GAO
Government Accountability & Oversight

Government Accountability & Oversight
724 Bielenberg Drive
Woodbury, MN 55125

Contact info@govoversight.org

Transparency Group Files SCOTUS Amicus Brief with Records Proving State "Climate" Lawsuit Is to Obtain "Sustainable Funding Stream"

Same two sets of notes from July Rockefeller-hosted meeting, confessing the revenue-raising motive, at were recently accepted by 1st Circuit over objection by plaintiff's tort counsel

WASHINGTON, D.C., April 30, 2020 – The transparency group Energy Policy Advocates ("EPA") today filed a Friend of the Court brief with the Supreme Court of the United States in *BP P.L.C. et al*. v. *Mayor and City Council of Baltimore*, providing public records showing the epidemic of "climate nuisance" lawsuits being pursued by the plaintiff's tort bar in state courts across the country is a pursuit by governments for a "sustainable funding stream." The tort bar recently turned to state courts after having their campaign shut down in the federal courts by SCOTUS in *American Electric Power v. Connecticut*, 564 U.S. 410 (2011).

This campaign was already confessed by the tort bar to be an effort to obtain unpopular "climate" policies denied their clients by the democratic process. It now is burdened by notes proving it to be an effort to raise hundreds of billions of dollars from the consumer, hiding the politically risky move to raise the revenues openly through taxes which, the documents presented to the Court also affirm, also are politically unattainable. Both are impermissible uses of the courts, and reflect a movement pinning its hopes for a radical agenda on state court bias. As such, the brief argues, belong in federal court.

Today's Amicus Curiae brief argues that:

> *"States and municipalities are engaged in a campaign through the courts to overturn 'unpopular federal laws.' Rather than recognizing the Constitution and federal laws as supreme, governmental 'climate nuisance' plaintiffs are applying 'narrow, grudging' interpretation of the removal statute to seek to overturn federal law through imposing ostensible tort liability in state courts."* And
>
> *"This Court should prevent litigants from seeking the most favorable forum to obtain political and policy ends by judicial means."*

In the memo accompanying its motion, EPA provided the Court with two independent sets of notes obtained under a state open records law and which purport to record a damning confession by Janet Coit, a senior State of Rhode Island official: the objective of this litigation is to obtain a "sustainable funding stream" for the State's spending ambitions, having failed to convince the voters' elected representatives to provide one. Each of these, independently, "document the State's concession that Rhode Island's elected representatives are insufficiently moved by the State's claims of loss and looming disaster to enact laws raising the revenues the State's executives desire; and, that Plaintiff is thus 'looking for [a] sustainable funding stream', having been reduced to 'suing big oil' for its 'Priority - sustainable funding stream'. Notably, both sets of notes capture the Plaintiff as having emphasized the 'state court' aspect of its plan."

These notes were taken during a two-day meeting in July 2019 hosted by the Rockefeller Brothers Fund at the Rockefeller family mansion at Pocantico, NY, as a forum for policy activists and their funders to coordinate with senior government officials from 15 states. It is to these officials the Director Coit made her confession, captured at the time by two participants.

Rhode Island, in *Rhode Island v. Chevron, et al*. shares the same legal counsel with the Mayor and City Council of Baltimore. EPA presented the United States Court of Appeals for the First Circuit with these same records recently in that action, over the opposition of Rhode Island and its lawyers, Sher Edling.

Today's brief noted, "That Rhode Island and the City of Baltimore share not only claims and legal strategies but legal counsel, whose recruiting team has emphasized to targeted governmental entities the desire to keep these matters in state court as the 'more advantageous venue for these cases,' given this Court's ruling in *American Electric Power*, raises concerns that the climate nuisance plaintiffs also share the hope for state court biases in the campaign to eliminate budgetary shortfalls and otherwise make policy through tort litigation."

The brief proceeded to cite emails obtained under open records laws in which "a lobbyist hired to assist with recruiting more governmental plaintiffs for Sher Edling passed along a note of encouragement to one prospective client whose counsel had expressed concern over [yet another federal judge dismissing a 'climate nuisance' case…that] flatly stated (or forwarded) the team's position that state courts are the 'more advantageous venue for these cases.'" (citations omitted)

Baltimore's outside tort counsel ultimately agreed to consent to today's Amicus brief, having previously and unsuccessfully filed a brief in opposition to the First Circuit seeing these records.

The Fourth Circuit *Baltimore* case before the Supreme Court is one among many proliferating in state courts, from coast to coast, an epidemic that now is admittedly about obtaining the "sustainable funding stream" that elected representatives are unwilling to impose the taxes to obtain. Quoting the U.S. District Court for the Southern District of New York in *Chevron Corp. v. Donziger*, which involved an infamous abuse of the judicial process, EPA highlighted a consideration relevant to the climate litigation tsunami: "The point of the multi-front strategy thus was to leverage the expense, risks, and burden to [defendant] of defending itself in multiple jurisdictions to achieve a swift recovery, most likely by precipitating a settlement." That opinion was later upheld at *Chevron Corp. v. Donziger*, 833 F.3d 7 4 (2d Cir. 2016), cert. denied at 137 S. Ct. 2268 (2017).

Matthew Hardin, who represents GAO in numerous lawsuits, filed on EPA's behalf.

Government Accountability & Oversight is a 501(c)3 non-profit organization dedicated to transparency in public officials' dealings on matters of energy, environment and law enforcement