IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

PORTLAND PIPE LINE CORP., et al., *Plaintiffs,*	
v.	No. 2:15-cv-00054-JAW
CITY OF SOUTH PORTLAND, et al., *Defendants*.	

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The Chamber of Commerce of the United States of America ("Chamber") respectfully urges this Court to grant the Plaintiffs' motion for summary judgment. The Plaintiffs challenge the legality of an Ordinance enacted by the City of South Portland, which prohibits the loading of crude oil onto tankers in the Portland Harbor, *see* Doc. 1-1. The only conceivable effect of the Ordinance—and the reason it was enacted—is to prohibit the flow of oil from Canada to the United States through the Portland-Montreal Pipeline. By preventing oil from being loaded onto tankers once it arrives, the Ordinance eliminates the incentive to send it through the pipeline in the first place. The Chamber agrees with the Plaintiffs that the Ordinance, among other deficiencies, violates the Commerce Clause and the Supremacy Clause. *See* Doc. 87 at 23-33, 50-59. The Chamber submits this *amicus* brief to explain why the Ordinance is not only unconstitutional, but it also threatens serious harm to local businesses and the ability of the United States to promote vital international trade relationships.

INTEREST OF *AMICUS CURIAE*[1]

The Chamber has a direct interest in this important case. The Chamber represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, from every region of the country—including Maine. It regularly represents the interests of its members by filing *amicus* briefs in cases, like this one, that involve issues of concern to the nation's business community.

The Chamber's members include producers, transporters, and users of crude oil, and they depend on stable, predictable, and nationally uniform regulations. Ordinances like the one the City enacted here threaten these interests and set a dangerous precedent that, if adopted elsewhere, would seriously disrupt interstate and international markets and create a patchwork of regulation that the Constitution and numerous statutes were designed to prevent. The Chamber's members also have a substantial interest in the maintenance of a coherent foreign trade policy, like the one in place with Canada for its energy resources, including oil sands. The City's transparent attempt to disrupt that policy impedes this country's commerce with our neighbors and allies.

ARGUMENT

The Ordinance before the Court constitutes a remarkably specific threat to international trade and the uniform regulation of oil transmission and export. As the Plaintiffs explain, the Ordinance was passed by the City Council as part of a continuous effort by activists and City officials to prevent the international shipment of oil-sands crude extracted in Canada by taking advantage of South Portland's location. *See id.* at 6-14. After voters narrowly rejected a referendum expressly designed to interfere with international oil transportation—activity approved

[1] The Chamber certifies that no counsel for a party authored this brief in whole or in part, and no one other than the Chamber, its members, or its counsel made a monetary contribution intended to fund its preparation or submission.

by the Department of State and regulated by federal pollution and safety laws—the City Council immediately began drafting this Ordinance to reach the same end. Throughout the drafting and enactment process, the record makes clear that the goal was to stop the export of Canadian oil through the Portland-Montreal Pipeline. *See id.* The City Council ultimately did so by prohibiting the *loading* of oil *from* the Pipeline onto "marine tank vessels" and the construction of any pipeline or shipping facilities associated with such bulk loading. *See* Ordinance §§ 27-786, 27-922(n), 27-930. Notably, the Ordinance does *not* prohibit the *unloading* of oil *into* the Pipeline. Nor does it purport to set emissions standards or otherwise neutrally regulate air quality regardless of source. And nothing in the challenged provisions involves facially neutral requirements such as setbacks, scenic impact standards, or other traditional zoning requirements. The specificity of the prohibition is thus, on its face, plainly designed to discriminate against the export of Canadian oil by controlling the direction and source of the oil in the Pipeline and through the Port of Portland.

The Court should grant the Plaintiffs' motion for summary judgment and enjoin enforcement of the Ordinance. Among other infirmities (described in full by the Plaintiffs), the Ordinance violates several Constitutional prohibitions. First, the Ordinance violates the Commerce Clause because it was designed with the express purpose of impeding foreign commerce—*i.e.*, the transportation of oil-sands crude from Canada to Maine, for export beyond these shores. Second, the Ordinance is preempted—by function of the Supremacy Clause—because it attempts to regulate the loading of cargo onto marine tankers and interstate pipeline safety, areas that are preempted by the Port and Waterways Safety Act and the Pipeline Safety Act. Indeed, the Framers designed the Commerce Clauses and the Supremacy Clause to function in tandem to prevent exactly the type of market balkanization effectuated by the Ordinance. Finally, the City's interference with foreign commerce and Congress's national standards is neither harmless nor

incidental. The Ordinance will have serious, adverse consequences for businesses in the Portland Harbor, with ripple effects throughout the state of Maine. It also will unduly interfere with the trading relationship between the United States and Canada. Permitting this law to stand would invite nationwide economic disaster by providing local interests with a road map to obstructing any U.S. trade, shipping, or energy policy with which they disagree.

I. The Ordinance Violates the Commerce Clause.

Article I of the Constitution gives Congress the power "[t]o regulate Commerce with foreign Nations." U.S. Const. Art. I, § 8, cl. 3. The ability of the United States to speak with one voice on issues of foreign commerce was a driving force of the adoption of the Constitution to replace the Articles of Confederation. *See* Scott Sullivan, *The Future of the Foreign Commerce Clause*, 83 Fordham L. Rev. 1955, 1962-65 (2015) (describing adoption of the clause). As Alexander Hamilton noted, "The interfering and unneighborly regulations of some States, contrary to the true spirit of the Union, have, in different instances, given just cause of umbrage and complaint to others, and it is to be feared that examples of this nature, if not restrained by a national control, would be multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the Confederacy." *The Federalist No. 22*, at 137 (Jacob E. Cooke ed. 1961).

The positive grant of authority to Congress in the Foreign Commerce Clause includes a negative denial of authority to state and local governments. *See S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984). Under the Foreign Commerce Clause, state and local governments cannot enact laws that are "designed to limit trade with a specific foreign nation." *Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38, 67 (1st Cir. 1999). A law that discriminates against foreign commerce is "virtually *per se* invalid." *Id.* (quoting *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 99 (1994)). Courts "generally str[ike] down" such laws "without

further inquiry." *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986). The Ordinance is such a law.[2]

First, the purpose and effect of the Ordinance are to discriminate against foreign commerce—namely, the transportation of oil-sands crude from Canada. Even if a law does not discriminate against foreign commerce on its face, it is invalid if it has a "discriminatory purpose" or a "discriminatory effect." *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270 (1984). The Ordinance unquestionably has a discriminatory purpose; the history of the Ordinance and the comments of the City officials who enacted it demonstrate that its unmistakable purpose is to prevent the flow of oil-sands crude from Canada to Maine. *See, e.g.*, Doc. 87 at 13 n.17 (noting statements of majority of City Council members regarding their desire to inhibit the transportation of "the world's dirtiest oil," to stop the flow of "tar sands" from Canada, and even to protect the "indigenous people of Alberta"). The City's purported interest in air quality is demonstrably pretextual, and this Court should not credit it. *See Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979).

The Ordinance also has a discriminatory effect. By prohibiting the loading of oil onto tankers in the Portland Harbor (but not the unloading), the Ordinance ensures that no oil can be transported from Canada to Maine or exported through South Portland to international markets. Canadian companies have no incentive to use the Portland-Montreal Pipeline if their oil cannot be

[2] Some of the cases cited in this section interpret the Interstate Commerce Clause, not the Foreign Commerce Clause. But the distinction is immaterial because the governing principles governing the two clauses are "essentially the same." *Antilles Cement Corp. v. Acevedo Vila*, 408 F.3d 41, 46 (1st Cir. 2005). If anything, the cases interpreting the Interstate Commerce Clause are too lenient because the Foreign Commerce Clause is wholly *broader*. "[S]tate restrictions burdening foreign commerce are subjected to a more rigorous and searching scrutiny" because "[i]t is crucial to the efficient execution of the Nation's foreign policy that 'the Federal Government ... speak with one voice when regulating commercial relations with foreign governments.'" *S.-Cent. Timber Dev.*, 467 U.S. at 100 (quoting *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285 (1976)); *accord Kraft Gen. Foods, Inc. v. Iowa Dep't of Rev. & Fin.*, 505 U.S. 71, 79 (1992); *Japan Line, Ltd. v. L.A. Cty.*, 441 U.S. 434, 448 (1979).

moved once it arrives. In short, as this Court has already recognized, the Ordinance "presently stands as a barrier to the north-to-south operation" of the Portland-Montreal Pipeline, and "the history of the Ordinance … suggests that the City's motive in enacting the Ordinance was to do just that." *Portland Pipe Line Corp. v. City of S. Portland*, 164 F. Supp. 3d 157, 175 (D. Me. 2016).

Second, the Ordinance is an impermissible "attempt[] to regulate conduct beyond [the City's] borders and beyond the borders of this country," *Nat'l Foreign Trade Council*, 181 F.3d at 69. By denying access to the Portland Harbor, the Ordinance attempts to discourage the extraction of oil-sands crude in Canada—a process that some environmentalists believe is harmful. The comments made by City officials when voting on the ordinance confirm this intent. *See* Doc. 87 at 13 n.17. But the Foreign Commerce Clause prevents state and local governments from "impos[ing] economic sanctions on violators of its laws with the intent of changing ... lawful conduct in other States" because such efforts offend "principles of state sovereignty and comity." *Nat'l Foreign Trade Council*, 181 F.3d at 69 (second alteration in original) (quoting *BMW of N.A., Inc. v. Gore*, 517 U.S. 559, 571-72 (1996)). It is no answer to say that the Ordinance will not *completely* discourage the extraction of oil-sands crude or that Canada can export oil-sands crude to other locations. If the City can effectively block Canadian oil from flowing through a pipeline, then so can other localities. *See id.* at 70. Accepting this argument would "read the Commerce Clause out of the Constitution." *Id.*

Third, the Ordinance "imped[es] the federal government's ability to 'speak with one voice' in foreign affairs.'" *Id.* at 68 (quoting *Japan Line*, 441 U.S. at 449). "If state action touching foreign commerce is to be allowed, it must be shown not to affect national concerns to any significant degree …." *Id.* (quoting L. Tribe, *American Constitutional Law* § 6-21, at 469 (2d ed. 1988)). The Ordinance fails this metric. As the Canadian government has explained, the flow of oil-sands crude

from Canada to the United States is "vital to the Canada-U.S. energy relationship." Gov't of Canada, *Oil Sands: A Strategic Resource for Canada, North America and the Global Market* 2 (2013), goo.gl/9MxR1e. Concomitantly, laws like the Ordinance that "restrict[] market access to oil sands crudes" could "damage the US-Canada relationship." IHS Cambridge Energy Research Project, *The Role of the Canadian Oil Sands in the US Market* 13 (2011), goo.gl/PeiodQ. The Foreign Commerce Clause prohibits such "impair[ment] [of] federal uniformity in an area where federal uniformity is essential." *Japan Line*, 441 U.S. at 448.

II. The Ordinance Is Preempted by the Port and Waterways Safety Act and the Pipeline Safety Act.

The Supremacy Clause provides that "the Laws of the United States" are "the supreme Law of the Land," U.S. Const. Art. VI, cl. 2, which means "any state law … which interferes with or is contrary to federal law" is preempted. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) (quoting *Felder v. Casey*, 487 U.S. 131, 138 (1988)). Preemption can be express or implied. *Id.* Express preemption occurs when "language in the federal statute … reveals an explicit congressional intent to pre-empt state law." *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 31 (1996). Implied preemption occurs when, for example, Congress occupies the field with "a regulatory scheme 'so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'" *SPGGC, LLC v. Ayotte*, 488 F.3d 525, 530 (1st Cir. 2007) (quoting *Barnett Bank*, 517 U.S. at 31).

Here, the Ordinance is preempted by at least two federal statutes: the Port and Waterways Safety Act and the Pipeline Safety Act.[3] Both statutes embody Congress's attempt to deal with the

[3] The Ordinance is not entitled to the presumption against preemption. The federal government, not the states, is traditionally responsible for regulating maritime commerce and interstate energy transportation. *See United States v. Locke*, 529 U.S. 89, 108 (2000); *Colo. Interstate Gas Co. v. Wright*, 707 F. Supp. 2d 1169, 1189 (D. Kan. 2010).

precise subject matter of the Ordinance: the loading of oil and other cargo onto ships, and the safe transmission of oil through pipelines. Congress made an express judgment that the economic importance of maritime shipping and interstate (as well as international) oil transportation require a unified, predictable set of federal standards. The Ordinance must give way to that reasoned decision.

A. Federal preemption—through the Supremacy Clause—functions in tandem with the Commerce Clause to remove obstacles to national and global markets.

Allowing South Portland to second-guess the comprehensive pipeline regulatory schemes enacted by Congress would thwart the sound policies underlying both the Supremacy Clause and the Commerce Clauses. The Supremacy and Commerce Clauses were adopted, in part, to remove obstacles to national and international markets. Indeed, one of the chief purposes of the Constitution was to create a national government with the power to regulate interstate commerce in a uniform manner. As James Madison explained, "The defect of power in the existing [Articles of Confederation] to regulate the commerce between its several members [has] been clearly pointed out by experience." *The Federalist No. 42*, at 283. And before the Constitution, the "multiplicity of laws in [the] several states" was one of the chief "evils . . . of our situation." James Madison, *Vices of the Political System of the United States* (1787), *available at* goo.gl/FMLe3. As Hamilton noted, absent a national government with authority to prescribe uniform commercial regulations, "[e]ach State, or separate confederacy, would pursue a system [of] commercial polity peculiar to itself [that would create] distinctions, preferences and exclusions, which would beget discontent." *The Federalist No. 7*, at 40. And accordingly, as Hamilton elsewhere remarked, "The importance of the Union, in a commercial light, is one of those points, about which there is least room to entertain a difference of opinion, and which has in fact commanded the most general assent of men, who have any acquaintance with the subject." *The Federalist No. 11*, at 65.

Such a union required both that the national government have authority to pass uniform laws governing interstate commerce, and that those laws supersede contrary laws enacted under the authority of the states. As Hamilton put it, "The government of the Union must be empowered to pass all laws, and to make all regulations … in respect to commerce." *The Federalist No. 23*, at 149. And that was one main reason the Framers determined that "[t]he character of such a governme[nt] ought … to be paramount to the state constitutions." James Madison, Notes of the Constitutional Convention (May 29, 1787), in 1 *The Records of the Federal Convention of 1787*, at 17-23 (Max Farrand ed. 1911). Thus, the Constitution's combination of the Commerce Clause and the Supremacy Clause created the framework for a truly national market, one that would substantially improve the new Nation's prosperity and, with that prosperity, its strength and standing in the world.

And that is why, when George Washington, then the President of the Constitutional Convention, transmitted the Constitution to the Continental Congress, he was able to tout as one of the three critical reasons for its adoption the fact that it vested the power of "regulating Commerce" in "the general Government of the Union." Letter from Federal Convention President George Washington to the President of Congress, Transmitting the Constitution (Sept. 17, 1787), *available at* goo.gl/MK14fU. But in so doing, he expressly recognized that the price of that arrangement would be States ceding a substantial portion of their sovereignty to the national government: "It is obviously impracticable in the federal Government Of these States to secure all Rights of independent Sovereignty to each and yet provide for the Interest and Safety of all—Individuals entering into Society must give up a Share of Liberty to preserve the Rest." But for Washington—and as confirmed by the subsequent ratification votes in the several States—the benefits of uniform commercial regulations were well worth the necessary sacrifice of the States'

"independent Sovereignty." It was considered a price worth paying for the benefits of an efficient, national market, one that would benefit businessmen, laborers, farmers, and consumers alike.

B. The Ordinance is field preempted by the Port and Waterways Safety Act.

The Ports and Waterways Safety Act ("PWSA"), 33 U.S.C. Ch. 25 & 46 U.S.C. Ch. 37, requires the Coast Guard to promulgate "uniform, national rules" for oil tankers. *Locke*, 529 U.S. at 109. Specifically, the Coast Guard must regulate "the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning" of oil tankers. 46 U.S.C. § 3703(a). If state and local governments attempt to regulate any of these areas, the PWSA field preempts those laws. *See Locke*, 529 U.S. at 111. "The Supremacy Clause dictates that the federal judgment that a vessel is safe to navigate United States waters prevail over the contrary state judgment." *Ray v. Atl. Richfield Co.*, 435 U.S. 151, 165 (1978).

Here, the Ordinance is directly aimed at the "bulk loading of crude oil onto any marine tank vessel." Ordinance §§ 27-786, 27-922(n), 27-930. This regulation falls squarely within the forbidden areas that are field-preempted by the PWSA. Specifically, the PWSA lists "the handling or stowage of cargo," "the manner of handling or stowage of cargo," and "the reduction or elimination of discharges … during cargo handling[] or other such activity" as areas that must be regulated exclusively by the Coast Guard. 46 U.S.C. § 3703(a). And the Coast Guard has in fact regulated in this area. *See, e.g.*, 33 C.F.R. Ch. I, Subch. O ("Pollution"). The PWSA thus prevents the City from "supplement[ing]" these federal laws, *Locke*, 529 U.S. at 114, even if the Ordinance does not "directly conflict" with them, *SPGGC*, 488 F.3d at 530. "Congress has left no room for state regulation of these matters." *Locke*, 529 U.S. at 111.

C. The Ordinance is expressly preempted by the Pipeline Safety Act.

The Pipeline Safety Act of 1994 ("PSA"), 49 U.S.C. §§ 60101 *et seq.*, recodifies the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquids Pipeline Safety Act of 1979. *See Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 877 n.14 (9th Cir. 2006). Like its predecessors, the PSA leaves interstate pipeline facilities to "exclusive Federal regulation and enforcement." 49 C.F.R. Pt. 195, App. A. The PSA contains the following express preemption provision: "A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c).

The Ordinance falls under this provision. By regulating the loading of crude oil onto tankers in the Portland Harbor, the Ordinance regulates "interstate pipeline facilities or interstate pipeline transportation." Those statutory terms are broad: they include any "equipment used or intended to be used in transporting [oil]" and "the storage of [oil] incidental to the movement of [oil] by pipeline." *Id.* § 60101(a)(5), (a)(22)(A)(i); *see also S. Union Co. v. Lynch*, 321 F. Supp. 2d 328, 341 (D.R.I. 2004) (concluding that the PSA covers facilities and activities that are "downstream" from pipelines); *Exxon Corp. v. U.S. Sec'y of Transp.*, 978 F. Supp. 946, 950 (E.D. Wash. 1997) (noting that "Congress intended 49 U.S.C. § 60101[(a)](22)(A) to be read fairly broadly" and holding that storage tanks fell within the statutory definition). The PSA thus preempts state and local attempts to regulate the "facilities, structures, or equipment" that are necessary to facilitate the "bulk loading of crude oil" from the pipeline to marine tank vessels, Ordinance § 27-786, as well as the loading itself.[4]

[4] Although 49 C.F.R. 195.1(b)(9)(ii) provides that promulgated federal safety regulations do "not apply to ... [t]ransportation of hazardous liquid ... [t]hrough facilities located on the grounds of a materials transportation terminal if the facilities are used exclusively to transfer hazardous liquid ... between a non-pipeline mode and a pipeline," this regulation does not purport to define or alter the statutory definitions in 49 U.S.C. § 60101(a) or the scope of the PSA's

The Ordinance also unquestionably imposes a "safety standard[]." The Ordinance emphasizes its desire to protect residents from the "harmful effects" of alleged discharges associated with the Pipeline. Doc. 1-1 at 5. And the ordinance specifically targets (and bans) activities and structures associated with the loading of oil from the pipeline onto a marine tank vessel. It is not aimed at ensuring aesthetic harmony or imposing setback or frontage requirements. *Cf. Tex. Midstream Gas Servs., LLC v. City of Grand Prairie*, No. 08-CV-1724, 2008 WL 5000038, at *11 (N.D. Tex. Nov. 25, 2008) (invalidating requirement of a security fence around compressor stations as a "safety standard," but upholding other zoning provisions unrelated to safety), *aff'd*, 608 F.3d 200 (5th Cir. 2010). The fact that the Ordinance purports in part to target air quality is immaterial, as the PSA's safety standards are specifically aimed at "risks to life and property," including "the need for ... protecting the environment." 49 U.S.C. § 60102(a)(1), (b)(1)(B)(ii). Environmental standards *are* safety standards for purposes of the PSA.

In any event, preemption turns on the Ordinance's *actual* purpose and effect. *See Gade*, 505 U.S. at 105-06. In this case, the actual purpose and effect of the Ordinance are to shut down the Portland-Montreal Pipeline based on the City's mistaken belief that the flow of Canadian oil-sands crude is unsafe. Supporters of the Ordinance believe that oil-sands crude is prone to leaking and cannot be safely transported through pipelines. *See Portland Pipeline Dries Up, Reviving Talk of Oil Sands Service*, Bangor Daily News (Mar. 9, 2016), goo.gl/6Mtb09. Of course, such claims have been widely discredited. *See* U.S. Dep't of State, *Final Environmental Impact Statement for*

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preemption provision. Moreover, "[t]he decision of the Department of Transportation to exempt certain pipelines from federal regulation does not necessarily mean that the state can step in and impose its own regulations. '[A] federal decision to forego regulation in a given area may imply an authoritative federal determination that the area is best left *unregulated*, and in that event would have as much pre-emptive force as a decision to regulate.'" *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354, 359 (8th Cir. 1993) (quoting *Ark. Elec. Coop. Corp. v. Ark. Public Service Comm'n*, 461 U.S. 375, 384 (1983)).

the Keystone XL Project, at 3.13-38 (August 26, 2011), *available at* goo.gl/Iq5Y0e (noting that "there is no evidence that the transportation of oil sands derived crude oil in Alberta has resulted in a higher corrosion related failure rate than occurs in the transportation of the variable-sourced crude oils in the U.S. system"). But that is not the point: the PSA expressly requires the *federal government*, not the City, to make that safety call. *See ANR Pipeline Co. v. Iowa State Commerce Comm'n*, 828 F.2d 465, 470 (8th Cir. 1987) ("Congress intended to preclude states from regulating in any manner whatsoever with respect to the safety of interstate transmission facilities."); *accord Kinley Corp.*, 999 F.2d at 359.

III. The Ordinance Will Have Adverse Impacts on Local Businesses and the Country's Relationship with a Foreign Ally.

The Ordinance not only violates federal law, but it also causes significant harm to local businesses that depend upon the viability of the pipeline and the commerce that it fosters. Most immediately, the Ordinance threatens the PPLC's contributions to the local oil products wholesale and distribution industry. According to an analysis prepared before the enactment of the Ordinance, that industry "serves as the anchor for the entire Port of Portland, accounting for 84% of the port's cargo vessels and 94% of its total cargo." *The Economic Impact on South Portland and the Greater Portland Region of the "Waterfront Protection Ordinance" Proposed in the City of South Portland, Maine* 2 (2013), *available at* goo.gl/TPKKNw [hereinafter *Economic Impact*].[5] The South Portland oil products storage and distribution system alone provides 85 jobs, spends nearly $38 million annually in the local economy, and maintains taxable assets of over $85 million.

[5] Although this analysis considered the impact of the somewhat broader proposed ordinance that the voters rejected (and which prompted the City's efforts to enact the challenged Ordinance), the report acknowledged PPLC's substantial share of the local industry, including its role as the industry's largest landowner in South Portland. *See id.* at 4.

Id. at 2. If the Ordinance is permitted to take effect and succeeds in blocking the economic viability of the Pipeline, this direct spending will be in immediate jeopardy.

The indirect effects of the Ordinance will be substantial as well. The $37.6 million that the oil products wholesale and distribution industry spends each year in the region creates many other jobs and boosts consumer spending. *Id.* at 5-7; *see also* Dick Ingalls, *"Clear Skies" Means Slow-Motion Dismantling of South Portland's Working Waterfront*, The Forecaster (Jul. 14, 2014), goo.gl/UxCDaW ("The terminals support untold numbers of other small businesses around the city, like barber shops, restaurants and grocery stores, tug boat operators, laborers, welders and pipefitters."). For every one job lost in the oil products wholesale and distribution industry, nearly four jobs are lost elsewhere. *See Economic Impact*, *supra*, at 6.

The Ordinance thus threatens hundreds, if not thousands, of jobs in Maine. *Id.* at 12. Consumers in Maine can also expect to see rising energy costs, as marine tankers are replaced by more expensive and less reliable ground transportation. *Id.* at 10-11. Indeed, the Maine Department of Economic and Community Development cited the Ordinance as the reason for its decision to revoke the City's "business-friendly" certification. *See* Darren Fishell, *South Portland Stripped of "Business Friendly" Designation*, Bangor Daily News (Apr. 17, 2015), goo.gl/Z9buZb.

As harmful as the Ordinance is to local interests, its damage spreads far beyond the borders of Maine. The State Department's involvement in the approval process underscores the international trade issues at stake. Indeed, the governments of the United States and Canada have both "recognized the substantial benefits that would ensue from broadened crude oil transfers and exchanges between these two historic trading partners and allies," including "the increased availability of reliable energy sources, economic efficiencies, and material enhancements to the energy security of both countries." Pres. Findings on U.S.-Canadian Crude Oil Transfers, 50 Fed.

Reg. 25,189, 25,189 (June 14, 1985). And a representative of Canada's government testified against the Ordinance, emphasizing the importance of the international trade relationship. Doc. 87 at 13-14. "The protests of America's trading partners are evidence of the great potential for disruption or embarrassment caused by" the Ordinance. *Nat'l Foreign Trade Council*, 181 F.3d at 54.

In sum, the Ordinance purposely seeks to interfere with a vital commercial relationship between the United States and one of its closest allies. This is why the framers of our Constitution were committed to protecting Congress's prerogative to regulate national commerce. Indeed, the Ordinance is precisely what James Madison warned of in *The Federalist No.* 42, when he observed that "the mild voice of reason, pleading the cause of an enlarged and permanent interest, is but too often drowned before public bodies as well as individuals, by the clamours of an impatient avidity for immediate and immoderate gain." *Id.* at 283. The Constitution requires this Court to enjoin its enforcement.

CONCLUSION

For the foregoing reasons, the Chamber respectfully asks this Court to grant the Plaintiffs' motion for summary judgment.

Respectfully submitted,

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Dated: November 23, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2016, a copy of the foregoing was electronically filed. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the court's system.

/s/ Patrick Strawbridge