



The Rhode Island Superior Court accepts amicus curiae brief from the United States Department of Justice as offering a specialized perspective in climate change litigation

By Jeffrey S. Brenner and Justin S. Smith

In Latin, “amicus curiae” means “friend of the court.” Traditionally, a person or a group with a strong interest in or views on the subject matter of a lawsuit may request that a court allow them to file a brief, ostensibly on behalf of a party but actually to suggest a rationale consistent with its own views. An Amicus Curiae Brief is commonly filed in appeals concerning a matter of broad public interest. It is rare for a litigant to challenge the filing of a group seeking to file an Amicus Curiae Brief, especially when the petitioner is the United States government. But that’s exactly what the State of Rhode Island did in *Rhode Island v. Chevron Corp. et al.*, C.A. No. PC-2018-4716 (R.I. Super. 2020), when the United States Department of Justice (“DOJ”) sought to file an Amicus Curiae Brief in pending climate change litigation against over a dozen oil and gas companies.

In a written decision on April 30, 2020, Associate Justice Netti C. Vogel of the Rhode Island Superior Court resolved this issue of first impression in Rhode Island trial court practice and permitted the DOJ to file an Amicus Curiae Brief addressing whether the State of Rhode Island’s claims against various oil and gas companies “are preempted or displaced by federal law, including the Clean Air Act and by the foreign commerce clause and foreign affairs power.” The decision also allowed four attorneys from the DOJ’s Environment and Natural Resources Division (ENRD) permission to participate in the case on a pro hac vice basis for the limited purpose of drafting, signing, and submitting the brief with the condition that the United States also will be represented by an attorney licensed to practice law in Rhode Island.

In support of its motion for leave to file an Amicus Curiae Brief, DOJ and the ENRD attorneys argued that (1) they have unique and significant expertise in each of these areas of federal law that may aid the Court, (2) the ENRD attorneys have special expertise in federal environmental law, and (3) their specialized expertise and broad perspective in interpreting federal statutes governing air pollution, as well as their expertise in international environmental negotiations would offer a helpful perspective and assist the Court in making its decision on the defendants’ pending Rule 12(b)(6) Motion to Dismiss for failure to state a claim upon which relief can be granted.

The State of Rhode Island objected, arguing that (1) DOJ's motion was untimely and prejudicial to the State, (2) DOJ overstates the value and importance of the United States' potential contribution to the legal issues involved, and (3) the legal arguments in the anticipated but unfiled brief would be duplicative of those raised by the defendants so they would not assist the Court with specialized expertise that would merit deference or special weight. The State also opposed the pro hac vice admission of the ENRD attorneys, arguing that they failed to show good cause for their admission into the case.

In its decision, the Court recognized that there are no guidelines regarding filing an Amicus Brief in the Superior Court Rules of Civil Procedure, so the Court looked to Rhode Island Rule of Appellate Procedure 16(h), which allows a non-party to file an Amicus Curiae Brief with the Rhode Island Supreme Court by consent or by leave of the Court after filing a motion, except that consent or leave is not required when the brief is presented by the United States or an officer or agency thereof, or by the State of Rhode Island or an officer or agency thereof.

The Court held that "the absence of a similar rule under the Rhode Island Rules of Civil Procedure does not, in and of itself, preclude the Court from accepting an amicus brief." Additionally, the Court recognized occasions where Superior Court judges have allowed amicus briefs in the absence of a rule specifically addressing such submissions. Furthermore, the Court held that it is not limited by labels, but instead looks to the substance of the filing to be considered by the Court, relying on Rhode Island Superior Court Rule of Civil Procedure 1, providing for the "just, speedy, and inexpensive determination of every action," and the liberal nature of the Rhode Island Rules of Civil Procedure.

Quoting a decision from the United States Court of Appeals for the Seventh Circuit, the Court held that the question of whether to allow the filing of an Amicus Curiae Brief is a "matter of judicial grace." In allowing the submission, the Court considered whether the proposed submission by the DOJ would benefit the Court in better understanding the issues before it and whether the Amicus Curiae Brief would provide a different perspective that counsel of record may not have articulated. The Court then held that "the DOJ and the ENRD potentially could offer a specialized perspective on the preemptive effect, if any, of the Environmental Protection Agency's regulation of greenhouse gas emissions, as well as on how to address complex questions of diplomacy and foreign affairs with respect to climate change."

Now that DOJ is allowed to file an Amicus Curiae Brief and the ENRD attorneys are allowed to appear pro hac vice with a Rhode Island licensed attorney as a sponsor, DOJ has until May 15 to do so.

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