	Case 2:18-cv-00758-RSL Docu	ment 134 Filed 10/03/18 Page 1 of 5
1	THE HONORABLE ROBERT S. LASNIK	
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9	UNITED STATES DISTRICT COURT	
10	WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
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12	KING COUNTY,	Case No. 2:18-cv-00758-RSL
13	Plaintiff,	CONSENTED-TO MOTION OF
14	v.	INDIANA AND ELEVEN OTHER STATES FOR LEAVE TO FILE
15	BP P.L.C., a public limited company of	AMICUS BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
16	England and Wales, CHEVRON CORPORATION, a Delaware corporation,	FIRST AMENDED COMPLAINT
17	CONOCOPHILLIPS, a Delaware	NOTE ON MOTION CALENDAR:
18	corporation, EXXON MOBIL CORPORATION, a New Jersey	Friday, October 19, 2018
19	corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and	
20	Wales, and DOES 1 through 10,	
21	Defendants.	
22	The States of Indiana, Alabama, Arkansas, Colorado, Georgia, Louisiana, Nebraska,	
23	Oklahoma, South Carolina, Texas, Utah, and Wisconsin respectfully move for leave to file an	
24	amicus curiae brief in support of the Defendants' Motion to Dismiss First Amended Complaint,	
25		
26	ECF No. 120. A copy of the proposed brief is attached as Exhibit A to this motion. Defendants	
27	and Plaintiff have consented to the filing of this motion and the accompanying amicus brief.	
28	CONSENTED-TO MOTION OF INDIANA & ELEVEN OTHER STATES FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT Case no. 2:18-cv-00758-RSL	

INTERESTS OF THE AMICI STATES

The justiciability of climate change lawsuits under federal common law is an issue of extraordinary importance to the Amici States. To permit federal adjudication of claims for abatement fund remedies would disrupt carefully calibrated state regulatory schemes devised by politically accountable officials. Federal courts should not use public nuisance and trespass theories to confound state and federal political branches' legislative and administrative processes by establishing emissions policy (or, as is more likely, multiple conflicting emissions policies) on a piecemeal, ad hoc, case-by-case basis under the aegis of federal common law.

States have an especially strong interest in this case because the list of potential defendants is limitless. Plaintiff's theory of liability involves nothing more specific than promoting the use of fossil fuels. As utility owners, power plant operators, and generally significant users of fossil fuels (through facilities, vehicle fleets and highway construction, among other functions), States and their political subdivisions themselves may be future defendants in similar actions.

REASONS WHY THE MOTION SHOULD BE GRANTED

District courts enjoy "broad discretion" to permit amicus participation, Hoptowit v. Ray, 682 F. 2d 1237, 1260 (9th Cir. 1982), abrogated on other grounds by Sandin v. Conner, 515 U.S. 472 (1995), and frequently do so when the case concerns "legal issues that have potential ramifications beyond the parties directly involved" or when the amicus "has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." Skokomish Indian Tribe v. Goldmark, No. C13-5071JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (citations and internal punctuation omitted). Both of those circumstances are present here: Defendants' potential liability could have nationwide impact, and the State Amici are specially qualified by virtue of their position in the federal system to assist CONSENTED-TO MOTION OF INDIANA & ELEVEN **Tupper Mack Wells PLLC** 2025 First Avenue OTHER STATES FOR LEAVE TO FILE AMICUS Suite 1100 BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO 2 Seattle, Washington 98121 DISMISS FIRST AMENDED COMPLAINT TEL 206.493.2300 FAX

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the Court in understanding that impact. The Court should exercise its discretion to permit the State Amici to file the attached amicus brief.

Plaintiff must file any responses to Defendants' motions to dismiss within nine days—by October 11, 2018, *see* Order Granting Parties' Stipulated Mot. Regarding Briefing Schedule for Defs.' Mot. to Dismiss Pursuant to Local Civil Rules 7(d)(1) & 10(g), ECF No. 121—but the parties are familiar with the State Amici's arguments because the State Amici previously filed a similar amicus brief in suits brought against Defendants by the cities of Oakland and San Francisco, represented by the same counsel as Plaintiff, in the U.S. District Court for the Northern District of California. *See* Amicus Br. of Indiana & Fourteen Other States in Support of Dismissal, *City of Oakland v. BP P.L.C.*, Nos. C 17-06011 WHA, C 17-06012 WHA (N.D. Cal. Apr. 19, 2018), ECF No. 224-1. Moreover, the State Amici are familiar with the parties' arguments and will not reprise them. Rather, the State Amici will draw on their expertise as sovereigns, regulators, and energy consumers to describe how Plaintiff's claims in this case should not go forward.

CONCLUSION

For these reasons, the Amici States respectfully request that the Court grant them leave to file the amicus brief attached as Exhibit A.

CONSENTED-TO MOTION OF INDIANA & ELEVEN OTHER STATES FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO 3 DISMISS FIRST AMENDED COMPLAINT Case no. 2:18-cv-00758-RSL

Tupper Mack Wells PLLC 2025 First Avenue Suite 1100 Seattle, Washington 98121 TEL 206.493.2300 FAX 206.493.2310 Dated: October 3, 2018

Respectfully Submitted,

TUPPER MACK WELLS PLLC

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Attorneys for *Amici Curiae* States of Indiana, Alabama, Arkansas, Colorado, Georgia, Louisiana, Nebraska, Oklahoma, South Carolina, Texas, Utah, and Wisconsin *Pro hac vice motions pending

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on this date, I caused the foregoing document to be electronically filed with the United States District Court Clerk using the CM/ECF system, and that service of the foregoing document will be accomplished by the CM/ECF system.

Dated at Seattle, Washington this 3rd day of October, 2018.

/s/James A. Tupper, Jr. James A. Tupper, Jr, WSBA No. 16873

CONSENTED-TO MOTION OF INDIANA & ELEVEN OTHER STATES FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT Case no. 2:18-cv-00758-RSL

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