SUPREME COURT OF MARYLAND

September Term, 2025

No. 11

MAYOR AND CITY COUNCIL OF BALTIMORE, *Appellant,*
v.
B.P. P.L.C., *et al.,* *Appellees.*

ANNE ARUNDEL COUNTY, MARYLAND, *Appellant,*
v.
B.P. P.L.C., *et al.,* *Appellees.*

CITY OF ANNAPOLIS, *Appellant,*
v.
B.P. P.L.C., *et al.,* *Appellees.*

CONSENT MOTION TO FILE *AMICUS* BRIEF IN SUPPORT OF APPELLEES

NOW COME proposed *amici curiae* Alabama and twenty-three (23) other States who join in its legal position in support of Appellees, by and through their undersigned counsel, and in accordance with Maryland Rule 8-511, hereby move for leave to file the *amicus* brief appended to this motion as Exhibit A. Each party has reciprocally consented to the filing of amicus briefs in this appeal and has waived service of hard copies. A form of Proposed Order is also provided.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above foregoing document was electronically filed with the Clerk of the Court using the Maryland Odyssey File and Serve system, which will electronically serve a copy to all counsel of record on July 15, 2025.

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EXHIBIT A

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On Appeal from the Circuit Court for Baltimore City (Videtta A. Brown, Judge)
On Appeal from the Circuit Court for Anne Arundel County (Steven Platt, Senior Judge)
Pursuant to a Writ of Certiorari to the Appellate Court of Maryland

BRIEF OF *AMICI CURIAE* ALABAMA AND 23 OTHER STATES IN SUPPORT OF APPELLEES

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JULY 15, 2025

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INTEREST OF *AMICI* STATES

The States of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wyoming respectfully submit this brief as *amici curiae* in support of Appellees.

State and local governments cannot regulate the global atmosphere. Because every State is equal, each with its own interest in our shared environment and shared natural resources, no one State can "enforce its own policy" on the others. *Kansas v. Colorado*, 206 U.S. 46, 95 (1907). Otherwise, the "result would be a balkanization of clean air regulations and a confused patchwork of standards, to the detriment of industry and the environment alike." *North Carolina ex rel. Cooper v. TVA*, 615 F.3d 291, 296 (4th Cir. 2010).

Tort actions designed to impose liability for global emissions threaten the sovereignty of *Amici* States and the wellbeing of their citizens. *Amici* States have their own policy goals, which out-of-state localities cannot override. Yet these suits deem emissions *anywhere*, including by and within *Amici* States, to be a nuisance or a trespass, which must be "punish[ed] … and deter[red]." *E.g.*, E.168 (Baltimore). To that end, the plaintiffs demand "the world's largest oil-and-gas companies" cease or abate "the worldwide production, promotion, and sale" of their products. OB.1, 6. They seek billions of dollars in damages and disgorgement. *Amici* States do not share these aims, which would imperil access to affordable energy everywhere, nor their sweeping theory of liability, which could inculpate "billions of third parties." OB.6. These lawsuits illustrate precisely why state law cannot supply the decision rule for liability premised on interstate gas emissions.

SUMMARY OF ARGUMENT

Maryland law cannot govern claims arising from the alleged "effects of out-of-state and international greenhouse gas emissions on the global climate." OB.6. The same "demands for applying federal law" to a dispute over interstate waters apply equally to this dispute over interstate air. *See Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972) ("*Milwaukee I*"). As a matter of constitutional structure and precedent, state law cannot govern a controversy that "touches basic interests of federalism" or one "where there is an overriding federal interest in the need for a uniform rule of decision." *Id.* Under longstanding doctrine, a state-law claim that resembles "the forcible abatement of outside nuisances" is constitutionally "impossible" for several reasons. *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907).

I. The assertion that one State, applying *its* law in *its* courts, can settle "environmental rights … outside its domain" is inimical to federalism. *Milwaukee I*, 406 U.S. at 108 n.9. Every State has a right to make policy choices within its borders, but no State can impose its choices on other States. *See, e.g.*, *BMW v. Gore*, 517 U.S. 559, 572 (1996).

II. Disputes of an interstate character must be resolved by "interstate common law" or other principles of general law—never state law. *Kansas*, 206 U.S. at 97. Applying Maryland law to determine liability for interstate gas emissions would not only be arbitrary and unfair; it would violate this "cardinal rule" of constitutional structure. *Id.*

III. It makes no difference whether the Clean Air Act has "displaced" federal common law (OB.19-27) because state law cannot constitutionally govern interstate emissions cases regardless of what federal remedies may be available.

ARGUMENT

By declaring independence, the Colonies laid claim "to all the rights and powers of sovereign states." *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 237-38 (2019) (citing *McIlvaine v. Coxe's Lessee*, 8 U.S. 209, 212 (1808)). "A sovereign decides by his own will, which is the supreme law within his own boundary." *Rhode Island v. Massachusetts*, 37 U.S. 657, 737 (1838). When sovereign wills conflict, they may settle their differences by treaty or war. For example, if a state permits a "nuisance" "upon a navigable river like the Danube, [it] would amount to a *casus belli* for a state lower down, unless removed." *Missouri v. Illinois*, 200 U.S. 496, 520-21 (1906).

But the Colonies joined the Union, and from the origins of our federal system flow several basic tenets of constitutional law. While the Constitution "did not abolish the sovereign powers of the States," it "limits [their] sovereignty in several ways." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 470 (2018).

Unlike "absolutely independent nations," which may resort to force, no State "can impose its own legislation" or "enforce its own policy upon the other[s]." *Kansas*, 206 U.S. at 95, 98. "[H]appily for our domestic harmony, the power of aggressive operation against each other is taken away." *Burton's Lessee v. Williams*, 16 U.S. 529, 538 (1818). Every State agreed to "stand[] on the same level with all the rest," *Kansas*, 206 U.S. at 97, forming "a union of states, equal in power, dignity and authority." *Coyle v. Smith*, 221 U.S. 559, 567 (1911).

Relinquishing the powers of diplomacy and war did not render the States defenseless. What would have been political fights among sovereigns became judicial questions

with answers in federal law. *Rhode Island*, 37 U.S. at 737-38, 743. By ratifying the Supremacy Clause, the States "surrendered to congress, and its appointed Court, the right and power of settling their mutual controversies." *Id.* at 737; *see Kansas*, 206 U.S. at 95; *Missouri*, 200 U.S. at 518-20; *Missouri v. Illinois*, 180 U.S. 208, 241 (1901); *see also Gibbons v. Ogden*, 22 U.S. 1, 211 (1824). The Constitution thus provided a structural solution for "bickerings and animosities … that could not be foreseen." The Federalist No. 80, at 537 (Cooke ed. 1961). "Whatever practices … tend[] to disturb the harmony between the States are proper objects of federal superintendence and control." *Id.*

In areas ripe for interstate conflict, the Court has maintained State equality and harmony by declining to apply any one State's law. *See Kansas*, 206 U.S. at 95; *Missouri*, 200 U.S. at 520; *see also, e.g.*, *New Jersey v. New York*, 283 U.S. 336, 342 (1931); *Connecticut v. Massachusetts*, 282 U.S. 660, 670-71 (1931). Instead, only federal law can govern matters that implicate interstate relations. The doctrine extends even to cases involving private parties like this one. *See, e.g., Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938); *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907); *Lessee of Marlatt v. Silk*, 36 U.S. 1, 22–23 (1837).

The U.S. Supreme Court had these principles in mind when it decided *Milwaukee I*, which was also an interstate nuisance case. Illinois alleged that Milwaukee had been polluting Lake Michigan, an interstate body of water. Invoking the logic of federalism, the Court held *unanimously* that Illinois could not force Milwaukee to abate its activity, but neither could Illinois be asked "to submit to whatever might be done." 406 U.S. at 104. The "nature of the problem" created an impasse that only a neutral arbiter, *i.e.*, federal law,

could resolve. *Id.* at 103 n.5. Congress can legislate, or federal courts can apply common law. Either way, state law cannot govern a controversy that "touches basic interests of federalism" or that needs "a uniform rule." *Id.* at 105 n.6. "Certainly," the pollution of Lake Michigan was such a controversy. *Id.*

Like *Milwaukee I*, the matter in controversy here cannot be decided by state law. Appellants seek to enact a climate policy for the world—one that would interfere with the sovereign power of every other State to regulate energy within its borders. "This is, in effect, an interstate dispute." *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 718 (8th Cir. 2023) (Stras, J., concurring) ("*API*"). And Maryland law cannot resolve an interstate dispute without breaking fundamental principles of federalism as articulated by the U.S. Supreme Court. This Court should affirm the orders dismissing all three cases.

I. State law can regulate emissions within state borders but not beyond them.

A. *Amici* States embrace the axiom that "each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003). Every State has "real and substantial interests" in the environment, *New Jersey*, 283 U.S. at 342, including "all the earth and air within its domain," *Tenn. Copper Co.*, 206 U.S. at 237. But by "the law of nature these things are common to mankind." *Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 718 (Cal. 1983) (quoting the Code of Justinian). It is thus no surprise that a State or local government may have cause to complain of "outside nuisances" and other "injuries analogous to torts." *Tenn. Copper Co.*, 206 U.S. at 237.

But the Constitution removed the "forcible abatement of outside nuisances" from a State's arsenal. *Id.*; *see also Kansas*, 185 U.S. at 140-41. If a State enacted a statute imposing massive liquidated damages for gasoline sold in a neighboring State, no one would doubt the violation of the neighbor's sovereignty. *See, e.g.*, *Louisiana v. Texas*, 176 U.S. 1, 27-28 (1900) (Brown, J., concurring). The attempt to construe state torts to have the same effect is no different, for "State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute." *BMW*, 517 U.S. at 573 n.17. Styling a State's effort "to impose its own policy choice" as a tort action does not shield it from the basic "principles of state sovereignty and comity." *Id.* at 572. Those principles would be "meaningless" if a State could avoid them by doing indirectly what it could not do directly. *See Kurns v. RR. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012). Thus, whether Maryland law regulates emissions through the "power to give damages rather than to enjoin," the result is still "a potent method of governing conduct and controlling policy." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959); *see also Cipollone v. Liggett Grp.*, 505 U.S. 504, 548 (1992) (Scalia, J., concurring).

Likewise, Appellants cannot conceal the purpose and effect of their suits to regulate the atmosphere by calling them consumer protection against deceptive marketing. OB.16. The heart of their complaints is the allegation that the production, sale, and use of traditional energy has fueled a climate crisis, costing Appellants millions or billions of dollars.[1]

[1] *See, e.g.*, E.1019-20, 1023 (Annapolis); E.1198-99, 1202-03 (Anne Arundel); E.41-42, 46-47 (Baltimore).

Appellants demand that energy companies "bear the costs" of the alleged crisis.[2] But how could they be ordered to bear the costs in a way that does not "limit pollution [*i.e.*, emissions] from any source"? OB.25. It is "common sense and basic economics" that "increas[ing] [the] cost of conduct will make that conduct less common." *City of New York v. Chevron Corp.*, 993 F.3d 81, 93 (2d Cir. 2021) (cleaned up). Accordingly, the Baltimore circuit court was exactly right that such claims "if successful would operate as a *de facto* regulation on greenhouse gas emissions." E.19. Try as they might, Appellants cannot "hid[e] the obvious"; they seek "a global remedy for a global issue." *API*, 63 F.4th at 719 (Stras, J., concurring). That is what these suits are "entirely about." E.11.

In truth and in substance, these suits have nothing to do with advertisements in Annapolis, Anne Arundel County, or Baltimore. Perfect compliance with Maryland's consumer laws would not have stopped the "storms" and "heatwaves,"[3] nor would any remedy in those three Maryland jurisdictions abate the alleged injuries. And because "it is not possible to determine the source of any individual molecule of CO2," E.1359 (Anne Arundel), there is no way to assign liability to anyone for any particular emissions. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 422 (2011) ("*AEP*"). Thus, the only way for energy companies to avoid liability altogether is to eliminate the production, sale, and use of their products *everywhere*.

But forcing global energy companies to stop their activities everywhere, to invent and sell "better technologies" around the world, and to usher in a transition to a "lower

[2] E.1020 (Annapolis); E.1199 (Anne Arundel); E.45 (Baltimore).
[3] E.1018-19 (Annapolis); E.1196-98 (Anne Arundel); *see also* E.42 (Baltimore).

carbon economy" is not among a State's constitutional powers.[4] *Contra* OB.49-50. To be sure, Maryland law can reach "persons and property within the limits of its own territory." *Hoyt v. Sprague*, 103 U.S. 613, 630 (1880); *see also Bonaparte v. Appeal Tax Ct. of Baltimore*, 104 U.S. 592, 594 (1881). But virtually all of the conduct targeted by these global lawsuits occurred outside of Maryland,[5] well beyond the proper sphere of States. *See BMW*, 517 U.S. at 573 n.20; *Healy v. Beer Inst.*, 491 U.S. 324, 335-36 (1989); *Lane County v. Oregon*, 74 U.S. 71, 76 (1868); *City of New York*, 993 F.3d at 92. These lawsuits do not resemble "well recognized" torts (OB.35) in any way.

B. Seizing the power to regulate wholly extraterritorial conduct also diminishes the police power of every other State "to promote the general welfare, or to guard the public health, the public morals, or the public safety" within their borders. *Lochner v. New York*, 198 U.S. 45, 67 (1905) (Harlan, J., dissenting). Through regulation, litigation, and other means, States have long exercised their powers to reduce pollution. *See, e.g.*, *Nw. Laundry v. City of Des Moines*, 239 U.S. 486, 490-92 (1916) (expressing "no doubt" that "emission of smoke [was] within the regulatory power of the state"); *Boomer v. Atl. Cement Co.*, 257 N.E.2d 870 (1970). As a general matter, law "designed to free from pollution the very air that people breathe clearly falls within … the police power." *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442 (1960).

Not only do Appellants encroach on the police powers of every other State; their novel theory would also upset the federal government's careful balancing. Federal

[4] E.150 (Baltimore); E.1167 (Annapolis); E.1350 (Anne Arundel).
[5] E.71-72 (Baltimore); E.1060 (Annapolis); E.1239-40 (Anne Arundel).

legislation has left "the primary responsibility" to States to prevent and control "air pollution … at its source." 42 U.S.C. §7401(a)(3). The statutory scheme exemplifies cooperative federalism, permitting States to implement their own regulations consistent with a federal baseline. *See, e.g.*, *id*. §7410(a)(1) (providing that States adopt plans to enforce federal standards "within such State").

As a result, our federal system allows States to pursue divergent policies with respect to energy production and environmental protection. *Compare, e.g.*, Utah Code Ann. §78B-4-515 (West) (limiting liability for "greenhouse gas emissions"); Tex. Water Code Ann. §7.257 (West) (providing affirmative defenses to torts allegedly "arising from greenhouse gas emissions") *with* Cal. Gov't Code §7513.75(a)(3) (West) (noting "the state's broad[] efforts to decarbonize"); Cal. Pub. Res. Code §25000.5(a) (West) (declaring "overdependence on … petroleum based fuels" to be "a threat"). Such variety reflects the genius of American federalism, which allows "different communities" to live by "different local standards." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989); *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2673 (2015); *Oregon v. Ice*, 555 U.S. 160, 171 (2009). Within its own domain, a State may "serve as a laboratory[] and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

But our federalism does not work if Appellants can wield state tort law to thwart the policies of other States. Alabama, for example, highly values the production and use of traditional energy. It is Alabama's policy "that the extraction of coal provides a major present and future source of energy and is an essential and necessary activity which contributes

to the economic and material well-being of the state." Ala. Code §9-1-6(a); *see also id.* §9-17-1, *et seq.* (governing the development of oil and gas). While Alabama has also enacted laws to protect air quality, prevent water pollution, and conserve wildlife, *see, e.g.*, *id.* §§6-5-127, 9-2-2, 22-23-47, 22-28-3, its views on how to achieve those ends diverge sharply from those of Appellants. In light of such irreconcilable differences, the Court cannot adopt a rule that every State but Maryland is "bound to yield its own views" on the issue of interstate emissions. *Kansas*, 206 U.S. at 97.

II. Claims based on interstate emissions are interstate controversies that demand a uniform federal rule of decision.

A. Appellants violate the "basic interests of federalism" by extending state law to matters that must be governed by federal law. *Milwaukee I*, 406 U.S. at 105 n.6. Because States are equal, no State's law can supersede that of another. *See supra* pp. 3-5. Instead, when sovereign wills collide in interstate controversies, "the equal rights of both" are honored by applying higher order principles: "what may … be called interstate common law." *Kansas*, 205 U.S. at 98; *see also API*, 63 F.4th at 718 (Stras, J., concurring) ("The rule of decision … has *always* been … what we now know as the federal common law.").

The U.S. Supreme Court has repeatedly identified interstate common law as an example of the "special" kind that survived *Erie*. *See, e.g.*, *AEP*, 564 U.S. at 421; *Milwaukee I*, 406 U.S. at 105-06; *Hinderlider*, 304 U.S. at 110. Often, the rules of specialized common law "are, in substance, just the old general-law doctrines in disguise." Stephen E. Sachs, *Finding Law*, 107 Cal. L. Rev. 527, 558 (2019). A dispute over the boundary between two States may be the paradigm case for applying interstate common law. But other

cases "implicating the conflicting rights of States" also involve "especial federal concerns to which federal common law applies." *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 & n.13 (1981).

Cases involving interstate emissions—*i.e.*, the pollution of air and water within one State from sources in another State—are interstate controversies that implicate the conflicting rights of States. Accordingly, the federal judiciary has understood for well "over a century" the need for federal resolution of such disputes. *City of New York*, 993 F.3d at 91 (collecting cases). Where no federal statute governs, the U.S. Supreme Court has identified and applied federal common law.

For example, in *Missouri v. Illinois*, Missouri sued to enjoin the dumping of sewage into an Illinois river, which, the State alleged, ultimately deposited downstream into Missouri riverbeds and poisoned Missouri water. 200 U.S. at 517. Applying principles "known to the older common law," not state law, the Court found that Missouri's claim failed for want of injury and causation. *Id*. at 522.

Interstate air pollution is no different. When Georgia sought to enjoin a Tennessee company from "discharging noxious gas" over state lines, Georgia law did not govern. *Tenn. Copper Co.*, 206 U.S. at 236. Rather, the Court identified common-law principles. As to the remedy, the Court thought a State could be "entitled to specific relief" rather than "give up quasi-sovereign rights for pay." *Id.* at 237-38. And the Court rejected a laches defense. *Id.* at 239. None of the analysis depended on state law but instead a federal equity jurisprudence for interstate emissions cases.

More recently in *Milwaukee I*, the U.S. Supreme Court recognized a general rule: a State's claims to protect its "ecological rights" against "improper impairment … from sources outside the State[]" have their "basis and standard in federal common law." 406 U.S. at 100. The dispositive fact was not that Lake Michigan is a body of water (as opposed to air or some other feature of the shared environment) but that it is "bounded … by four States," one of which was polluting. *Id.* at 104 n.6. When "deal[ing] with air and water in their … interstate aspects," the "basic interests of federalism" demand the application of a neutral law: federal law. *Id.* at 103 n.5, 104 n.6; *see also Iowa v. Illinois*, 147 U.S. 1, 7-8, 13 (1893) (rejecting the views of dueling state courts in favor of "equality" in river rights); *Connecticut*, 282 U.S. at 669-70 (rejecting "municipal law"); *Virginia v. Tennessee*, 148 U.S. 503, 523-24 (1893) (applying public law, international law, and moral law). Alleging liability for emissions from sources outside Maryland, the suits at hand represent interstate controversies that cannot be resolved under state law and must be dismissed.

B. Appellants also undermine federalism by seeking to extend state law where there is a strong "need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at 105 n.6. Specialized federal common law "remain[s] unimpaired for dealing … with essentially federal matters," *United States v. Standard Oil Co.*, 332 U.S. 301, 307 (1947), *i.e.*, those implicating "uniquely federal interests … committed by the Constitution and laws of the United States to federal control," *Boyle v. United States*, 487 U.S. 500, 504 (1988) (cleaned up). Federal control can be necessary to prevent "identical transactions" from being "subject to the vagaries of the laws of several states" at once. *Cf. Clearfield Tr. Co. v. United States*, 318 U.S. 363, 367 (1943).

The problem of interstate emissions requires a uniform solution. Only federal law, "not the varying common law of individual states," can serve as a "basis for dealing in uniform standard with the environmental rights of [each] State." *Milwaukee I*, 406 U.S. at 108 n.9. The rationale of *Milwaukee I* applies *a fortiori* to claims based on *global* emissions, which implicate *every* State, not just those with claims to a specific river or lake.

Appellants envision and justify a world in which energy companies would be subjected to every State's regulatory and enforcement regime simultaneously, creating unpredictable and irreconcilable duties. *See Wisc. Dept. of Ind. v. Gould Inc.*, 475 U.S. 282, 286 (1986) ("Conflict is imminent whenever two separate remedies … bear on the same activity." (cleaned up)). State law would inevitably create a "balkanization of clean air regulations and a confused patchwork of standards, to the detriment of industry and the environment alike." *North Carolina ex rel. Cooper*, 615 F.3d at 296; *see also City of New York*, 993 F.3d at 91. If every State can regulate the same conduct, energy companies will face tremendous "vagueness" and "uncertainty," and States will risk "chaotic confrontation" with each other. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987).

Unfortunately, such chaos is already unfolding. Dozens of States and localities have brought enforcement actions like these under the aegis of their own state laws.[6] Their

[6] *See, e.g.*, *Hawaii v. BP P.L.C.*, 1CCV-25-717 (Haw. Cir. Ct. filed May 1, 2025); *Maine v. BP P.L.C.*, PORSC-CV-24-442 (Me. Super. Ct. filed Nov. 26, 2024); *Bucks County v. BP P.L.C.*, 2024-01836 (Pa. Ct. Com. Pl. filed Mar. 25, 2024); *City of Chicago v. BP P.L.C.*, 2024CH01024 (Ill. Cir. Ct. filed Feb. 20, 2024); *Metro v. Exxon Mobil Corp.*, 23-cv-51752 (D. Or. filed Jan. 3, 2024); *District of Columbia v. Exxon Mobil Corp.*, 89 F.4th 114 (D.C. Cir. 2023); *California ex rel. Bonta v. Exxon Mobil Corp.*, CGC23609134 (S.F. Super. Ct. filed Sept. 15, 2023); *City of Charleston v. Brabham Oil Co.*, 23-1802 (4th Cir.); *County of*

efforts will continue to breed confusion while threatening ruinous liability for the traditional energy industry. As cases progress around the country, it becomes more and more likely that one state court, interpreting one State's law, could "scuttle the nation's carefully created system for accommodating the need for energy production and the need for clean air." *North Carolina*, 615 F.3d at 296; *see also AEP*, 564 U.S. at 427 ("[O]ur Nation's energy needs and the possibility of economic disruption must weigh in the balance."). Such disaster may be avoided by declining to apply state law to cases about interstate emissions.

III. Displacement of federal common law does not render state law competent to govern interstate emissions.

Milwaukee I remains binding precedent for the proposition that state law cannot supply a decisional rule for interstate conflicts over air and water. Yet Appellants resist its application on the ground that the federal common law governing interstate emissions "*no longer exists*" following enactment of the Clean Air Act and Clean Water Act. OB.21; *accord, e.g.*, *Rhode Island*, 35 F.4th at 55; *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 206 (4th Cir. 2022). On their view, displacement of federal common law

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Multnomah v. Exxon Mobil Corp., 23-CV25164 (Or. Cir. Ct. filed June 22, 2023); *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023); *Minnesota v. API*, 63 F.4th 703; *Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44 (1st Cir. 2022); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022) (consolidated with *Delaware ex rel. Jennings v. B.P. Am., Inc.*, 22-1096 (3rd Cir. 2022)); *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101 (9th Cir. 2022) (consolidated with *County of Maui v. Chevron U.S.A. Inc.*, 39 F.4th 1101 (9th Cir. 2022)); *County of San Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022); *New Jersey v. Exxon Mobil*, 22-cv-06733 (D.N.J. 2022); *Municipalities of Puerto Rico v. Exxon Mobil*, 3:22-cv-01550 (D.P.R. 2022); *City of Oakland v. BP P.L.C.*, 969 F.3d 895 (9th Cir. 2020); *Vermont v. Exxon Mobil*, 2:221-cv-00260 (D. Vt. 2021); *City of New York*, 993 F.3d 81; *King County v. BP P.L.C.*, C18-758-RSL (W.D. Wash. 2018).

allows "state law … [to] snap back into action unless specifically preempted by statute." *City of New York*, 993 F.3d at 98. The "snap back" theory is badly mistaken.

First, Appellants misapprehend the function of federal common law, which "exists … because state law cannot be used." *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) ("*Milwaukee II*"). In the "enclaves" of federal common law, States are not "free to develop their own doctrines." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426 (1964). A federal statute *does* displace federal common law when it "speaks directly to the question at issue," OB.23 (quoting *AEP*, 564 U.S. at 424) but *only because* a different federal rule governs. Whatever form federal law takes, it remains equally "inappropriate for state law to control." *Texas Indus.*, 451 U.S. at 641; *see also AEP*, 564 U.S. at 422. As the Second Circuit explained, "state law does not suddenly become competent to address issues that demand a unified federal standard simply because Congress … displace[d] a federal court-made standard with a legislative one." *City of New York*, 993 F.3d at 98.

The U.S. Supreme Court addressed the same issue in *Standard Oil*, a damages action arising from the collision of a truck with a U.S. Army soldier. 332 U.S. at 302. The truck owner's liability could not "be determined by state law" because the matter "vitally affect[ed] [federal] interests, powers, and relations … as to require uniform national disposition rather than diversified state rulings." *Id.* at 305, 307. "The only question," then, was "which organ of the Government is to make the determination that liability exists." *Id.* at 316. Finding that decision best left "for the Congress, not for the courts," *id.* at 317, the Court effectively barred a remedy. It did not then *revisit* its choice-of-law holding in the absence of federal common law.

Similarly, a claim traditionally governed by federal common law remains so, notwithstanding whether that "claim may fail at a later stage." *Oneida Indian Nation of N.Y. v. Oneida County*, 414 U.S. 661, 675 (1974); *cf. Ouellette*, 479 U.S. at 499-500. Any "displacement of a federal common law right of action" is a "displacement of remedies." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 857 (9th Cir. 2012). While Appellants insist that "[n]o federal common law of air pollution—interstate or international—survives the CAA," OB.24, whether an earlier *remedy* has been displaced has no bearing on centuries of doctrine that forbids the application of state law. The Clean Air Act did not impliedly overrule every interstate pollution case.

Second, state law would be especially inappropriate to replace federal common law that was fashioned out of constitutional necessity. The interstate law governing emissions was developed because "the basic scheme of the Constitution so demands." *AEP*, 564 U.S. at 421. "The very reasons the Court gave for resorting to federal common law in *Milwaukee I* are the same reasons why … federal law must govern" even after any displacement. *Illinois v. City of Milwaukee*, 731 F.2d 403, 410-11 (7th Cir. 1984) ("*Milwaukee III*"). In an area ripe for interstate conflict, applying one State's law would derogate the sovereignty of another; it would treat the States unequally. *Kansas*, 206 U.S. at 95. Appellants urge a *constitutional* wrong that a federal statute like the Clean Air Act has no power to permit.

Likewise, if "uniquely federal" interests demand "uniform federal standards," state law can never be conclusive. *Milwaukee III*, 731 F.2d at 410. "[T]he state claiming injury cannot apply its own state law to out-of-state discharges." *Id.* In *Milwaukee III*, Illinois had squarely argued that if federal common law were "dissipated" by statute, then "Illinois law

must again control," *id.* at 406, but the Seventh Circuit rightly concluded that "the logic of *Milwaukee I*" meant state law could *never* apply to interstate pollution, *id.* at 411. Whether by common law or statute, "federal law must govern." *Id.*

The interests identified in the *Milwaukee* cases apply even more strongly here. As explained in *AEP*, trial courts "issuing ad hoc, case-by-case injunctions" are not well "suited to serve as primary regulator of greenhouse gas emissions." 564 U.S. at 428. If the Clean Air Act was meant to be a better and more uniform solution, it would make no sense for state law to "snap back" and recreate the problem that *better* federal law tried to solve.

Third, Appellants misread the U.S. Supreme Court's decision in *AEP*. True, the Court left open the possibility of certain state-law claims, 564 U.S. at 429, but not the claims here. The Court remarked in *dicta* that after the Clean Water Act, plaintiffs could still bring a "nuisance claim pursuant to the law of the *source* State." *Id.* (quoting *Ouelette*, 479 U.S. at 489). That fact does not help Appellants, who bring claims under Maryland law, not the law of any source State. *See Ouelette*, 479 U.S. at 495. The type of claim *AEP* left open (intrastate) was never governed by federal common law in the first place. The type of claim here (interstate) was historically governed by federal interstate common law, precluding state law.

In fact, *AEP* reaffirmed that "suits brought by one State to abate pollution emanating from another State" are "meet for federal law governance." 564 U.S. at 421-22. In such suits, "borrowing the law of a particular State would be inappropriate." *Id.* Appellants largely ignore these lines in *AEP*, *see* OB.22-23, as well as the Supreme Court's doubt that "a State may sue to abate any and all manner of [interstate] pollution," 564 U.S. at 421-22.

If federal law might not provide a cause of action for unbounded claims of global warming, *id.* at 422-23, the *AEP* Court surely did not invite state law to fill the void.

CONCLUSION

The Court should affirm the judgments of the Circuit Court for Baltimore City and the Circuit Court for Anne Arundel County.

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 5,195 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I certify that, on this 15th day of July 2025, the Brief of *Amici Curiae* Alabama and 23 Other States in the captioned case was filed electronically and served electronically by the MDEC system on all persons entitled to service.

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