

No. 19-1330

IN THE

United States Court of Appeals

FOR THE TENTH CIRCUIT

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY;
BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY;
CITY OF BOULDER,

Plaintiffs-Appellees,

v.

SUNCOR ENERGY (U.S.A.), INC.; SUNCOR ENERGY SALES INC.; SUNCOR
ENERGY INC.; EXXON MOBIL CORPORATION,

Defendants-Appellants.

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE*
BRIEF IN SUPPORT OF APPELLEES, URGING
AFFIRMANCE

Applicants, the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association, move this Court, pursuant to Fed. R. App. P. 29(a) for an Order granting leave to file the accompanying *Amicus Curiae* brief in support of Plaintiffs-Appellees, urging affirmance. In support of this motion, Applicants assert as follows:

1. Plaintiffs-Appellees, Board of County Commissioners of Boulder County, Board of County Commissioners of San Miguel County, and City of Boulder, have consented to the filing of *amicus curiae* briefs.

2. Defendant-Appellant Exxon Mobil Corporation has consented to the filing of *amicus curiae* briefs.

3. Applicants have been unable to obtain a position on *amicus curiae* briefs from Defendants-Appellants Suncor Energy (U.S.A.), Inc., Suncor Energy Sales, Inc., and Suncor Energy Inc.

4. Applicant National League of Cities (NLC) is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with forty-nine State municipal leagues, NLC serves as a national advocate for more than 19,000 cities and towns, representing more than 218 million Americans. Its Sustainable Cities Institute serves as a resource hub for climate change mitigation and adaptation for cities.

5. Applicant U.S. Conference of Mayors (USCM) is the official non-partisan organization of U.S. cities with populations of more than 30,000 people (approximately 1,400 cities in total). USCM is home to the Mayors Climate Protection Center, formed to assist with implementation of the Mayors Climate Protection Agreement.

6. The International Municipal Lawyers Association (IMLA) is a nonprofit, nonpartisan professional organization consisting of more than 2,500 members. The membership is composed of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts.

7. Applicants, collectively “Local Government *Amici*,” serve as representatives of local governments nationwide and have an ongoing interest and sensitivity to the need for a balanced federal-state judicial system. This case, which seeks a determination of local government parties’ rights under state law, raises a critical federalism issue: the appropriate scope of appellate review of a district court’s remand order under 28 U.S.C. § 1447(d). Allowing any defendant to obtain plenary review of all aspects of a remand order just by including an argument for federal officer removal would fundamentally disrupt local governments’ ability to litigate claims brought under state law in state courts and incentivize inclusion of meritless federal-officer removal claims and increased attempts to appeal remand orders due to that inclusion.

8. In addition, should the Court extend its review beyond this limitation, Local Government *Amici* have a unique interest in the Court's proper recognition of state-court jurisdiction over state law claims for injuries arising from climate change consequences. Judicial conversion of a variety of well-pleaded state law claims into vaguely defined federal common law claims, and the exercise of federal jurisdiction over them that Defendants seek, would threaten to intrude upon municipal governments' authority within our federalist system to rely on state law and state courts to seek redress for localized harms. In a contemporary world defined by complex economic and environmental systems that transcend multiple borders, even conduct arising in part outside a municipality nonetheless can cause highly damaging local effects.

9. *Local Government Amici* have participated as amicus curiae in cases raising substantially the same issues as this case in the Ninth Circuit, *County of San Mateo v. Chevron Corp.*, Nos. 18-15499, 18-15502, 18-15503, 18-16376, the Fourth Circuit, *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 19-1644, and the First Circuit, *State of Rhode Island v. Shell Oil Prods. Co.*, No. 19-1818.

10. The brief offered by Applicants brings the perspective of local governments and their officials who must deal with the consequences of climate change and who must, from time to time, undertake litigation under state law in

state courts against parties who cause cognizable harm to local government units.

Thus, Applicants have an acute interest in the procedural, jurisdictional, and substantive legal aspects of the proceeding.

WHEREFORE, Applicant requests that this motion be granted, allowing the filing of their *Amicus Curiae* Brief in Support of Plaintiffs-Appellees, Urging Affirmance.

January 6, 2020

Respectfully submitted,

/s/ Robert S. Peck

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DISCLOSURE STATEMENT

The National League of Cities, the U.S. Conference of Mayors and the International Municipal Lawyers Association are non-profit organizations, each having no parent corporation and with no publicly held corporation owning 10% or more of any of their stock.

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made per 10th Cir. R. 25.5;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Avast Antivirus, Version 19.8.2393, updated January 2, 2020, according to the program are free of viruses.

/s/ Robert S. Peck

Robert S. Peck

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2020, I electronically filed the foregoing using the court's CM/ECF system which will send notification of such filing to which will serve notice of the filing on all filers registered in the case, including all parties required to be served.

Date: January 6, 2020

s/ Robert S. Peck

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