No. 19-1818

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

STATE OF RHODE ISLAND,
Plaintiff-Appellee,

v.

SHELL OIL PRODUCTS COMPANY, LLC; CHEVRON CORP.; CHEVRON USA, INC.; EXXONMOBIL CORP.; BP, PLC; BP AMERICA, INC.; BP PRODUCTS NORTH AMERICA, INC.; ROYAL DUTCH SHELL, PLC; MOTIVA ENTERPRISES, LLC; CITGO PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; MARATHON OIL COMPANY; MARATHON OIL CORPORATION; MARATHON PETROLEUM CORP.; MARATHON PETROLEUM COMPANY, LP; SPEEDWAY, LLC; HESS CORP.; LUKOIL PAN AMERICAS LLC; DOES 1-100,
Defendants-Appelants,
and
GETTY PETROLEUM MARKETING, INC.,
Defendant.

On appeal from the U.S. District Court for the District of Rhode Island
No. 1:18-cv-00395-WES-LDA (The Honorable Edgar Smith)

PROPOSED AMICUS BRIEF
ON BEHALF OF ENERGY POLICY ADVOCATES

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Corporate Disclosure Statement

Under Federal Rule of Appellate Procedure 26.1, Energy Policy Advocates certifies that it is a non-profit corporation incorporated under the laws of Washington State and recognized under section 501c3 of the Internal Revenue Code. Energy Policy Advocates has no parent entity, and no publicly held corporation or similarly situated legal entity has 10% or greater ownership in Energy Policy Advocates.

Interest of the Amicus Curiae

Energy Policy Advocates is a nonprofit organized in Washington State which performs research on public policy issues, with a focus on issues relating to energy and the environment. In its public policy research work, Energy Policy Advocates has obtained documents relevant to this Court as it considers the issue of state court bias and considers the issue of remand.

Rule 29 (a)(4)(E) Statement

No party or party's counsel authored this brief in whole or in part. No party nor any party's counsel contributed money that was intended to fund preparing or submitting this brief. No person—other than the amicus curiae, its members, or its

counsel—contributed money that was intended to fund preparing or submitting this brief.

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I. INTRODUCTION

Proposed *Amicus Curiae* Energy Policy Advocates ("EPA") has obtained emails and handwritten and typewritten notes under public records laws that are highly relevant to this proceeding. These two sets of notes each purport, independently, to record the assertion by a senior State of Rhode Island official that 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.

This information is thematically consistent with the brief of the *Amici* Senators Markey, Reed, and Whitehouse, alleging that certain parties are using this Court, in this action, in service of unique economic interests[1]. Refreshingly, these records obtained by Energy Policy Advocates move beyond aspersions and instead provide documentation, contemporaneously recorded by two different parties hearing the same assertions and recording them the same way. Contrary to the suggestion of the *Amici* Senators, however, these notes show the State confiding to peers that it is the Plaintiff who seeks to use the judiciary, in this suit, in that way.

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[1] See, e.g., "The Chamber would clearly love to neuter the judicial branch of government on these questions to the benefit of its fossil fuel donors." Brief of *Amici Curiae* Senators Sheldon Whitehouse, Jack Reed, and Edward Markey in Support of Appellees And Affirmance, 00117531608, at 11. The popular reading of this filing and allegation is "Rhode Island and Massachusetts senators argued that the Chamber of Commerce wants to "neuter the judicial branch" to benefit fossil fuel funders." Law360, "US Chamber Wants To 'Neuter' Judges, Sens. Tell 1st Circ.", https://www.law360.com/articles/1235369. January 17, 2020.

These public records offered by Proposed *Amicus* EPA 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 executive desires; 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 identify Plaintiff emphasizing the "state court" aspect of its plan.

Other public records obtained by Energy Policy Advocates and its counsel document members of the Plaintiff's legal counsel's team, in attempting to recruit other governmental entities to their campaign, acknowledging its position that state courts are the "more advantageous venue for these cases".

These records, representing Plaintiff's concession as recorded by others in a private setting, leave little doubt that the instant litigation seeks at least two impermissible objectives. These include using (state) courts to effectively create federal energy and environmental policy as stand-ins for the political process that has denied plaintiffs their desired policies. They also include seeking to raise revenues, which also are the proper subject of, but have been denied to the governmental plaintiffs by, the political process.

These public records provide strong impetus to acknowledge, as a formal matter, that this "climate nuisance" litigation campaign is an impermissible use of the courts, seeking the most favorable forum to obtain political ends by judicial

means; that when filed they must remain in federal court; and that they should be dismissed for the same reasons.

II. PUBLIC RECORDS OBTAINED BY PROPOSED *AMICUS CURIAE* AFFIRM THIS CASE BELONGS IN FEDERAL COURT

Proposed *Amicus Curiae* Energy Policy Advocates ("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, NY. These include numerous emails, agendas and other materials. Most pertinent to this filing, they also include a set of handwritten notes and a second, corroborating set of typewritten notes. 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.[2]

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[2] These 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 transmitting them 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. "RBF CNEE climate policy notes Jul 17 18.docx" are Katie McCormack's notes (Energy Foundation); these appear to be produced as document EPA_CORA1542.pdf, derived from Ms. McCormick's transmittal email being 1541, in which she describes her notes as long, and 1542 consists of 18 pages of notes; "Xerox Scan_07222019155622.pdf" are Carla Frisch's handwritten notes (this was produced as document EPA_CORA1505.pdf).

This was a private event, styled "Accelerating State Action on Climate Change," if hosted as a forum for policy activists and a major funder to coordinate with senior public employees. The latter included, for example, a governor's chief of staff, and department secretaries and their cabinet equivalents from fifteen states. These states included Plaintiff Rhode Island, represented by its Director of the Department of Environmental Management, Janet Coit.[3]

These notes 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, is particularly striking and relevant, affirming two points that have become obvious and which should inform key decisions confronting the judiciary in this "climate nuisance" litigation. EPA has no reason to doubt their veracity or accuracy. To the contrary.

Rocky Mountain Institute's Frisch recorded Director Coit speaking to this litigation as shown in the below excerpted image (Ms. Frisch's notes are available in full at https://climatelitigationwatch.org/wp-content/uploads/2020/03/Carla-Frisch-handwritten-notes-EPA_CORA1505.pdf):

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

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

non controversial
NV - appliance standards - decide if legislative/regulatory
fleet elec., state + public bldgs.
getting flac on solar "fairness" w/ codes
Push 100s on methane leakage
(Co - rolling mandate on adopting IECC codes)
have to be careful about keeping Ds in office.
Rcl - Gen Assembly D but doesn't care on env/climate.
looking for sustainable funding stream
sueing big oil for R.I. damages in state court

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losing forests to solar citing - tradeoff.
carbon pricing study - out for RFP now.
U.S. Congress new infrastructure bill...
Need the business community.

The first line-item 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 appears to also reflect her view of why the legislature has thereby declined to obtain from the taxpayer, and then appropriate to the State, the revenue streams that Plaintiff desires. The next two line-items attributed to Director Coit clearly characterize the Plaintiff's suit — given, e.g., as the first point (and second set of notes) highlight, to the State's displeasure, the legislature is not the party "looking for [a] sustainable funding stream".

This entry on its face represents 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 revenue measures, thus leaving the State "looking for [a] sustainable funding stream" and therefore "suing big oil."

Fortunately 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. To this Court's further benefit, Ms. McCormack's typewritten transcription of Director Coit's commentary reads almost verbatim as Ms. Frisch's.

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

- Political context
  - No leg session next year give runway
  - Need because starting from standstill
  - NV bright blue right now not deep blue over long term – leg need support

Janet

- 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
- Solar siting bill failed – losing forests to solar
- Carbon pricing study out in RFP now – asked them to take closer at Transport, link to other studies in process

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.

These notes on their face both affirm two realities that have become inescapable in recent years about this epidemic of "climate nuisance" litigation, all channeled into state courts after the first generation of suits floundered in federal court. That is that these suits seek to use the courts to stand in for policymakers on two fronts. First, the plaintiffs seek courts to help create policy outcomes denied the plaintiffs through the proper, political process. Second, plaintiffs seek to use the courts in this manner to seek billions of dollars in revenues, for distribution toward political uses and constituencies, raising of which is properly attempted through the political process.

On that first count of policymaking through the courts, these Rockefeller-meeting notes ratify a comment made to The Nation magazine by the plaintiffs' tort lawyer credited with inventing this wave of litigation, Matt Pawa. The magazine wrote, "At the end of his speech, Senator Whitehouse reminded his colleagues of their 'legislative responsibility to address climate change.' But it'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'."[4]

This is not a proper role for the courts but the nationwide litigation campaign also informs a conclusion that these cases when brought belong in federal court, as well as that they should be dismissed for reasons including the inherently obvious and now repeatedly confessed purpose.

The second conclusion affirmed by Plaintiff's twice-sourced assertions is that the litigation is a grab for revenues by the state, which again must properly be pursued through the political process. This is related to the first conclusion in that, like other political initiatives, such revenue raising measures must be enacted by the voters' elected representatives or approved directly by voters. Instead, with the failure to obtain more "funding streams" being yet another way the political process has let such plaintiffs down, we see them circumventing that process through this litigation campaign.

That the desire for more governmental revenue without adopting the necessary direct taxes, for which there can be a political price to pay, was behind such litigation was suggested by the same U.S. Chamber of Commerce targeted by *Amici* Sens. Markey, Reed and Whitehouse in their brief. A 2019 report

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[4] 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/.

"Mitigating Municipality Litigation: Scope and Solutions", published by the Chamber's Institute for Legal Reform" noted, *inter alia*:

* "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."[5]

These records now provide documentary evidence to support that view.

III. HISTORIC CONCERNS ABOUT STATE COURT BIAS ARE AMPLIFIED IN THIS CASE

A "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

[5] United States Chamber of Commerce, "Mitigating Municipality Litigation: Scope and Solutions," U.S. Chamber Institute for Legal Reform, March 2019, https://www.instituteforlegalreform.com/uploads/sites/1/Mitigating-Municipality-Litigation-2019-Research.pdf, at p. 1, 6, 7 and 18, respectively.

(5th Cir. 2016). The Supreme Court also recognizes bias as a concern justifying removal to federal court. "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). Bias exists, as these opinions acknowledge, and there is no reasoned basis for declaring that such bias extends only to parties who are unpopular government officials. Indeed, the Supreme Court has cautioned against "narrow, grudging interpretation" of federal officer removal. *Willingham v. Morgan*, 395 U.S. 402, 407 (1969). Simply put, "[t]he removal statute is an incident of federal supremacy." *Murray v. Murray*, 621 F.2d 103, 106 (5th Cir. 1980).

The State is 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.

It is hard to imagine a more striking case where fear of state court bias could be a concern than is presented in the instant matter. Stated otherwise and even more affirmatively, the *hope* for state court bias is demonstrably at play in the

instant matter, as shown in records obtained by Proposed *Amicus* Energy Policy Advocates through public records laws.

As documented, *supra*, by its own admission the State is pursuing this litigation to obtain a "sustainable funding stream" for its officials' spending ambitions, having failed to convince the voters' elected representatives to provide one. Both sets of notes discussed, *supra*, specify Director Coit's emphasis on seeking this "sustainable funding stream" in "state court." This objective of suing to make 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 plaintiffs' desired policies, and is well-understood among plaintiffs' team.

For example, and again turning to documents obtained 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,[6] and immediately prior to the State filing its suit in Rhode Island Superior Court, a lobbyist hired to assist with recruiting more governmental plaintiffs for Sher

[6] *City of Oakland, et al., v. BP P.L.C., et al.*, Case 3:17-cv-06011-WHA (N.D. Calif.), Order Granting Motion to Dismiss Amended Complaints, Dkt. 283.

Edling[7] passed along a note of encouragement to one prospective client, Fort Lauderdale, Florida, whose counsel had expressed concern over that latest failure.

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[7] The web is somewhat involved. G. Seth Platt is one of the network's consultants, engaged to help lobby Florida municipalities to file suit similar to the State's. At the time of the correspondence cited herein, Platt was a registered lobbyist for the Institute for Governance & Sustainable Development (IGSD)(www.igsd.org) (see searchable index of lobbying registrations at ftlweb01app.azurewebsites.us/Ethicstrac/Lobbyists.aspx). Platt worked with IGSD and others pitching municipalities to file "climate nuisance" litigation against energy interests, with Rhode Island's counsel Sher Edling.

In the wake of Rhode Island's initial Superior Court filing, on July 27, 2018 Fort Lauderdale Interim City Attorney Alain Boileau wrote Mayor Dean Trantalis, copying other aides, in pertinent part:

> "Mayor…I had a positive meeting yesterday with Marco Simons, Esquire of the EarthRights International Group, Matt Edling, Esquire, Vic Sher, Esquire, of SherEdling, and Jorge Mursuli [IGSD]." https://climatelitigationwatch.org/wp-content/uploads/2020/03/Boileau-explains-to-Mayor-his-mtg-w-Sher-Edling.pdf

That same day, Boileau wrote the same parties: "I suggested they prepare a presentation for the commission. They just need a target date." https://climatelitigationwatch.org/wp-content/uploads/2020/03/Boileau-explains-to-Mayor-his-mtg-w-Sher-Edling.pdf

When that presentation was arranged, Mr. Mursuli wrote to Mayda Pineda of Fort Lauderdale's government "to include additional co-counsel on the phone during our face-to-face meeting with Mr. Boileau.

> They are:
> Vic Sher 415/595-9969
> Matt Edling 415/531-1829
> Please let me know if patching them into our meeting is doable. Again, thanks very much."
> https://climatelitigationwatch.org/wp-content/uploads/2020/03/Mursuli-seeks-inclusion-ofSherEdling-in-pitching-FTL-litigation.pdf

Mr. Mursuli then wrote Lizardo Corandao of Fort Lauderdale's government seeking to ensure that Sher Edling participation on the pitch call "is doable". https://climatelitigationwatch.org/wp-content/uploads/2020/03/Mursuli-seeks-inclusion-ofSherEdling-in-pitching-FTL-litigation-II.pdf

EPA has obtained other emails showing Rhode Island, through Special Assistant Attorney General Greg Schultz, referring Sher Edling to Connecticut's Office of Attorney General for similar purposes. https://climatelitigationwatch.org/wp-content/uploads/2020/03/Pawa-SherEdling-chronology.pdf.

While seemingly written by legal counsel,[8] this lobbyist/recruiter G. Seth Platt flatly stated (or forwarded) the team's position that state courts are the "more advantageous venue for these cases."[9]

This email, like all of the correspondence cited herein, was sent in close proximity in time with the State's initial filing in Rhode Island Superior Court (in this case, the business day before Rhode Island filed suit).

Mr. Platt then quotes UCLA Law professor and also consultant to Plaintiff's counsel Sher Edling,[10] Ann Carlson, linking in the email to an article quoting her further on this belief that, for whatever reasons, plaintiffs' chances for recovery are

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[8] Lobbyist G. Seth Platt is not an attorney but "provides procurement and lobbying consultation services, research analysis, and marketing and media consultation". https://lsnpartners.com/staff/seth-platt/ Also, Platt's email relating an assessment of Judge Alsup's opinion begins in the Times Roman font, but the assessment that follows his introduction is written in Helvetica font.

[9] https://climatelitigationwatch.org/wp-content/uploads/2020/03/GSPlatt-explains-seeks-to-encourage-Fort-Lauderdale-post-Judge-Alsop-Opinion.pdf. While recruiting Fort Lauderdale to file a climate nuisance action similar to the instant matter, Platt offered "context for Dean and Alain's consideration" in an email to Mayor Dean Trantalis, City Attorney Boileau, and Mayor's Chief of Staff Scott Wyman. This was specifically in response to U.S. District Judge Alsup's June 2018 opinion dismissing certain municipalities' "climate nuisance" litigation on the grounds that the courts were not the proper place to deal with such global issues.
In another email, City Attorney Alan Boileau writes to Mayor Trantalis, "The governmental plaintiffs are essentially pursuing liability through common law claims at a local level for a global (and not exclusively domestic) problem upon which the judiciary is taking the position that the issue has been and should be relegated to the executive and legislative branches.https://climatelitigationwatch.org/wp-content/uploads/2020/03/CLK_789_2018-Emails-2nd-FTL-Production.pdf

[10] Matt Dempsey, "UCLA Professor's Role In Climate Litigation Raises Transparency Questions," Western Wire, November 27, 2018, https://westernwire.net/ucla-professors-role-in-climate-litigation-raises-transparency-questions/

much better in state fora.[11] And just last month a *Los Angeles Times* news article quoted Carlson's colleague and also apparently consultant for plaintiffs' counsel, Sean Hecht, on this topic of state courts being "more favorable to 'nuisance' lawsuits."[12]

IV. CONCLUSION

These notes from the Rockefeller-hosted meeting in July 2019, obtained by Energy Policy Advocates, provide strong impetus to formally confront traits of this "climate nuisance" litigation campaign, which are a grab for revenue and other desired policies that have eluded parties through the political process, seeking the most favorable forum for a court to stand in for that political process.

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[11] "'[U.S. District Judge William Alsup's] decision is irrelevant from a legal perspective,' Carlson said, as long as these cases stay in state courts. Federal courts, like Alsup's, are less favorable to lawsuits like San Francisco and Oakland's, which contend that fossils fuel companies are liable for damages because they've created a public "nuisance," said Carlson." 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/

[12] "Two separate coalitions of California local governments are arguing to have their suits heard in California state courts, which compared to their federal counterparts, tend to be more favorable to "nuisance" lawsuits. …"There is a lot at stake in this appeal," said Sean Hecht, co-executive director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law. "If the cases can move forward in state court, the courts are likely to take the plaintiffs' claims seriously, and this may affect prospects for cases in other states as well." Hecht's environmental law clinic provided legal analysis for the plaintiffs in some of the cases." 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/2020-02-05/california-counties-suing-oil-companies-over-climate-change-face-key-hearing-wednesday.

The notes are damning on this score, and other public-record Emails reveal concern that the records would find their way to the public, and possible machinations to avoid that.[13] The confession by Rhode Island's Director of Environmental Management surely is one very big reason why. Proposed *Amicus Curiae* Energy Policy Advocates respectfully requests this Court consider this information in the instant matter and conclude that this suit, of all such suits, belongs in federal court. Only the federal court system will be able to properly adjudicate the merits of this matter in an unbiased fashion, without prejudice against "unpopular federal laws" or "unpopular federal officials."

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[13] After another open records request captured these notes, Sarah Cottrell Propst, Cabinet Secretary of New Mexico's Energy, Minerals, & Natural Resources Department, wrote to RBF's Michael Northrop, "Just a heads up that we received a public records requests [sic] for all correspondence to/from me that includes wri.org [World Resources Institute], including as a cc, which pulled in some of the Pocantico documents." (https://climatelitigationwatch.org/wp-content/uploads/2020/03/NM-warns-RBF-of-open-records-request-EPA_CORA1347_Redacted.pdf) In response, Northrop write, "[g]iven the records request NM got I'm thinking maybe it shouldn't be emailed out. I can get my office to snail mail it." (https://climatelitigationwatch.org/wp-content/uploads/2020/03/RBF-Northrop-suggests-notes-of-mtg-shouldnt-be-emailed-EPA_CORA1458_Redacted.pdf) In reply, CNEE's Patrick Cummins, gently suggested to Northrop that "Snail mail is probably subject to open records too, no?" (It is) (https://climatelitigationwatch.org/wp-content/uploads/2020/03/Edited-notes-transmittal-email-CSU-suggests-Snail-mail-probably-covered-EPA_CORA1481_Redacted.pdf).

Dated: March 10, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under Federal Rule of Appellate Procedure 29(a)(4)(g), I certify that:

This brief complies with Rule 29(a)(5)'s type-volume limitation because it contains 2407 words, as determined by the MacBook pages word-processing system used to prepare the brief, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with Rule 32(a)(5)'s typeface requirements and Rule 32(a)(6)'s type-style requirements because the text in the body has been prepared in a proportionately spaced typeface using MacBook pages in 14-point Times New Roman Font.

/s/ Matthew D. Hardin
Matthew D. Hardin

CERTIFICATE OF SERVICE

I, Matthew D. Hardin, hereby certify that on March 10, 2020, the foregoing document was filed and served through the CM/ECF system.

Respectfully submitted,
/s/ Matthew D. Hardin
Matthew D. Hardin