



# PUBLIC AGENCY CLIMATE CASES: THE CURRENT LANDSCAPE

CLIMATE CHANGE SCIENCE AND LITIGATION  
CONFERENCE HONOLULU, HI  
MAY 2019

**VIC SHER**  
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**SHER EDLING LLP**  
*PROTECTING PEOPLE AND THE PLANET*

# PARTIES, IMPACTS, AND CLAIMS

CASE	DEFENDANTS				IMPACTS				LEGAL CLAIMS ASSERTED						
	Exxon	Chevron, Shell, BP, CPhillips	15 Other Fossil Fuel & Coal Cos	SunCor	SLR	Hydro Cycle	Health	Other	Pub Nuisance (People)	Nuisance (Pub/Priv)	Trespass	Product Liability	Negl	FTW	Other
<b>San Mateo, Marin, Imperial Beach</b>	X	X	X		X				X	X	X	X	X	X	
<b>Santa Cruzes, Richmond (CA)</b>	X	X	X		X	X	X	X	X	X	X	X	X	X	
<b>San Francisco / Oakland</b>	X	X			X				X						
<b>New York</b>	X	X			X					X	X				
<b>Boulder (CO)</b>	X			X		X		X		X	X				X
<b>King County (WA)</b>	X	X			X	X		X		X	X				
<b>Baltimore (MD)</b>	X	X	X		X	X	X	X		X	X	X	X	X	X
<b>Rhode Island</b>	X	X	X							X	X	X	X	X	X
<b>PCFFA</b>	X	X	X			X		X		X		X	X	X	

## REMAND / APPEAL STATUS

CASE NAME	Removed / Court	Remand Sought?	Remand Granted/Denied	Motion to Dismiss
San Mateo, Marin, Imperial Beachs, Santa Cruzes, Richmond	Yes / ND CA (Chhabria)	Y	Granted* (Appeal pending in 9 <sup>th</sup> Circuit)	--
San Francisco, Oakland	Yes / ND CA (Alsup)	Y	Denied (appeal pending in 9 <sup>th</sup> Circuit)**	Case dismissed Jun. 25, 2018 (Alsup) ****
PCFFA	Yes / ND CA (Chhabria)	Y	Stayed	--
New York City	--	--	--	Case dismissed Jul. 19, 2018 (Keenan)***** (appeal pending in 2 <sup>nd</sup> Circuit)
Boulder County	Yes / Dist. of CO (Hegarty)	Y	--	Pending
King County (WA)	Yes / W.D. WA (Lasnik)	N	--	Case stayed pending outcome of 9 <sup>th</sup> circuit appeal of CA cases
Baltimore	Yes / Dist. of MD Northern Div (Hollander)	Y	Pending	
State of Rhode Island	Yes / Dist. of RI (Smith)	Y	Pending	

\**County of San Mateo v. Chevron Corp.*, 294 F.Supp.3d 934 (N.D.CA. 2018)

\*\**The People of the State of California v. BP P.L.C.*, No. C 17-06011 WHA (N.D. CA. Feb. 27, 2018)

\*\*\**County of Santa Cruz v. Chevron Corp.*, No. 18-cv-00450-VC (N.D.CA. Jul. 10, 2018)

\*\*\*\* *City of Oakland v. BP P.L.C.*, 2018 WL 2109726 (Jun. 25, 2018)

\*\*\*\*\**City of New York v. BP P.L.C.*, No. 18 Civ. 182 (JFK) (Jul. 19, 2018)



# ALSUP: INHERENTLY FEDERAL BUT NO REMEDY

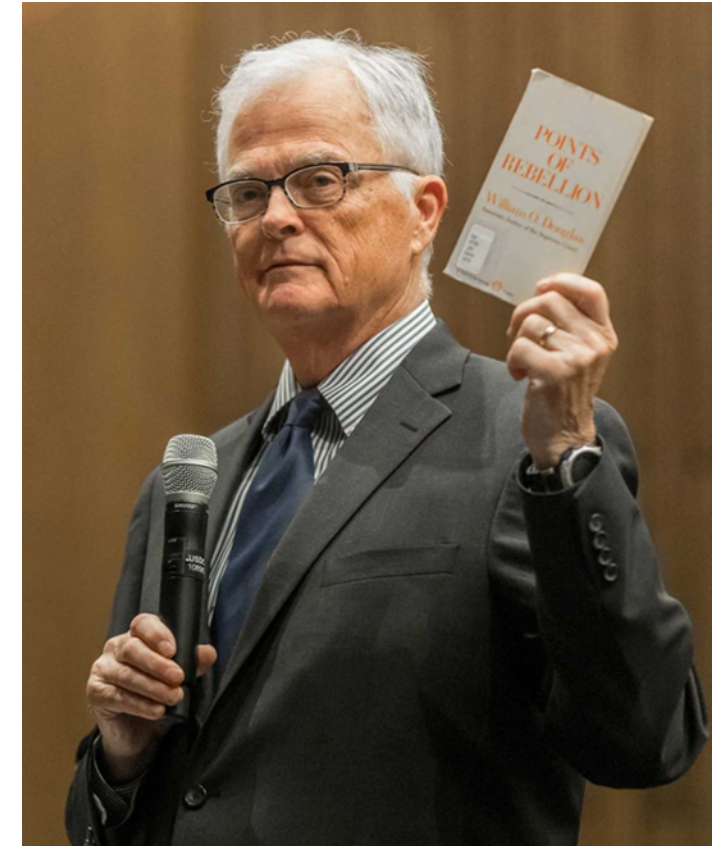
## Motion for Remand DENIED

“If ever a problem cried out for a uniform and comprehensive solution, it is the geophysical problem” of Climate Change

## Motion to Dismiss (12(b)(6)) GRANTED

- Displacement
- Political Question for Congress and Executive
- Interferes with Foreign Affairs
- Keenan (SDNY) In Accord

## Motion to Dismiss (12(b)(2)) GRANTED



District Judge William Alsup  
<https://www.cand.uscourts.gov/wha>

# CHHABRIA: NO INHERENT FEDERAL ISSUE



District Judge Vince Chhabria  
<https://www.cand.uscourts.gov/vc>

## Motion for Remand GRANTED

- No Federal Common Law (Displaced by CAA)
- No Complete Preemption
- No *Grable* Federal Issue
  - “[D]efendants mostly gesture to federal law and federal concerns in a generalized way. The mere potential for foreign policy implications ... does not raise ... [any]actually disputed, substantial federal issue”
- No OCSLA
- No Federal Enclave
- No Federal Officer
- No Bankruptcy
- No Admiralty

## BATTLE OF THE AMICI

San Mateo County et al		San Francisco/ Oakland		New York City	
Pro	Con	Pro	Con	Pro	Con
States (CA, NY, MD, NJ, OR, RI, VT, and WA)	US Chamber of Commerce	States (CA, CT, MD, MN, NJ, NY, OR, RI, VT, WA, DC)		States (NY, CA, MD, NJ, OR, RI, VT, WA, DC)	States (Indiana + 14)
CA State Ass'n of Counties		Former Govt and US State Dept Officials		Natl League of Cities, US Conf of Mayors, IMLA	Chamber of Commerce
Natl League of Cities, US Conf of Mayors, IMLA		Senators Whitehouse, Feinstein, Harris, Blumenthal, Hirono, and Markey		Foreign Relations Scholars	Nat'l Assn Mfrs
Public Citizen		Natl League of Cities, US Conf of Mayors, IMLA		NRDC	Washington Legal Fdn
Sen. Sheldon Whitehouse		CA State Ass'n of Counties		Prof. Catherine Sharkey	Prof. Richard Epstein
Robert Brulle, et al. (deception)		Legal Scholars (tort law)			United States
Mario Molina et al. (science)		Mario Molina et al. (science)			
NRDC		Robert Brulle, et al. (deception)			
		NRDC			
		Conflicts of Laws and Foreign Relations Law Scholars			





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