No. ___, Original

Supreme Court of the United States

STATE OF ALABAMA, STATE OF ALASKA,
STATE OF FLORIDA, STATE OF GEORGIA,
STATE OF IDAHO, STATE OF IOWA, STATE OF KANSAS,
STATE OF MISSISSIPPI, STATE OF MISSOURI,
STATE OF MONTANA, STATE OF NEBRASKA,
STATE OF NEW HAMPSHIRE, STATE OF NORTH DAKOTA,
STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA,
STATE OF SOUTH DAKOTA, STATE OF UTAH,
STATE OF WEST VIRGINIA, AND STATE OF WYOMING,
Plaintiffs,

v.

STATE OF CALIFORNIA, STATE OF CONNECTICUT,
STATE OF MINNESOTA, STATE OF NEW JERSEY, AND
STATE OF RHODE ISLAND

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The States of Alabama, Alaska, Florida, Georgia, Idaho, Iowa, Kansas, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, West Virgina, and Wyoming respectfully move this Court for leave to file the accompanying Bill of Complaint. In support, Plaintiffs assert that their claims arise under the United States Constitution, 28 U.S.C. §1251(a), and the equitable powers of this Court. Their claims are serious and dignified, and they seek relief that no alternative forum can adequately provide. For these and other reasons more fully stated in the accompanying brief, the Court should grant the Motion.

Respectfully submitted,

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BILL OF COMPLAINT

The States of Alabama, Alaska, Florida, Georgia, Idaho, Iowa, Kansas, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, West Virgina, and Wyoming bring this action against the States of California, Connecticut, Minnesota, New Jersey, and Rhode Island, and for their cause of action state the following:

NATURE OF THE ACTION

1. Defendant States assert the power to dictate the future of the American energy industry. They hope to do so not by influencing federal legislation or by

petitioning federal agencies, but by imposing ruinous liability and coercive remedies on energy companies through state tort actions governed by state law in state court. *See California ex rel. Bonta v. Exxon Mobil Corp.*, No. CGC-23-609134 (S.F. Super. Ct. filed Sept. 15, 2023); *Connecticut v. Exxon Mobil Corp.*, No. HHD-CV-20-6132568-S, (Conn. Super. Ct. filed Sept. 14, 2020); *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct. filed June 24, 2020); *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct. filed Oct. 18, 2022); *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. filed July 2, 2018).

2. In essence, Defendant States want a global carbon tax on the traditional energy industry. Citing fears of a climate catastrophe, they seek massive penalties, disgorgement, and injunctive relief against energy producers based on out-of-state conduct with out-of-state effects. On their view, a small gas station in rural Alabama could owe damages to the people of Minnesota simply for selling a gallon of gas. If Defendant States are right about the substance and reach of state law, their actions imperil access to affordable energy everywhere and inculpate every State and indeed every person on the planet. Consequently, Defendant States threaten not only our system of federalism and equal sovereignty among States, but our basic way of life.

3. In the past when States have used state law to dictate interstate energy policy, other States have sued and this Court has acted. When "West Virginia, then the leading producer of natural gas, required gas producers in the State to meet the needs of all local customers before shipping any gas interstate," this

"Court entertained a suit brought by" Ohio and Pennsylvania against West Virginia. *Maryland v. Louisiana*, 451 U.S. 725, 738 (1981) (discussing *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923)). And in 1981, this Court considered a "functionally indistinguishable" challenge brought by Maryland and other States against Louisiana. *Id.* Louisiana's taxation scheme for natural gas threatened the "health, comfort and welfare" of "private consumers in each" plaintiff State through "the threatened withdrawal of the gas from the interstate stream"—"a matter of grave public concern." *Id.* (quoting *Pennsylvania*, 292 U.S. at 592). The cases raised "serious and important concerns of federalism fully in accord with the purposes and reach of [the Court's] original jurisdiction." *Id.* at 744.

4. The Court's intervention was warranted then and is warranted now because Defendant States are not independent nations with unrestrained sovereignty to do as they please. In our federal system, no State "can legislate for, or impose its own policy upon the other." *Kansas v. Colorado*, 206 U.S. 46, 95 (1907); *see also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571-73 (1996). Yet Defendants seek to set emissions policy well beyond their borders—punishing conduct that other States find "essential and necessary … to the economic and material well-being" of their citizens. *E.g.*, Ala. Code §9-1-6(a).

5. When controversies arise among sovereigns, their options are diplomacy or war. *Missouri v. Illinois*, 180 U.S. 208, 241 (1901). The Constitution changed that. *See, e.g.*, U.S. Const. art. I §10; *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 245 (2019). When controversies arise among the States of our

Union, their options are to seek a federal resolution from Congress or from this Court. U.S. Const. art. III, §2; 28 U.S.C. §1251(a); *Kansas v. Colorado*, 185 U.S. 125, 141-42 (1902); *Rhode Island v. Massachusetts*, 37 U.S. 657, 737-38 (1838). By refusing these federal law paths, taking matters into their own hands, and proceeding under their own laws, Defendant States have greatly "disturb[ed] the harmony between the States." The Federalist No. 80 (Hamilton). Accordingly, many States have urged the Court to review the basis for these suits and rule that the subject matter at issue—alleged interstate air pollution—is a "proper object[] of federal superintendence and control," *id. See, e.g.*, Br. of Ala. & 19 Other States as *Amici Curiae*, Nos. 23-947 & 23-952 (U.S. filed Apr. 1, 2024).

6. Under this Court's precedents, the actions of Defendant States are unconstitutional. "[T]he basic scheme of the Constitution … demands" the application of federal law to matters of interstate air pollution. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011) ("*AEP*"). It cannot be otherwise, for every State has a stake in the Nation's resources and the natural world. And any State's actions to alter the composition of shared resources necessarily affects the other States. The only neutral authority that can fairly govern such matters is federal law.

7. In *Illinois v. City of Milwaukee*, this Court recognized that a dispute over interstate waters "demands" federal resolution. 406 U.S. 91, 105 & n.6 (1972) ("*Milwaukee I*"). Consistent with our constitutional structure and centuries of precedent, the Court explained that federal law must govern "where there is an overriding federal interest in the need for a

uniform rule of decision or where the controversy touches basic interests of federalism." *Id.* at 105 n.6.

8. The Court's rationale in *Milwaukee I* applies *a fortiori* to disputes over interstate air. Actions seeking abatement and damages for an alleged "global climate crisis" caused by interstate emissions must be governed by federal law.[1] There is one global atmosphere, and there is no way to trace a particular molecule of gas in the atmosphere to its source or pinpoint its local effects. N.J. Complaint at 163. If each State had "independent and plenary regulatory authority" over the same emissions, the result would be "chao[s]," including "confrontation between sovereign states," "impossible to predict [] standard[s]," and a wholly "irrational system of regulation." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987). Instead, this Court has long applied federal law to controversies involving interstate emissions. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases).

9. Defendant States are nevertheless proceeding to regulate interstate gas emissions under their state laws and in their state courts. Through artful pleading, they have avoided removal to federal court. *See,*

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[1] *E.g.,* Complaint at 2-3, 193-94, *Platkin v. Exxon Mobil Corporation*, No. MER-L-001797-22 (N.J. Super. Ct.) (N.J. Super. Ct. Oct. 18, 2022) ("N.J. Complaint") https://climatecasechart.com/wp-content/uploads/case-documents/2022/20221018_docket-MER-L-001797-22_complaint.pdf; Notice of Entry of Order Granting Petition for Coordination, Ex. A. to Ex. 1, *California v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. Feb. 7, 2024), https://perma.cc/T77R-L78K ("If ever there were litigations that could be described as truly global in scope, they are these. … [T]he interests potentially affected by the issues in these cases apply equally well to the populations of … any other county, state, or nation on the face of the Earth. These are not lawsuits with a local focus or local stakes.").

e.g., *Minnesota v. Am. Petroleum Inst.,* 63 F.4th 703, 719 (8th Cir. 2023) (Stras, J., concurring). Each day carries the threat of sweeping injunctive relief or a catastrophic damages award that could restructure the national energy system. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 500-01 (2008) (discussing punitive damages and the "inherent uncertainty of the trial process").

10. All at once, Defendant States' actions exceed state authority, flout the horizontal separation of powers, usurp federal authority over a federal issue, and violate the prohibition on extraterritorial regulation embodied in the Commerce Clause.

11. Plaintiff States and their citizens rely on traditional energy products every day. The assertion that Defendant States can regulate, tax, and enjoin the promotion, production, and use of such products beyond their borders—but outside the purview of federal law—threatens profound injury. Therefore, Plaintiff States have no choice but to invoke this Court's "original and exclusive jurisdiction of all controversies between two or more States." 28 U.S.C. §1251(a); *see* U.S. Const. art. III, §2. As noted above, the Court has exercised original jurisdiction not only in interstate-emissions cases but also in the specific context of one State's claims involving another State's energy regulations. *See, e.g.*, *Maryland v. Louisiana*, 451 U.S. 725, 744 (1981); *Pennsylvania v. West Virginia*, 262 U.S. 553, 591 (1923). Applying those precedents and core constitutional principles, the Court should exercise its original jurisdiction over this suit. The Court should enjoin Defendant States from seeking to impose liability or obtain equitable relief premised on either emissions by or in Plaintiff States or the promotion, use, and/or sale of traditional energy products in or to Plaintiff States.

FACTS

I. The Role of Traditional Energy Sources in American Prosperity

12. In 1900, oil, gas, and coal contributed about 6,000 terawatt-hours per year—about half of the world's energy.[2] A century later, use of these sources had grown more than tenfold to supply over 94,000 terawatt-hours per year—comprising the vast majority of the world's energy and raising *per capita* energy availability more than four-fold. *Id.* Nearly three-quarters of this growth came from oil and natural gas. *Id.*

13. The growth in available energy directly enabled unprecedented material improvements in transportation, manufacturing, agriculture, and home goods. Improved industrialization and the availability of oil- and gas-derived plastics in turn enabled unprecedented improvements in sanitation, public health, and medical treatments. From 1900 to 2010, all-cause mortality declined 54%.[3]

A. Oil and natural gas are foundational to the American economy.

14. The United States has been the world leader in oil production for most of the past century.[4] Since

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[2] *Global Direct Primary Energy Consumption*, Our World in Data, Oxford Martin Sch., Univ. of Oxford, https://ourworldindata.org/grapher/global-primary-energy.

[3] Rebecca Tippet, *Mortality and Cause of Death, 1900 v. 2010*, Carolina Demography (June 16, 2014), https://carolinademography.cpc.unc.edu/2014/06/16/mortality-and-cause-of-death-1900-v-2010/.

[4] *Oil Production*, Our World in Data, Oxford Martin Sch., Univ. of Oxford, https://ourworldindata.org/grapher/oil-production-by-country.

2013, the United States has exceeded all nations in petroleum production, and it has been the world's largest producer of natural gas since 2009.[5]

15. In 2015, for example, the oil and natural gas industry was directly responsible for approximately 8% of American GDP and 6% of all employment.[6]

16. Oil and natural gas have been powerful drivers for U.S. manufacturing. Oil and gas booms are associated with higher wages and increased output.[7]

17. American farming and ranching operations also rely heavily on affordable oil and natural gas to run machinery and equipment,[8] produce crucial inputs such as fertilizers,[9] and transport products.

B. Oil and natural gas are crucial to domestic transportation and the electrical grid.

18. Oil provides the primary energy source driving the U.S. transportation sector, which facilitates

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[5] Samantha Gross, *Geopolitical Implications of U.S. Oil and Gas in the Global Market*, Brookings Inst. (May 22, 2018), www.brookings.edu/testimonies/geopolitical-implications-of-u-s-oil-and-gas-in-the-global-market/.

[6] Bob Iaccino, *How Much Does Oil and Gas Drive U.S. GDP?*, The Street (June 5, 2019), www.thestreet.com/markets/how-much-does-oil-and-gas-drive-u-s-gdp-14981567.

[7] Hunt Allcott & Daniel Keniston, *Dutch Disease or Agglomeration? The Local Economic Effects of Natural Resource Booms in Modern America*, 85 Rev. Econ. Stud. 695 (2018).

[8] Tyne Morgan, *Is Deere Pushing Electric Tractors? An Exclusive Interview With John Deere's CTO*, AgWeb (Jan. 17, 2023), www.agweb.com/news/machinery/new-machinery/deere-pushing-electric-tractors-exclusive-interview-john-deeres-cto.

[9] *U.S. ammonia production is growing, and becoming less carbon intensive*, U.S. Energy Info. Admin. (Apr. 1, 2021), www.eia.gov/naturalgas/weekly/archivenew_ngwu/2021/04_01/.

virtually all of the U.S. economy.[10] Internal combustion engine vehicles are superior to electric vehicles in range,[11] durability,[12] and hauling capacity.[13]

19. Electric vehicles are also largely powered by traditional energy sources because natural gas and coal supply most of the energy for America's electric bulk-power system.[14]

20. Natural gas represents such a large share of U.S. electricity generation in large part because it is the most cost-effective means of maintaining stable generation when intermittent energy sources (like solar and wind) are unavailable. As a result, on average, wind energy generates less than 34% of its nameplate capacity and solar only 23%.[15]

21. The adoption of solar and wind led the North American Reliability Corporation to name "energy policy" as one of the most significant risks to grid

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[10] *Use of Energy Explained: Energy Use for Transportation,* U.S. Energy Info. Admin., www.eia.gov/energyexplained/use-of-energy/transportation.php (updated Aug. 16, 2023).

[11] Mark Kane*, US: Median Range Of 2021 Gasoline Vehicles Is 72% Higher Than BEVs*, InsideEVs (Jan. 18, 2022), insideevs.com/news/561634/us-median-range-gasoline-bevs/.

[12] Nick Carey, et al., *Insight: Scratched EV Battery? Your Insurer May Have to Junk the Whole Car*, Reuters (Mar. 20, 2023), www.reuters.com/business/autos-transportation/scratched-ev-battery-your-insurer-may-have-junk-whole-car-2023-03-20/.

[13] Eric Brandy, *Payload and Towing Capacity on Electric Vehicles*, Kelley Blue Book (Aug. 18, 2022), www.kbb.com/car-advice/ev-payload-towing-capacity/.

[14] *Electricity Data Browser*, U.S. Energy Info. Admin., www.eia.gov/electricity/data/browser/.

[15] *Capacity Factors for Utility Scale Generators Primarily Using Non-Fossil Fuels*, U.S. Energy Info. Admin. (May 13, 2024), www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_6_07_b.

reliability.[16] Two-thirds of North America faced the risk of energy shortfalls last summer during periods of extreme demand.[17]

C. Oil and natural gas are critical to homeland and national security.

22. First responder equipment like ambulances, fire engines, and rescue vehicles cannot function without oil-derived fuels. Virtually every piece of first responder equipment is currently fueled by diesel or gasoline because heavy-duty vehicles are notoriously hard to electrify owing to their higher cost, shorter range, and reliability problems.[18] Electric vehicles also run the risk of being entirely unable to run during a blackout if they cannot be charged.

23. Nor can most aircraft—first responder, military, or otherwise—fly without oil-derived fuels.

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[16] N. Am. Reliability Corp., *2023 ERO Reliability Risk Priorities Report*, (Aug. 17, 2023), www.nerc.com/comm/RISC/Related%20Files%20DL/RISC_ERO_Priorities_Report_2023_Board_Approved_Aug_17_2023.pdf.

[17] N. Am. Reliability Corp., *Two-thirds of North America Faces Reliability Challenges in the Event of Widespread Heatwaves* (May 17, 2023), www.nerc.com/news/Pages/Two-thirds-of-North-America-Faces-Reliability-Challenges-in-the-Event-of-Widespread-Heatwaves.aspx.

[18] *See, e.g.*, Hoyu Chong & Edward Rightor, *Closing the Trucking Gaps: Priorities for the Department of Energy's RD&D Portfolio*, Info. Tech. & Innovation Found. (June 2023), https://itif.org/publications/2023/06/20/closing-the-trucking-gaps-priorities-for-the-department-of-energys-rd-and-d-portfolio/; Shreya Agrawal, *Fact Sheet | The Future of the Trucking Industry: Electric Semi-Trucks* (2023), Env't & Energy Study Inst. (May 11, 2023), www.eesi.org/papers/view/fact-sheet-the-future-of-the-trucking-industry-electric-semi-trucks-2023.

Demand for kerosene-type jet fuel has doubled since 1980.[19]

24. Aircraft performance puts a high premium on thrust-to-weight ratio.[20] Because lithium-ion batteries are far less energy dense than kerosene—the basis for most jet fuels—it would be much more difficult to travel in an electric plane than in an electric car.[21]

25. Virtually all ground military equipment of the United States is powered by gasoline or diesel fuel as well. The problems that plague heavy-duty electrification generally also affect heavy-duty military vehicles. Military equipment often needs to operate in locations without reliable power supplies. As the Army's chief scientist for ground vehicle systems has explained, the military "has a unique set of operational requirements, and no current fuel source meeting those requirements contains as much energy, by weight, as diesel or gasoline."[22]

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[19] *U.S. Product Supplied of Kerosene-Type Jet Fuel*, U.S. Energy Info. Admin., www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=MKJUPUS2&f=M.

[20] *See* Alexander Bills et al., *Performance Metrics Required of Next-Generation Batteries to Electrify Commercial Aircraft*, 5 ACS Energy Letters 663 (Feb. 4, 2020), https://pubs.acs.org/doi/10.1021/acsenergylett.9b02574.

[21] Casey Crownhart, *This Is What's Keeping Electric Planes from Taking Off*, MIT Tech. Rev. (Aug. 17, 2022), www.technologyreview.com/2022/08/17/1058013/electric-planes-taking-off-challenges/.

[22] David J. Gorsich & Andr Boehman, *Driving Fuel Choices*, U.S. Army (Dec. 14, 2020), www.army.mil/article/241758/driving_fuel_choices.

D. Oil and natural gas have supported improvements in environmental quality and have reduced weather-related deaths.

26. America's air is cleaner than a century ago thanks in part to the increased use of oil and natural gas. While all energy generation, including "renewable" sources, creates some pollution, oil and natural gas produce far fewer pollutants than the biomass fuels they replaced. A decline in air and water quality in some places after the industrial revolution was primarily due to the dramatic increase in overall population and energy consumption.

27. Technological advances made possible by energy growth have enabled drastic reductions in pollution even while increasing energy consumption. Despite large growth in the population, economic activity, and miles traveled, total emissions of the six main air pollutants dropped 73% between 1980 and 2022. [23] Deaths from outdoor air pollution in the United States fell from 29.6 deaths per 100,000 people in 1990 down to just 8.5 deaths per 100,000 people in 2019, one of the lowest rates in the world.[24]

28. Average global deaths per capita from natural disasters have also decreased from a high of approximately 26.5 per 100,000 people in the 1920s to about 0.5 per 100,000 in the 2020s.[25] Deaths and damage

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[23] U.S. Env't Prot. Agency, *Air Quality - National Summary*, https:// www.epa.gov/air-trends/air-quality-national-summary.

[24] Hannah Ritchie & Max Roser, *Outdoor Air Pollution*, Our World in Data, Oxford Martin Sch., Univ. of Oxford, ourworldindata.org/outdoor-air-pollution (Mar. 2024) (Chart 10).

[25] Hannah Ritchie & Pablo Rosado, *Natural Disasters*, Our World in Data, Oxford Martin School, Oxford University (2022) (Table: Decadal Average: Annual Number of Deaths From Disasters), https://ourworldindata.org/natural-disasters.

caused by these disasters have been mitigated by technological improvements enabled by traditional energy. And despite common statements to the contrary, extreme weather in the form of hurricanes or tornados has not detectibly increased over the last century. In fact, the frequency of hurricanes making landfall in the United States has declined slightly since 1900.[26] Hurricanes that do make landfall have not increased in intensity.[27] Strong tornadoes (level three or higher) have not increased since 1950.[28]

II. Litigation Over Interstate Gas Emissions

29. Defendant States are threatening to weaken our national energy system through tort litigation under their state laws and in their state courts.

30. This Court has consistently held that lawsuits over interstate air (and water) pollution, including emissions from the use of oil and natural gas, must be decided under federal law. *See New York*, 993 F.3d at 91 (collecting cases, *e.g.*, *AEP*, 564 U.S. at 420-23; *Milwaukee I*, 406 U.S. at 103). Application of federal law to these fundamentally interstate matters prevents overreaching States from weaponizing their laws to

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[26] Phillip J. Klotzbach et al., *Continental U.S. Hurricane Landfall Frequency and Associated Damage: Observations and Future Risks*, 99 Bull. Am. Meteorological Soc'y 1359 (2018).

[27] Bjorn Lomborg, *Hurricane Ida Isn't the Whole Story on Climate; The Number of Landfall Hurricanes Isn't Rising and the World Is Getting Better at Mitigating Their Destruction*, Wall St. J. (Sept. 15, 2021), www.wsj.com/articles/hurricane-ida-henri-climate-change-united-nations-un-galsgow-conference-natural-disaster-infrastructure-carbon-emissions-11630704844.

[28] Kevin M. Simmons et al., *Normalized Tornado Damage in the United States: 1950–2011*, 12 Env't Hazards 132 (2013); *see also* Vittorio A. Gensini & Harold E. Brooks, *Spatial Trends in United States Tornado Frequency*, 1 npj Climate & Atmospheric Sci., art. no. 38 (2018).

impose their policy agendas on sister States and ensures that national policy remains sensitive to the interests of the whole Nation.

31. Dissatisfied with their options under federal law, however, numerous state and local governments have launched a frenzy of lawsuits invoking their own laws to demand billions of dollars in damages allegedly related to past, present, and future climate change owing, they say, to interstate gas emissions.

32. When New York City brought such claims in the Second Circuit, the court squarely dismissed them. The City insisted that its "case concerns only 'the production, promotion, and sale of fossil fuels,' not the regulation of emissions." *New York*, 993 F.3d at 91. But the court explained, "Artful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions." *Id.* "It is precisely *because* fossil fuels emit greenhouse gases—which collectively 'exacerbate global warming'—that the City is seeking damages." *Id.* The court reiterated that "over a century" of Supreme Court precedent makes clear that federal law necessarily governs lawsuits relating to interstate emissions. *Id.*

33. Undeterred by precedent new and old, Defendant States filed state-law claims in their own state courts, seeking damages for emissions from the promotion, use, and/or sale of traditional energy products around the world, including wholly within Plaintiff States. In each case, no matter the cause of action, Defendant States invite the court to impose a *de facto* carbon tax by extracting extensive monetary damages from companies for any attributable emissions. Defendants also seek equitable or injunctive relief, such as the abatement of alleged nuisances.

34. These cases aim to enforce policies through the application of state law that Defendant States and their allies have not persuaded Congress to adopt. In *American Petroleum Institute*, Judge Stras aptly described Minnesota's suit as an "attempt to set national energy policy," and "'effectively override … the policy choices made by' the federal government and other states." 63 F.4th at 719 (Stras, J., concurring). At every opportunity, Defendants have fought to keep their claims before their own state courts.

35. Defendant States have also directed some of their claims at the speech of energy producers in Plaintiff States. The complaints would impose liability for allegedly failing to disclose purported knowledge about the global climate.[29] Aside from their many legal flaws, including serious First Amendment problems, these claims reveal blatant hypocrisy: Defendant States themselves did not provide or require the kind of warnings that they now say were necessary.

36. To bolster the efforts to set interstate energy policy through state law, the Climate Judiciary Project ("CJP") of the Environmental Law Institute ("ELI") has been training judges on climate litigation. This includes "disseminating a climate science and law curriculum and ... conducting seminars and educational programs" to provide "information to the judiciary about the science of climate change as it is

[29] *See, e.g.*, Complaint at 9, *California ex rel. Bonta v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. filed Sept. 15, 2023) ("Cal. Complaint") (addressing "Exxon's statements in California and elsewhere").

understood by the expert scientific community and relevant to current and future litigation."[30]

37. CJP trained "over 400 judges" in 2022 alone, and "wove a network of Judicial Leaders in Climate Science (JLCS), delivering a model program to train and support trainers of judicial peers at the state court level."[31] CJP Co-Founder Paul Hanle has stated that CJP is particularly mindful of "the states where there are [climate] impacts that are being adjudicated."[32]

38. "The judges came away steeped in facts about the science of climate change, *deeply impressed* with their consequences, and committed to working together and reaching out to fellow judges to convey what they had learned. Drawn from a diversity of backgrounds and jurisdictions—from Vermont to Texas to California—each participant has *committed to taking concrete actions* to advance the education of their peers. Judges with no experience educating colleagues or previous knowledge of climate issues proposed an impressive array of ways they would contribute to preparing their courts."[33]

JURISDICTION

39. This Court has original and exclusive jurisdiction over this action under Article III, §2, cl. 2 of the U.S. Constitution and 28 U.S.C. §1251(a),

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[30] ELI, *Climate Judiciary Project*, www.eli.org/climate-judiciary-project.

[31] CJP Staff, *2022 Year in Review*, ELI (Apr. 1, 2023), https://cjp.eli.org/news/230401-2022-year-review.

[32] ELI, *Dialogue: Extreme Weather and Climate Change*, 50 Env't L. Rep. 10963, 10972 (2020), www.nossaman.com/assets/htmldocuments/ELR%20-%20Extreme%20Weather%20and%20Climate%20Change.pdf.

[33] *2022 Year in Review*, *supra.* (emphases added).

because the dispute is both a "Case[] … in which a State shall be Party" and a "controvers[y] between two or more States."

PARTIES

I. Plaintiffs

40. Plaintiffs are sovereign States. Each Plaintiff State sues by and through its attorney general, who is empowered to sue in the name of the State to protect its interests.

41. Plaintiff States have standing to sue in their sovereign and quasi-sovereign capacities.

42. Plaintiff States are injured by Defendant States' attempts to use their laws and their courts to impose liability on traditional energy companies for actions conducted by Plaintiff States and their residents within Plaintiff States' borders. Doing so interferes "with the autonomy of the individual States within their respective spheres." *Healy v. Beer Inst.*, 491 U.S. 324, 335-36 (1989); *cf. Maine v. Taylor*, 477 U.S. 131, 137, 148 (1986); *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907).

43. Imposing liability under state law is a form of regulation. As this Court has noted, "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 572 n.17. The "obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)); *Cipollone v. Liggett Grp.*, 505 U.S. 504, 548 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part) (explaining

that "general tort-law duties" can "impose 'requirement[s] or prohibition[s]'").

44. Each Plaintiff State likewise has an "interest in not being discriminatorily denied its rightful status within the federal system." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982). A State is denied that equal right when another State tries to exercise jurisdiction over it, its interests, and its citizens in violation of federal law.

45. Plaintiff States also have standing as sovereigns based on their impending loss of tax revenue if the sale of certain energy products in their states is enjoined or otherwise diminished. *Wyoming v. Oklahoma*, 502 U.S. 437, 447 (1992); *see also Dep't of Com. v. New York*, 139 S. Ct. 2551, 2565 (2019) (indirect loss of funding suffices for standing).

46. By statute, coastal States are entitled to significant portions of the proceeds from Outer Continental Shelf leasing and production. Those revenue rights arise under three separate programs. First, under OCSLA's revenue-sharing program, the States with offshore federal leases located within the first three miles from the State's seaward boundary receive 27% of the revenue generated from those leases. 43 U.S.C. §1337(g)(5)(A). Second, the Coastal Impact Assistance Program provides assistance from leases to Alaska, Alabama, California, Louisiana, Mississippi, and Texas. 43 U.S.C. §1356a. Third, the Gulf of Mexico Energy Security Act of 2006 provides for the sharing of 37.5% of qualified Outer Continental Shelf revenues among Alabama, Louisiana, Mississippi, and Texas to aid in coastal-restoration efforts. Pub. L. No. 109-432, 120 Stat. 3000, 43 U.S.C. §1331 note. These interests too support the exercise of original jurisdiction. *Cf.*

Maryland, 451 U.S. at 744-45 ("[B]ecause of the interest of the United States in protecting its rights in the OCS area, with ramifications for all coastal States, as well as its interests under the regulatory mechanism that supervises the production and development of natural gas resources, we believe that this case is an appropriate one for the exercise of our original jurisdiction under §1251(b)(2).").

47. "Jurisdiction is also supported by the States' interest as *parens patriae*." *Maryland*, 451 U.S. at 737. A State may act as the "representative of its citizens in original actions where the injury alleged affects the general population of a State in a substantial way." *Id.* Here, Plaintiff States have an "interest in protecting [their] citizens from substantial economic injury presented by" Defendant States' attempts to regulate nationwide energy policy. *Id.* at 739. Thus, even when "no question of boundary is involved, nor of direct property rights belonging to the complainant state[s], … it must surely be conceded that if the health and comfort of the inhabitants of a state are threatened"—and here, as well, their constitutional rights—"the state is the proper party to represent and defend them." *Kansas*, 185 U.S. at 141-42.

48. Plaintiff States also have standing as purchasers of energy. They purchase massive quantities of energy in performing their sovereign duties. Defendant States' ongoing and imminent actions will make energy less affordable and less available, *see New York*, 993 F.3d at 93, harming Plaintiff States' ability to exercise their sovereign functions. *See Maryland*, 451 U.S. at 737 ("It is clear that the plaintiff States, as major purchasers of natural gas whose cost has increased as a direct result of Louisiana's imposition of

the First-Use Tax, are directly affected in a 'substantial and real' way so as to justify their exercise of this Court's original jurisdiction."); *Orangeburg v. FERC*, 862 F.3d 1071, 1074 (D.C. Cir. 2017) ("[T]he city has demonstrated an imminent loss of the opportunity to purchase a desired product (reliable and low-cost wholesale power).").

49. Plaintiff States' standing is confirmed by *Pennsylvania v. West Virginia*, where this Court exercised original jurisdiction to stop constraints imposed by West Virginia on the commercial flow of natural gas to neighboring states. 262 U.S. 553. The Court recognized Pennsylvania's standing both "as the proprietor of various public institutions and schools" that use gas for fuel and "as the representative of the consuming public whose supply will be similarly affected." *Id.* at 591.

50. In *Maryland v. Louisiana*, this Court held that Maryland and other States had standing to sue Louisiana over its tax on pipeline companies because the plaintiff States asserted "substantial and serious injury to their proprietary interests as consumers of natural gas as a direct result of the allegedly unconstitutional actions of Louisiana." 451 U.S. at 739. The plaintiff States also had an "interest in protecting [their] citizens from substantial economic injury presented by imposition of the [tax]." *Id.*

51. Plaintiff Alabama, its political subdivisions, and its citizens are harmed by Defendant States' actions. As the Energy Information Administration has documented, "Alabama is an energy-rich state with a wide variety of resources, including deposits of coal,

crude oil and natural gas."[34] In 2022, for instance, Alabama was the 16th highest producer of natural gas in the United States.[35] "[M]ining and oil and natural gas extraction[] are major contributors to Alabama's economy."[36]

52. The Bureau of Economic Analysis reports that in 2022, employees in Alabama working in oil and gas extraction received over $54 million in compensation, and employees in pipeline transportation received over $86 million.[37]

53. In Fiscal Year 2022, Alabama received around $1 billion in tax revenue from traditional energy sources, including $700 million from its gasoline tax, $32 million from oil and gas privileges, and $12 million from oil and gas production.[38]

54. Alabama also receives funds directly from companies who have purchased the right to develop natural gas resources in Mobile Bay.[39] The amount of payment each year depends on natural gas volumes produced and the price of natural gas per thousand

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[34] *State Profile and Energy Estimates: Alabama*, U.S. Energy Info. Admin., www.eia.gov/state/analysis.php (last updated Oct. 19, 2023).

[35] *Natural Gas Gross Withdrawals and Production*, U.S. Energy Info. Admin., www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_a.htm.

[36] *State Profile and Energy Estimates: Alabama*, *supra.*

[37] *SAGDP4N Compensation of Employees*, U.S. Bureau of Econ. Analysis, https://tinyurl.com/567cjxbk.

[38] *See* Ala. Dep't of Revenue, *2023 Annual Report* at 6-7 (2024), www.revenue.alabama.gov/2023-annual-report/. Alabamians consumed over 3.5 billion gallons of gasoline and diesel that year. *Id.* at 21.

[39] *See Alabama Trust Fund*, Ala. Treasury Dep't, https://treasury.alabama.gov/alabama-trust-fund/.

cubic feet.[40] In Fiscal Year 2022, the Alabama Trust Fund, which receives these payments, received $67.9 million in royalties. *Id.*

55. Plaintiff Alaska, its political subdivisions, and its citizens are harmed by Defendant States' actions. It has interests in the economic opportunities, including energy security, that responsible oil and natural gas development provides to Alaska's citizens.

56. The "oil and natural gas industries are a key part of Alaska's energy-intensive economy." [41] Its North Slope "contains 6 of the 100 largest oil fields in the United States and 1 of the 100 largest natural gas fields." *Id.* The North Slope is estimated to hold approximately 50 trillion cubic feet of discovered gas, 194 trillion cubic feet of undiscovered conventional gas, and 125 trillion cubic feet of unconventional gas. It has produced over 18 billion barrels of oil and is estimated to contain over 48 billion barrels of undiscovered oil. And its Cook Inlet basin is estimated to hold approximately 1.2 trillion cubic feet of undiscovered, technically recoverable gas and over 500 million barrels of undiscovered, technically recoverable oil.

57. The Bureau of Economic Analysis reports that in 2022, employees in Alaska working in oil and gas extraction received over $875 million in

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[40] *See* Ala. State Treasurer's Off., *Alabama Trust Fund Annual Report 2022* at 3 (2023), https://treasury.alabama.gov/download/atf-annual-report-2022/.

[41] *State Profile and Energy Estimates: Alaska*, U.S. Energy Info. Admin., www.eia.gov/state/analysis.php (updated Oct. 19, 2023).

compensation.[42] In Fiscal Year 2023, total petroleum revenues accounted for $3.8 billion of the State's revenues.[43]

58. Plaintiff Mississippi, its political subdivisions, and its citizens are harmed by Defendants' actions. As the Energy Information Administration has documented, Mississippi has an "energy-intensive economy" and "substantial energy infrastructure," including "many natural gas, crude oil, and refined product pipelines," the nation's "10th-largest petroleum refinery," and "[o]ne of the largest natural gas processing plants in the United States."[44]

59. The Bureau of Economic Analysis reports that in 2022, employees in Mississippi working in oil and gas extraction received over $63 million in compensation, and employees in pipeline transportation received over $105 million.[45]

60. "Mississippi ranks among the 5 states with the lowest average gasoline prices, but among the top 10 states with the highest gasoline expenditures per capita." [46] In Fiscal Year 2023, Mississippi received hundreds of millions of dollars in tax revenue from traditional energy sources, including over $307

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[42] *SAGDP4N Compensation of Employees*, U.S. Bureau of Econ. Analysis, https://tinyurl.com/567cjxbk.

[43] *Spring 2024, Revenue Forecast, Alaska Department of Revenue,* Appendix A-3, https://tax.alaska.gov/programs/programs/reports/RSB.aspx?Year=2024&Type=Spring#program1487

[44] *State Profile and Energy Estimates: Mississippi*, U.S. Energy Info. Admin., www.eia.gov/state/analysis.php?sid=MS (last updated Oct. 19, 2023).

[45] *SAGDP4N Compensation of Employees*, U.S. Bureau of Econ. Analysis, https://bit.ly/3QSqG6i.

[46] *State Profile and Energy Estimates: Mississippi*, *supra.*

million from its gasoline tax and over $51 million from oil and gas severance taxes.[47]

61. Plaintiff Missouri, its political subdivisions, and its citizens are harmed by Defendants' actions. Coal provides two-thirds of Missouri's electricity output, the fourth highest of any State.[48] Missouri is also a net energy consumer and is greatly harmed by increases in energy prices.

62. Plaintiff Nebraska, its political subdivisions, and its citizens are harmed by Defendants' actions. Nebraska produces crude oil and natural gas, and it ranks as the Nation's second-largest producer of ethanol.[49]

63. The Bureau of Economic Analysis reports that in 2022, employees in Nebraska working in oil and gas extraction earned over $5 million in compensation, and employees in pipeline transportation received over $18 million.[50]

64. Cross-country travelers driving vehicles that use liquid fuels pass through Nebraska on Interstate 80 and other highways. They pay Nebraska's fuel tax

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[47] *See* Miss. Dep't of Revenue, *Annual Report Fiscal Year 2023*, at 97, 112 (2023), www.dor.ms.gov/sites/default/files/Statistics/MSDOR%20Annual%20Report%20FY%202023%20full%2001182024.pdf. Mississippians consumed over 4.2 billion gallons of gasoline that year. *Id.* at 112.

[48] *Missouri State Energy Profile*, U.S. Energy Info. Admin., www.eia.gov/state/print.php?sid=MO (updated July 20, 2023).

[49] *State Profile and Energy Estimates: Nebraska*, U.S. Energy Info. Admin., www.eia.gov/state/analysis.php?sid=NE#14 (last updated July 20, 2023).

[50] *SAGDP4N Compensation of Employees*, U.S. Bureau of Econ. Analysis, https://perma.cc/FP5J-YRSW.

during such trips. Nebraska's fuel tax revenues total over $300 million annually.[51]

65. Plaintiff North Dakota, its political subdivisions, and its citizens are harmed by Defendants' actions. North Dakota ranks third in the nation in crude oil reserves and production, has almost 2% of the nation's natural gas reserves, has the world's largest known deposit of lignite, and is the firth-largest coal-producing State.[52] "The energy-intensive oil and natural gas extraction industries, mining that includes coal production, and agriculture are major contributors to the state's economy." *Id.*

66. Since 1975, over $1 billion in tax revenue has gone to the State from lignite coal severance and conversion taxes. The coal industry also employs over 3,300 employees directly and over 11,000 indirect individuals in the State.[53]

67. The oil and gas industry in North Dakota accounted for more than $42.6 billion in gross business volume, nearly 50,000 jobs with a payroll totaling $3.9 billion, and $3.8 billion in state and local tax revenues in 2021 alone.[54]

68. From 2017 to 2022, oil extraction and production taxes equaled more than 51% of all taxes collected

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[51] *Nebraska Motor Vehicle Fuel Taxes and Registration Fees History and Program Description*, Neb. Legislature (Oct. 15, 2023, 1:27 PM), https://perma.cc/N2MB-6HL3.

[52] *State Profile and Energy Estimates: North Dakota*, U.S. Energy Info. Admin., www.eia.gov/state/print.php?sid=ND.

[53] *Energy and Natural Resources*, N.D. Dep't of Com., www.commerce.nd.gov/economic-development-finance/energy-and-natural-resources.

[54] *2021 Economic & Job Contributions of the Oil and Gas Industry*, N.D. Petroleum Found., ndpetroleumfoundation.org/2021-economic-contributions/.

by North Dakota.[55] These funds are used for infrastructure investments, education, tax relief, budget stabilization, and research investment.

69. Defendant States' actions injure all Plaintiff States, their political subdivisions, and their citizens. The relief Defendant States seek will increase the cost to produce, distribute, and procure energy within Plaintiff States.[56] Even in States that do not produce traditional energy like oil and natural gas, such sources are crucial inputs for many other industries—including transportation, agriculture, and manufacturing[57]—and are invaluable to the vast majority of their citizens.[58] By imposing new costs on sellers and producers of energy, Defendants will do economic damage to the citizens of Plaintiff States by depressing wages and employment in industries that depend

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[55] *See 2022 Oil & Gas Tax Study,* N.D. Petroleum Found. & W. Dakota Energy Assoc., https://ndpetroleumfoundation.org/2022-oil-gas-tax-study-industry-taxes-benefit-every-nd-county/.

[56] *See, e.g.*, George L. Priest, *Market Share Liability in Personal Injury and Public Nuisance Litigation: An Economic Analysis*, 18 S. Ct. Econ. Rev. 109, 131-32 (2010) (explaining how market-share liability in tort amounts to a tax on current consumers and shareholders that lacks "distributional reason").

[57] *See supra* Facts §§ I.A-C.

[58] *See generally U.S. States: State Profiles and Energy Estimates*, U.S. Energy Info. Admin, www.eia.gov/state/ (estimating the energy production, consumption, and expenditure of each State by source and sector); *see also Table P2. Primary Energy Production Estimates in Trillion Btu, 2021*, U.S. Energy Info. Admin, www.eia.gov/state/seds/sep_prod/xls/P2.xlsx; *Rankings: Total Energy Consumed per Capita, 2021*, U.S. Energy Info. Admin, www.eia.gov/state/rankings/?sid=US#/series/12; *Table E15. Total Energy Price and Expenditure Estimates (Total, per Capita, and per GDP), Ranked by State, 2021*, U.S. Energy Info. Admin, www.eia.gov/state/seds/data.php?incfile=/state/seds/sep_sum/html/rank_pr.html.

upon affordable energy as well as by increasing prices for electricity and other consumer goods and services.

II. Defendants

A. California

70. On September 15, 2023, California filed "California v. Big Oil"[59] in California state court against Exxon Mobil, Shell, Chevron, ConocoPhillips, BP, American Petroleum Institute, and Does 1–100, alleging various harms resulting from the production and promotion of their products. *California v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct.). The lawsuit alleged seven counts of action: public nuisance; equitable relief for pollution, impairment, and destruction of natural resources; untrue or misleading advertising; misleading environmental marketing; unlawful, unfair, or fraudulent business practices; strict products liability (failure to warn); and negligent products liability (failure to warn).[60]

71. The lawsuit asks the state court to "compel[] Defendants to abate the ongoing public nuisance their conduct has created in California," to "grant[] any and all temporary and permanent equitable relief and impos[e] such conditions upon the Defendants as are required to protect and/or prevent further pollution, impairment and destruction of the natural resources of California," and to "enter[] all orders or judgments as may be necessary to restore to any person in interest

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[59] *People of the State of California v. Big Oil*, Office of Governor Gavin Newsom (Sept. 16, 2023), www.gov.ca.gov/2023/09/16/people-of-the-state-of-california-v-big-oil/.

[60] Complaint at 119-32, *California v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. Sept. 15, 2023), https://climatecasechart.com/wp-content/uploads/case-documents/2024/20240207_docket-CGC23609134_notice.pdf.

any money or other property that Defendants may have acquired" in violation of California law. *Id.* at 132-33 (capitalization altered). These remedies would necessarily decrease the promotion, sale, and/or of certain energy products to and in Plaintiff States in order to reduce alleged liability for emissions by or wholly therein.[61]

B. Connecticut

72. On September 14, 2020, Connecticut filed suit in Connecticut state court against Exxon Mobil alleging various harms resulting from the company's production and promotion of its products. *Connecticut v. Exxon Mobil Corp.*, No. HHD-CV-20-6132568-S (Conn. Super. Ct.). The lawsuit alleged eight counts of action involving Exxon's allegedly false or misleading statements about its business practices and environmental impacts related to emissions from the combustion of the company's products across the world. For example, the complaint alleged that Exxon "undermin[ed] and delay[ed] the creation of alternative technologies, … which could have avoided the most devastating effects of climate change" and which "directly and proximately caused substantial injury to consumers."[62]

73. The lawsuit seeks various forms of relief, including "equitable relief … for mitigation, adaptation,

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[61] The complaint alleges that the harms are caused by the general accumulation of certain gases in the atmosphere, none of which may be directly tied to emissions in California. *Id.* at 31-35. This theory necessarily reaches emissions by or wholly within Plaintiff States.

[62] First Amended Complaint at 43, *Connecticut v. Exxon Mobil Corp.*, No. HHD-CV-20-6132568-S (Conn. Super. Ct. filed Nov. 20, 2023), https://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=26324374.

and resiliency" as well as "restitution," *id.* at 44-45, which necessarily includes relief related to emissions by or wholly within Plaintiff States. Connecticut also seeks disgorgement, civil penalties, and "other injunctive and equitable relief commensurate with the past and future harm caused by … [allegedly] illegal business practices." *Id.* at 8.

74. The Second Circuit recently affirmed an order remanding the case to state court. *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023).

C. Minnesota

75. On June 24, 2020, Minnesota filed suit in Minnesota state court against American Petroleum Institute, Exxon Mobil, and others, alleging various forms of fraud related to the dangers of oil and gas and claiming billions of dollars of harms allegedly from climate change. *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct.).

76. The lawsuit seeks equitable relief, damages, disgorgement of profits, and restitution "to remedy the great harm and injury to the State resulting from Defendants' unlawful conduct."[63] The State asks the court to remedy harms allegedly caused by the combustion of fuels attributable to the defendants that allegedly "caused a substantial portion of global atmospheric greenhouse-gas concentrations, and the attendant historical, projected, and committed

[63] Complaint at 83, *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct. June 24, 2020), https://climatecasechart.com/wp-content/uploads/case-documents/2020/20200624_docket-62-CV-20-3837_complaint.pdf.

disruptions to the environment—and consequent injuries to Minnesota—associated therewith." *Id.* at 71.

77. This Court denied a petition for writ of certiorari from the Eighth Circuit's decision to remand the case to state court. *Am. Petroleum Inst.*, 63 F.4th 703, cert. denied, 144 S. Ct. 620 (Jan. 8, 2024).

D. New Jersey

78. On October 18, 2022, Defendant New Jersey filed suit in New Jersey state court against 12 energy companies and subsidiaries and the American Petroleum Institute. *Platkin v. Exxon Mobil Corporation*, No. MER-L-001797-22 (N.J. Super. Ct.). The suit asserts eight counts of action: trespass, public and private nuisance, impairment of the public trust, negligence, consumer fraud claims, and failure to warn.[64]

79. New Jersey alleges, for example, that the energy companies failed to warn about the effects of energy consumption, leading to increased consumption and thus "accelerated climate change" and "deadly climate change impacts" that have "damaged land, buildings, infrastructure, natural resources, communities … and the economy," and "delayed [] emergence of viable clean energy alternatives." *Id.* at 166. The State has requested eleven forms of relief including compensatory damages, punitive damages, "natural resource damages," and injunctions to "abate the ongoing" trespass and nuisance. *Id.* at 193-94. These remedies would necessarily decrease the promotion, sale, and/or of certain energy products to and in Plaintiff States in order to reduce alleged liability for emissions by or wholly within Plaintiff States.

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[64] N.J. Complaint at ii.

80. The United States District Court for the District of New Jersey remanded the case to state court last year after the defendant companies removed.[65]

E. Rhode Island

81. On July 2, 2018, Defendant Rhode Island filed suit in Rhode Island state court against 21 energy companies and subsidiaries, including Chevron, Exxon Mobil, and BP, and unnamed Does 1–100. *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.). Rhode Island alleged that the companies were "directly responsible for 182.9 gigatons of CO_2 emissions between 1965 and 2015, representing 14.81% of" global CO_2 emissions during that time, making the companies "directly responsible for a substantial portion of past and committed sea level rise."[66]

82. The lawsuit includes eight counts of action: public nuisance, strict liability for failure to warn, strict liability for design defect, negligent design defect, negligent failure to warn, trespass, impairment of public trust resources, and state environmental rights. *Id.* at 115-40.

83. Rhode Island seeks various forms of relief, including "compensatory" and "punitive damages" to compensate the State for alleged "climate change impacts" caused by "potent greenhouse gas" "emissions," *id.* at 4, 140 (capitalization altered), including those by or within Plaintiff States. According to the

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[65] *See Platkin v. Exxon Mobil Corp.*, No. 22-cv-06733, 2023 WL 4086353, at *5 (D.N.J. June 20, 2023).

[66] Complaint at 4, *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018), https://climatecasechart.com/wp-content/uploads/case-documents/2018/20180702_docket-PC-2018-4716_complaint.pdf.

complaint, the alleged harms stem from the promotion, sale, and/or use of traditional energy products, including by or within Plaintiff States. Rhode Island also seeks equitable relief, "including abatement of the nuisances complained of herein." *Id.* at 140.

84. The First Circuit affirmed an order remanding the case to Rhode Island state court where it is still pending. *Rhode Island v. Shell Oil Prod. Co.*, 35 F.4th 44, 62 (1st Cir. 2022).

COUNT I: Horizontal Separation of Powers

85. This Court has emphasized the importance of the "principles of state sovereignty and comity" embraced by the Constitution. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 (1996). As this Court explained just last Term, the Constitution protects the "horizontal separation of powers," both through its basic structure and through its express guarantees, such as "the Due Process Clause and the Full Faith and Credit Clause." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985)).

86. "[A]ll States enjoy equal sovereignty." *Shelby Cnty. v. Holder*, 570 U.S. 529, 535 (2013). Indeed, the Constitution reflects "special concern ... with the autonomy of the individual States within their respective spheres." *Healy,* 491 U.S. at 335-36; *cf. Bonaparte v. Appeal Tax Ct. of Balt.*, 104 U.S. 592, 594 (1881) ("No State can legislate except with reference to its own jurisdiction.").

87. Attempts by Defendant States to use their own laws to regulate activity or extract liability for emissions by or wholly within Plaintiff States violate this separation of powers, exceed the authority of

Defendant States, and intrude on Plaintiff States' core sovereignty.

88. Plaintiff States are therefore entitled to injunctive relief under section 2 of Article III, 28 U.S.C. §1251, and the inherent equitable powers of this Court, prohibiting Defendant States from seeking to impose liability or obtain equitable relief premised on either emissions by or in Plaintiff States or the promotion, use, and/or sale of traditional energy products in or to Plaintiff States.

COUNT II: Exclusive Federal Authority Over Interstate Emissions

89. States have never had the power to regulate interstate emissions under state law. Rather, as this Court has long held, the regulation of interstate emissions lies exclusively within the competence of the federal government. *See, e.g.*, *AEP*, 564 U.S. at 420-23. Only neutral federal law can govern when the "nature of the problem" is one that "touches basic interests of federalism" or requires "a uniform rule." *Milwaukee I*, 406 U.S. at 103 n.5, 105 n.6.

90. The Clean Air Act further demonstrates Congress's singular and plenary authority to regulate interstate emissions, striking a balance between energy production and environmental protection, 42 U.S.C. §7401(c); *see also* Energy Reorganization Act of 1974, 42 U.S.C. §5801; Mining and Minerals Policy Act, 30 U.S.C. §21a; Surface Mining Control and Reclamation Act, 30 U.S.C. §1201.

91. To be sure, States have "the primary responsibility" to prevent and control "air pollution … *at its source*." 42 U.S.C. §7401(a)(3) (emphasis added); *see also id.* §7410(a)(1) (providing that States adopt plans to enforce federal law "within such State"). But

nothing in the Clean Air Act empowered States to regulate *interstate* gas emissions emanating from outside their borders. Congress must "enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *Sackett v. EPA*, 598 U.S. 651, 679 (2023) (collecting cases). Lacking such clear language, the Clean Air Act did not grant States powers to regulate interstate emissions that they never had.

92. Defendant States have no authority to apply their own laws to regulate interstate gas emissions, and their attempts to do so violate the Supremacy Clause, U.S. Const. art. VI, cl. 2. This Court has exercised original jurisdiction over similar claims arising under the Supremacy Clause. *See, e.g.*, *Maryland*, 451 U.S. at 746-52.

93. Plaintiff States are therefore entitled to injunctive relief under section 2 of Article III, 28 U.S.C. §1251, and the inherent equitable powers of this Court, prohibiting Defendant States from seeking to impose liability or obtain equitable relief premised on either emissions by or in Plaintiff States or the promotion, use, and/or sale of traditional energy products in or to Plaintiff States.

COUNT III: Commerce Clause

94. Attempts by Defendant States to regulate activity within Plaintiff States violate the Commerce Clause. *See* U.S. Const. art. I, §8, cl. 3. The "'Commerce Clause ... precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.' ... Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state

regulatory regime into the jurisdiction of another State." *Healy*, 491 U.S. at 336-37.

95. Plaintiff States need not be involved directly in the commerce at issue to raise a Commerce Clause challenge. *Wyoming*, 502 U.S. at 448-49; *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 341 (1977).

96. Attempts by Defendant States to use their own laws to impose liability for emissions by or wholly within Plaintiff States, with no direct connection to Defendant States, violate the Commerce Clause. Seeking to enjoin conduct within or involving Plaintiff States is a transparent attempt to "directly regulate[] transactions which take place ... wholly outside the State." *Edgar v. MITE Corp.*, 457 U.S. 624, 641 (1982) (plurality op.).

97. Defendant States also discriminate against interstate commerce in favor of local interests by seeking to regulate energy sources favored and promoted by Plaintiff States. *See, e.g.*, Ala. Code §§9-1-6(a), 9-17-1 *et seq*. Simultaneously, Defendant States promote the use and development of alternative energy sources within their States that they do not burden with the threat of massive tort liability. Their requested relief is, in effect, a discriminatory tax.

98. Plaintiff States are therefore entitled to injunctive relief under section 2 of Article III, 28 U.S.C. §1251, and the inherent equitable powers of this Court, prohibiting Defendant States from seeking to impose liability or obtain equitable relief premised on either emissions by or in Plaintiff States or the promotion, use, and/or sale of traditional energy products in or to Plaintiff States.

COUNT IV: Declaratory Relief

99. For the reasons stated in Counts I through III, Plaintiff States are entitled to relief under 28 U.S.C. §2201, declaring that attempts by Defendant States to impose liability or obtain equitable relief from energy companies for emissions by or in Plaintiff States (including by targeting protected speech) is unconstitutional and beyond the competence of Defendants to prosecute. Plaintiff States are also entitled relief declaring that Defendant States' attempts to enjoin the promotion, sale, and/or use of oil, natural gas, coal, and other traditional energy sources beyond their borders, including in or to Plaintiff States, are unconstitutional and beyond the competence of Defendants to prosecute.

PRAYER FOR RELIEF

WHEREFORE, because the Plaintiff States cannot make reprisal by embargo, engage in diplomatic relations, nor attempt force, but must resort to the judicial power of this Court provided by section 2 of Article III and 28 U.S.C. §1251(a) for resolving controversies among States, they respectfully request that this Court issue the following relief:

A. Declare attempts by Defendant States to impose liability for emissions by or in Plaintiff States unconstitutional and beyond the competence of Defendant States to prosecute.

B. Declare attempts by Defendant States to enjoin the promotion, sale, and/or use of traditional energy products, such as oil and natural gas, in or to Plaintiff States unconstitutional and beyond the competence of Defendant States to prosecute.

C. Enjoin attempts by Defendant States to impose liability for emissions by or in Plaintiff States.

D. Enjoin attempts by Defendant States to enjoin the promotion, sale, and/or use of traditional energy products, such as oil and natural gas, in or to Plaintiff States.

E. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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No. ___, Original

Supreme Court of the United States

STATE OF ALABAMA, STATE OF ALASKA,
STATE OF FLORIDA, STATE OF GEORGIA,
STATE OF IDAHO, STATE OF IOWA, STATE OF KANSAS,
STATE OF MISSISSIPPI, STATE OF MISSOURI,
STATE OF MONTANA, STATE OF NEBRASKA,
STATE OF NEW HAMPSHIRE, STATE OF NORTH DAKOTA,
STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA,
STATE OF SOUTH DAKOTA, STATE OF UTAH,
STATE OF WEST VIRGINIA, AND STATE OF WYOMING,
Plaintiffs,

v.

STATE OF CALIFORNIA, STATE OF CONNECTICUT,
STATE OF MINNESOTA, STATE OF NEW JERSEY, AND
STATE OF RHODE ISLAND

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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INTRODUCTION

"In all Cases … in which a State shall be Party, the Supreme Court shall have original jurisdiction." U.S. Const. art. III, §2. Congress has added that the Court's original jurisdiction over interstate controversies is "exclusive." 28 U.S.C. §1251(a). In other contexts, the Court has stated that "jurisdiction given" to federal courts comes with a "virtually unflagging obligation" to exercise it. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) ("We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."). But the Court "honor[s] [its] original jurisdiction" by "mak[ing] it obligatory only in appropriate cases." *Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972) ("*Milwaukee I*"); *see also Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992); *Wyoming v. Oklahoma*, 502 U.S. 437, 450 (1992); *Louisiana v. Texas*, 176 U.S. 1, 15 (1900).

If there is any case in which the Court's exercise of original jurisdiction is appropriate, it's this one. Defendants are five States that assert the power to enact disastrous nationwide energy policy via state tort law enforced by state courts. Thus, this Court's first factor, "the nature of the interest" at stake, *Mississippi*, 506 U.S. at 77, is amply met: Defendant States assert powers with no analogue in our Nation's history. For their powers to grow beyond their borders, every other State's power within its borders must wither. Not only is the theory of these suits repugnant to our constitutional structure; it spells disaster for our national energy system. The claims here are of the utmost "seriousness and dignity." *Id.*

Second, this is a case only the Supreme Court can resolve. There is no fair "alternative forum," *id.*, especially where nearly every federal court to consider the issues has remanded to state court. Absent this Court's intervention, Plaintiff States are left to hope their interests are protected by private parties litigating against Defendant States in their own courts under their own laws. Those fora are neither available to Plaintiff States nor fair to them. Their use is tantamount to "the forcible abatement of outside nuisances," which the Constitution made "impossible." *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907). This Court should grant the motion and reaffirm that "*the* alternative to force is a suit in this court." *Id.* (emphasis added).

The Supreme Court has exercised original jurisdiction over analogous cases when States have sued over the use of state law to dictate interstate energy policy. When "West Virginia, then the leading producer of natural gas, required gas producers in the State to meet the needs of all local customers before shipping any gas interstate," this "Court entertained a suit brought by" Pennsylvania and Ohio. *Maryland v. Louisiana*, 451 U.S. 725, 738 (1981) (discussing *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923)). The States could sue to protect public institutions and the consuming public, whose "substantial" interests were threatened with "serious injury." *Id.* at 738-39.

In 1981, this Court considered a "functionally indistinguishable" challenge brought by Maryland and other States against Louisiana. 451 U.S. at 738. Louisiana's "first use" taxation scheme for natural gas threatened the "health, comfort and welfare" of "private consumers in each" plaintiff State through "the threatened withdrawal of the gas from the interstate

stream"—"a matter of grave public concern." *Id.* at 738 (quoting *Pennsylvania*, 262 U.S. at 592). Because these "direct injur[ies]" undermined each plaintiff's "interest in protecting its citizens from substantial economic injury," the case "implicate[d] serious and important concerns of federalism fully in accord with the purposes and reach of [this Court's] original jurisdiction." *Id.* at 739, 743-44. Denying Louisiana's motion to dismiss, the Court rejected its argument that "presently pending state lawsuits raising the identical constitutional issues presented here constitute sufficient reasons to forgo the exercise of … original jurisdiction." *Id.* at 740.

ARGUMENT

I. This Court should exercise jurisdiction in light of the great "seriousness and dignity" of the claims.

At the time of the Founding, controversies among the States "had raged with such fierceness as … to lead to bloodshed" and "civil disturbance which threatened to impair the harmony of the Union." 1 Hampton Lawrence Carson, *The Supreme Court of the United States: Its History* 66 (1892). By declaring their 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).

Pursuant to their sovereign powers, the newly independent nations then targeted each other with "'rival, conflicting and angry regulations,'" which "continued to be a source of conflict." *Camps*

Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564, 629 (1997) (Thomas, J., dissenting) (quoting James Madison). It was well understood by the Founders that "the transition from animosities to hostilities was frequent in the history of independent States." *Chisholm v. Georgia*, 2 U.S. 419, 474 (1793). The need for "a common tribunal for the termination of controversies became desirable." *Id.*

"[H]appily for our domestic harmony," the States relinquished their sovereign powers of diplomacy and war, and the Constitution removed any "power of aggressive operation" against States. *Burton's Lessee v. Williams*, 16 U.S. 529, 538 (1818). 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; *Kansas v. Colorado*, 185 U.S. 125, 140-41 (1902) ("*Kansas I*"). Through the Supremacy Clause, the States "surrendered to congress, and its appointed Court, the right and power of settling their mutual controversies." *Rhode Island*, 37 U.S. at 737; *see also Kansas v. Colorado*, 206 U.S. 46, 95 (1907) ("*Kansas II*"); *Missouri v. Illinois*, 200 U.S. 496, 518-20 (1906) ("*Missouri II*"); *Missouri v. Illinois*, 180 U.S. 208, 241 (1901) ("*Missouri I*"); *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 (Hamilton). "Whatever practices" that "tend[] to disturb the harmony between the States[] are proper objects of federal superintendence and control." *Id.*

From these origins of our federal system flow basic tenets of constitutional law that establish both the "seriousness and dignity" of this suit and the unique need for this Court's intervention.

First, 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," no State "can impose its own legislation" or "enforce its own policy upon the other[s]." *Kansas II*, 206 U.S. at 95, 97-98. Every State must "stand[] on the same level with all the rest." *Id.* at 97. By attempting to regulate energy nationwide, Defendant States violate the horizontal separation of powers and defy the notion of "a union of states, equal in power, dignity and authority." *Coyle v. Smith*, 221 U.S. 559, 567 (1911).

Second, in areas ripe for conflict, the Supreme Court has maintained equality and harmony among the States by applying "the supreme Law of the Land," U.S. Const. art. VI, cl. 2, not the law of any one State. *See Kansas II*, 206 U.S. at 95; *Missouri II*, 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). Only neutral federal law can govern when the "nature of the problem" "touches basic interests of federalism" or requires "a uniform rule." *Milwaukee I*, 406 U.S. at 103 n.5, 105 n.6; *see also Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 420-23 (2011) ("*AEP*"). Defendant States have no power to use their laws to control *interstate* emissions.

Third, it is one thing for a State to enact a law that influences commerce in other States, *see Gibbons*, 22 U.S. at 203, but something else entirely to assign tort liability or seek to enjoin anyone who sells or uses traditional energy anywhere in the country. The latter reprises the tit-for-tat economic warfare among States that motivated the Commerce Clause. Defendant

States flout the clause's negative command by "directly regulat[ing] transactions which take place … wholly outside" their borders. *Edgar v. MITE Corp.*, 457 U.S. 624, 641 (1982) (plurality op.).

Beyond the constitutional ramifications, the issues have grave consequences for the future of the energy industry, the national economy, and energy prices for everyday Americans—to name a few. Defendant States threaten to impose billions of dollars in costs on the energy sector, which will not fall on the defendants in those suits alone. Because the costs will fall on the public as a whole, the affected "interests are substantial." *Pennsylvania*, 262 U.S. at 591.

A. Defendant States violate the horizontal separation of powers by regulating emissions beyond their borders.

While "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) (emphasis added), Defendant States assert the power to proscribe wholly extraterritorial conduct based on its alleged effect on the global atmosphere. They cannot do so without upsetting the horizontal separation of powers among equal State sovereigns.

Every State has "real and substantial interests" in the natural 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 Justinian Code). It is thus unsurprising that a State might complain of "outside nuisances" and other "injuries analogous to torts."

Tenn. Copper Co., 206 U.S. at 237. Indeed, a "nuisance created by a state upon a navigable river like the Danube, [] would amount to a *casus belli* for a state lower down, unless removed." *Missouri II*, 200 U.S. at 520-21. But the Constitution removed "the forcible abatement of outside nuisances" from a State's arsenal. *Tenn. Copper Co.*, 206 U.S. at 237; *Kansas I*, 185 U.S. at 140-41.

Defendant States exceeded their authority by seeking "forcible abatement," rather than a federal judicial remedy. If a State passed a statute imposing massive liquidated damages for every gallon of gasoline sold in a neighboring State, no one would doubt that the law violates the neighbor's sovereignty, among other tenets of our federalism. *See, e.g.*, *Louisiana*, 176 U.S. at 27-28 (Brown, J., concurring). The attempt to construe state torts or consumer protection statutes to have such effects 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 of N. Am., Inc. v. Gore*, 517 U.S. 559, 573 n.17 (1996). 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 571-72. Those principles would be "meaningless" if a State could avoid them by doing indirectly what it could not do directly. *See Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012); *Cipollone v. Liggett Grp.*, 505 U.S. 504, 548 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part) (explaining that "general tort-law duties" can "impose 'requirement[s] or prohibition[s]'"); *see also Cummings v. Missouri*, 71 U.S. 277, 325 (1866) ("The legal result must be the same, for what cannot be done directly cannot be done indirectly.").

Likewise, Defendant States cannot conceal the effect of their suits to regulate interstate air by describing them as consumer protection actions. Such depictions defy "common sense," *City of New York v. Chevron Corp.*, 993 F.3d 81, 93 (2021), and cannot be squared with the face of the complaints. Each of the Defendant States seeks to impose liability or requests relief, such as abatement, based on the effects of alleged *global* climate change. It is hard to miss that California repeatedly complains of conduct occurring in "California *and elsewhere*" with effects in "California *and elsewhere*."[67] While the State alleges that "disinformation" misled California consumers, it was not "disinformation" that caused California's alleged injuries; it was, according to the complaint, the "human combustion of fossil fuels to produce energy and use of fossil fuels to create petrochemical products," activities that occur every day around the world. *See* Cal. Complaint at 32. California's alleged injuries stem from global phenomena, such as "melting of ice sheets and glaciers." *Id.* at 113.

As one state judge put it, California's suit "seek[s] to establish the defendants' responsibility and liability for contributing to global climate change." Notice of Entry of Order Granting Petition for Coordination, Ex. A. to Ex. 1, *California v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. Feb. 7, 2024). The judge was blunt in his assessment that "[i]f ever there were litigations that could be described as truly global

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[67] *See* Complaint at ¶¶7, 12(f), 12(h), 13(g), 13(h), 12(g), 13(g), 13(h), 14(g), 14(h), 15(h), 15(i), 16(f), 16(g), 18(e), 18(h), 25, 109, 121, *California v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. Sept. 15, 2023) ("Cal. Complaint") (emphasis added), www.gov.ca.gov/wp-content/uploads/2023/09/FINAL-9-15-COMPLAINT.pdf.

in scope, they are these. … [T]he interests potentially affected by the issues in these cases apply equally well to the populations of … any other county, state, or nation on the face of the Earth. These are not lawsuits with a local focus or local stakes." *Id.* Indeed, California seeks remedies such as "all temporary and permanent equitable relief needed to prevent further pollution," relief that must reach conduct *everywhere* to redress the alleged injuries. Cal. Complaint at 124.

The remaining Defendant States similarly seek relief for conduct far beyond their borders. Connecticut seeks relief for its "mitigation, adaptation, and resiliency" measures to "combat the … effects of climate change"—which will allegedly cost the State billions.[68] Minnesota also claims billions of dollars in harm from climate change (with billions more to come, it says), and it seeks restitution for that harm, which it ties to the accumulation of certain gases in the Earth's atmosphere. [69] Likewise, New Jersey seeks compensatory and natural resource damages and alleges that energy-driven climate change is to blame for billions of dollars in property damage. [70] And

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[68] First Amended Complaint at 36, 44, *Connecticut v. Exxon Mobil Corp.*, No. HHD-CV-20-6132568-S (Conn. Super. Ct. Nov. 20, 2023), https://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=26324374.

[69] Complaint at 3, 15, 83, *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct. June 24, 2020), https://climatecasechart.com/wp-content/uploads/case-documents/2020/20200624_docket-62-CV-20-3837_complaint.pdf.

[70] Complaint at 2, 176, 193, *Platkin v. Exxon Mobil Corporation*, No. MER-L-001797-22 (N.J. Super. Ct. Oct. 18, 2022), https://climatecasechart.com/wp-content/uploads/case-documents/2022/20221018_docket-MER-L-001797-22_complaint.pdf.

Rhode Island seeks compensatory damages for harm from "dire climate-related effects" from certain gas emissions.[71] Even under Defendants' own view, however, the alleged effects of climate change result from global emissions. For many of their claims, it doesn't matter whether emissions came from their own States, Alabama, or across the planet. *See AEP*, 564 U.S. at 422 ("[E]missions in New Jersey may contribute no more to flooding in New York than emissions in China."). The effects are all the same and, as a result, they are seeking to punish energy companies for selling their products anywhere.

But reducing the sale and use of traditional energy *everywhere* is not among any State's constitutional powers. *See Hoyt v. Sprague*, 103 U.S. 613, 630 (1880); *see also Healy v. Beer Inst.*, 491 U.S. 324, 335-36 (1989); *Bonaparte v. Appeal Tax Ct. of Baltimore*, 104 U.S. 592, 594 (1881); *Lane County v. Oregon*, 74 U.S. 71, 76 (1868); *New York*, 993 F.3d at 92. There is no historical analogue to these suits, which threaten damages as "a potent method of governing conduct and controlling policy" across the country. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959). To be sure, not every suit against the energy industry is an attempt to regulate interstate emissions. But these cases are.

Usurping the power to control extraterritorial conduct with respect to energy and the environment diminishes the police power of every other State "to promote the general welfare, or to guard the public

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[71] Complaint at 1, 4, 140, *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018), https://climatecasechart.com/wp-content/uploads/case-documents/2018/20180702_docket-PC-2018-4716_complaint.pdf.

health, the public morals, or the public safety." *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.*, 26 N.Y.2d 219 (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 Defendant States encroach on the police powers of every other State; their novel theory would also upset the federal government's careful balancing. Federal legislation on the subject of gas emissions 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").

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*, 576 U.S. 787, 816-17 (2015); *Oregon v. Ice*, 555 U.S. 160, 170-71 (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).

The aims of Defendant States are irreconcilable with many policies adopted by Plaintiff 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 Defendant States. This Court should reaffirm that cases about interstate emissions are interstate conflicts in which no State is "bound to yield its own views." *Kansas II*, 206 U.S. at 97.

B. Defendant States violate basic principles of federalism by applying state law to interstate matters governed by federal law.

1. Defendant States violate the "basic interests of federalism," *Milwaukee I*, 406 U.S. at 105 n.6, by extending state law to matters that must be governed by federal law. Their lawsuits create interstate controversies to which federal law applies, but Defendant States seek to insulate their claims from the guardrails of federal law. Because States are equal, no State's law can supersede that of any other. Instead, when sovereign wills collide in interstate matters, the Court "recognize[s] the equal rights of both" by applying higher order principles—"what may … be called interstate common law." *Kansas II*, 206 U.S. at 98; *accord Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 718 (8th Cir. 2023) (Stras, J., concurring) ("The rule of decision … has *always* been … what we now know as the federal common law." (emphasis added)).

This 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 v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938). A dispute over the boundary between two States may be the paradigmatic 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). The doctrine that only federal law can govern interstate matters extends even to cases involving private parties. *See, e.g.*, *Hinderlider*, 304 U.S. at 110;

Tenn. Copper Co., 206 U.S. at 237; *Lessee of Marlatt v. Silk*, 36 U.S. 1, 22-23 (1837).

By their nature, Defendant States' claims involving interstate emissions—*i.e.*, the pollution of air and water in one State from sources in another—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. *New York*, 993 F.3d at 91 (collecting cases). Where no federal statute governs, this Court has identified and applied federal common law.

For example, *Missouri v. Illinois* was a suit to enjoin the dumping of sewage into an Illinois river, which, Missouri alleged, ultimately deposited downstream into Missouri riverbeds and poisoned Missouri water. *Missouri II*, 200 U.S. at 517. Applying principles "known to the older common 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 in rejecting a laches defense and fashioning a remedy. *Id.* at 237-39. The Court thought a State could be "entitled to specific relief" rather than "give up quasi-sovereign rights for pay." *Id.* at 237-38. The analysis did not depend on state law but a federal equity jurisprudence for interstate emissions cases.

More recently in *Milwaukee I*, the 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. In an original nuisance suit, Illinois alleged that Milwaukee was polluting Lake Michigan, an interstate body of water. The Court invoked the logic of federalism: While Illinois could not force Milwaukee to abate its activity, neither could Illinois be required "to submit to whatever might be done." *Id.* at 104. Thus, the "nature of the problem" created an impasse that only neutral federal law could resolve. *Id.* at 103 n.5.

The dispositive fact in *Milwaukee I* was that Lake Michigan is "bounded, as it is, by four States," one of which was polluting. *Id.* at 105 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).

Having alleged liability for interstate emissions, Defendant States have created interstate controversies under this Court's binding precedent. *See Am. Petroleum Inst.*, 63 F.4th at 718 (Stras, J., concurring) ("This is, in effect, an interstate dispute."). Defendant States seek to enact a global climate policy—one that would interfere with the sovereign power of every other State to regulate within its borders. Permitting them to do so under the aegis of state law would contravene basic federalism principles that this Court has applied time and again.

2. Defendant States also undermine federalism by extending state law into an area 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. of Cal.*, 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 (1998) (cleaned up). Uniquely federal interests exist where the application of state law "would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of the several states." *Clearfield Tr. Co. v. United States*, 318 U.S. 363, 367 (1943).

The problem of interstate emissions requires a uniform federal solution, not case-by-case adjudication under state law. Only federal law, "not the varying common law of the 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 107 n.9. The Court's view in *Milwaukee I* applies *a fortiori* to Defendant States' claims premised on *global* emissions, which implicate *every* State, not just those with claims to a specific river or lake.

The theory advanced by Defendant States would subject energy companies to every State's regulatory and enforcement regime simultaneously—resulting in unpredictable and irreconcilable duties. *See Wisc. Dept. of Indus. v. Gould Inc.*, 475 U.S. 282, 286 (1986) ("Conflict is imminent whenever two separate remedies … bear on the same activity." (cleaned up)). Their actions will 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 v. Tenn. Valley Auth.*, 615 F.3d 291, 296 (4th Cir. 2010); *see also 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). The potential for disaster may be avoided by the recognition that a uniform federal law must govern. Defendant States may not enforce their individual state laws to the problem of interstate emissions.

3. Some courts have wrongly suggested that displacement of federal common law by federal statute renders state law competent to govern interstate emissions. They resist *Milwaukee I*'s application, reasoning that the federal common law governing interstate emissions "*no longer exists*" after the Clean Air Act and Clean Water Act. *Bd. of Cnty. Comm'rs of Boulder Cnty. v Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1260 (10th Cir. 2022); s*ee also, e.g.*, *Rhode Island v. Shell Oil Prod. Co.*, 35 F.4th 44, 55 (1st Cir. 2022); *Mayor of Baltimore v. BP P.L.C.*, 31 F.4th 178, 206 (4th Cir. 2022). On this view, displacement allows "state law … [to] snap back into action unless specifically preempted by statute." *New York*, 993 F.3d at 98.

The "snap back" approach is misguided. First, federal common law exists precisely "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). Any displacement of

federal common law just means that 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 presumptively competent to address issues that demand a unified federal standard simply because Congress … displace[d] a federal court-made standard with a legislative one." *New York*, 993 F.3d at 98.

The 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 Court answered the choice-of-law question first: 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). Whether the *remedy* is still available 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 before it.

Second, state law would be especially inappropriate to replace federal common law fashioned out of constitutional necessity. Here, interstate common law 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 II*, 206 U.S. at 95. Defendant States urge a grave constitutional wrong that the Clean Air Act cannot sanctify.

Likewise, if "uniquely federal" interests demand "uniform federal standards," state law can never be conclusive. *Milwaukee III*, 731 F.2d at 410. The interests identified in *Milwaukee* apply even more strongly here. As the Court explained in *AEP*, "district judges 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 that was one of the reasons for displacement, it would make no sense for state law to "snap back" and recreate the problem that *better* federal law was needed to solve.

Defendant States might be permitted to bring "nuisance claim[s] pursuant to the law of the *source* State," the Court once remarked in *dicta*. *Id.* at 429 (emphasis in original). That would make sense, as

intrastate claims were never governed by federal common law in the first place.

But Defendants bring *interstate* claims, which cannot constitutionally proceed under state law. As this Court reaffirmed in *AEP*, "suits brought by one State to abate pollution emanating from another State" are "meet for federal law governance." *Id.* at 421-22. In such suits, "borrowing the law of a particular State would be inappropriate." *Id.* at 422 (collecting cases). Further, this Court expressed doubt that "a State may sue to abate any and all manner of [interstate] pollution." *Id.* 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; in fact, it seemed to warn against actions just like those at issue here.

C. Defendant States violate the Commerce Clause by regulating extraterritorially.

The Commerce Clause also works to protect States from attempts by one State to impose its policy choices on the others. To that end, "the 'Commerce Clause … precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.'" *Healy*, 491 U.S. at 336 (quoting *Edgar*, 457 U.S. at 642-43 (1982) (plurality op.). By imposing liability on wholly extraterritorial transactions in the energy market, Defendant States impermissibly "project[]" their "regulatory regime into the jurisdiction of [Plaintiff] State[s]." 491 U.S. at 336-37.

If Defendant States can proceed against any source of emissions anywhere in the world, the Commerce Clause's "negative command" would be quite

meaningless. *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995). As the Court recently reiterated, a State may not "directly regulate … transactions with no connection to the State." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023) (emphasis omitted). Yet Defendant States challenge conduct that has *no identifiable connection* to them, or at least no more connection to them than any emission anywhere in the world. *See, e.g.*, Cal. Complaint at 96 (alleging increased temperatures in California because "[g]lobally, increased concentrations of carbon dioxide and other gases in the atmosphere are causing a continuing increase in the planet's average temperature").

Defendant States' claims could be constitutional only on the assumption that any minute alteration in the global atmosphere has a "connection" to every State. But if that is the law, then the Commerce Clause is toothless in the entire field of air regulation—a conclusion with no support in precedent. A carveout in the Commerce Clause for air cases would not "respect the interests of other States" nor help "maint[ain] … a national economic union." *BMW*, 517 U.S. at 571.

Further, the Court has already endorsed the application of the Commerce Clause to a state law that burdened out-of-state energy consumers. In *Maryland v. Louisiana*, it was clear to the Court that "the flow of gas" among States "constitutes interstate commerce." 451 U.S. at 754. Louisiana had taxed the gas leaving the State and simultaneously adopted a "pattern of credits and exemptions" to protect in-state consumers from any impact of the tax. *Id.* at 759. Likewise, Defendant States seek to impose liability on

forms of energy favored by other States and their citizens. *See, e.g.*, Cal. Complaint at 123 (faulting energy companies for "affirmatively promoting fossil fuel products"). Their requested relief would directly burden the interstate energy markets and prevent States from adopting alternative regulatory regimes in line with their own policy prerogatives.

This is not a case where the state laws at issue have mere "ripple effects beyond their borders." *Nat'l Pork Producers Council*, 598 U.S. at 390. Defendant States hope to enforce their laws directly on wholly extraterritorial conduct. The Commerce Clause forbids such overreach.

D. Defendant States threaten to upend the national energy economy.

Beyond the constitutional issues, the bill of complaint describes "a matter of grave public concern" that warrants this Court's exercise of original jurisdiction. *Pennsylvania*, 262 U.S. at 592. The affected citizens—anyone who uses traditional energy products—"constitute a substantial portion," indeed the vast majority, "of [each] state's population. Their health, comfort, and welfare are seriously jeopardized by the threatened withdrawal of the gas from the interstate stream." *Id.*

It is difficult to overstate the magnitude of the harms posed by Defendant States, who assert that their state laws impose liability—and the potential for injunctive relief—based on emissions anywhere in the world. "If the Producers want to avoid all liability, then their only solution would be to cease global production altogether." *New York*, 993 F.3d at 93. Even if "some level of ongoing liability were deemed palatable, a significant damages award" for any of the

Defendant States would predictably increase the cost and decrease the supply of energy. *Id.* The consequences could be even more severe if a state court grants "any and all temporary and permanent equitable relief needed to prevent further pollution, impairment and destruction of the natural resources of" one of the Defendant States. Cal. Complaint at 124. Defendant States may wish for a global energy transition or some technological breakthrough, but whatever the likelihood and feasibility of such changes, Americans will greatly suffer in the meantime. As detailed in the bill of complaint, energy sources such as oil and natural gas are critical to a variety of industries, including agriculture, manufacturing, and transportation. A threat of "substantial economic injury" is "serious" enough to grant the Plaintiff States' motion. *Maryland*, 451 U.S. at 739.

Moreover, the potential damage is too great for Plaintiff States to wait and hope that Defendant States lose in their present state-court actions. Defendants assert that their laws reach wholly extraterritorial promotion, use, and sale of energy *now*. The threat alone is an "attempt[] to alter [] nationwide policy." *BMW*, 517 U.S. at 572. Such attempts are unlawful whether they are "legislatively authorized" or ultimately "judicially imposed." *Id.* This Court may consider the future "practical operation" of the challenged state laws. *Maryland*, 451 U.S. at 756; *id.* at 760 ("We need not know how unequal the Tax is before concluding that it unconstitutionally discriminates.").

Each lawsuit represents a grave risk that a single state judge might "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. Worse, separate courts could enter divergent forms of relief, breeding confusion and compounding ruinous liability. In *AEP*, this Court "resist[ed] setting emissions standards by judicial decree under federal tort law" in part because federal judges are not well equipped to assess "our Nation's energy needs and the possibility of economic disruption." 564 U.S. at 427. Surely, *state* tort law is no more competent to make national energy policy.

Just as Maryland and other States had an "immediate and recognized" interest in stopping an unconstitutional tax, Plaintiff States properly invoke this Court's jurisdiction over a "threatened invasion of rights." *Maryland*, 451 U.S. at 736 n.11, 738; *id.* at 760 (enjoining "further collection of the Tax"). The Court should grant the motion before Defendant States can enforce their purported extraterritorial powers to create a national emergency.

II. This Court should exercise jurisdiction because no alternative forum is available.

The Supreme Court is the appropriate place to litigate these issues. Because Congress gave this Court "exclusive" original jurisdiction over controversies between States, 28 U.S.C. §1251(a), Plaintiff States have no alternative forum to bring this suit against Defendant States. *See Mississippi*, 506 U.S. at 77-78 (explaining that the statute's "uncompromising" language "necessarily denies jurisdiction of such cases to any other federal court"); *see also* The Federalist No. 81 (Hamilton) ("[I]t would ill suit [a State's] dignity to be turned over to an inferior tribunal.").

"The model case for invocation of this Court's original jurisdiction is a dispute between States of such

seriousness that it would amount to *casus belli* if the States were fully sovereign." *Texas v. New Mexico*, 462 U.S. 554, 571 n.18 (1983). The allegations that Defendant States suffer from out-of-state nuisances would be *casus belli* among independent nations. *See Missouri II*, 200 U.S. 496, 520-21. Rather than seek relief from the federal government, Defendants chose the path of "forcible abatement." *Tenn. Copper Co.*, 206 U.S. at 237. If they asserted that their state laws govern interstate boundary lines or interstate water rights, the collision between States would be undeniable. *See Kansas I*, 185 U.S. at 140-41. The same goes for this case about the proper response to interstate air pollution. That Defendants proceeded by lawfare, not warfare, does not make the controversy any less suitable for this Court's jurisdiction.

Because Plaintiff States face a frontal assault on their sovereignty, they should not be forced to rely on private parties litigating in sister-state courts to vindicate their rights. Especially where Plaintiff States challenge the very existence of those actions, it would be anomalous for this Court to deny the motion on the ground that further suspect litigation may protect their interests.

Moreover, the Court has already recognized that its original jurisdiction is proper in suits over energy policy like this one. *Pennsylvania v. West Virginia* was a controversy over policies affecting the availability and shipment of natural gas from one State to another. 262 U.S. at 591. And *Maryland v. Louisiana* involved a tax on natural gas pipelines. 451 U.S. at 744. The Court entertained the action over Louisiana's objection that there were "pending state-court actions in Louisiana in which the constitutional issues sought to be presented

may be addressed." *Id.* at 735. Among the facts supporting jurisdiction was the "magnitude" of the tax, which would be felt by "millions of consumers." *Id.* at 744. The threatened penalties here dwarf the tax burden in *Maryland*.[72]

This Court has also regularly exercised equitable jurisdiction over lawsuits involving alleged "outside nuisances" that implicate "quasi-sovereign interests." *See, e.g.*, *Milwaukee I*, 406 U.S. at 104; *New York v. New Jersey*, 256 U.S. 296, 313-14 (1921); *New Jersey*, 283 U.S. at 476-77; *Missouri II*, 200 U.S. at 520-21; *Missouri I*, 180 U.S. at 241. Although Plaintiff States do not bring nuisance claims, the constitutional wrongs by Defendant States directly concern a State's power to redress alleged interstate nuisances. Only this Court can definitively and finally resolve such matters.

* * *

If the Court determines that this controversy does not satisfy the factors for granting the Motion to File a Bill of Complaint, the Court should reexamine and overrule its precedent holding that its exclusive original jurisdiction over disputes between States is discretionary. The discretionary approach to original jurisdiction is inconsistent with the text of section 2 of Article III and 28 U.S.C. §1251, and also with the Court's understanding of those provisions for most of its history. As many Justices have recognized, the only proper reading of the constitutional text and history, and 28 U.S.C. §1251, is that the grant of original jurisdiction to this Court over suits between states is mandatory, unqualified, and exclusive. *See Texas v. California*, 141 S. Ct.

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[72] *See, e.g.*, Complaint at 2, 144, 193, *Platkin v. Exxon Mobil Corporation*, No. MER-L-001797-22 (N.J. Super. Ct.) (N.J. Super. Ct. Oct. 18, 2022) (requesting billions of dollars in compensation).

1469, 1472 (2021) (Alito, J., dissenting from denial of motion for leave to file complaint) (collecting cases); *Nebraska v. Colorado*, 577 U.S. 1211 (2016) (Thomas, J., dissenting from denial of motion for leave to file complaint) (similar).

CONCLUSION

For the foregoing reasons, Plaintiff States respectfully request that this Court grant their Motion for Leave to File Bill of Complaint.

Respectfully submitted,

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