

No. 19-1644

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

MAYOR AND CITY COUNCIL OF BALTIMORE,

Plaintiff-Appellee,

v.

BPP.L.C., *et al.*,

Defendants-Appellants.

*On Appeal from the United States District Court
for the District of Maryland, No. 1:18-cv-02357-ELH
Hon. Ellen L. Hollander*

**BRIEF OF AMICUS CURIAE SENATORS SHELDON WHITEHOUSE
AND EDWARD J. MARKEY
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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**AMICUS CURIAE'S IDENTITY, INTEREST,
AND AUTHORITY TO FILE**

Senator Sheldon Whitehouse represents the State of Rhode Island in the United States Senate. First elected to the Senate in 2006, Senator Whitehouse has actively sought comprehensive solutions to address climate change. He is a member of the Senate's Environment and Public Works Committee and author of the American Opportunity Carbon Fee Act, which would establish a fee on carbon emissions and return all revenue generated to the American people.

Senator Whitehouse has closely observed the influence of corporate lobbying and elections spending in Congress and how the fossil fuel industry has used its political and electioneering influence on those issues. The Senator regularly speaks on the Senate floor about the need to act on climate change and is the author of *Captured: The Corporate Infiltration of American Democracy*. He has participated as amicus curiae in other cases concerning climate change, including cases that raise similar issues to this one. *See City of Oakland v. BP P.L.C.*, No. 18-16663 (9th Cir., docketed Sept. 4, 2018), and *Cty. of San Mateo v. Chevron Corp.*, No. 18-15499 (9th Cir., docketed Mar. 27, 2018).

Senator Edward J. Markey represents the Commonwealth of Massachusetts in the United States Senate. He is a member of the

Environment and Public Works, the Commerce, Science, and Transportation, and the Foreign Relations committees. He also serves as Chair of the Senate Climate Change Task Force. Senator Markey's more than 40 years of legislative experience includes co-authorship with Congressman Henry Waxman of the only comprehensive climate legislation ever to pass a chamber of Congress. It would have cut national global warming emissions by 17 percent by 2020 and 80 percent by 2050. He was also the principal House author of a 1987 energy conservation act of 1987 and a 2007 law to increase national fuel economy standards, which reduced consumer costs and greenhouse gas emissions. Senator Markey is a sponsor of the Green New Deal resolution, which sets out the principles to achieve a just transition to a net-zero emissions economy. He has participated as amicus curiae in other cases concerning climate change, including *City of Oakland v. BP P.L.C.*, No. 18-16663 (9th Cir., docketed Sept. 4, 2018)

Senators Whitehouse and Markey file this brief to underscore the need to address these issues in court, as well as in the other branches of government, particularly when certain other amici curiae have advocated denying the propriety of addressing those issues in the courts, while also, outside this arena, working to stop other branches from moving forward on climate change.

All parties have consented to the filing of this brief. No party's counsel authored the brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person other than Senator Whitehouse, Senator Markey, or their counsel contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus Curiae Chamber of Commerce of the United States [hereinafter, “the Chamber”] asks this Court to reverse the District Court’s order remanding this matter to state court because it asserts that climate change is uniquely a federal issue, denying any role to the States or their courts. The erroneous nature of the Defendants’ exclusivity argument becomes more acute when examined in the context of these same defendants’ decades-long efforts to stifle action by both Congress and the Executive Branch, pervert independent scientific consideration by those two branches of government, and undermine the United States’ political and moral authority in international negotiations.

Climate change’s cataclysmic effects are felt in different ways in different localities, giving each a distinct interest in the issue. The urgent nature of the problem and the need to utilize every available tool to address it makes clear that there is no overriding federal common law or federal statutory law that prevents states from imposing liability and its courts from adjudicating those issues, particularly for the very real injuries that Defendants have proximately caused.

For the reasons set forth below, any legal arguments or factual assertions the Chamber has made about the merits, justiciability, or the proper

role of the federal courts vis-à-vis other courts or other branches of government should respectfully be treated with the scrutiny deserving of assertions made by a self-interested party with a long history belying its arguments.

ARGUMENT

The Senators file this brief to provide context for arguments made by the Chamber¹ in support of Appellants' request that this Court review and reverse the lower court's order remanding this case to state court. The

¹ This case highlights the fecklessness of the Court's disclosure rules in identifying who the real party in interest is behind an amicus brief. The Chamber manufactures no product and provides no general service. It exists as an intermediary between business interests and the public and political worlds. It is not transparent as to the sources of its funding. If the Chamber provides any service other than lobbying and electioneering, it is masking the identity of real parties or industries in interest behind the relative anonymity of the Chamber's name. On the issue of climate, its funding is particularly mysterious, as many companies on its board disagree with and deny accountability for the climate denial and opposition the Chamber espouses. *See Whitehouse & Warren, et al., U.S. Chamber of Commerce: Out of Step with the American People and its Members available at https://www.warren.senate.gov/files/documents/2016-6-14-Chamber_of_Commerce_Report.pdf (viewed on Aug. 28, 2019).* As astronomers divine the presence of dark bodies from their effect on the behavior of visible bodies, one can divine some unseen force driving the Chamber to a position on climate issues no member corporation will publicly espouse. The secrecy of the Chamber's funding obscures the exact explanation of this aberration. Arguably, the Chamber is sustained and controlled by fossil fuel industry funding. There is no reason that the Court, the other parties, and the country should be denied the identity of all real parties in interest behind the Chamber's brief.

Chamber's essential argument is that climate change is a federal issue and this Court should deny any role to the states or state courts. Instead, it suggests that federal uniformity is a value above all others on this issue. It argues for deference to Congress and what it describes as "federal common law," which to the extent it exists in our court system is largely based upon state common law and thus provides no proper basis for removal. *See Phoenix Mut. Life Ins. Co. v. Adams*, 30 F.3d 554, 564 (4th Cir. 1994) ("We have recognized that federal courts may draw on state common law in shaping the applicable body of federal common law.").

The rare instances where a developed federal common law exists and differs from that of the states so as to displace state law are "few and restricted." *Wheeldin v. Wheeler*, 373 U.S. 647, 651 (1963). Without specific congressional authorization, "federal common law exists only in such narrow areas as those concerned with the rights and obligations of the United States, interstate and international disputes implicating conflicting rights of States or our relations with foreign nations, and admiralty cases." *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981) (footnotes omitted). Federal common law does not apply here.

I. THE CHAMBER'S RECORD DEMONSTRATES LITTLE REGARD FOR CONGRESSIONAL ACTION ON CLIMATE CHANGE.

The Chamber's brief attempts to convince this Court of its sincere concerns on climate change in order to suggest that it has credible concerns on the narrow jurisdictional issue before this Court. However, before the U.S. Congress, the Chamber vigorously opposes any effective congressional effort. It should not be allowed to have it both ways, so that the end result is that no one has authority to address the climate catastrophe we are barreling towards.

In its brief, the Chamber cites a web page on climate change that it recently added² to its website. It writes that it "believes that the global climate is changing, and that human activities contribute to those changes," and that "global climate change poses a serious long-term challenge that deserves serious solutions."³ Chamber of Commerce Am. Br. [hereinafter, "Am. Br."]

1. It follows this with the claim:

² Amy Harder, "America's business lobby shifting on climate change," *Axios* (Apr. 18, 2019), <https://www.axios.com/chamber-commerce-shifting-climate-change-6a18f7c6-88ef-446e-99a5-1ed1fd627cbe.html>.

³ In its brief, the Chamber nevertheless uses the language of climate denial. Like a losing army falling back to successive interior trenches, the climate-denial apparatus the fossil fuel industry funds has steadily retreated into less exposed rhetorical positions as its positions have become more and more untenable. It began by maintaining that climate change was a hoax and climate scientists were dishonest; as factual evidence piled up, it moved to arguing that the science is uncertain, too uncertain to justify the massive economic

Governmental policies aimed at achieving these goals should come from the federal government, and in particular Congress and the Executive Branch, not through the courts, much less a patchwork of actions under state common law.

Id. at 2.

Perhaps anticipating that Senator Whitehouse would file an *amicus* brief in this case as he has done in other climate-related cases, the Chamber then cites its support of a recent bill⁴ he authored to provide federal support for research, development, and deployment of new technologies to reduce carbon emissions from the industrial sector. *Id.*

costs of responding; as both of these propositions were exposed as false, the latest fallback position has become, yes, the climate is changing (note the evasive use of the passive voice: not humans are changing it) and, yes, humans have something to do with it (note the elusive “contribute to” -- not that there is no credible alternative explanation to human carbon emissions as essentially the sole cause), and maybe we should do something about it some time, but “innovation” will probably get us out of it (as they busily protect market failures that stifle said innovation). The common true north of all these propositions has been that Congress need not act, and fossil fuel polluters get to continue to pollute without paying for the very real costs of their pollution. This is no small thing for them: the International Monetary Fund has identified the subsidy in the United States favoring the fossil fuel industry at \$700 billion per year. Yes, billion with a “b.” *See* Benedict Clements and Ian Parry, “Subsidies: Some Work, Others Don’t, International Monetary Fund,” *available at* <https://www.imf.org/external/pubs/ft/fandd/2018/09/pdf/what-are-subsidies-basics.pdf>.

⁴ *See*, S.2300, Clean Industrial Technology Act of 2019, 116th Cong., 1st Sess., *available at* <https://www.govtrack.us/congress/bills/116/s2300/text>.

However, the implied position of wider support, bears no resemblance to the Chamber's actual position on climate change. In fact, the Chamber has a long and thoroughly blemished record of opposition to "governmental policies" and "serious solutions" for climate change, whether those policies come from Congress or the executive branch. As a United States Senators, amici curiae have had a front row seat from which to observe the Chamber's remorseless efforts to thwart any climate action in Washington.

Take federal legislation. In 2007, the Chamber opposed bipartisan cap-and-trade legislation.⁵ In 2009, the Chamber was one of the leading interest groups lobbying against the Waxman-Markey cap-and-trade legislation.⁶ Since the failure of Waxman-Markey, the Chamber's allies in Congress have refused to hold hearings on, mark up, debate, or vote on any legislation proposing a policy framework for economy-wide reductions in carbon

⁵ See, e.g., "Wake Up to Climate Change Legislation" attack ad, U.S. Chamber of Commerce (Nov. 9, 2007), available at <https://www.youtube.com/watch?v=XevRKC82soI> (last viewed on Aug. 28, 2019).

⁶ See, e.g., Letter Opposing H.R. 2454, the "American Clean Energy and Security Act of 2009," U.S. Chamber of Commerce (Jun. 24, 2009), available at <https://www.uschamber.com/letter/letter-opposing-hr-2454-american-clean-energy-and-security-act-2009> (last viewed on Aug. 28, 2019). Of particular note is the Chamber's threat to consider votes on this legislation in its "How They Voted" scorecard, which may in turn influence election spending decisions.

pollution. More recently, the Chamber was a ferocious opponent of the so-called “Green New Deal,” an aspirational statement of policy goals that would not have had the force of law had it passed.⁷ In conversations with Senator Whitehouse, Senator Markey, and their staffs, the Chamber has repeatedly expressed its opposition to carbon fee legislation⁸ and indeed any form of carbon fee or carbon pricing.

While the Chamber may point to words on its website and its recent support for a bill authored by amicus curiae Senator Whitehouse, it remains adamantly opposed to the only three “serious solutions” that have been proposed in Congress that would have some chance of holding global average temperature increase to less than 1.5 degrees Celsius: 1) a cap-and-trade system; 2) a massive investment program in low-carbon technologies; or 3) a carbon fee. Indeed, the Intergovernmental Panel on Climate Change’s 2018 report on global warming at 1.5 degrees Celsius concluded that “carbon prices

⁷ U.S. Chamber Letter to the Senate Opposing S.J.Res.8, the Green New Deal, U.S. Chamber of Commerce, <https://www.uschamber.com/letter/us-chamber-letter-the-senate-opposing-sjres8-the-green-new-deal>.

⁸ See, S.1128, The American Opportunity Carbon Fee Act of 2019, 116th Cong., 1st Sess. available at <https://www.govtrack.us/congress/bills/116/s1128/text>.

remain a necessary condition of ambitious climate policies.”⁹ Its support for one bill, though welcomed, is far from support for a comprehensive legislative effort commensurate with the problem and is belied by the Chamber’s long-term behavior.

II. THE CHAMBER’S RECORD DEMONSTRATES LITTLE REGARD FOR EXECUTIVE ACTION ON CLIMATE CHANGE.

The Chamber has also worked assiduously to defeat regulatory actions by the executive branch to limit carbon pollution. In 2010, the Chamber sued the Environmental Protection Agency (EPA), seeking to overturn its finding that greenhouse gas emissions endanger the public health and welfare.¹⁰

Beginning in 2014, the Chamber convened fossil fuel industry lobbyists, lawyers, and political strategists to plot legal strategies for opposing future regulatory actions to limit carbon pollution.¹¹ In 2015, the Chamber led

⁹ Global Warming of 1.5 Degrees Celsius, Section 4.4.5.2, Intergovernmental Panel on Climate Change, <https://www.ipcc.ch/sr15/chapter/chapter-4/>.

¹⁰ *Chamber of Commerce v. EPA*, Petition for Review (Feb. 12, 2010), Case No. 10-1030 (D.C. Cir.), available at <https://www.chamberlitigation.com/sites/default/files/cases/files/2010/Chamber%20of%20Commerce%20v.%20EPA%20%28Endangerment%20Rule%29%20%28Petition%20for%20Review%29.pdf> (viewed on Aug. 28, 2019).

¹¹ Coral Davenport and Julie Hirschfeld Davis, “Move to Fight Obama’s Climate Plan Started Early,” *The New York Times* (Aug. 3, 2015), <https://www.nytimes.com/2015/08/04/us/obama-unveils-plan-to-sharply-limit-greenhouse-gas-emissions.html>

a coalition of trade associations suing to block EPA's proposed Clean Power Plan to reduce carbon emissions in the electric power sector.¹²

With the election of a president opposed to policies limiting carbon emissions, the Chamber switched to offense. In 2017, it funded a study critical of the Paris Agreement,¹³ which President Trump then cited in his justification for withdrawing from the agreement.¹⁴ Notably, the study was thoroughly debunked by independent climate experts.¹⁵ Also in 2017, the Chamber spearheaded a lobbying campaign in support of a Congressional Review Act

¹² *Chamber of Commerce v. EPA*, Petition for Review (Oct. 23, 2015), Case No. 15-1382 (D.C. Cir.), available at <https://www.chamberlitigation.com/sites/default/files/U.S.%20Chamber%20C%20et%20al.%20v.%20EPA%20%28ESPS%29%20--%20Petition%20for%20Review.pdf> (last viewed on Aug. 28, 2019).

¹³ Impacts of Greenhouse Gas Regulations on the Industrial Sector, NERA Economic Consulting (March 2017), available at <http://www.globalenergyinstitute.org/sites/default/files/NERA%20Final%20Report%202.pdf> (last viewed on Aug. 28, 2019).

¹⁴ Glenn Kessler and Michelle Ye Hee Lee, "Fact-checking President Trump's claims on the Paris climate change deal," *The Washington Post* (June 1, 2017), https://www.washingtonpost.com/news/fact-checker/wp/2017/06/01/fact-checking-president-trumps-claims-on-the-paris-climate-change-deal/?utm_term=.42bce20e6fcd.

¹⁵ See, e.g., Kevin Steinberger and Amanda Levin, "Chamber Inflates Costs, Ignores Benefits of Climate Action," Natural Resources Defense Council (March 22, 2017), available at <https://www.nrdc.org/experts/kevin-steinberger/chamber-inflates-costs-ignores-benefits-climate-action> (last viewed on Aug. 28, 2019).

resolution to repeal a Department of Interior rule limiting methane emissions from oil and gas facilities on public lands.¹⁶

The Chamber has also been a major supporter of the Trump administration's efforts to repeal and/or water down rules limiting carbon pollution. Most recently, the Chamber intervened in a lawsuit in order to support the administration's proposal to repeal the Clean Power Plan and replace it with a rule that would do little to reduce carbon pollution from the power sector.¹⁷

III. THE CHAMBER USES ITS POLITICAL CLOUT TO OPPOSE ACTION ON CLIMATE CHANGE.

The Chamber also wields its influence through electoral politics. Since the decision in *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010), permitting outside groups to spend unlimited sums on electioneering activities, the Chamber has directly spent approximately \$150 million¹⁸ on

¹⁶ See, e.g. Key Vote Alert, U.S. Chamber of Commerce (May 9, 2017), available at https://www.uschamber.com/sites/default/files/5.9.17_key_vote_letter_to_senate_supporting_h.j._res._36_cra_resolution_repealing_blm_methane_rule.pdf (viewed on Aug. 28, 2019).

¹⁷ U.S. Chamber Motion to Intervene on Clean Power Plan and Affordable Clean Energy Rules, U.S. Chamber of Commerce, <https://www.globalenergyinstitute.org/us-chamber-motion-intervene-clean-power-plan-and-affordable-clean-energy-rules>.

¹⁸ U.S. Chamber of Commerce Outside Spending by Year, Center For Responsive Politics,

congressional races, which is more than any other trade association.¹⁹ Many of the attack ads the Chamber funds target candidates for their willingness to support policies that limit carbon pollution.²⁰ Almost no candidate benefiting from the Chamber's outside spending has supported any meaningful climate legislation.

The political power of the Chamber is not only measured by what the Chamber actually spends in each electoral cycle, but by what it threatens to spend. The ability to spend unlimited money in politics necessarily imparts the ability to threaten to spend unlimited amounts. Such threats provide several advantages to the influencer: they are effective; they can be kept secret; and the threat alone often means that the money doesn't actually have

<https://www.opensecrets.org/outsidespending/detail.php?cmte=US+Chamber+of+Commerce&cycle=2018> (last viewed on Aug. 28, 2019).

¹⁹ The Chamber goes through extraordinary lengths to keep its membership anonymous and as a trade association organized under section 501(c)(6) of the Internal Revenue Code, it is not otherwise obligated to disclose this information. As a result, the corporations that fund this political spending are unknown.

²⁰ See, e.g., "Run, Jimmy" attack ad against Katie McGinty, 2016 candidate for U.S. Senate from Pennsylvania, *available at* <https://player.vimeo.com/video/208379329> (last viewed on Aug. 28, 2019); Nancy Madsen, "U.S. Chamber of Commerce says Tim Kaine supported higher energy costs for families," Politifact Virginia (Aug. 21, 2012), <https://www.politifact.com/virginia/statements/2012/aug/21/us-chamber-commerce/us-chamber-commerce-says-tim-kaine-supported-highe/>.

to be spent. Indeed, at the beginning of almost every election cycle, the Chamber threatens to spend far more than it actually spends, which serves as a warning to any moderate Republican fearing a well-funded primary challenger.²¹ Bipartisan activity on climate change came to an end in Congress immediately after the *Citizens United* decision unleashed these powers. That is not a coincidence.

The Chamber's real actions have been far from their representation of an organization in search of "serious solutions." Am. Br. 1. They have participated in a decades-long campaign of disinformation, obstruction, and political intimidation designed to prevent democratically accountable

²¹ See, e.g., Carol Leonnig, "Corporate donors fuel Chamber of Commerce's political power," *The Washington Post* (Oct. 19, 2012) https://www.washingtonpost.com/politics/decision2012/corporate-donors-fuel-chamber-of-commerces-political-power/2012/10/18/96ad666a-1943-11e2-bd10-5ff056538b7c_story.html?utm_term=.2798acebd23f.

branches of government from adopting any policies that would reduce carbon pollution.²² This Court should assess the Chamber's arguments accordingly.²³

²² The predicament of the falsity of the climate denial position (now well documented in peer-reviewed academic research) is best illustrated by the major oil companies whose CEOs now publicly purport to acknowledge the reality and severity of their product's harmful effects on our planet, and claim to support a market-based carbon price (some even provide slight — by industry standards — support to a not-yet-operational 501(c)(4) organization supporting a carbon price), but at the same time the industry's entire extant (and formidable) political and electioneering apparatus (including, we believe, the Chamber, though the Chamber's non-transparency obscures a true answer) remains remorselessly dedicated to opposing any meaningful legislative solution, including a price on carbon. Such groups also include the National Association of Manufacturers, the American Petroleum Institute, Americans for Prosperity, and an armada of others that collectively dominate political spending in America. *See, e.g.*, Robert Brulle, "The climate lobby: a sectoral analysis of lobbying spending on climate change in the USA, 2000 to 2016," *Climatic Change*, vol. 149, issue 3-4, p. 289–303, *available at* <https://link.springer.com/article/10.1007%2Fs10584-018-2241-z>.

²³ Many blue-chip companies have cut ties with the Chamber after doing a similar assessment. Over the last 10 years, Apple, Costco, eBay, General Mills, Goldman Sachs, HP, Kellogg, Kraft Heinz, Mars, Mattel, McDonalds, Mondelez, Nestlé, Pacific Gas & Electric, PNM Resources, Starbucks, Unilever, and Walgreens Boots Alliance are all known to have quit the Chamber at least in part over its climate obstructionism and denial. *See, e.g.*, Dominic Rushe, "Disney, the Gap and Pepsi urged to quit the US Chamber of Commerce," *The Guardian* (April 24, 2017), <https://www.theguardian.com/business/2017/apr/24/disney-the-gap-and-pepsi-urged-to-quit-us-chamber-of-commerce>. Together, these companies have a market capitalization of more than \$2.2 trillion. This raises the question: why would the Chamber be willing to lose such members as a cost of clinging to climate denial and obstruction.

IV. COURTS, INCLUDING STATE COURTS, ARE WELL-POSITIONED TO ADDRESS THE ISSUES IN THIS CASE.

The Chamber's legal strategy here is an extension of its political one. While its primary focus is on convincing this Court that the issues raised by the plaintiff-appellees should be addressed in federal court, the Chamber's real intent is that the damages suffered not be compensated for nor even addressed at all: "Governmental policies aimed at achieving these goals should come from the federal government, and in particular Congress and the Executive Branch, not through the courts, much less a patchwork of actions under state common law." Am. Br. 2.

In fact, cases such as this one fall squarely within the competency of the judicial branch, both federal and state. They present factual claims that courts are expert at resolving. They present questions of harm and liability that courts are expert at resolving. They require the winnowing of fact from fiction and fraud, where courts have both the expertise and the ability to impose consequences for fiction, fraud, and very real harms. Court-required discovery helps winnow fact from industry-funded, poll-tested fictions shopped in legislative arenas. Finally, courts and juries have a storied equalizing role: they are established to provide a forum where even politically mighty interests must stand equal before the law with those they have

harmed.²⁴ Politically mighty organizations prefer more favorable fields, where their political might settles the question. The Chamber would clearly love to neuter the judicial branch of government on these questions.

History reveals a long battle between powerful influencers who want to bring government to their heel, at whatever cost to the public, and a public that needs its own interests protected from those big influencers.²⁵ Courts have

²⁴ Unique in the constitutional constellation, the jury is designed not just to protect the individual against government, but also to protect the individual against other “more powerful and wealthy citizens.” 3 W. Blackstone, *Commentaries on the Laws of England* 381 (1768). Juries are not obliged to respect political power or proprieties, just to do justice in the case before them. 1 Alexis De Tocqueville, *Democracy in America* 314 (Arthur Goldhammer trans., Penguin Putnam Inc. 2004) (1838) (“The jury system as it is understood in America seems to me a consequence of the dogma of popular sovereignty just as direct and just as extreme as universal suffrage. Both are equally powerful means of ensuring that the majority reigns.”).

²⁵ *See, e.g.*, Theodore Roosevelt, *New Nationalism Speech* (1910) (“[T]he United States must effectively control the mighty commercial forces[.] . . . The absence of an effective state, and especially, national, restraint upon unfair money-getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power.”); David Hume, *PHILOSOPHICAL WORKS OF DAVID HUME* 290 (1854) (“Where the riches are in a few hands, these must enjoy all the power and will readily conspire to lay the whole burden on the poor, and oppress them still farther, to the discouragement of all industry.”); Andrew Jackson, 1832 Veto Message Regarding the Bank of the United States (Jul. 10, 1832) (transcript available in the Yale Law School library) (“It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purpose . . . to make the richer and the potent more powerful, the humble members of society . . . have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of the Government.”); Niccolo Machiavelli, *THE PRINCE IX* (1532) (“[O]ne cannot

an undeniable and unique role in this contest as the branch of government theoretically least responsive to political might. It should come as no surprise that the mightiest of political influencers would like to steer all questions of importance to them to the arenas where their political might holds greatest sway. But that's not how the Founders set up our government. There is no doctrine of "too big to adjudicate" or "too important to the politically mighty to adjudicate." The politically mighty have enough advantages without the Court conferring such benefits upon them.

CONCLUSION

For the foregoing reasons, this Court should carefully scrutinize the arguments made before it that urge reversal and instead affirm the District Court's order of remand.

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Respectfully submitted,

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by fair dealing, and without injury to others, satisfy the nobles, but you can satisfy the people, for their object is more righteous than that of the nobles, the latter wishing to oppress, whilst the former only desire not to be oppressed.”).

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on September 3, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Robert S. Peck

Robert S. Peck

CERTIFICATE OF COMPLIANCE

Pursuant to 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 4,128 words (as determined by the Microsoft Word 365 word-processing system used to prepare the brief), excluding the parts 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 it has been prepared in a proportionately spaced typeface using Microsoft Word 365 in 14-point Times Roman font.

/s/ Robert S. Peck

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