contributing to climate change. The U.S. Supreme Court held that the federal law claims at issue were displaced by the Clean Air Act. See id. at 425. The Court also stated that determinations courts would have to make if they were to hear a climate lawsuit require "federal law governance" and that "borrowing the law of a particular State would be inappropriate." Id. at 422. As acknowledged by the trial court and detailed below, the Second Circuit, along with state courts in Maryland,

Delaware, New York, and now Pennsylvania, have ruled to dismiss lawsuits comparable to the case at bar for these very reasons.

To be clear, the legal issues here are the same as those in AEP and the other cases: can an entity be subject to liability for interstate and international conduct contributing to global climate change, which, in turn, is causing impacts in local communities? As the Supreme Court explained in AEP, climate change is the result of a vast array of sources from around the world for more than 150 years, and a by-product of modern life. See id. at 416-18. Greenhouse gas ("GHG") emissions and their impact on global climate change are neither local to any state or country, nor are they caused by any group of companies in a given state such that any one state's law can govern GHG emission-related activities. That is why the Supreme Court stated the issues here are "of special federal interest." Id. at 424.

Nevertheless, here, New Jersey is trying to use the state's law to determine the rights and responsibilities for climate change around the world, including which companies are to blame and how much they should have to pay the State. No state law has this reach. The vast majority of actions——including the extraction, production, promotion, marketing, and sale of energy, worldwide GHG emissions, and public discourse over these issues——occurred outside of New Jersey's borders, have no nexus to the State, and are not subject to New Jersey law. Thus, imposing liability on them would have the unconstitutional effect of regulating and penalizing

conduct in other states and countries. That is why nearly twenty U.S. states have filed briefs *opposing* this climate litigation campaign; it infringes on their state's sovereignty and hampers their ability to make decisions about these issues within their own borders.[1] In addition, in choosing to name only these Defendants, the state is making a subjective determination as to whom to blame for global climate change—a decision not subject to New Jersey law.

This Court should affirm the decision below and make clear that the state law claims here lie outside New Jersey's judicial authority. Determining how to address climate change—its causes and impacts—is one of the most important public policy issues the New Jersey legislature and Congress, state and federal agencies, and international bodies have been working on for decades. These matters are beyond the reach of the state's liability law.

I. UNDER U.S. SUPREME COURT JURISPRUDENCE, LITIGATION OVER GLOBAL CLIMATE CHANGE ARISES UNDER FEDERAL LAW

When New Jersey and others filed AEP in 2004, it was the first major case seeking to impose liability over climate change. Their targets for the litigation were utilities that generated electricity for many parts of the country. Three other lawsuits followed, each testing other ways climate litigation could be framed. In California

[1] See Bill of Complaint, Alabama v. California, No. 158 (Original) (U.S., filed May 22, 2024).

v. General Motors Corp., California sued auto manufacturers for making products that emit GHGs. See No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007). In Native Village of Kivalina v. ExxonMobil Corp., a village sued oil and gas producers for damages related to rising sea levels. See 696 F.3d 849 (9th Cir. 2012). As here, the village alleged the defendants were "substantial contributors to global warming" in part caused by "conspir[ing] to mislead the public about the science of global warming." Id. at 854. And in Comer v. Murphy Oil USA, Inc., Mississippi residents filed a class action against oil and gas producers for costs associated with Hurricane Katrina under the theory that the defendants caused emissions that made the hurricane more intense. See 718 F.3d 460 (5th Cir. 2013).

The common underpinnings of these cases echo those here: climate change is caused by GHG emissions, including fossil fuel use around the world. See AEP, 564 U.S. at 416. The emissions have accumulated in the atmosphere for more than 150 years and causing impacts on the Earth. The defendants are in violation of some federal or state liability law based on the way they are contributing to GHG emissions through their products, operations, or other activities. Therefore, the defendants are responsible for climate change and its impacts, and the governments are entitled to whichever remedy they are seeking. See id. at 418.

In AEP, the Obama administration's brief to the U.S. Supreme Court opposed such extensive liability, explaining the inherent shortcomings with this litigation

campaign: there are "almost unimaginably broad categories of both potential plaintiffs and potential defendants." Brief for the Tennessee Valley Authority, American Electric Power Co. v. Connecticut, No. 10-174 (U.S., filed Jan. 31, 2011). The "[p]laintiffs have elected to sue a handful of defendants from among an almost limitless array of entities that emit greenhouse gases. Moreover, the types of injuries that [the] plaintiffs seek to redress, even if concrete, could potentially be suffered by virtually any landowner, and to an extent, by virtually every person." Id. at 15. It is "impossible to consider the sort of focused and more geographically proximate effects" characteristic of traditional liability law. Id. at 17.

The U.S. Supreme Court agreed in a unanimous ruling. Its reasoning demonstrates why claims, including those here, over global climate change cannot be adjudicated under any state's law. First, the Court cited its precedents. In United States v. Standard Oil Co. of California, the Court stated that certain claims invoke the "interests, powers and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings." 332 U.S. 301, 307 (1947). And, in Illinois v. City of Milwaukee, the Court held that "the basic scheme of the Constitution so demands" that federal law govern "air and water in their ambient or interstate aspects." 406 U.S. 91, 103 (1972). In AEP, the Court made clear that determining the rights and responsibilities for interstate and international GHG emissions and climate change are among these federal law subjects.

Second, the Court held Congress displaced through the Clean Air Act remedies that might be granted under federal common law. See AEP, 564 U.S. at 425. In doing so, it recognized that any court adjudicating such a claim would end up regulating defendants' products or conduct "by judicial decree." Id. at 425, 427. "The appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be prescribed in a vacuum: as with other questions of national or international policy, informed assessment of competing interests is required." Id. at 427. It also explained the institutional deficiencies with courts being enmeshed in the climate change debate, regardless of legal doctrine.

Given the U.S. Supreme Court's clear direction, courts dismissed the remaining climate cases. In Kivalina, the Ninth Circuit stated even though the theories pursued differed from AEP, given the U.S. Supreme Court's broad message, "it would be incongruous to allow [such litigation] to be revived in another form." 696 F.3d at 857. It appreciated that climate suits are the type of "transboundary pollution" claims the Constitution exclusively commits to federal law. Id. at 855. This is true regardless of how the suits are framed—over energy use or products, by public or private plaintiffs, under federal or state law, or for injunctive relief, abatement, or damages. In Comer, a judge held that under AEP the state law claims in that case were preempted. See 839 F. Supp. 2d 849 (S.D. Miss. 2012).

In California's case, the Northern District of California explained the constitutional concerns with imposing liability for emissions "originating both within, and well beyond, the borders of the State of California." General Motors Corp., 2007 WL 2726871, at *22. The court quoted from Massachusetts v. Environmental Protection Agency, 549 U.S. 497, 519 (2007): "When a State enters the Union, it surrenders certain sovereign prerogatives. Massachusetts cannot invade Rhode Island to force reductions in greenhouse gas emissions. . . . These sovereign prerogatives are now lodged in the Federal Government." Id. at *15. Thus, the law was and is clear: claims over GHG emissions and climate change are governed exclusively by federal law and the Clean Air Act.

II. REPACKAGING CLAIMS REJECTED IN AEP DOES NOT CHANGE THE FACT THAT TODAY'S CLIMATE LITIGATION ALSO SEEKS TO REGULATE INTERSTATE AND INTERNATIONAL EMISSIONS

After AEP, the climate litigation campaign was re-tooled to appear different from AEP, but have the same effect of regulating interstate and international fuel emissions. 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), at 28. Rather than asking a court to directly regulate emissions or put a price on carbon, the campaign would ask for damages and penalties. See id. at 13 ("Even if your ultimate goal [is] to shut down a company,

you still might be wise to start out by asking for compensation for injured parties."). Thus, even though today's global climate-related claims have been reframed under a variety of state laws, they present the same overarching concerns identified in AEP and these other cases, and they should fail for the same reasons those cases failed.

Also, the narrative promoted by the campaign's advocates that there is some widespread "campaign of deception" is undermined by the way the lawsuits are being packaged. The governments are naming anywhere from one to several dozen defendants, including local entities in an effort to keep the cases in state court. This ever-changing list of defendants that engage in different aspects of the energy industry highlights the fact that imposing liability on any group of defendants that a city, state or other local government chooses to name lacks any principled basis.

Indeed, outside of court, the advocates openly acknowledge the desired effect of this litigation is to impose costs on the worldwide production, promotion, sale and use of fossil fuels—what they call the fuel's "true cost"—on consumers. Kirk Herbertson, Oil Companies vs. Citizens: The Battle Begins Over Who Will Pay Climate Costs, EarthRights Int'l, Mar. 21, 2018. They want to force energy companies to raise the price of fossil fuels "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. They also 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 Ctr., Apr. 17, 2018.[2]

To mask this goal and make this litigation more politically palatable, the advocates partnered with state and local governments, which would seek to use this monetary penalty to deal with local impacts of climate change. In fact, the governments often disclaim any attempt to regulate or put costs on emissions. However, artful pleading and disclaimers cannot hide the true federal nature of this litigation. The lawsuits are being funded by non-profit organizations because the litigation raises national and international 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 legal fees would be paid by the Institute for Governance and Sustainable Development). As one jurist stated, the governments and backers are waging this federal policy dispute "through the surrogate of a private party as the defendant." Minnesota v. American Petroleum Inst., 63 F.4th 703, 719 (8th Cir. 2023) (Stras, J., concurring).

[2] A reporter following 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.

In short, the purpose of this litigation is to use state law to penalize national energy use and direct money from energy consumers across the country to local governments, unbridled by the checks and balances of Congress's legislative process. In addition, these groups are using political-style tactics to recruit local governments to bring these cases and to leverage the litigation to hinder the energy companies politically. Unlike traditional state lawsuits, therefore, success here includes filing and maintaining state lawsuits they can use for these national goals.

Overall, three dozen of lawsuits similar to this one have now been filed in carefully chosen jurisdictions across the country in an effort to "side-step federal courts and [U.S.] Supreme Court precedent" and convince local courts to help them advance their preferred public policy agenda by awarding money to state and local jurisdictions. Editorial, Climate Lawsuits Take a Hit, Wall St. J., May 17, 2021.

III. REGARDLESS OF STATE LAW LABELS, PLAINTIFFS' CLAIMS ARE PREEMPTED BY THE CONSTITUTION

To be clear, the state law liability theories in this litigation are mere fig leaves. The theories of harm are not moored to any plaintiff, defendant, or jurisdiction. And, the chain of causation is anything but local to a given state.

Federal courts were the first to assess the validity of this purposeful reframing, concluding that because the claims still seek to impose liability for GHG emissions, the specific allegations and legal theories do not change the outcome: the claims are barred by federal law because the basic scheme of the U.S. Constitution so demands.

See, e.g., 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 remand order, 960 F.3d 570 (9th Cir. 2020). The Second Circuit called the reframing a false veneer: "[W]e 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. It is immaterial whether the case is "styled as" an action for injunction, damages or penalties; the litigation has "the same practical effect" of regulating national and international GHG emissions. Id. at 96.

The Second Circuit also explained the constitutional deficiencies with these state claims: "a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." Id. at 91. That is because "a substantial damages award like the one requested by the City would effectively regulate the Producers' behavior far beyond New York's borders." Id. at 92. "Any actions the Producers take to mitigate their liability, then, must undoubtedly take effect across every state (and country). And all without asking what the laws of those other states (or countries) require." Id. Such "sprawling" claims seeking "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," are "simply beyond the limits of state law." Id. at 92.

Several state courts have followed the Second Circuit. In Delaware, the court held Delaware cannot sue fuel producers for emissions outside of Delaware because federal law "preempts state law to the extent a state attempts to regulate air pollution originating in other states." Delaware ex rel. Jennings v. BP America Inc., 2024 WL 98888, at *10 (Del. Super. Ct. Jan. 9, 2024). "[S]eeking damages for injuries resulting from out-of-state or global emissions and interstate pollution" is "beyond the limits of [state] common law." Id. at *9.

The court hearing Baltimore's case echoed that the claims are "artful" but "not sustainable." Mayor and City Council of Baltimore v. BP P.L.C., No. 24-C-18-004219, at *10 (Md. Cir. Ct. July 10, 2024). Regardless of whether the claims seek to directly regulate emitters, as in AEP, or seek damages, as here, "the Constitutional federal structure does not allow the application of state law to claims like those presented by Baltimore." Id. at *11. "Global pollution-based complaints were never intended by Congress to be handled by individual states." Id. at *12. A court hearing two other Maryland cases concurred. See City of Annapolis v. BP PLC, No. C-020CV-21-250 (Md. Cir. Ct. Jan. 23, 2025).

The New York court dismissing New York City's latest attempt at climate litigation held any allegation over the impact of fossil fuel emissions on the climate involves public information, meaning "a reasonable consumer cannot have been misled." City of New York v. Exxon Mobil Corp., 2025 WL 209843, *13 (N.Y. Sup.

Ct. Jan. 14, 2025). "The City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil fuels cause climate change, and, on the other hand, that the same consumers are being duped by Defendants' failure to disclose that their fossil fuel products emit greenhouse gasses that contribute to climate change." Id. at *14.

Since the ruling below, a Pennsylvania court dismissed a similar lawsuit brought by Bucks County, finding the claims "solely within the province of federal law." Bucks County v. BP P.L.C., No. 2024-01836, *15 (Pa. Ct. Comm. Pleas May 16, 2025). The court expressly adopted "the logic and reasoning" of the Second Circuit and other courts rejecting climate litigation to "conclude that our federal structure does not allow Pennsylvania law, or any State's law, to address the claims raised." Id. at *16.

And, President Biden's Solicitor General in asking the U.S. Supreme Court not to review Honolulu's climate case, acknowledged that state law climate claims may be foreclosed by federal law "to the extent they are based on emissions or other conduct outside of Hawaii." Brief for the United States as Amicus Curiae, Sunoco LP v. City and County of Honolulu, Nos. 23-947, 23-952, 2024 WL 5095299, at *7 (U.S., filed Dec. 10, 2024). She added: "To be sure, petitioners may ultimately prevail on their contention that respondents' claims are barred by the Constitution—

specifically, the Interstate and Foreign Commerce Clause, the Due Process Clause, and federal constitutional structure....” Id. at *13.

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

Finally, using state law to subject a handful of American, Canadian, and European energy manufacturers to liability for global GHG emissions would interfere with exclusive federal interests. At the heart of these claims is the notion that America should increase the price and reduce the production of fossil fuels because of their impact 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.”). This may be some people’s preferred public policy response to climate change, but it is not the role of individual state courts to impose these changes across the country and outside of the legislative process. Congress, unlike state courts, can weigh competing factors, such as affordability and energy security, and assess the impact of imposing these costs on companies that sell fuel in the United States, including whether doing so will achieve any positive climate outcomes, how much the penalty should be, and how the money should be spent.

For example, state courts do not control the global energy markets. As the New York Times reported, 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. "[S]tate-owned oil companies in the Middle East, North Africa and Latin America are taking advantage of the cutbacks . . . by cranking up" production, which could make America "more dependent on [OPEC], authoritarian leaders and politically unstable countries . . . that are not under as much pressure to reduce emissions." Id. Thus, this litigation, which would not impose these costs on the state-owned oil companies, will not reduce overall emissions and could make them worse.

Artful pleading does not change the deficiencies with this litigation. The U.S. Constitution is not so fragile as to be swayed by the State's reframing of the federal law issues at play in this case. The basic truths about this litigation remain inviolate:

This case is about interstate and international emissions. The heart of New Jersey's claim is that Defendants exacerbated global climate change by increasing GHG emissions through their conduct and products. The State cannot change the fact that global climate change is not the result of emissions solely from Defendants' products, operations or other activities, or solely in New Jersey, but everyone, everywhere for more than 150 years. As the Second Circuit explained, that is why the repackaged allegations "cannot transform [the litigation] into anything other than a suit over global greenhouse gas emissions." City of New York, 993 F.3d at 97. The Third Circuit similarly recognized that Delaware and Hoboken tried re-casting their

suits as just about misrepresentations, but their own complaints "belie" any such suggestion because they also allege trespasses and nuisances. City of Hoboken v. Chevron Corp., 45 F.4th 699, 712 (3d Cir. 2022).

Federal law exclusively governs interstate and international GHG emissions. The U.S. Supreme Court in AEP held that climate litigation (like all interstate and international pollution cases) is governed by federal law and, if a cause of action is allowed, the dispute would be determined by federal common law. However, the Court continued that Congress gave the Environmental Protection Agency (EPA) the authority to make determinations with respect to interstate GHG emissions in the Clean Air Act, which displaced such federal causes of action. Plaintiffs assert that the Supreme Court's displacement ruling means that disputes over interstate GHG emissions, which required federal law governance and have been assigned to the EPA, can now suddenly be decided by any state. The Second Circuit described this theory as a "too strange to seriously contemplate." City of New York, 993 F.3d at 99. Here, the trial court correctly pointed out that federal law would govern in any event because foreign emissions not subject to the Clean Air Act are still governed by federal law that would preempt any state claims sounding in GHG emissions: "There is simply no counter to the argument that federal law has not been displaced with respect to foreign emissions."

Imposing liability here regulates conduct with no nexus to New Jersey. The U.S. Supreme Court has long held that liability can be "a potent method of governing conduct and controlling policy." San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 247 (1959). Here, New Jersey seeks to impose such liability for conduct wholly outside of New Jersey, thereby impermissibly regulating conduct in other states and countries. Under this theory, each state could impose its "own climate standards" on other states. Bill Schuette, Energy, Climate Policy Should be Guided by Federal Laws, Congress, Not a Chaotic Patchwork of State Laws, Law.com, Apr. 25, 2024 (Schuette was Michigan Attorney General from 2011-2019). The result would be "a chaotic mix of state approaches [that] risks interfering with an effective, unified process to solve the climate problems the plaintiffs seek to abate." Donald Kochan, Supreme Court Should Prevent Flood of State Climate Change Torts, Bloomberg Law, May 20, 2024.

Imposing a carbon penalty is a legislative, not judicial, function. This litigation is premised on the fact that "forcing companies to raise the price of the energy they don't like, like fossil fuel energy, will make it too expensive for people and businesses thus decreasing the amount used." Danielle Zanzalari, Government Lawsuits Threaten Consumers' Pockets and Do Little to Help the Environment, USA Today, Nov. 1, 2023. Legislative direction is needed here. Deciding whether to impose this cost, how much, and where the money should be spent involves factors

beyond the disputes of these parties and facts subject to the rules of evidence, *e.g.*, energy affordability, economic impacts of raising energy costs, national energy security, the climate impacts of shifting energy production to less environmentally conscience countries, and more. This litigation also ignores the needs of others to pay for their own climate needs. As one local leader said in response to Hoboken's suit: "Hoboken is sticking the rest of us with the bill" as its case "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).

This litigation is an exercise in political decision-making. Because there are innumerable sources of GHG emissions around the world, New Jersey could have named innumerable combinations and permutations of entities, including entirely different companies in entirely different industries, in this lawsuit and make the same claims. The State made a *political* decision as to whom to sue. See Lesley Clark, Why Oil Companies Are Worried About Climate Lawsuits From Gas States, E&E News, Nov. 7, 2023 (quoting a climate litigation campaign leader: "It's no secret that we go around and talk to elected officials" and "look at the politics" in deciding whom to approach to bring these lawsuits.). Imposing liability for climate change on any group of defendants is unprincipled, which is underscored by the fact that there is an ever-changing list of defendants in these cases.

* * *

Ultimately, amicus believes the best way to address the impact of energy on the climate is for federal and local governments to work with manufacturers and others 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, Mar. 27, 2019. Today's challenge is to provide affordable and reliable energy while mitigating its climate impacts, not to artfully plead lawsuits.

CONCLUSION

For these reasons, the Court should affirm the decision below.

Respectfully submitted,

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Dated: July 1, 2025

CERTIFICATE OF SERVICE

I certify that on July 1, 2025, I electronically filed the foregoing Brief using New Jersey's eCourts system.

The parties in this case are registered eCourts users and will be served by the eCourts system.

/s/ Philip S. Goldberg
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