

In the Commonwealth Court of Pennsylvania

No. 1525 CD 2025

BUCKS COUNTY,

Appellant

v.

BP P.L.C., et al.,

Appellees.

**BRIEF OF AMICI CURIAE THE NATIONAL ASSOCIATION OF
MANUFACTURERS AND PENNSYLVANIA MANUFACTURERS'
ASSOCIATION IN SUPPORT OF APPELLEES**

*Appeal from the Order Entered on May 16, 2025, by the
Court of Common Pleas of Bucks County, Pennsylvania, No. 2024-01836*

Philip S. Goldberg, Esquire
SHOOK HARDY & BACON L.L.P.
1800 K Street, N.W., Suite 1000
Washington, DC 20006
(202) 783-8400
pgoldberg@shb.com

Erin L. Leffler, Esquire
PA I.D. #204507
SHOOK, HARDY & BACON L.L.P.
Two Commerce Square
2001 Market Street, Suite 3000
Philadelphia, PA 19103
(215) 278-2555
eleffler@shb.com

Attorneys for Amici Curiae

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STATEMENT OF THE QUESTION PRESENTED FOR REVIEW

Does federal law, whether under federal common law, the Clean Air Act, or the constitutional structure of government, preempt state law claims brought by Bucks County seeking to subject Defendant energy producers to liability for harms the County alleges from global climate change. The Court of Common Pleas found that the claims are preempted. *Amici* agrees and urges this Court to affirm.

STATEMENT OF INTEREST OF AMICI CURIAE¹

Amici curiae are the National Association of Manufacturers (NAM) and Pennsylvania Manufacturers' Association (PMA). The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs 13 million men and women, contributes \$2.9 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 country.

The PMA, since its founding in 1909, has served as a leading voice for Pennsylvania manufacturing, its 540,000 employees on the plant floor, and the

¹ Pursuant to Pa. R.A.P. 531(b), *amici curiae* state that no person or entity other than the *amici*, their members, or counsel made a monetary contribution to the preparation or submission of this brief or authored any part of this brief.

millions of additional jobs in supporting industries. From its headquarters in the Frederick W. Anton, III, Center, across from the steps to the State Capitol Building in Harrisburg, PMA seeks to improve the Commonwealth's competitiveness by promoting pro-growth public policies that reduce the cost of creating and keeping jobs in Pennsylvania. PMA advocates for a balanced and stable legal system in the Commonwealth and files amicus briefs in cases involving such critical issues.

The NAM and PMA are dedicated to manufacturing safe, innovative and sustainable products that provide benefits to consumers while protecting human health and the environment. Climate change is one of the most important public policy issues of our time, and both the NAM and PMA support efforts to address climate change and improve public health through appropriate laws and regulations. Developing technologies to reduce greenhouse gas emissions, make energy more efficient, and modify infrastructures to deal with climate change have become international imperatives. State law claims seeking to impose liability over the worldwide production, sale, and promotion of energy products, however, cannot achieve these goals and are not the appropriate means for deciding these issues.

For these reasons, the NAM and PMA have a substantial interest in this attempt to subject their members to unprincipled state liability for harms associated with climate change and impose these costs on American manufacturers.

ARGUMENT

The Court of Common Pleas properly recognized in this case that, regardless of how pleaded or framed, claims seeking redress for harms caused by climate change from interstate and international emissions go beyond the limits of Pennsylvania law. No state can reach outside its boundaries to govern, let alone impose liability on, the production, promotion and sale of fossil fuels—and the use of those fuels—in other states and “every nation in the world.” Further, the trial court rightfully recognized these lawsuits are 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, it aligned its reasoning with numerous courts throughout the Mid-Atlantic region that have dismissed similar lawsuits under their states’ laws in response to this coordinated, national litigation campaign over global climate change. The Court should affirm this decision, reinforce its reasoning, and find Bucks County has failed to state a cause of action because Pennsylvania law does not allow governments to impose the broad, unprincipled liability sought here.

As an initial matter, the Court should be guided by *AEP*. There, the U.S. Supreme Court heard a case in which state and local governments sought to impose liability on energy companies for contributing to global climate change, holding the federal law claims were displaced by the Clean Air Act. In doing so, it made clear that the determinations courts would have to make in hearing such climate lawsuits

require “federal law governance” and that “borrowing the law of a particular State would be inappropriate.” *Id.* at 422. It also explained that these issues, ultimately, are regulatory—not liability—in nature, and that it was appropriate for Congress to delegate the authority to address these issues to the Environmental Protection Agency (EPA). As acknowledged by the trial court below, the Second Circuit along with state courts in Delaware, New Jersey, and New York, South Carolina, North Carolina—and now the Maryland Supreme Court—have stated they too are adhering to *AEP* and ruled to dismiss comparable climate lawsuits.

The legal issues here are the same as those in *AEP* and these other cases: can any entity or group of entities be subject to liability because their products, conduct, or operations contributed to greenhouse gas (GHG) emissions, which, when taken together with all other GHG sources, is causing climate change and impacts in local communities? The answer is “no.” As the Supreme Court explained in *AEP*, climate change is a by-product of modern life caused by a vast array of products, activities and other sources from around the world from the past 150 years. *See id.* at 416-18. GHG emissions and global climate change are neither local to any state or country, nor caused by any group of companies in a state, such that the state’s liability law can govern. That is why the Supreme Court stated the issues here are “of special federal interest” and judges should not be making these types of decisions on an ad hoc basis, regardless of the cause of action or how the claims are pleaded. *Id.* at 424.

Nevertheless, Bucks County here is trying to use Pennsylvania’s law to determine the rights and responsibilities for climate change, including which companies are to blame and how much they should have to pay. As the trial court properly observed—and consistent with *AEP*—the vast majority of actions at issue in this litigation occurred outside of Pennsylvania, have no nexus to Pennsylvania, and are not subject to Pennsylvania law. Thus, allowing these claims would have the unconstitutional effect of regulating and penalizing conduct in other states and countries. Indeed, more than twenty states have filed briefs *opposing* this litigation campaign because it infringes on their state’s sovereignty and hampers their ability to make decisions about these issues within their borders.² In addition, in choosing to name only these defendants—and not the countless others who have contributed to climate change—Bucks County is making a subjective determination as to who to blame for climate change, which is not a decision subject to Pennsylvania law.

This Court should affirm the decision below and make clear that the state law claims here lie outside Pennsylvania’s authority. Determining how to address climate change—its causes and impacts—is one of the most important public policy issues the Pennsylvania General Assembly and Congress, state and federal agencies,

² See Bill of Complaint, *Alabama v. California*, No. 158 (Original) (U.S., filed May 22, 2024).

and international bodies have been working on for decades. These matters are public policy issues and lie beyond the reach of state liability law.

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

When *AEP* was filed in 2004, it was the first major case seeking to impose liability over GHG emissions and climate change. The targets for the litigation were utilities that generated electricity for much of the country. Three other lawsuits followed, each testing other ways climate litigation could be framed. In *California 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. These emissions have accumulated in the atmosphere for as many as 150 years and are impacting the Earth. The defendants are violating some federal or state law in contributing to GHG emissions through their products, operations, or other activities. As a result, the defendants are responsible for climate change and its impacts, and the governments are entitled to various remedies. *See id.* at 418.

In *AEP*, the Obama administration’s brief to the Supreme Court opposed such liability as being too subjective and unprincipled: 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). “Plaintiffs 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 liability law. *Id.* at 17.

The U.S. Supreme Court agreed in a unanimous ruling. Its reasoning demonstrates why claims over global climate change, including those here, cannot be adjudicated under any state’s law. First, the Court underscored the inherent federal nature of claims related to global GHG emissions. It explained that in *United States v. Standard Oil Co. of California*, the Court held 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, as stated in *Illinois v. City of Milwaukee*, it 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). The *AEP* Court made plain that these rulings apply to climate litigation because determining the rights and responsibilities for interstate and international GHG emissions and climate change are among these federal law subjects. As the Court of Common Pleas explained below, because the claims here also arise from interstate emissions, they too can sound only in federal law, which is why the court held it had no subject matter jurisdiction over the claims.

Second, the U.S. Supreme Court held that Congress displaced through the Clean Air Act judicial remedies that might otherwise have been available 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. Courts do not have the ability to weigh these extrajudicial factors; they can only decide legal disputes on the evidence presented. The Court also explained the institutional deficiencies with courts being

enmeshed in the climate change debate at all, regardless of legal doctrine, stating climate policy should not be decided by judges on an “ad hoc, case-by-case” basis. *Id.* at 428. These concerns are magnified by the litigation here, which asks individual state court judges to apply their own, separate liability laws to these same issues.

Given the U.S. Supreme Court’s clear direction against this type of litigation, courts dismissed the remaining cases pending at the time. In *Kivalina*, the Ninth Circuit stated even though the theories pursued in that case differed from *AEP*, given the 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 also appreciated climate suits are the type of “transboundary pollution” claims the Constitution exclusively commits to federal law. *Id.* at 855. These principles hold true regardless of how the suits are framed or pleaded—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 Mississippi state 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 also 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. THE COMMONWEALTH COURT PROPERLY HELD THAT REPACKAGING CLAIMS REJECTED IN *AEP* DOES NOT CHANGE THE FACT THAT THIS CASE 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 28.³ 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 liability laws—from public nuisance to consumer protection—they

³ <https://www.ucs.org/sites/default/files/attach/2016/04/establishing-accountability-climate-change-damages-lessons-tobacco-control.pdf>.

all present the same central concerns identified in *AEP* and these other cases. Accordingly, they should also fail for the same reasons those cases failed.

Further, the substantive narrative promoted by the campaign’s advocates in an attempt to justify these cases—that there is some widespread “campaign of deception”—is undermined by the way the lawsuits are packaged and pleaded. In these cases, the governments are naming anywhere from one to several dozen defendants in different aspects of the energy industry, including local entities in an effort to keep the cases in state court. The ever-changing combinations and permutations of defendants undermines the existence of any such conspiracy. It also highlights why imposing liability on any one or group of defendants a plaintiff chooses to name for its lawsuit lacks any principled legal basis.

Indeed, outside of court, the advocates openly acknowledge the desired effect of this litigation is to impose costs on the 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, 2020.⁴

⁴ <https://coloradosun.com/2021/02/01/boulder-climate-lawsuit-opinion/>.

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, 2018.⁵ A lawyer associated with the litigation campaign put it this way: “Essentially, the tort liability is an indirect carbon tax. You sue an oil company, an oil company is liable, the oil company then passes that liability on to the people who are buying its products.” Kamden Mulder, *Lawyer Behind Colorado Climate Suit Says the Quiet Part Out Loud: Litigation Is a Tax on Oil Companies and Consumers*, Nat’l Review, Oct. 20, 2025 (quoting David Bookbinder).

To mask these goals and try to make this litigation more politically palatable, the advocates partnered with state and local governments—including Bucks County here—which would seek to use this monetary penalty to deal with local impacts of climate change. The governments often disclaim any attempt to regulate or put costs on emissions; they say they just want money to deal with the impacts of climate change in their jurisdictions. However, artful pleading and disclaimers cannot hide

⁵ A reporter who follows 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, at <https://insideepa.com/outlook/climate-suits-keeps-issue-alive-nuisance-cases-reach-key-venue-rulings>.

the true federal, public policy nature of this litigation. The lawsuits are being funded by non-profit organizations and presented to local governments *because* the litigation would impact federal energy policy. *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).⁶ As one jurist stated, the governments and backers are waging this federal energy 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).

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 these lawsuits have now been filed in carefully chosen jurisdictions in an effort to “side-step federal courts and [U.S.] Supreme Court

⁶ <https://www.hobokennj.gov/news/hoboken-sues-exxon-mobil-american-petroleum-institute-big-oil-companies>.

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. If this gambit is successful, it will give activists on all sides a road map for using state liability law to drive a wide variety of federal legal and public policy matters irrespective of decisions made in Congress, Pennsylvania and other state legislatures, and other courts.

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

The state law theories in these climate lawsuits—whether public nuisance, private nuisance, consumer protection, trespass, failure to warn, or other state liability law—have proven to be mere fig leaves. As the Maryland Supreme Court recently ruled, the allegations in this litigation do not meet the elements or nature of any of the state claims asserted. *See Mayor and City Council of Baltimore v. B.P. P.L.C.*, -- A.3d --, 2026 WL 809501, at *28 (Md. Mar. 24, 2026) (“each of the local governments’ claims fail to state legally cognizable claims under Maryland common law”). Also, as courts have broadly noted, the chain of causation is anything but local and the theories of harm are not moored to any plaintiff, defendant, or jurisdiction. Indeed, the predictions of the Obama administration in *AEP* have been borne out. There are unimaginably broad categories of plaintiffs and defendants for these cases, and imposing liability on any group of defendants is unprincipled.

As noted, the federal courts were the first to assess the validity of the litigation’s purposeful reframing after *AEP*. They concluded that because the claims still seek to impose liability for GHG emissions, the specific factual allegations and legal theories pleaded 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 out this reframing as 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 law 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 “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. In a telling response, Delaware moved for partial final judgment, stating it had no interest in litigating a case based “solely [on] in-state emissions.” Pl.’s Mot. For Entry of Partial Judgment Pursuant to Rule 54(b), *Delaware v. BP Am., Inc.*, C.A. No. N20-C-09-097 (Del. Super. Ct. Oct. 21, 2024). The State affirmed that it was seeking relief for conduct that “occurred in and outside of Delaware and that increased emissions in and outside of Delaware.” *Id.*

The New Jersey court hearing that state’s suit also agreed with the “logic and reasoning” of the Second Circuit and other decisions “that have rejected the availability of state tort law in the climate change context.” *Platkin v. ExxonMobil*

Corp., No. MER-L-001797-22, at *6-7 (N.J. Super. Ct. Feb. 5, 2025). Despite Plaintiffs’ artful pleading, the trial court found “Plaintiffs’ complaint, even under the most indulgent reading, is entirely about addressing the injuries of global climate change.” *Id.* at *9. In New York, the court dismissing New York City’s latest attempt at climate litigation further stated that 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.

In South Carolina, the court noted Charleston was “seeking to hold two dozen energy companies, retailers, and a pipeline liable under South Carolina law for harms allegedly arising from the effects of global greenhouse gas emissions and global climate change.” *City of Charleston v. Brabham Oil Co., Inc.*, 2025 WL 2269770, No. 2020-CP-10-03975, at *1 (S.C. Ct. Comm. Pleas Aug. 6, 2025). The court dismissed the claims, stating “although Plaintiff’s claims purport to be about deception, they are premised on, and seek redress for, the effects of greenhouse gas emissions.” *Id.* at *2. It also noted the “growing chorus of state and federal courts”

that are “singing from the same hymnal,” citing the court below in this case, is “swelling for sound public policy reasons.” *Id.* “Plaintiff’s theory of liability appears almost limitless. Under Plaintiff’s theory, virtually anyone could be a plaintiff—and a defendant—in what would effectively amount to a perpetual series of lawsuits that reset after every storm.” *Id.* “Moreover, under Plaintiff’s theory, there is no reason to limit the universe of potential defendants to energy companies alone.” *Id.*

Other jurists have made similar observations. In North Carolina, a court dismissed climate claims against Duke Energy Corporation, holding it “presents nonjusticiable questions.” *Town of Carrboro, North Carolina v. Duke Energy Corp.*, No. 24-cv-003385-670, at *2 (N.C. Super. Ct. Feb. 12, 2026). In a venue ruling, a California court observed: “If ever there were litigations that could be described as truly global in scope, they are these. . . . These are not lawsuits with a local focus or local stakes.” *California v. ExxonMobil Corp.*, No. CGC-23-609134, Not. of Entry of Order Granting Pet. for Coordination, Ex. 1, Ex. A, at 12 (Cal. Super. Ct. Feb. 07, 2024) (citing *Fuel Industry Climate Cases, JCCP 5310*, Tentative Ruling (Cal. Super. Ct. Jan. 25, 2024)). And, in Boulder’s climate case, the dissent observed: “While Boulder’s state-law claims masquerade as tort claims for damages, a closer look at the substance of those claims’ allegations reveals that Boulder seeks to effectively abate or regulate interstate emissions,” which “state law remains

incompetent” to do. *In re: Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, 2025 WL 1363355, at *13, *16 (Colo. May 12, 2025) (Samour, J., dissenting).

Finally, President Biden’s Solicitor General, in asking the U.S. Supreme Court not to review Honolulu’s climate case, acknowledged 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. The current administration has intensified the federal government’s view that this litigation is substantively unsound, calling climate lawsuits “illegitimate impediments to the production of affordable, reliable energy that Americans deserve.” Alexa St. John, *Justice Department Sues Hawaii, Michigan, Vermont and New York Over State Climate Actions*, Assoc. Press, May 1, 2025 (quoting then-U.S. Attorney General Bondi).⁷

⁷ <https://apnews.com/article/trump-doj-climate-states-policy-lawsuits-a5228e1dd6348f09d2a70f460142531a>.

Thus, administrations of both political parties and courts in a multitude of states have reached the same conclusion: determining the rights and responsibilities for climate change is a federal, public policy—not a state law liability—matter.

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

Finally, as these courts concluded, invoking state laws to subject a handful of companies that sell Americans the energy they need for their everyday lives 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 on and reduce the production of fossil fuels because of their impact on the climate. *See City of New York*, 993 F.3d at 93. 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 on an ad hoc basis 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 where money should be spent.

For example, state courts do not control the global energy markets. As the *New York Times* has reported, some energy manufacturers 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, 2021.⁸ “[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.* In other words, shifting a greater share of the world’s energy market to areas of the globe that are susceptible to political unrest and less committed to environmental consciousness could actually make emissions worse, not better.⁹ And decreasing U.S. production due to lawsuits like Bucks County’s could hinder U.S. producers in responding to international crises, as with the situations in Ukraine and Iran.¹⁰

Further, artful pleading does not change the legal deficiencies with this litigation. The U.S. Constitution and its structure on state authorities are not so

⁸ <https://www.nytimes.com/2021/10/14/business/energy-environment/oil-production-state-owned-companies.html>.

⁹ *See, e.g.*, Kate Abnett & Alexander Chituc, *EU Plans Emergency Measures to Curb Energy Costs as Iran War Hits Markets*, Reuters, Mar. 16, 2026 (noting plans to make more carbon emissions permits available to ease restrictions on fuels).

¹⁰ *See, e.g.*, Trever Higgins & Akshay Thyagarajan, *The War in Iran Will Raise Fuel Prices and Costs Throughout the Economy*, Center for American Progress, Mar. 11, 2026, at <https://www.americanprogress.org/article/the-war-in-iran-will-raise-fuel-prices-and-costs-throughout-the-economy/>.

fragile as to be swayed by the Plaintiffs’ 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 Bucks County’s claims is that Defendants exacerbated global climate change by increasing GHG emissions through their conduct and products. But Bucks County cannot change the fact that global climate change is not the result of emissions from defendants’ products, operations or other activities solely in Pennsylvania, but everyone, everywhere for more than 150 years. This case is not about who knew or said what and when, whether the suits target utilities or upstream producers and sellers of energy, or which conduct or attributes the governments assert are the bases for their liability theories. The potential impact of these fuels on the climate has been widely studied, discussed and acted upon by governments and international bodies since the 1960s. As the Second Circuit explained, there is no repackaging of these allegations that can “transform [the litigation] into anything other than a suit over global greenhouse gas emissions.” *City of New York*, 993 F.3d at 97. Plaintiffs cannot “have it both ways”: “disavowing any intent to address emissions” while “identifying such emissions as the singular source” of harms they allege. *Id.* at 91.

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 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 court. The Second Circuit described this theory as "too strange to seriously contemplate." *Id.* at 99. The court below correctly pointed out that "[t]he reason Bucks County avoids the issue of emissions is obvious, there is no question that emissions are the sole province of the federal government through the [Clean Air Act] and EPA and the regulations that flow from it."

Indeed, the whole argument that the Supreme Court in *AEP* left open the potential for state litigation based on the preemptive effect of the Clean Air Act is premised on a false reading of *AEP*. Specifically, this argument ignores the parenthetical following the statement in question, which properly cabined the availability of any state cases to those applying the "law of the *source* State." *AEP*, 564 U.S. at 429 (emphasis in original). The Court in *AEP* did not, in any way, authorize applying Pennsylvania law to GHG emissions in other states and countries.

Imposing liability here would regulate conduct with no nexus to Pennsylvania. 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). A core tenet of liability is to define conduct that is unlawful, require defendants to compensate those harmed by that unlawful conduct, and instruct defendants and others not to engage in any such unlawful conduct. Here, Plaintiffs seek to impose such liability on and govern conduct almost exclusively outside of Pennsylvania, thereby impermissibly regulating conduct in other states and countries. Under this theory, each state could impose its “own climate standards” on other states and countries. 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—including energy affordability, economic impacts of raising energy costs, national security, and the impacts of shifting energy production to less environmentally conscience countries. 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).¹¹

This litigation is an exercise in political decision-making. Because there are innumerable sources of GHG emissions in every state and country—and there have been for more than 150 years—plaintiffs could have named innumerable combinations and permutations of entities, including entirely different companies in entirely different industries. Plaintiffs made a *political* decision as to whom to sue. Indeed, the climate litigation campaign leadership has conceded that “[i]t’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. Lesley Clark, *Why Oil Companies Are*

¹¹ <https://njbiz.com/opinion-wrong-course/>.

Worried About Climate Lawsuits From Gas States, E&E News, Nov. 7, 2023 (quoting a leader of this litigation campaign). Imposing liability for climate change on any group of defendants is wholly unprincipled, which, again, is underscored by the fact that there is an ever-changing list of defendants in these cases.

* * *

Ultimately, *amici* believe the best way to address the impact of energy on the climate is for federal and local governments to work with manufacturers and others to develop 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. The challenge is to provide affordable and reliable energy while mitigating climate impacts, not to artfully plead lawsuits.

CONCLUSION

For these reasons, this Court should affirm the judgment below.

Dated: April 15, 2026

Respectfully submitted,

/s/ Erin L. Leffler

Erin L. Leffler, Esquire
PA I.D. #204507
Shook, Hardy & Bacon L.L.P.
Two Commerce Square
2001 Market Street, Suite 3000
Philadelphia, PA 19103
(215) 278-2555
eleffler@shb.com

Philip S. Goldberg, Esquire
Shook, Hardy & Bacon L.L.P.
1800 K Street, NW, Suite 1000
Washington, DC 20006
(202) 783-8400
pgoldberg@shb.com

*Attorneys for Amici Curiae the National
Association of Manufacturers and
Pennsylvania Manufacturers'
Association*

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief of *Amici Curiae* complies with the word-count limit set forth in Pa. R.A.P. 531(b)(3) because it contains 6,322 words, excluding the supplementary matter excluded by Pa. R.A.P. 2135(b).

I also certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Erin L. Leffler

Erin L. Leffler, Esquire
PA I.D. #204507

Dated: April 15, 2026

PROOF OF SERVICE

I hereby certify that I am on this 15th day of April 2026 serving two copies of the foregoing Brief of *Amici Curiae* upon counsel of record by first-class U.S. Mail, postage-prepaid, pursuant to Pa. R.A.P. 121:

Dara Burns, Esq.
Assistant County Solicitor
Law Department – County of Bucks
55 E. Court St., 5th Floor
Doylestown, PA 18901
dburns@buckscounty.org

Daniel R. Flynn, Esq.
Anna Claire Skinner, Esq.
Elizabeth Claire Carpenter, Esq.
James T. Crisafulli, Esq.
DiCello Levitt LLP
Ten North Dearborn Street, Sixth Floor
Chicago, Illinois 60602
dflynn@dicellolevitt.com
askinner@dicellolevitt.com
ecarpenter@dicellolevitt.com
jcrisafulli@dicellolevitt.com

Attorneys for Bucks County

Hon. Emil A. Giordano, Esq. (ret.)
Rebecca Price, Esq.
NORRIS MCLAUGHLIN, P.A.
515 Hamilton Street, Suite 502
Allentown, PA 18101
rprice@norris-law.com

Jeremiah J. Anderson, Esq.
MCGUIRE WOODS LLP
845 Texas Avenue, Suite 2400
Houston, TX 77002
jjanderson@mcguirewoods.com

Brian D. Schmalzbach, Esq.
MCGUIRE WOODS LLP
800 East Canal Street
Richmond, VA 23219
bschmalzbach@mcguirewoods.com

Attorneys for American Petroleum Institute

Rebecca Trela, Esq.
Michael C. Zogby, Esq.
Paul Quincy, Esq.
BARNES & THORNBURG LLP
1717 Arch Street, Suite 4900
Philadelphia, PA 19103
Rebecca.trela@btlaw.com
Michael.zogby@btlaw.com
Paul.quincy@btlaw.com

Moez M. Kaba, Esq.
John C. Hueston, Esq.
HUESTON HENNIGAN LLP
523 W. 6th Street Suite 400
Los Angeles, CA 90014
mkaba@hueston.com
jhueston@hueston.com

*Attorneys for ExxonMobil Oil Corporation,
Exxon Mobil Corporation*

D. Alicia Hickok, Esq.
DLA PIPER (US) LLP
1650 Market Street, Suite 5000
Philadelphia, PA 19103
alicia.hickok@us.dlapiper.com

Attorney for Exxon Mobil Corporation

Mark C. Labrum, Esq.
Christopher P. Coval, Esq.
FENNINGHAM, DEMPSTER & COVAL LLP
Five Neshaminy Interplex, Suite 315
Trevose, PA 19053
mlabrum@fsd-law.com
ccoval@fsdc-law.com

Maura K. Monaghan, Esq.
Alexander J. Costin, Esq.
Jacob W. Stahl, Esq.
DEBEVOISE & PLIMPTON LLP
66 Hudson Boulevard E.
New York, NY 10001-2189
mkmonaghan@debevoise.com
ajcostin@debevoise.com
jwstahl@debevoise.com

William D. Sarratt, Esq.
Joshua A. Cohen, Esq.
DEBEVOISE & PLIMPTON LLC
650 California Street, Floor 31
San Francisco, CA 94108-2612
dsarratt@debevoise.com
jacohen@debevoise.com

*Attorneys for Shell Oil Products Co., LLC,
Shell PLC, Shell USA, Inc.*

Daniel C. Fleming, Esq.
James Kevin Haney, Esq.
WONG FLEMING, P.C.
1500 JFK Boulevard
Two Penn Center Plaza, Suite 810
Philadelphia, PA 19102
dfleming@wongfleming.com
jhaney@wongfleming.com

*Attorneys for ConocoPhillips, ConocoPhillips
Company*

Frederick P. Santarelli, Esq.
Stewart J. Greenleaf, Jr., Esq.
Thomas J. Elliott, Esq.
ELLIOTT GREENLEAF, P.C.
Union Meeting Corporate Center V
925 Harvest Drive, Suite 300
Blue Bell, PA 19422
fpsantarelli@elliottgreenleaf.com
SJGJr@elliottgreenleaf.com
txe@elliottgreenleaf.com

A. Michael Pratt, Esq.
GREENBERG TRAURIG, LLP
1717 Arch Street, Suite 400
Philadelphia, PA 19103
prattam@gtlaw.com

Richard C. Pepperman II, Esq.
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
peppermanr@sullcrom.com
davidoffa@sullcrom.com

Amanda Flug Davidoff, Esq.
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W., Suite 700
Washington, D.C. 20006
davidoffa@sullcrom.com

Diana E. Reiter, Esq.
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019
diana.reiter@arnoldporter.com

*Attorney for BP America Inc., BP Products
North America Inc.*

Paul G. Nofer, Esq.
Matthew J. McHugh, Esq.
KLEHR HARRISON HARVEY
BRANZBURG LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103
pnofer@klehr.com
mmchugh@klehr.com

*Attorneys for Phillips 66, Phillips 66
Company*

Theodore J. Boutrous, Jr. Esq.
William E. Thomson, Esq.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
tboutrous@gibsondunn.com
wthomson@gibsondunn.com

Joshua D. Dick, Esq.
GIBSON, DUNN & CRUTCHER LLP
One Embarcadero Center, Suite 2600
San Francisco, CA 94111-3715
jdick@gibsondunn.com

Neal S. Manne, Esq.
Erica W. Harris, Esq.
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002-5096
nmanne@susmangodfrey.com
eharris@susmangodfrey.com

*Attorneys for Chevron Corporation, Chevron
U.S.A. Inc.*

/s/ Erin L. Leffler

Erin L. Leffler, Esquire
PA I.D. #204507

Dated: April 15, 2026

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Bucks County,	:	1525 CD 2025
Appellant	:	
v.	:	
BP America Inc., BP PLC,		
BP Products North America Inc.,		
Chevron Corporation, Chevron		
U.S.A., Inc., ConocoPhillips		
Company, ConocoPhillips,		
Phillips 66 Company, Phillips		
66, Exxon Mobil Corporation,		
ExxonMobil Oil Corporation,		
Shell Oil Products Company,		
LLC, Shell PLC, Shell U.S.A.,		
Inc., and American Petroleum		
Institute		

PROOF OF SERVICE

I hereby certify that this 15th day of April, 2026, I have served the attached document(s) to the persons on the date(s)
and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Service

Served: Burns, Dara
Service Method: eService
Email: dburns@buckscounty.org
Service Date: 4/15/2026
Address: 55 E. Court Street
Doylestown, PA 18901
Phone: 215-348-6464
Representing: Appellant Bucks County

Served: Coval, Christopher Philip
Service Method: eService
Email: ccoval@fsdc-law.com
Service Date: 4/15/2026
Address: Five Neshaminy Interplex
Suite 315
Trevose, PA 19053
Phone: 215-639-4070
Representing: Appellee Shell Oil Products Company LLC
Appellee Shell PLC
Appellee Shell USA, Inc.

Served: Elliott, Thomas Jackson
Service Method: eService
Email: txe@elliottgreenleaf.com
Service Date: 4/15/2026
Address: 925 Harvest Drive
Blue Bell, PA 19422
Phone: 215-977-1080
Representing: Appellee Chevron Corporation
Appellee Chevron U.S.A., Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Fleming, Daniel C.
Service Method: eService
Email: dfleming@wongfleming.com
Service Date: 4/15/2026
Address: 821 Alexander Road
Suite 200
Princeton, NJ 08540
Phone: 609-951-9520
Representing: Appellee ConocoPhillips
Appellee ConocoPhillips Company

Served: Giordano, Emil
Service Method: eService
Email: pmould@norris-law.com
Service Date: 4/15/2026
Address: 515 W. Hamilton Street
Suite 502
Allentown, PA 18101
Phone: 610-391-1800
Representing: Appellee American Petroleum Institute

Served: Greenleaf, Stewart John
Service Method: eService
Email: sjgjr@elliottgreenleaf.com
Service Date: 4/15/2026
Address: Elliott Greenleaf, P.C.
925 Harvest Drive, Suite 300
Blue Bell, PA 19422
Phone: 215-977-1000
Representing: Appellee Chevron Corporation
Appellee Chevron U.S.A., Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Haney, James Kevin
Service Method: eService
Email: jhaney@wongfleming.com
Service Date: 4/15/2026
Address: 43 Deerfield Road
East Brunswick, NJ 08816
Phone: 609-216-4211
Representing: Appellee ConocoPhillips
Appellee ConocoPhillips Company

Served: Hickok, Dorothy Alicia
Service Method: eService
Email: alicia.hickok@us.dlapiper.com
Service Date: 4/15/2026
Address: DLA PIPER LLP (US)
1650 Market Street, Suite 5000
Philadelphia, PA 19103
Phone: 215-656-3345
Representing: Appellee Exxon Mobil
Appellee ExxonMobil Oil Corporation

Served: Labrum, Mark
Service Method: eService
Email: mlabrum@fsdc-law.com
Service Date: 4/15/2026
Address: FIVE NESHAMINY INTERPLEX
SUITE 315
TREVOSSE, PA 19053
Phone: 215-639-4070
Representing: Appellee Shell Oil Products Company LLC
Appellee Shell PLC
Appellee Shell USA, Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: McHugh, Matthew James
Service Method: eService
Email: mmchugh@klehr.com
Service Date: 4/15/2026
Address: 1835 Market Street
Suite 1400
Philadelphia, PA 19103
Phone: 215-569-1662
Representing: Appellee Phillips 66
Appellee Phillips 66 Company

Served: Nofer, Paul George
Service Method: eService
Email: pnofer@klehr.com
Service Date: 4/15/2026
Address: Klehr Harrison Harvey Branzburg LLP
1835 Market Street
Philadelphia, PA 19013
Phone: 215-569-3287
Representing: Appellee Phillips 66
Appellee Phillips 66 Company

Served: Pratt, Anthony Michael
Service Method: eService
Email: prattam@gtlaw.com
Service Date: 4/15/2026
Address: Greenberg Traurig, LLP
1717 Arch Street, Suite 400
Philadelphia, PA 19103
Phone: 215-972-5916
Representing: Appellee BP America, Inc.
Appellee BP PLC
Appellee BP Products North America, Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Price, Rebecca Jo
Service Method: eService
Email: rprice@norris-law.com
Service Date: 4/15/2026
Address: 515 W. Hamilton Street
Suite 502
Allentown, PA 18101
Phone: 610-391-1800
Representing: Appellee American Petroleum Institute

Served: Quincy, Paul Levi
Service Method: eService
Email: paul.quincy@btlaw.com
Service Date: 4/15/2026
Address: 555 12th St. NW
Suite 1200
Washington, DC 20004
Phone: 202-831-6727
Representing: Appellee Exxon Mobil
Appellee ExxonMobil Oil Corporation

Served: Santarelli, Frederick P.
Service Method: eService
Email: fpsantarelli@elliottgreenleaf.com
Service Date: 4/15/2026
Address: 925 Harvest Dr
Suite 300
Blue Bell, PA 19422
Phone: 215-977-1000
Representing: Appellee Chevron Corporation
Appellee Chevron U.S.A., Inc.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served: Trela, Rebecca L.
Service Method: eService
Email: rebecca.trela@btlaw.com
Service Date: 4/15/2026
Address: Barnes & Thornburg LLP
Three Logan Square.1717 Arch Street Ste. 4900
Philadelphia, PA 19103-2825
Phone: 445-201-8911
Representing: Appellee Exxon Mobil
Appellee ExxonMobil Oil Corporation

/s/ Erin Loucks Leffler

(Signature of Person Serving)

Person Serving: Leffler, Erin Loucks
Attorney Registration No: 204507
Law Firm:
Address: 2001 Market St Ste 3000
Philadelphia, PA 19103
Representing: Amicus Curiae Pennsylvania Manufacturers' Association
Amicus Curiae The National Association of Manufacturers