

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Ned Comer, <i>et al.</i> ,)	
<i>Plaintiffs-Appellants,</i>)	
)	
v.)	Appeal No. 07-60756
)	
Murphy Oil USA, <i>et al.</i> ,)	
<i>Defendants-Appellees.</i>)	

**MOTION OF PROFESSORS DAVID E. ADELMAN, LYNN E. BLAIS,
JAMES R. GORDLEY, OLIVER A. HOUCK, RONALD J. RYCHALK,
WENDY E. WAGNER, AND KEITH WERHAN FOR LEAVE TO FILE A
BRIEF AS AMICI CURIAE SUPPORTING PLAINTIFFS-APPELLANTS’
STANDING TO SUE**

Professors David E Adelman, Lynn E. Blais, James R. Gordley, Oliver A. Houck, Ronald J. Rychalk, Wendy E. Wagner, and Keith Werhan, by and through undersigned counsel, respectfully submit this motion under Federal Rule of Appellate Procedure 29 and request that the Court grant them leave to file a brief as amici curiae in the above-captioned matter.*

Movants and proposed amici are senior legal scholars in law schools in Louisiana, Mississippi, and Texas who have researched, taught and published

* Undersigned counsel sought the parties’ positions on this motion only shortly before the motion was due because counsel was uncertain whether proposed amici would be proceeding with this motion. While some parties have granted consent, most, quite understandably, have not responded as of the time of filing this motion. Undersigned counsel notes as well that at least one party had refused to consent to the proposed filing of an amicus brief by another group of law professors addressing the Political Question Doctrine issues in the case.

widely on constitutional, administrative and property law, including the law of nuisance and standing to sue. The proposed amici, and some examples of their most relevant publications, are:

David E. Adelman, Harry Reasoner Regents Chair in Law, University of Texas School of Law

- David E. Adelman, *Climate Change, Federalism, and Promoting Technological Change*, in BEYOND ENVIRONMENTAL LAW (Cambridge Press 2010).
- David E. Adelman, *Reorienting State Climate Change Policies*, 50 ARIZ. L. REV. 835 (2008).

Lynn E. Blais, Leroy G. Denman, Jr., Regents Professor in Real Property Law, University of Texas School of Law

- Lynn E. Blais & Wendy E. Wagner, *Emerging Science, Adaptive Regulation, and The Problem of Rulemaking Ruts*, 86 TEX. L. REV. 1701 (2008).

James R. Gordley, W.R. Irby Chair in Law, Tulane University Law School

- James R. Gordley, *Takings*, 82 TUL. L. REV. 1505 (2008).
- James R. Gordley, FOUNDATIONS OF PRIVATE LAW: PROPERTY, TORT, CONTRACT, UNJUST ENRICHMENT (Oxford Press 2006).

Oliver A. Houck, Professor of Law, Tulane University Law School

- Oliver A. Houck, *Standing on the Wrong Foot: The Case For Equal Protection*, 58 SYRACUSE L. REV. 1 (2007).
- Oliver A. Houck, *President X and the New, (Approved) Decisionmaking*, 36 AM. U. L. REV. 535 (1987).

Ronald J. Rychalk, Associate Dean for Academic Affairs, Professor of Law, University of Mississippi School of Law

- Ronald J. Rychalk, *Common Law Remedies for Environmental Wrongs: The Role of Private Nuisance*, 59 MISS. L. J. 657 (1989).

- Ronald J. Rychalk, *Trial by Fury: Restoring the common Good in Tort Litigation*, in THE CHRISTIAN SOCIAL THOUGHT SERIES monograph 8 (Acton Institute ed., 2005).

Wendy E. Wagner, Joe A. Worsham Centennial Professor of Law, University of Texas School of Law

- RESCUING SCIENCE FROM POLITICS: REGULATION AND THE DISTORTION OF SCIENTIFIC RESEARCH (Wendy E. Wagner & Rena Steinzor eds., 2006).
- Wendy E. Wagner, *Congress, Science and Environmental Policy*, 1999 U. ILL. L. REV. 181 (1999).

Keith Werhan, Ashton Phelps Chair of Constitutional Law, Tulane University Law School

- Keith Werhan, *Separation of Powers*, in ENCYCLOPEDIA OF LEGAL HISTORY (Stanley N. Katz et al. eds., 2009).
- Keith Werhan, *Checking Congress and Balancing Federalism: A Lesson from Separation-of-Powers Jurisprudence*, 57 WASH. & LEE L. REV. 1213 (2000).

While the movants take no position on the legal, scientific, or policy merits of the substantive claims asserted by Plaintiffs in this case, they seek to submit this brief because the case raises important issues concerning Article III standing requirements in cases arising under the common law, concerning the relationship between the jurisdictional pleadings and the proof of substantive claims, and concerning questions of traceability and causation in cases involving greenhouse gas emissions and global warming. The importance of the case, including the standing issue, is emphasized in the four petitions for rehearing en banc that were filed by Defendants-Appellees, and by this Court's grant of rehearing en banc. Proposed amici believe that their expertise in areas of law directly relevant to this

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 7, 2010, I electronically filed the foregoing motion with the clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I will mail the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

Lawrence E. Abbott
COTTEN, SCHMIDT &
ABBOTT, LLP
400 Lafayette St., Suite 200
New Orleans, LA 70130

Michael B. Gerrard
ARNOLD & PORTER, LLP
399 Park Avenue
New York, NY 10022-4690

J.Gregory Copeland
BAKER BOTTS LLP
One Shell Square
910 Louisiana Street
Houston, TX 77002-4995

Raymond L. Brown
BROWN, BUCHANAN &
SESSOMS, PA
P. O. Box 2220
Pascagoula, MS 39569-2220

William L. Watt
BENNETT LOTTERHOS SULSER
WILSON
188 E Capitol St Ste 1400
Jackson, MS 39201

Kenneth W. Barton
BUTLER, SNOW, O'MARA,
STEVENS & CANNADA
P. O. Box 22567
Jackson, MS 39225-2567

Thomas L. Carpenter, Jr.
CARR, ALLISON, PUGH,
HOWARD, OLIVER &
SISSON, PC
Suite 2001
14231 Seaway Road, Building
Gulfport, MS 39503

John G. Corlew
CORLEW, MUMFORD & SMITH
PLLC
P. O. Box 16807
Jackson, MS 39236

Robert A. Long
COVINGTON & BURLING, LLP
1201 Pennsylvania Ave. NW
Washington, DC 20011

Scott L. Winkelman
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Richard L. Forman
FORMAN, PERRY, WATKINS,
KRUTZ & TARDY
P.O. Box 22608
Jackson, MS 39225-2608

Shellye V. McDonald
FRANKE & SALLOUM, PLLC
2605 Fourteenth Street
P.O. Drawer 460
Gulfport, MS 39502

Kerry J. Miller
FRILOT, LLC
1100 Poydras Street, Suite 3600
New Orleans, LA 70163-3600

Robert D. Gholson
GHOLSON, BURSON, ENTREKIN
& ORR, PLLC
P. O. Box 1289
Laurel, MS 39441-1289

Jack F. Dunbar
1312 University Avenue, East
Oxford, MS 38655

Norman G. Hortman, Jr.
HORTMAN, HARLOW,
MARTINDALE, BASSI,
ROBINSON & MCDANIEL, PLLC
P.O. Drawer 1409
Laurel, MS 39441-1409

Rick Richmond
JENNER & BLOCK, LLP
633 West 5th Street, Suite 3500
Los Angeles, CA 90071-2054

Mary S. Johnson
JOHNSON GRAY MCNAMARA,
LLC
21357 Marion Lane
Suite 300
Mandeville, Louisiana 70471

Thomas E. Fennell
JONES DAY
P. O. Box 660623
Dallas, TX 75266-0623

Michael Phillips
KEAN MILLER HAWTHORNE
D'ARMOND
MCCOWAN & JARMAN, L.L.P.
First Bank and Trust Tower
Suite 1450, 909 Poydras St.
New Orleans, Louisiana 70112

Paul D. Clement
KING & SPALDING, LLP
1100 Louisiana, Suite 4000

Houston, TX 77002-5213

Herbert L. Zarov
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606

John G. Wheeler
MITCHELL, MCNUTT & SAMS
P. O. Box 7120
Tupelo, MS 38802-7120

Daniel P. Collins
MUNGER, TOLLES, OLSON LLP
355 South Grand Avenue, 35th floor
Los Angeles, CA 90071-1560

Jonathan D. Hacker
O'MELVENY & MYERS, LLP
1625 Eye Street, NW
Washington, DC 20006

Raymond M. Ripple
Dupont Legal
Suite D 7012
1007 Market Street
Wilmington, DE 19898

Ronald G. Peresich
PAGE, MANNINO, PERECICH &
MCDERMOTT, PLLC
759 Vieux Marche Mall
P.O. Drawer 289
Biloxi, MS 39533

Peter D. Keisler
SIDLEY AUSTIN, LLP
1501 K Street, N.W.
Washington, DC 20005

Edwin W. Small
TENNESSEE VALLEY
AUTHORITY
400 West Summit Hill Dr.
Knoxville, TN 37902-1401

Charles Evans Ross
WISE, CARTER, CHILD &
CARAWAY
P. O. Box 651
Jackson, MS 39205-0651

I further certify that copies of this motion were mailed postage paid
this 7th day of April, 2010 to the following unrepresented parties by U.S.
mail:

EON AG
E On-Platz 1
Dusseldorf, D-40479
Germany

FIRSTENERGY CORP
76 South Main Street
Akron, OH 44308

FPL Group Inc.
700 Universe Boulevard
Juno Beach, FL 33408

_____/s/
Sean H. Donahue
DONAHUE & GOLDBERG, LLP
2000 L St., NW Suite 808
Washington, D.C. 20036
Tel. (202) 277-7085
Email: sean@donahuegoldberg.com

April 7, 2010

No. 07-60756

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NED COMER; BRENDA COMER; ERIC HAYGOOD; BRENDA HAYGOOD;
LARRY HUNTER; SANDRA L. HUNTER; MITCHELL KISIELWESKI;
JOHANNA KISIELWESKI; ELLIOT ROUMAIN; ROSEMARY ROUMAIN;
JUDY OLSON; DAVID LAIN
Plaintiffs – Appellants,

v.

MURPHY OIL USA; UNIVERSAL OIL PRODUCTS (UOP); SHELL OIL
CO.; EXXONMOBIL CORP; AES CORP; ALLEGHENY ENERGY
INC; ALLIANCE RESOURCE PARTNERS LP; ALPHA NATURAL
RESOURCES INC; ARCH COAL INC; BP AMERICA PRODUCTION
CO.; BP PRODUCTS NORTH AMERICA INC; CINERGY CORP;
CONOCOPHILLIPS COMPANY; CONSOL ENERGY INC; THE DOW
CHEMICAL COMPANY; DUKE ENERGY CORP; EON AG; E I DUPONT
DE NEMOURS & CO; ENTERGY CORP; FIRSTENERGY CORP;
FOUNDATION COAL HOLDINGS INC; FPL GROUP INC; HONEYWELL
INTERNATIONAL INC; INTERNATIONAL COAL GROUP INC; MASSEY
ENERGY CO; NATURAL RESOURCE PARTNERS LP; PEABODY ENERGY
CORP; RELIANT ENERGY INC; TENNESSEE VALLEY AUTHORITY;
WESTMORELAND COAL CO; XCEL ENERGY INC; CHEVRON USA INC;
THE AMERICAN PETROLEUM INSTITUTE
Defendants – Appellees.

On Appeal from the United States District Court
for the Southern District of Mississippi

BRIEF OF AMICI CURIAE DAVID E. ADELMAN, LYNN E. BLAIS, JAMES
R. GORDLEY, OLIVER A HOUCK, RONALD J. RYCHALK, WENDY E.
WAGNER, AND KEITH WERHAN IN SUPPORT OF PLAINTIFFS-
APPELLANTS' ARTICLE III STANDING

Sean H. Donahue
DONAHUE & GOLDBERG, LLP
2000 L St., NW Suite 808
Washington, D.C. 20036
Tel.: (202) 277-7085
Counsel for Amici

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities, as described in Local Rule 28.2.1, have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualifications or recusals.

Plaintiffs

Ned Comer
Brenda Comer
Eric Haygood
Brenda Haygood
Larry Hunter
Sandra L. Hunter
Mitchell Kisielweski
Johanna Kisielweski
Elliott Roumain
Rosemary Roumain
Judy Olson
David Lain

Counsel for Plaintiffs

F. Gerald Maples, P.A.
F. Gerald Maples
Stephen M. Wiles
Carlos A. Zelaya, II
Alexander J. Williamson
Porter & Malouf
Timothy W. Porter
Mumphrey Law Firm, LLC
J. Wayne Mumphrey
Wayne B. Mumphrey
Clayton Connors

Defendants

Murphy Oil USA
Universal Oil Products
Shell Oil Company
ExxonMobil Corp.
AES Corp.
Allegheny Energy Inc.
Alliance Resource Partners LP
Alpha Natural Resources Inc.
Arch Coal Inc.
BP America Production Company
Cinergy Corp.
Conocophillips Company
Consol Energy Inc.
The Dow Chemical Company
Duke Energy Corp.

BP Products North America Inc.
Eon Ag
E. I. Dupont De Nemours & Co.
Entergy Corp.
Firstenergy Corp.
Foundation Coal Holdings Inc.
FPL Group Inc.
Honeywell International Inc.
International Coal Group Inc.
Massey Energy Co.
Natural Resource Partners LP.
Peabody Energy Corp.
Reliant Energy Inc.
Tennessee Valley Authority
Westmoreland Coal Co.
Xcel Energy Inc.
Chevron USA Inc.
The American Petroleum Institute

Counsel for Defendants

Cotton, Schmidt & Abbott

Lawrence E. Abbott
Charles H. Abbott

Arnold & Porter, LLP

Michael B. Gerrard
Nancy G. Milburn
Yue-Han Chow

Baker & Botts

J. Gregory Copeland
Samuel Cooper

Brown, Buchanan & Sessoms, PA

Raymond L. Brown

Brunini, Grantham, Grower & Hewes, PLLC

William L. Watt
Christopher R. Fontan

Butler, Snow, O'Mara, Stevens & Cannada

Kenneth W. Barton
Benjamin McRae Watson

Carr, Allison, Pugh, Howard, Oliver & Sisson, PC

Thomas L. Carpenter, Jr.

Corlew Munford & Smith PLLC

John G. Corlew
Katherine K. Smith

Covington & Burling, LLP

Robert A. Long

Crowell & Moring LLP

Scott L. Winkelman
Daniel W. Wolff
Tracy A. Roman
Kathleen Taylor Sooy

Dupont Legal Department

Raymond M. Ripple
Donna L. Goodman

Forman, Perry, Watkins, Krutz & Tardy

Richard L. Forman

Franke & Salloum, PLLC

Shellye V. McDonald
Richard P. Salloum

Frilot, LLC

Kerry J. Miller
Paul C. Thibodeaux
Benjamin M. Castoriano

Gholson, Burson, Entrekin & Orr, PLLC

Robert D. Gholson
Craig N. Orr
Noel A. Rogers

Daniel D. Wallace

Holcomb Dunbar

Jack F. Dunbar

Hortman, Harlow, Martindale, Bassi, Robinson & McDaniel, PLLC

Norman G. Hortman, Jr.

David L. Martindale

Jenner & Block LLP

Rick Richmond

Kenneth K. Lee

Kelly M. Morrison

Brent L. Caslin

Johnson Gray McNamara, LLC

Mary S. Johnson

Thomas M. McNamara

Jones Day

Thomas E. Fennell

Kevin P. Holewinski

Michael L. Rice

Kean Miller Hawhorne D'armond

Michael Phillips

Anthony Williams

Louis Grossman

King & Spalding, LLP

Paul D. Clement

Robert E. Meadows

Jonathan L. Marsh

Tracie J. Renfroe

Mayer Brown LLP

Herbert L. Zarov
Timothy S. Bishop
Richard F. Bulger
Charles S. Kelley

Mitchell, McNutt & Sams

John G. Wheeler

Munger, Tolles & Olson LLP

Daniel P. Collins

O'Melveny & Myers, LLP

Jonathan D. Hacker
John F. Daum

Page, Mannino, Peresich & McDermott, PLLC

Ronald G. Peresich
Michael E. Whitehead

Sidley Austin, LLP

Peter D. Keisler
Quin M. Sorenson

Tennessee Valley Authority

Edwin W. Small

Wise, Carter, Child & Caraway

James Earl Graves, III
William B. Lovett, Jr.
Charles Evans Ross

/s/ Sean H. Donahue
Attorney of Record for Amici Curiae

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Fed. R. Civ. P. 8 11

Miss. R. App. P. 20 19

Other Authorities:

Greg J. Holland & Peter J. Webster, *Heightened Tropical Cyclone Activity in the North Atlantic: Natural Variability or Climate Trend?*, 365 PHIL. TRANSACTIONS ROYAL SOC’Y A 2695 (July 30, 2007) 12

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Kevin E. Trenberth & Dennis J. Shea, *Atlantic Hurricanes and Natural Variability in 2005*, 33 GEOPHYSICAL RESEARCH LETTERS 12704 (June 27, 2006)..... 13

Peter J. Webster, et al., *Changes in Tropical Cyclone Number, Duration, and Intensity in a Warming Environment*, 309 SCIENCE 1844 (Sept. 16, 2005) 12

Charles A. Wright and Mary Kay Kane, LAW OF FEDERAL COURTS (6th ed. 2002) 7

INTRODUCTION AND STATEMENT OF INTEREST

Mississippi coastal property owners brought this action against oil and gas, chemical, coal mining, and power companies, asserting common law claims including public and private nuisance, trespass, and negligence. Plaintiffs' Third Amended Class Action Complaint alleges, among other things, that Defendants' emissions of carbon dioxide, methane, and other greenhouse gases (GHGs) increased atmospheric concentrations of such gases and exacerbated global warming that harmed plaintiffs by, among other things, lending strength to Hurricane Katrina and causing sea levels to rise. The district court held that Plaintiffs' claims were barred by the political question doctrine and that they lacked Article III standing.

A panel of this Court unanimously reversed as to the claims seeking damages for the effects of global warming (it affirmed the dismissal of Plaintiffs' other claims). On the standing question, the Panel concluded that "plaintiffs' complaint alleges that defendants' emissions caused the plaintiffs' property damage, which is redressable through monetary damages." *Comer v. Murphy Oil Co.*, 585 F.3d 855, 867 (5th Cir. 2009). The Panel rejected arguments that Plaintiffs had not properly alleged a causal link between their claimed injury and Defendants' conduct, concluding that Defendants' "main contentions are similar to

those recently rejected by the Supreme Court in *Massachusetts v. EPA*, [549 U.S. 497 (2007)]” and that Article III precedent supported a finding of causation here. 585 F.3d at 865, 866-67. Judge Davis noted his agreement as to the political question and standing issues, but would have affirmed the judgment on the basis that Plaintiffs’ allegations fail to establish proximate cause as a matter of law. *Id.* at 879 (Davis, J., specially concurring).

Defendants filed four petitions for rehearing en banc, all of which asked the full Court to consider the applicability of the political question doctrine and whether the Panel had erred in concluding that Plaintiffs’ allegations satisfied the “traceability” or causation prong of the Article III standing inquiry. The Court granted all four petitions.

Amici are senior legal scholars in Louisiana, Texas and Mississippi who have researched, taught and published widely on constitutional, administrative and property law, including the law of nuisance and standing to sue. They, and examples of amici’s most relevant publications, are:

David E. Adelman, Harry Reasoner Regents Chair in Law, University of Texas School of Law

- David E. Adelman, *Climate Change, Federalism, and Promoting Technological Change*, in BEYOND ENVIRONMENTAL LAW (Cambridge Press 2010).
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- Lynn E. Blais & Wendy E. Wagner, *Emerging Science, Adaptive Regulation, and The Problem of Rulemaking Ruts*, 86 TEX. L. REV. 1701 (2008).

James R. Gordley, W.R. Irby Chair in Law, Tulane University Law School

- James R. Gordley, *Takings*, 82 TUL. L. REV. 1505 (2008).
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Oliver A. Houck, Professor of Law, Tulane University Law School

- Oliver A. Houck, *Standing on the Wrong Foot: The Case For Equal Protection*, 58 SYRACUSE L. REV. 1 (2007).
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Ronald J. Rychalk, Associate Dean for Academic Affairs, Professor of Law, University of Mississippi School of Law

- Ronald J. Rychalk, *Common Law Remedies for Environmental Wrongs: The Role of Private Nuisance*, 59 MISS. L. J. 657 (1989).
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Wendy E. Wagner, Joe A. Worsham Centennial Professor of Law, University of Texas School of Law

- RESCUING SCIENCE FROM POLITICS: REGULATION AND THE DISTORTION OF SCIENTIFIC RESEARCH (Wendy E. Wagner & Rena Steinzor eds., 2006).
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Keith Werhan, Ashton Phelps Chair of Constitutional Law, Tulane University Law School

- Keith Werhan, *Separation of Powers*, in ENCYCLOPEDIA OF LEGAL HISTORY (Stanley N. Katz *et al.* eds., 2009).
- Keith Werhan, *Checking Congress and Balancing Federalism: A Lesson from Separation-of-Powers Jurisprudence*, 57 WASH. & LEE L. REV. 1213 (2000).

Amici take no position on the legal, scientific, or policy merits of Plaintiffs' suit. We submit this brief, instead, because the case raises important issues concerning Article III standing requirements in cases arising under the common law, and on the relationship between the jurisdictional pleadings and the proof of substantive claims. In our view, the arguments Defendants offer in defense of the district court's standing ruling are inconsistent with Article III requirements for public and private law alike and would, if accepted, unsettle well-established distinctions between jurisdictional issues and the merits.

SUMMARY OF ARGUMENT

The Panel correctly rejected Defendants' Article III standing argument. The three-part test for Article III emerged in response to novel forms of public law litigation that often lacked the hallmarks of private litigation under the common law, *i.e.*, a plaintiff seeking relief from a private party who had wronged him. While the three-part constitutional standing test applies in all federal cases, it is readily satisfied in cases like this one, in which private plaintiffs allege that private defendants violated their rights under the common law.

The Panel correctly concluded that Plaintiffs have alleged facts sufficient, at the pleading stage, to support their common law claims seeking recovery for harms allegedly suffered from the effects of global warming. Plaintiffs' complaint sets forth a causal link between Defendants' emissions and Plaintiffs' injuries. Whether or not Plaintiffs can adduce evidence sufficient to prove this link, their allegations suffice to establish jurisdiction.

The Panel properly rejected Defendants' submissions that the particular dynamics of the global warming problem – including the multitude of emitters of greenhouse gases, and the practical impossibility of following particular emissions from smokestack to injured party – defeat Plaintiffs' standing here. Article III does not mandate a particular model of causation, and as both the Panel here and the Second Circuit have recently noted, it is well established that contributions to harms, including incremental increases in concentrations of pollutants that are emitted by many sources, can be actionable under established statutory rules and common law principles. Very similar allegations that emissions of greenhouse gases had incrementally increased concentrations of greenhouse gases, thereby exacerbating global warming-driven harms to the plaintiffs-petitioners, were found to satisfy the Article III causation requirement in *Massachusetts v. EPA*, despite objections essentially identical to those raised here.

ARGUMENT

I. ARTICLE III STANDING IN PUBLIC AND COMMON LAW

Article III standing jurisprudence has developed in response to unique institutional concerns presented by the advent of new forms of litigation in which private parties sought to enforce public law. The cases and controversies clause was interpreted to restrict the field of eligible plaintiffs to those affected by governmental actions, *e.g.*, *Sierra Club v. Morton*, 405 U.S. 727, 740 (1972) (“The requirement that a party seeking review must allege facts showing that he is himself adversely affected * * * serve[s] as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome.”). Its rules have also been explained as a safeguard against undue interference with executive and administrative decision making. *E.g.*, Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 881 (1983) (doctrine intended to prevent “an overjudicialization of the processes of self-governance”). The now-familiar resulting standing rules oblige a plaintiff to show that (1) he has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely

speculative, that the injury will be redressed by a favorable decision. See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

In practice, these Article III requirements for public law adjudication operate as gatekeepers that are separate from the merits, distinct from the allegations that are required to state, and the evidence that must be adduced to prove, a cause of action. Once the threshold question of standing is satisfied, the parties and the court address the proper application of public laws – an inquiry that often will not focus on the standing-conferring injury to the plaintiff.

In common law claims the Article III inquiries are rarely relevant. As the Panel explained, “[t]hroughout American history lawsuits between private parties over private rights, such as the common-law claims asserted here, have not triggered the standing concerns that public-law cases, calling for vindication of constitutional or statutory policies, have.” 585 F.3d at 864 (citations omitted). A leading treatise on this point, also cited by the Panel, observes:

The law of standing is almost exclusively concerned with public-law questions involving determinations of constitutionality and review of administrative or other governmental action. In theory, of course, it is not so limited. The person suing for breach of contract or for a tort must be found to be the real party of interest, but in practice those suits are brought only by a person harmed by the supposed wrong and standing to sue is self-evident. It is only when a question is of a public nature that the interested bystander is likely to attempt suit.

Charles A. Wright and Mary Kay Kane, *Law of Federal Courts* 69 (6th ed. 2002) (quoted at 585 F.3d at 864 n.3). See also *Regional Properties, Inc. v. Fin. and*

Real Estate Consulting Co., 678 F.2d 552, 560 n.14 (5th Cir. 1982). The reasons for this distinction are obvious. In the first place, no one is challenging government policy. Further, the issues of injury in fact, causation and remedy, are the essence of plaintiff's case in chief and are presented in the pleadings. Indeed, the Article III tests for public law actions can be understood as surrogates for the standard requirements of common law pleadings.

The traditional gatekeeping inquiries for common law litigation, then, are not the injury/causation/redressability inquiries developed in recent decades in response to the special problems posed by public law litigation. They are, instead, an assessment of the adequacy of the allegations in the complaint in light of the requirements of the substantive law, through procedural tools such as motions to dismiss for failure to plead facts that would entitle the plaintiff to relief.

Defendants' arguments not only ignore these basic distinctions between public and private law for purposes of standing to sue, but at times even reverse them, urging that these common-law plaintiffs should bear a *higher* standing burden than public law claimants. See, *e.g.*, Petition for Rehearing En Banc of Defendants-Appellees Coal Companies at 11, 13-14. They would also, anomalously, require plaintiffs to prove their case in order to be able to prove their case, and would enmesh trial

courts in *pleading-stage* factual inquiries that would be both novel and unworkable.¹

II. THE ADEQUACY OF PLAINTIFFS' CAUSATION ALLEGATIONS

This case involves claims under the common law of nuisance, negligence, and trespass. To support these claims, Plaintiffs have asserted that the Defendants' emissions of greenhouse gases caused them various injuries. The Complaint alleges that Defendants are responsible for releasing "massive amounts" of greenhouse gases, Third Amended Class Action Complaint, p. 10; p. 16, ¶ 18, that Hurricane Katrina was "fueled and intensified" by warm waters and environmental conditions, and that those conditions were "were a direct and proximate result of the defendants' greenhouse emissions," *id.*, p. 10, ¶ 16. See also *id.* p. 8, ¶ 6; pp. 19-20. In addition, Plaintiffs allege that "[t]he Defendants' greenhouse gas emissions have contributed to sea level rise, which has a number of severe consequences including, but not limited to the following: **** a. Direct loss of private property as land is subsumed under rising sea levels and destroyed by saltwater intrusion. b. Loss of the use and quiet enjoyment of private property caused by rising sea levels * * * " *Id.*, p. 17, para. 30.

¹ Indeed, there is not a little irony in Defendants' characterization of the Panel's decision as "unprecedented," Petition for Rehearing En Banc of Defendants-Appellees Coal Companies at 3, given that the dismissal on Article III standing grounds of common law tort claims asserted by private plaintiffs against private defendants, and in which plaintiffs allege harm to their own land, is itself, to say the least, highly unusual.

The Complaint is reasonably construed to allege that the Defendants' actions increased atmospheric concentrations of GHGs sufficiently to produce harms that would not otherwise have occurred. The evidence for such allegation might be challenged, but a motion to dismiss is not the time for such a challenge.

Furthermore, the causal relationship demanded under the public law cases need not be the same as would satisfy requirements to allege proximate causation under the substantive common law. *Texans United for a Safe Econ. Educ. Fund v. Crown Cent. Petroleum Corp.*, 207 F.3d 789, 793 (5th Cir. 2000) (although plaintiffs "must ultimately establish causation if they are to prevail on the merits, they need not do so to establish standing"). As the Second Circuit noted in similar circumstances, "particularly at the pleading stage, the 'fairly traceable' standard is not equivalent to a requirement of tort causation." *Connecticut v. Am. Elec. Power Co.*, 582 F.3d 309, 346 (2d Cir. 2009) (citing *Natural Resources Defense Council, Inc. v. Watkins*, 954 F.2d 974, 980 n.7 (4th Cir. 1992), and *Barbour v. Haley*, 471 F.3d 1222, 1226 (11th Cir. 2006)). See also *Texans United*, 207 F.3d at 793 (erroneous to "conflate[] the issue of standing with the issue of actual liability").

Defendants invite the Court to go behind Plaintiffs' allegations on causation and make its own findings, without the benefit of evidence. This position would be improper even if this were a public law case, since, as the Court has explained,

allegations of fact necessary to support Article III standing suffice at the pleading stage. See *Bennett v. Spear*, 520 U.S. 154, 168 (1997) (citing *Defenders of Wildlife*, 504 U.S. at 561, and *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)). Such an approach is all the more inappropriate in a tort case, in which the public's (and the judiciary's) interest in ensuring that a plaintiff has a concrete stake in the controversy and motivation to litigate energetically is accomplished by the requirements of the relevant common law causes of action.

Nor should the Court accept Defendants' invitations to override the Complaint's allegations as "implausible," under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). Neither of those decisions – both of which focused upon the relationship between pleading standards under Fed. R. Civ. P. 8 and the requirements of proof for particular federal causes of action – purported to alter the requirements for pleading facts sufficient to support Article III standing.² Neither authorizes a court, at the

² These decisions emphasize the importance of the underlying substantive law in determining the sufficiency of a complaint. See *Twombly*, 550 U.S. at 556-57 (antitrust conspiracy); *Iqbal*, 129 S. Ct. at 1947 (civil rights violations/intent). At least in this Court, Defendants do not argue that Plaintiffs' allegations fall short of what Mississippi common law (or the federal common law of nuisance) requires; instead they claim the complaints fall short of the considerably less demanding "fair traceability" standard. Indeed, for purposes of this case, Defendants' position appears to be that even if Plaintiffs have alleged claims for nuisance, trespass, and negligence that pass muster under Mississippi law, the causation allegations in the complaints are too weak to satisfy Article III standards.

pleading stage, to decide for itself complex and disputed scientific questions bearing on causation.

The decisions instruct that “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 556). Here, the Plaintiffs have pleaded such facts, alleging emissions of greenhouse gases that contribute to climate change, increasing air and water temperatures leading to an increase in the frequency and intensity of hurricanes. Such allegations describe the connection between the plaintiff’s injury and the alleged conduct of the defendant. These allegations present factual questions, not the sort of “legal conclusion” that the recent decisions describe as “not entitled to the assumption of truth.” *Iqbal*, 129 S. Ct. at 1950 (quoting *Twombly*, 550 U.S. at 555).

Viable scientific evidence supports the relationship between global warming and the number of high-intensity storms, particularly in the North Atlantic region, which includes the Gulf Coast area.³ While there are many factors that shape the character of any particular weather event, the suggestion that climate change

³ See Greg J. Holland & Peter J. Webster, *Heightened Tropical Cyclone Activity in the North Atlantic: Natural Variability or Climate Trend?*, 365 PHIL. TRANSACTIONS ROYAL SOC’Y A 2695 (July 30, 2007); Peter J. Webster, et al., *Changes in Tropical Cyclone Number, Duration, and Intensity in a Warming Environment*, 309 SCIENCE 1844 (Sept. 16, 2005); see also *Massachusetts*, 549 U.S. at 522 n.18 (discussing sea level rise, storm intensity, and Katrina).

contributed to the intensity of Katrina, and other specific events, is by no means so facially implausible that it can be dismissed based upon judicial notice alone.⁴ Cf. *American Elec. Power*, 582 F.3d at 347 (stating that question whether GHG emitters caused harms cited by plaintiffs “is an issue best left to the rigors of evidentiary proof at a future stage of the proceedings, rather than dispensed with as a threshold question of constitutional standing”).

Plaintiffs need not show – as a matter of substantive law, nor certainly to satisfy Article III – that Defendants’ emissions are the *only* cause of Hurricane Katrina or of sea level rise in the Gulf. See *Barbour*, 471 F.3d at 1226. See also *Gaston Copper*, 204 F.3d at 161 (“[r]ather than pinpointing the origins of particular molecules, a plaintiff must merely show that a defendant discharges a pollutant that causes or contributes to the kinds of injuries alleged,” and refusing “to transform the ‘fairly traceable’ requirement into the kind of scientific inquiry that neither the Supreme Court nor Congress intended.”) (citation and internal quotation marks omitted); *Natural Res. Def. Council*, 954 F.2d at 980 n.7. Like the Second Circuit in *American Electric Power*, this Court should reject the “argument that many others contribute to global warming in a variety of ways, and that

⁴ See Kevin E. Trenberth & Dennis J. Shea, *Atlantic Hurricanes and Natural Variability in 2005*, 33 GEOPHYSICAL RESEARCH LETTERS 12704 (June 27, 2006) (noting that high sea surface temperatures are strongly correlated with increased hurricane intensity and concluding that high temperatures seen in the North Atlantic, including the Gulf Coast, in 2005 were partly attributable to global warming).

therefore Plaintiffs cannot allege traceability[.]” 582 F.3d at 347.⁵ Contrary to Defendants’ apparent view, see, e.g., Petition for Rehearing of Murphy Oil, *et al.* at 12 (Article III standing lacking because GHGs are “undifferentiated”); Petition for Rehearing of Excel, *et al.*, at 14 (similar); Coal Companies Rehearing at 13 (contesting that causation can be predicated on a defendant’s contribution to plaintiff’s injury), Article III does not mandate, as a constitutional requirement, a particular theory of causation – and it must accommodate the multiplicity of causation standards, of different formulations and rigor, that have traditionally been applied to statutory and common law. Cf. *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (court should not “raise the standing hurdle higher than the necessary showing for success on the merits”).

This observation is particularly applicable to the law of nuisance, which has long grappled with difficult pollution problems – including those involving multiple sources. As this Court has noted, “nuisance liability at common law has been based on actions which ‘contribute’ to the creation of a nuisance.” *Cox v. City of Dallas*, 256 F.3d 281, 292 n.19 (5th Cir. 2001). “[T]he fact that other persons contribute to a nuisance is not a bar to the defendant’s liability for his own

⁵ Given the allegations of the complaint here; the procedural posture of this case and the absence of precedent dismissing common-law tort claims on Article III grounds, *amici* fail to see how the panel’s decision “rendered the traceability requirement a dead letter in this circuit.” Rehearing Pet. of Murphy Oil *et al.* at 12.

contribution.” Restatement (Second) of Torts, Sec. 840E (1979). The Restatement explains:

Situations may arise in which each of several persons contribute to a nuisance to a relative slight extent, so that his contribution taken by itself would not be an unreasonable one and so would not subject him to liability; but the aggregate nuisance resulting from the contributions of all is a substantial interference, which becomes an unreasonable one. In these cases the liability of each contributor may depend upon whether he is aware of what the others are doing, so that his conduct becomes negligent or otherwise unreasonable in light of that knowledge. It may, for example, be unreasonable to pollute a stream to only a slight extent, harmless in itself, when the defendant knows that pollution by others is approaching or has reached the point where it causes or threatens serious interference with the rights of those who use the water.

Id. Comment b.

As the Panel here and the *American Electric Power* court recognized, what Defendants identify as the distinctive “causation” shortcoming – that Defendants make only a small contribution to the harm – is in fact a common feature of pollution cases under both statutory and common law alike. While relatively small individual contributions may have different implications depending upon the substantive law in question, it assuredly does *not* defeat a plaintiff’s constitutional standing to sue.

Plaintiffs, of course, would have to produce evidence in order to support the claims of causation – a difficult challenge given the complexity of climate change, and the fact that many of Plaintiffs’ claims are predicated in part on the premise that Defendants’ greenhouse gas emissions can be causally linked to Katrina, a

particular weather event. However, Defendants' contention that the allegations are insufficient to support Article III standing at the pleading stage is misplaced.

III. MASSACHUSETTS AND TRACEABILITY

Further undermining Defendants' traceability objection is the Supreme Court's ruling in *Massachusetts*, which held that an alleged causal relationship very similar to that alleged by Plaintiffs here satisfied the Article III traceability requirement. The Court rejected arguments like those advanced here, namely, that the "global" nature of the climate change problem, and the impossibility of directly connecting specific emissions to specific injuries, render the causal connections between greenhouse gas emissions and injuries so remote and uncertain as to defeat standing for purposes of Article III. See 549 U.S. at 524-25.

Massachusetts differed from this case in two ways that made the Article III inquiry *more* difficult there than it is here. First, in *Massachusetts*, the Court considered Article III standing in a context equivalent to summary judgment – a federal rulemaking review brought directly in the D.C. Circuit under the Clean Air Act, 42 U.S.C. § 7607(b), a procedure in which standing is required to be substantiated by evidence, see *Sierra Club v. EPA*, 292 F.3d 895, 898-901 (D.C. Cir. 2002). Here, by contrast, standing is challenged by motion to dismiss under Fed. R. Civ. P. 12(b), so that allegations must be assumed to be true and to include necessary supporting factual assertions, see *Bennett*, 520 U.S. at 168.

Second, *Massachusetts* presented precisely the kind of public law problem that led the Court to formulate the tripartite Article III standing test and that has led to its most demanding applications, namely, a claim by a private party that the government has unlawfully failed to regulate another private party, to the complainant's detriment. As Chief Justice Roberts' dissent emphasized, "when a party is challenging the Government's allegedly unlawful regulation, or lack of regulation, of a third party, satisfying the causation and redressability requirements becomes 'substantially more difficult.'" 549 U.S. at 543 (quoting *Defenders of Wildlife*, 504 U.S. at 562). In contrast to that "more difficult" standing problem, Plaintiffs here, invoking long-recognized common law causes of action, sue entities that (according to the complaint) are themselves responsible for harmful emissions. See *Comer*, 585 F.3d at 865 & n.5 (noting that causal chain in *Massachusetts* extended "one step further" than the one claimed here).

In *Massachusetts*, EPA made Article III causation arguments remarkably similar to those made by Defendants here. The agency emphasized that "climate change is, by definition, a global phenomenon"; that GHGs are evenly mixed throughout the Earth's atmosphere; and that "as much as 80 percent" of all greenhouse gas emissions emanate from outside the United States. Brief for the Federal Respondent at 13-14 (S. Ct. No. 05-1120). EPA also emphasized the relatively small fraction of global greenhouse gas emissions were at stake:

Vehicles were responsible for only 30 percent of U.S. emissions and (7 percent of worldwide emissions) – and the regulations the petitioners wanted EPA to adopt would apply only to new motor vehicles, and could only reduce some of the emissions from those vehicles, meaning that the emissions petitioners claimed EPA had an obligation to prevent would constitute only a “tiny percentage” of worldwide emissions. *Id.* at 13-14.

The Court in *Massachusetts* held, however, that the claims satisfied the causation requirement, rejecting EPA’s argument that “its decision not to regulate greenhouse gas emissions from new motor vehicles contributes so insignificantly to petitioners’ injuries that the agency cannot be haled into federal court to answer for them.” 549 U.S. at 523. The Court explained that EPA’s argument rested “on the erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum.” *Id.* See *Am. Elec. Power*, 582 F.3d at 338 (discussing Court’s application of the three-part Article III test).

As the Panel in this case noted, the *Massachusetts* Court “accepted a causal chain virtually identical in part to that alleged by plaintiffs,” 585 F.3d at 865, namely that greenhouse gas emissions attributable to the Defendants (there an agency that had declined to regulate) had exacerbated global warming, thereby causing (or worsening) harms to the plaintiffs. *Massachusetts* rejects the argument, resuscitated by Defendants here, that the “undifferentiated” nature of

greenhouse gas pollution – the fact that it is not possible to connect trace identified chemicals from the defendant to the plaintiff’s injury – precludes Article III “traceability.”

CONCLUSION

Defendants repeatedly point to the exceptional scope and ambition of Plaintiffs’ claims; to the undisputed fact that Defendants’ facilities represent only a fraction of the sources of GHG emissions worldwide; and to the undeniably vexing remedial problems that such claims could present.

In their haste to urge dismissal of this case at the threshold, however, Defendants ask the Court to stretch and distort the constitutional law of standing, and to confuse principles governing jurisdiction with adjudication on the merits. Defendants’ efforts to obtain an exceedingly unusual Article III standing dismissal of common law claims is especially remarkable given that it has not yet been determined in this case whether Plaintiffs’ allegations state claims under Mississippi law.⁶ If plaintiffs’ legal claims are as tenuous and unreasonable as Defendants claim, then they should have powerful arguments to dismiss them, but there is no reason why rules and procedures used for processing every other kind

⁶ Whether Plaintiffs have stated claims under Mississippi law was not addressed by the district court, or in the briefing in this Court. Accordingly, if the Court seeks to address the issue, see 585 F.3d at 879 (Davis, J.), it may wish to call for additional briefing. See also Miss. R. App. P. 20 (allowing for certification of questions of state law to the Mississippi Supreme Court).

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 7, 2010, I electronically filed the foregoing with the clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I will mail the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

Lawrence E. Abbott
COTTEN, SCHMIDT & ABBOTT,
LLP
400 Lafayette St., Suite 200
New Orleans, LA 70130

William L. Watt
BENNETT LOTTERHOS SULSER
WILSON
188 E Capitol St Ste 1400
Jackson, MS 39201

Michael B. Gerrard
ARNOLD & PORTER, LLP
399 Park Avenue
New York, NY 10022-4690

Kenneth W. Barton
BUTLER, SNOW, O'MARA,
STEVENS & CANNADA
P. O. Box 22567
Jackson, MS 39225-2567

J.Gregory Copeland
BAKER BOTTS LLP
One Shell Square
910 Louisiana Street
Houston, TX 77002-4995

Thomas L. Carpenter, Jr.
CARR, ALLISON, PUGH,
HOWARD, OLIVER & SISSON, PC
Suite 2001
14231 Seaway Road, Building
Gulfport, MS 39503

Raymond L. Brown
BROWN, BUCHANAN &
SESSOMS, PA
P. O. Box 2220
Pascagoula, MS 39569-2220

John G. Corlew
CORLEW, MUMFORD & SMITH
PLLC
P. O. Box 16807
Jackson, MS 39236

Robert A. Long
COVINGTON & BURLING, LLP
1201 Pennsylvania Ave. NW
Washington, DC 20011

Scott L. Winkelman
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

Richard L. Forman
FORMAN, PERRY, WATKINS,
KRUTZ & TARDY
P.O. Box 22608
Jackson, MS 39225-2608

Shelley V. McDonald
FRANKE & SALLOUM, PLLC
2605 Fourteenth Street
P.O. Drawer 460
Gulfport, MS 39502

Kerry J. Miller
FRILOT, LLC
1100 Poydras Street, Suite 3600
New Orleans, LA 70163-3600

Robert D. Gholson
GHOLSON, BURSON, ENTREKIN
& ORR, PLLC
P. O. Box 1289
Laurel, MS 39441-1289

Jack F. Dunbar
1312 University Avenue, East
Oxford, MS 38655

Norman G. Hortman, Jr.
HORTMAN, HARLOW,
MARTINDALE, BASSI,
ROBINSON & MCDANIEL, PLLC
P.O. Drawer 1409
Laurel, MS 39441-1409

Rick Richmond
JENNER & BLOCK, LLP
633 West 5th Street, Suite 3500
Los Angeles, CA 90071-2054

Mary S. Johnson
JOHNSON GRAY MCNAMARA,
LLC
21357 Marion Lane
Suite 300
Mandeville, Louisiana 70471

Thomas E. Fennell
JONES DAY
P. O. Box 660623
Dallas, TX 75266-0623

Michael Phillips
KEAN MILLER HAWTHORNE
D'ARMOND
MCCOWAN & JARMAN, L.L.P.
First Bank and Trust Tower
Suite 1450, 909 Poydras St.
New Orleans, Louisiana 70112

Paul D. Clement
KING & SPALDING, LLP
1100 Louisiana, Suite 4000
Houston, TX 77002-5213

Herbert L. Zarov
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606

John G. Wheeler
MITCHELL, MCNUTT & SAMS
P. O. Box 7120
Tupelo, MS 38802-7120

Daniel P. Collins
MUNGER, TOLLES, OLSON LLP
355 South Grand Avenue, 35th floor
Los Angeles, CA 90071-1560

Jonathan D. Hacker
O'MELVENY & MYERS, LLP
1625 Eye Street, NW
Washington, DC 20006

Raymond M. Ripple
Dupont Legal
Suite D 7012
1007 Market Street
Wilmington, DE 19898

Ronald G. Peresich
PAGE, MANNINO, PERECICH &
MCDERMOTT, PLLC
759 Vieuz Marche Mall
P.O. Drawer 289
Biloxi, MS 39533

Peter D. Keisler
SIDLEY AUSTIN, LLP
1501 K Street, N.W.
Washington, DC 20005

Edwin W. Small
TENNESSEE VALLEY
AUTHORITY
400 West Summit Hill Dr.
Knoxville, TN 37902-1401

Charles Evans Ross
WISE, CARTER, CHILD &
CARAWAY
P. O. Box 651
Jackson, MS 39205-0651

