No. 20-900

In The

Supreme Court of the United States

SHELL OIL PRODUCTS CO., L.L.C., et al.,

Petitioners,

v.

RHODE ISLAND,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

MOTION FOR LEAVE TO FILE AND *AMICUS* BRIEF OF ENERGY POLICY ADVOCATES IN SUPPORT OF THE PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF CERTIORARI

Pursuant to Supreme Court Rule 37.2, Energy Policy Advocates ("EPA") respectfully moves for leave to file the accompanying *amicus curiae* brief in support of the Petition for a Writ of Certiorari. Congruent with the Rule, counsel for EPA provided notice of the *amicus's* desire to file the brief to all counsel of record on January 6, 2021. Respondent the State of Rhode Island replied on January 10, 2021, indicating that Rhode Island did not consent to the filing of this *amicus* brief. Counsel of Record for the Petitioners did not reply to either the initial inquiry from the *amicus* seeking consent to file its brief or to a follow up email sent on January 15, 2021. As such, the *amicus* cannot state what the position of the petitioners is with respect to this motion.

EPA is interested in this case because it previously filed an *amicus* brief in this matter when it was pending before the First Circuit, which that Court considered in evaluating the issues raised below, and for the same reasons EPA recently filed an *amicus* brief at both the petition stage and the merits stage before this Court in a case that raised similar issues (*BP, PLC et al. v. Mayor and City Council of Baltimore*, Case No. 19-1189). In its First Circuit brief in this same matter, EPA brought to the attention of the Circuit Court records that EPA obtained through state open records laws, which records illustrate the plaintiff's emphasis on remaining in state court as the venue most likely to support its drive to obtain, through this litigation, a

"sustainable funding stream" for the state that it was denied by its legislature, which refused to enact plaintiff's desired policies. Other records contain assertions that these lawsuits are to substitute for the failure to enact federal legislation. In its previous briefs in this Court in a case raising similar issues, EPA raised the alarm that federal courts remanding claims to state court without substantial consideration of implications for federal policy undermine this Court's own precedents and recent Congressional enactments.

EPA wishes to support the petition for certiorari in this case because the decision below has implications for a growing number of similar lawsuits nationwide. These suits are part of a documented and coordinated national campaign of state-court litigation, and EPA hopes that this Court will ensure the lower courts give serious consideration to issues of state court bias and to the actual, confessed motivations of plaintiffs who seek remand. EPA believes that the arguments set forth in its brief will assist the Court in resolving the issues presented by the petition and amplify its previous briefing on these issues.

As a nonprofit incorporated in Washington State, EPA has no direct interest, financial or otherwise, in the outcome of the case, aside from its interest in good governance and advocating for the proper role of the federal judiciary. Because of its lack of a direct interest, combined with its intimate and firsthand knowledge of the records illustrating the above concerns about the motivations of Rhode Island in seeking remand, EPA

can provide the Court with a perspective that is distinct and independent from that of the parties. For the foregoing reasons, EPA respectfully requests that this Court grant leave to file the accompanying *amicus curiae* brief.

Respectfully submitted,

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INTEREST OF THE *AMICUS*[1]

Energy Policy Advocates ("EPA") is a nonprofit organization incorporated under the laws of Washington State, dedicated to bringing transparency to the actions of government at all levels. As part of its mission, EPA files open records requests under both state and federal laws and conducts research into how governmental policies on energy and environmental issues are made.

EPA has obtained emails, handwritten and typewritten notes, and purported confidentiality and "common interest" agreements that illustrate the genesis of and machinations behind the new wave of climate nuisance litigation in state courts. These records reveal an attempt to raise governmental revenues and obtain national policies, both outside the ordinary democratic process. EPA feels it is in the interests of justice to bring the records it has obtained to the attention of this Court so that it may consider whether a Circuit Court's decision to remand a case from federal court to state court runs counter to federal policies relating to energy or the environment, or to the federal interest in ensuring the integrity of the judicial system as a whole.

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* EPA, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

The District Court's discussion of the factual background in this matter begins with the sentence "Climate change is expensive, and the State wants help paying for it." App. 27a. By the time the Circuit Court handed down its opinion in this case, however, plaintiff had transformed its argument from a focus on obtaining for Rhode Island some "help" paying for climate change, into a new argument more focused on alleged failure to warn or false advertising. The First Circuit summarized the state's evolving position as follows: "Rhode Island sued a slew of oil and gas companies for the damage caused by fossil fuels *while those companies misled the public about their products' true risks*." App. 6a (emphasis added).

This shift, through rhetorical sleight of hand on appeal, coincided with a change in approach by "climate" plaintiffs from seeking relief based on the law of nuisance to seeking relief grounded in consumer protection after plaintiff filed suit in 2018, after the nuisance claims suffered setbacks in federal court on both coasts.[2] Yet this case has always been a public nuisance suit, and was even listed in an "Amendment to Confidentiality Agreement Regarding Participation in Climate Change Public Nuisance Litigation" among ideologically aligned state attorneys general, signed by Rhode Island on November 26, 2019.[3] That pact,

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[2] *City of Oakland, et al. v. BP P.L.C., et al*., 325 F. Supp. 3d 1017 (N.D. Cal. 2018), and *City of New York v. BP P.L.C.,* 325 F. Supp. 3d 466 (S.D.N.Y. 2018).

[3] EPA obtained the original April 25, 2018 Agreement and 2019 Amendment from, *inter alia*, Rhode Island's Office of the

claiming a common interest among attorneys general from coast to coast "in one or more cases brought, or that will be brought, in state court or U.S. District Court, or appealed to state or federal courts of appeal, including the highest state appellate court or the U.S. Supreme Court" cited seven cases "referred to herein as the 'Litigation.' " That list of cases included "*Rhode Island v. Chevron Corp.* (R.I. Super. Ct. PC-2018-4716, and D. R.I. 18-00395)."

The pact that Rhode Island's Attorney General and fellow travelers in the climate litigation movement amended (by adding the Rhode Island case to its scope) sets forth its objective: "The Parties to this Agreement have a common interest in ensuring the proper application of the federal and/or state common law of public nuisance arising from the effects of climate change, including sea level rise."[4]

The District Court's blunt assessment of Rhode Island's monetary goals aligns with the factual allegations in the complaint originally filed in Rhode Island's Superior Court and thereafter removed to federal court, and comports with facts that have come to light

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Attorney General under that state's Access to Public Records Act. The document, which bears the title "Amendment to Confidentiality Agreement Regarding Participation in Climate Change Public Nuisance Litigation," is available at https://climatelitigationwatch.org/wp-content/uploads/2021/01/Climate-Change-Public-Nuisance-Litigation-CIA-Amendment.pdf.

[4] The document, styled as a "Confidentiality Agreement Regarding Participation in Climate Change Public Nuisance Litigation," is available at https://climatelitigationwatch.org/wp-content/uploads/2021/01/Climate-Change-Public-Nuisance-Litigation-CIA.pdf.

as a result of EPA's efforts obtaining public records under various state transparency laws.

EPA has obtained emails and handwritten and typewritten notes under public records laws that shed light on the motives behind this proceeding. These documents expressly acknowledge the state's motives not only for pursuing this litigation (its General "Assembly [led by] very conservative leadership – doesn't care about env't," which has left the state's executive branch "looking for sustainable funding stream" for its spending ambitions) *but also for pursuing it in state court*. These two sets of notes each purport, independently, to record the emphasis by a cabinet-level state of Rhode Island official that this lawsuit was filed in "State court against oil and gas" because of the executive's "Priority – sustainable funding stream" needed to fulfill certain spending ambitions which the executive failed to convince the voters' elected representatives to satisfy through the ordinary process of taxation.[5]

These public records obtained by EPA document the political impetus for filing suit, while offering a remarkable "tell" about the plaintiff's true feelings about

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[5] These notes are available, respectively, at https://climatelitigationwatch.org/wp-content/uploads/2020/03/Carla-Frisch-handwritten-notes-EPA_CORA1505.pdf and https://climatelitigationwatch.org/wp-content/uploads/2020/03/EF-Katie-McCormack-typed-notes-EPA_CORA1542.pdf. These documents are identified in an August 20, 2019 email from CNEE's Patrick Cummins to RBF's Michael Northrop, Subject: meeting highlights, available at https://climatelitigationwatch.org/wp-content/uploads/2020/03/Edited-notes-transmittal-email-CSU-suggests-Snail-mail-probably-covered-EPA_CORA1481_Redacted.pdf.

its claims of loss and looming disaster, especially in light of the state's professed intention to rely on purportedly planet-killing activities as a "sustainable" funding source. Even more concerning, both sets of notes identify plaintiff's emphasis on the "state court" aspect of its plan, reflecting that the state shares the fear expressed by other members of its team that its claims may be doomed by the faithful application of federal law by federal courts.

Other public records obtained by Energy Policy Advocates and its counsel document members of the plaintiff's legal counsel's team, in its efforts to recruit other governmental entities as plaintiffs in its campaign, acknowledging the team's view that state courts are the "more advantageous venue for these cases."[6] These records, expressing candid views in public records which the parties may not have expected to be released, leave little doubt that the instant litigation has at least two impermissible objectives.

First, as also explained, *infra*, the state plaintiff in this matter seeks to use state courts to effectively create or modify federal energy and environmental policy, as stand-ins for the political process that has denied plaintiff its desired policies. Second, the state seeks to raise revenues through the courts and with a judicial

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[6] See, e.g., email from a recruiter for Rhode Island counsel Sher Edling, LLP named Seth Platt to the Mayor of Fort Lauderdale, Florida, at https://climatelitigationwatch.org/wp-content/uploads/2019/09/GsPlatt-responds-to-Ft-Lauderdale-signaling-Judge-Alsup-opinion-is-too-much-for-them.pdf.

imprimatur, rather than through the proper legislative means through which it confesses to have failed.

The public records EPA has obtained provide strong impetus to acknowledge, despite the state's assertions otherwise and the appellate court's indulgence of the shifting characterization of the claims at issue here, that this suit is a part of a much broader wave of "climate nuisance" litigation that seeks to use the courts to attain political goals denied the plaintiffs through the political process.

ARGUMENT

I. PUBLIC RECORDS OBTAINED BY EPA DEMONSTRATE THIS CASE IS AN ATTEMPT TO USE THE COURTS TO OBTAIN OR INFLUENCE POLICY THROUGH IMPROPER MEANS.

EPA has obtained public records from Colorado State University's Center for a New Energy Economy ("CNEE") under the Colorado Open Records Act ("CORA"). The records pertain to a two-day meeting in July 2019 hosted by the Rockefeller Brothers Fund ("RBF") at the Rockefeller family mansion at Pocantico, New York, and include numerous emails, agendas and other materials. Most pertinent to this brief, they also include a set of handwritten notes and a second, corroborating set of typewritten notes both taken by attendees. The former was prepared by attendee Carla Frisch of the Rocky Mountain Institute

("RMI"), and the latter by attendee Katie McCormack of the Energy Foundation.[7] Both Ms. Frisch and Ms. McCormack are affiliated with well-known energy and environmental policy advocates, with no apparent or particular scholarly expertise in nuisance or state truth-in-advertising claims.

The 2019 RBF meeting, styled "Accelerating State Action on Climate Change," was a private affair which served as a forum for policy activists and a major funder to coordinate with senior public employees.[8] The latter included, for example, a governor's chief of staff, and department secretaries and their cabinet equivalents from fifteen states.[9] These states included plaintiff Rhode Island, represented by its Director of the Department of Environmental Management, Janet Coit.

These meeting notes obtained by EPA purport to contemporaneously record the comments of Director Coit discussing the instant matter among peers. One passage in each set of notes, attributed to Director Coit and replicated almost verbatim in both, illustrates both that the state seeks to use litigation to force a change in climate policy, and that the state is

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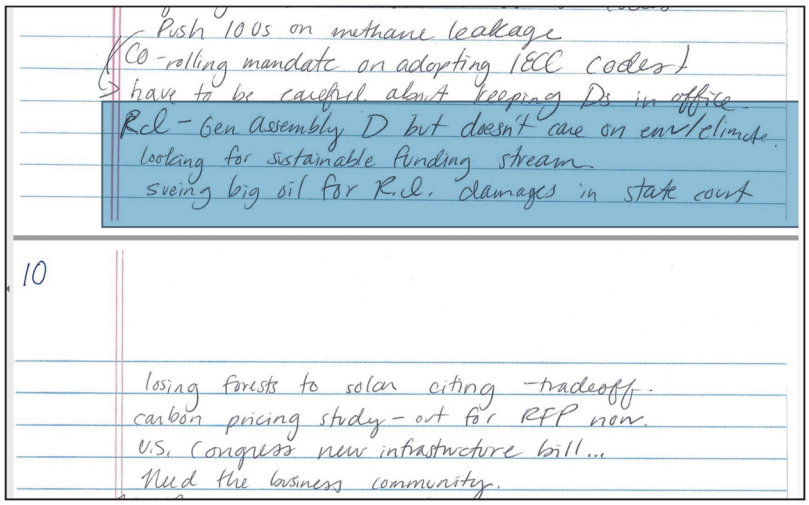
[7] See fn. 5, *supra*.

[8] The agenda for the meeting is available at https://govoversight.org/wp-content/uploads/2020/01/Draft-Agenda-EPA_CORA0008-copy.pdf.

[9] The participant list is available at https://climatelitigationwatch.org/wp-content/uploads/2020/03/List-of-Attendees-EPA_CORA1037.pdf.

motivated by fiscal policy to file its litigation in state – rather than federal – court.

Rocky Mountain Institute's Frisch recorded Director Coit speaking to this litigation as shown in the below excerpted image:



Ms. Frisch recorded Director Coit as saying, about this suit:

> RI – Gen Assembly D but doesn't care on env/climate
> looking for sustainable funding stream
> suing big oil for RI damages in state court[10]

The first line attributes to Director Coit the position that the Rhode Island legislature is not persuaded of the claims set forth by the state in this matter. It

[10] Ms. Frisch's notes are available in full at https://climatelitigationwatch.org/wp-content/uploads/2020/03/Carla-Frisch-handwritten-notes-EPA_CORA1505.pdf.

appears to also reflect her informed view of why the legislature has declined to directly obtain from the taxpayer the revenue streams that plaintiff desires. The next two lines attributed to Director Coit are only further evidence of the true objectives behind the plaintiff's suit. Specifically, to the state executive branch's displeasure, the legislature is not the party "looking for [a] sustainable funding stream."

These notes reflect a senior official confessing that Rhode Island's climate litigation is in fact a product of Rhode Island's elected representatives lacking enthusiasm for politically enacting certain policies, including concomitant revenue measures. Thus, rather than work with the "very conservative" Rhode Island legislature to obtain such policies through the give and take of the legislative process, the state's executive branch elected to "look for [a] sustainable funding stream" by "suing big oil."

We can be confident that Ms. Frisch did not mishear Director Coit. The Energy Foundation's Katie McCormack provided RBF with a typewritten set of her own notes transcribing the proceedings.[11] Ms. McCormack's typewritten transcription of Director Coit's commentary reads almost verbatim to the recollection of Ms. Frisch.

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[11] Ms. McCormack's notes are available in their entirety at https://climatelitigationwatch.org/wp-content/uploads/2020/03/EF-Katie-McCormack-typed-notes-EPA_CORA1542.pdf.

Ms. McCormack recorded Director Coit as saying:

- Assembly very conservative leadership – don't care about env't
- If care, put it in the budget
- Priority – sustainable funding stream
- State court against oil/gas

These notes EPA obtained through public records requests illustrate two troubling aspects of the recent epidemic of "climate nuisance" litigation, which has been channeled into state courts (after the first generation of suits floundered in federal court, and ultimately were terminated by this Court in *American Electric Power v. Connecticut*, 131 S. Ct. 2527, 2539, 564 U.S. 410, 426 (2011)). Specifically, these suits seek to use the (state) courts to stand in for (state and federal) policymakers in at least two ways. First, these suits ask the state courts to substitute their authority for that of the political branches of government at both the state and federal level on matters of climate policy. Second, these suits seek billions of dollars in revenues, which would properly be obtained through taxation enacted by legislators, for distribution toward political uses and constituencies.

With respect to the first issue – policymaking through the courts – the RBF meeting notes echo a comment made to The Nation magazine by the plaintiffs' tort lawyer credited with inventing this wave of litigation. The Nation's Zoe Carpenter wrote, "[I]t's clear that too many lawmakers have abdicated, thus

the pressure to tackle the climate issue through existing regulations like the Clean Air Act, and through the courts. 'I've been hearing for twelve years or more that legislation is right around the corner that's going to solve the global-warming problem, and that litigation is too long, difficult, and arduous a path,' said Matthew Pawa, a climate attorney. 'Legislation is going nowhere, so litigation could potentially play an important role.' "[12]

Rhode Island's attempted use of the courts to attain revenue and other policy ends that have eluded it through legislation or regulation is improper, but the attempt also informs a conclusion that these cases, when brought, belong in federal court. Such suits should also be dismissed for reasons including the inherently obvious, and now repeatedly confessed, purpose.

If the plaintiff's motivation to obtain and influence policy were not itself an improper use of the courts, the proponents of this new wave of climate litigation are also increasingly candid about the litigants' motive to use the pressure of litigation to force opponents to capitulate to legislative change that they otherwise oppose, or support with insufficient enthusiasm. Another example of the records EPA has obtained in which the improper motive for filing the new wave of "climate nuisance" suits is an email in

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[12] Zoe Carpenter, "The Government May Already Have the Law It Needs to Beat Big Oil," *The Nation*, July 15, 2015, https://www.thenation.com/article/the-government-may-already-have-the-law-it-needs-to-beat-big-oil/.

which an official with one municipal nuisance plaintiff (the City of Boulder, Colorado) admits the City's position in filing its suit, that "the pressure of litigation could also lead companies . . . to work with lawmakers on a deal" about climate policies.[13] Former Connecticut Attorney General Richard Blumenthal is quoted describing *American Electric Power v. Connecticut*, 564 U.S. 410, 426 (2011), which suit he brought before being elected to the United States Senate, "My hope is that the court case will provide a powerful incentive for polluters to be reasonable and come to the table . . . We're trying to compel measures that will stem global warming regardless of what happens in the legislature."[14] This Court cannot sanction the use of the judiciary to force energy and environmental legislative policy change that plaintiffs seek, including to arrange for the equivalent of energy taxes the legislature will not provide, and it should be especially zealous in protecting federal policies and legislation from being forced by actions taken in various state court systems.

The second conclusion affirmed in the twice-sourced assertions by Rhode Island's official that EPA has obtained is that this the new wave of state court

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[13] January 5, 2018 email from Boulder Chief Sustainability & Resilience officer Jonathan Koehn to Alex Burness of the Boulder Daily Camera, Subject: RE: Follow-up to council discussion. Available at https://climatelitigationwatch.org/boulder-official-climate-litigation-is-tool-to-make-industry-bend-a-knee/.

[14] Editorial, "The New Climate Litigation," Wall Street Journal, December 28, 2009, https://www.wsj.com/articles/SB10001424052748703478704574612150621257422.

"climate nuisance" litigation is a grab for state fiscal revenue streams which are only properly enacted through the political process. In the ordinary political process, revenues are raised by legislators and spent by the executive branch according to legislative authorization and appropriation. This new wave of litigation promises to erode the separation of powers by using courts, rather than legislators, to raise revenues for the executive branch to spend.

As the U.S. Chamber of Commerce noted in a 2019 report entitled "Mitigating Municipality Litigation: Scope and Solutions," the desire of the municipal and state plaintiffs for more governmental revenue, without adopting the necessary direct taxes for which there can be a political price to pay, appears to be a key driver of such litigation. That report highlighted:

- "For instance, local government leaders may eye the prospect of significant recoveries as a means of making up for budget shortfalls."

- "Large settlements like those produced in the tobacco litigation are alluring to municipalities facing budget constraints."

- "Severe, persistent municipal budget constraints have coincided with the rise of municipal litigation against opioid manufacturers as local governments are promised large recoveries with no risk to municipal budgets by contingency fee trial lawyers."

- "Conclusion A convergence of factors is propelling municipalities to file affirmative lawsuits against corporate entities. There is the 'push' factor: municipalities face historic budgetary constraints and a public

inundated with news reports on the opioid crisis, rising sea levels, and data breaches. And there is the 'pull' of potential multimillion dollar settlements and low-cost, contingency fee trial lawyers. As a consequence, municipalities are pivoting to the courts by the thousands."[15]

The National Association of Manufacturers' Center for Legal Action has similarly argued that, "The towns and lawyers have said that this litigation is solely about money. The towns want funding for local projects, and their lawyers are working on a contingency fee basis, which means they aren't paid if they don't win."[16]

The records EPA has obtained provide documentary evidence to support its concern that the "climate nuisance" plaintiffs, and most openly Rhode Island, seek to exploit state courts to balance municipal/state budgets, to erode the separation of power between branches of state governments, and to compel policy decisions that both state and federal legislators have declined to make. This Court should grant certiorari to guard against this improper use of the judiciary.

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[15] United States Chamber of Commerce, "Mitigating Municipality Litigation: Scope and Solutions," U.S. Chamber Institute for Legal Reform, March 2019, https://instituteforlegalreform.com/wp-content/uploads/2020/10/Mitigating-Municipality-Litigation-2019-Research.pdf, at pp. 1, 6, 7 and 18, respectively.

[16] Manufacturers' Accountability Project, "Beyond the Courtroom: Climate Liability Litigation in the United States," p. 2, https://mfgaccountabilityproject.org/wp-content/uploads/2019/06/MAP-Beyond-the-Courtroom-Chapter-One.pdf.

II. CONCERNS ABOUT STATE COURT BIAS ARE AMPLIFIED IN THIS CASE.

As EPA has noted in its *amicus* briefing in a similar case pending before this Court, the "historic concern about state court bias" is the underlying basis allowing for federal officer removal. *Savoie v. Huntington Ingalls, Inc.*, 817 F.3d 457, 461 (5th Cir. 2016). This Court has explicitly recognized bias as a concern justifying removal to federal court. Although judicial officers in both state and federal courts nationwide no doubt do their level best to adjudicate the disputes that come before them, this Court has held that "State-court proceedings may reflect 'local prejudice' against unpopular federal laws or federal officials." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007).

Simply put, and despite best efforts to avoid its influence, bias exists. There is no reasoned basis to adopt a crabbed interpretation of "against unpopular federal laws or officials." Indeed, this Court has cautioned against "narrow, grudging interpretation" of federal officer removal. *Willingham v. Morgan*, 395 U.S. 402, 407 (1969). Because "[t]he removal statute is an incident of federal supremacy," *Murray v. Murray*, 621 F.2d 103, 106 (5th Cir. 1980), federal supremacy demands that this Court step in once again to ensure cases that strike at the heart of important federal policies are heard in federal court.

Just as this Court warned in *Watson*, the state of Rhode Island is engaged in a campaign through the courts to overturn "unpopular federal laws." Rather

than recognizing the Constitution and federal law as supreme, governmental "climate nuisance" plaintiffs are applying a "narrow, grudging" interpretation of the removal statute to seek to overturn federal law through imposing ostensible tort liability in state courts. That this grudging interpretation of the federal law of removal coincides with a grudging interpretation of *American Electric Power* and an expansive view of the ability of the executive branch of government to raise its own revenues, only highlights the need for this Court to step in to avoid the appearance of state court bias and ensure the faithful application of federal law.

It is hard to imagine a more striking case where a perception of state court bias gives rise to concern than is presented in this case, in which the clear *hope* for state court bias is demonstrated in the express litigation strategy revealed in the aforementioned records obtained by Energy Policy Advocates through public records laws.

As documented, *supra*, by its own admission the State of Rhode Island is pursuing this litigation to obtain a "sustainable funding stream" for its executive branch officials' spending ambitions, and is doing so expressly because the legislature has failed to live up to the executive branch's hopes. Both sets of notes specify Director Coit's emphasis before an audience of largely, or even entirely non-lawyer, senior executive *policy* officials, on seeking this "sustainable funding stream" in "state court." The state's objective of suing to create, influence, or even overturn federal policy and raise state revenues in state courts is a thematic

cousin of the drive to use the courts when legislatures fail to enact plaintiff's desired policies, and is well-understood among plaintiff's team.

For example, and again turning to documents made public through open records laws, consider the description by a member of the state's outside legal counsel's own team. After U.S. District Judge William Alsup dismissed the City of Oakland's "climate nuisance" suit against many of the same defendants in June 2018, and immediately prior to the state of Rhode Island filing its suit in Rhode Island Superior Court, UCLA Law professor and also consultant to plaintiff's counsel Sher Edling, Ann Carlson,[17] reiterated her belief, for whatever reason, that the plaintiff's chances for recovery are much better in state fora.[18] And a recent *Los Angeles Times* news article quoted Carlson's colleague and also apparently consultant for plaintiff's counsel, Sean Hecht, on this topic of state courts being "more favorable to 'nuisance' lawsuits."[19]

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[17] Ms. Carlson's disclosures to the University of California at Los Angeles regarding her outside employment with plaintiff's counsel Sher Edling can be found at https://climatelitigationwatch.org/wp-content/uploads/2021/01/Responsive-Documents-20-8525.pdf.

[18] Mark Kaufman, "Judge tosses out climate suit against big oil, but it's not the end for these kinds of cases," mashable.com, June 26, 2018, https://mashable.com/article/climate-change-lawsuit-big-oil-tossed-out/.

[19] Susanne Rust, "California communities suing Big Oil over climate change face a key hearing Wednesday," *Los Angeles Times*, February 5, 2020, https://www.latimes.com/california/story/

This case presents a unique situation where the plaintiff confessed its strategy to obtain fiscal revenues to underwrite desired policies through litigation in state court, the plaintiff's counsel's consultants expressed their view that the plaintiff is more likely to obtain success in state court, and major news outlets echo the common perception that state courts are more hospitable for the plaintiff's claims. This case presents a near-ideal exemplar of when the federal courts should step in to ensure perceptions of fair play against even the perception of bias.

CONCLUSION

These notes EPA has obtained from the July 2019 Rockefeller-hosted meeting demonstrate the need for this Court to confront the expanding and nationally coordinated tsunami of state-court "climate nuisance" litigation. Such suits are not only a grab for revenue and other desired policies that have eluded parties through the political process, but demean the federal judiciary by attempting to seek to coerce or effectively compel federal policies in state court. This Court should grant certiorari to make clear that federal courts are the proper forum to obtain a ruling relating to federal energy and environmental policy matters and to ensure that courts at both the state and federal level are perceived to rule on such issues in

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2020-02-05/california-counties-suing-oil-companies-over-climate-change-face-key-hearing-wednesday. See also, e.g., fn. 6, *supra*.

accordance with the law rather than based on apparent or anticipated biases.

Respectfully submitted,

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