IN THE
SUPREME COURT OF MARYLAND

September Term, 2025

No. 11

MAYOR AND CITY COUNCIL OF BALTIMORE,

Appellant,

v.

B.P. P.LC., *et al*.,

Appellees.

ANNE ARUNDEL COUNTY, MARYLAND,

Appellant,

v.

B.P. P.LC., *et al*.,

Appellees.

CITY OF ANNAPOLIS,

Appellant,

v.

B.P. P.LC., *et al*.,

Appellees.

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

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BRIEF OF AMICUS CURIAE ATTORNEY GENERAL OF MARYLAND IN SUPPORT OF APPELLANTS

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BRIEF OF AMICUS CURIAE ATTORNEY GENERAL OF MARYLAND IN SUPPORT OF APPELLANTS

INTEREST OF AMICUS CURIAE

The Attorney General of Maryland has "general charge of the legal business of the State," Md. Code Ann., State Gov't § 6-106(a) (LexisNexis 2021), and the duty to "[p]rosecute and defend on the part of the State all cases pending in the Appellate Courts of the State . . . by or against the State, or in which the State may be interested, except those criminal appeals otherwise prescribed by the General Assembly." Md. Const. art. V, § 3(a)(1). More specifically, the Attorney General is entitled to file a brief as amicus curiae "in any appeal in which the State of Maryland may have an interest." Md. Rule 8-511(a)(2).

The Attorney General files this amicus brief to assert the State's interest in preserving the capacity of Maryland common law and statutory law to remedy harm caused by commercial entities within the State. That interest extends to claims brought in state court for climate change-related harms alleged to result from the deceptive conduct of fossil fuel producers and sellers, especially when the plaintiffs are governmental entities. As this brief explains, and contrary to the circuit courts' conclusions in these cases, federal law does not preempt plaintiffs' claims. Plaintiffs seek relief arising from defendants' allegedly deceptive marketing and distribution of dangerous products; they do not seek to regulate emissions, nor do they seek to penalize emissions. Thus, although federal law may preempt some efforts to regulate or penalize cross-boundary emissions, that preemptive effect is irrelevant here. Rather, plaintiffs' claims are no more preempted than any other use of state tort law to seek recompense for deceptive marketing or distribution of a product.

As explained below, the fact that plaintiffs' claims implicate climate change does not alter this conclusion. The circuit courts' contrary determinations rested in part on the notion that climate change is a distinctly national or global problem, demanding only a national or global response. (E. 11, 12, 14, 1383-85.) Climate change is indeed a national and global problem, but its effects—from rising temperatures to rising seas—often are felt at the local level. State and local governments, in turn, have undertaken a wide array of measures to address the many facets of climate change and its consequences. Particularly in this light, state-law tort liability for in-state harms that defendants allegedly have caused via deceptive conduct is unremarkable and not preempted.

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE NOT PREEMPTED.

These lawsuits seek to hold defendants liable on well-established state law theories. (E. 45 ¶ 11; E. 1160-84 ¶¶ 243-321; E. 1346-70 ¶¶ 246-323.) Plaintiffs' claims focus on defendants' allegedly tortious conduct as marketers and distributors of fossil fuels—products whose use results in the emission of greenhouse gases. (*E.g.*, E. 41-45 ¶¶ 1-7, 10; E. 1015-20 ¶¶ 1-12; E. 1193-99 ¶¶ 1-12.) More specifically, plaintiffs allege that defendants have unlawfully marketed and sold fossil fuels despite knowing those products to be dangerous. (*E.g.*, E. 43-44 ¶¶ 5-7; E. 1017-18 ¶¶ 7-9; E. 1195-96 ¶¶ 7-9.) Plaintiffs allege that defendants' tortious conduct caused harm in Maryland. (E. 44 ¶ 8; E. 1018-20 ¶¶ 9-11; E. 1196-98 ¶¶ 9-11.) And plaintiffs seek compensation for the damage that

defendants' tortious conduct allegedly has caused. (*E.g.*, E. 45 ¶ 12; E. 1020 ¶ 14; E. 1119 ¶ 14.)

Just as important is what these lawsuits do not do. They do not seek to hold defendants liable as emitters. (*See, e.g.*, E. 45 ¶ 12 ("The City does not seek to impose liability on Defendants for their direct emissions of greenhouse gases and does not seek to restrain Defendants from engaging in their business operations.").) They do not ask the courts to require any polluting source to stop, reduce, or control emissions. And they do not ask the courts to accomplish or require any overall reduction in emissions.

Still, relying on cases such as *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987), and *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) ("*AEP*"), the circuit courts reasoned that plaintiffs' claims are preempted by federal law, essentially because they arise from out-of-state emissions and interstate pollution. (E. 10-19, 1383-86.) That conclusion is incorrect because plaintiffs do not seek to hold defendants liable as emitters of pollutants *anywhere*, whether in-state or out-of-state. Rather, they are suing defendants as allegedly deceptive marketers and distributors of products whose use has harmed plaintiffs in this State. (*E.g.*, E. 43-44 ¶¶ 5-7; E. 1017-18 ¶¶ 7-9; E. 1195-96 ¶¶ 7-9); *see Young v. Masci*, 289 U.S. 253, 258-59 (1933) (observing that "[t]he cases are many in which a person acting outside the state may be held responsible according to the law of the state for injurious consequences within it"); *cf. National Pork Producers Council v. Ross*, 598 U.S. 356, 373-76 (2023). And they are doing so on the basis of well-established state law theories. Whatever legal principles may govern a suit against a power plant for its transboundary emissions of greenhouse gases, those principles have nothing to

do with plaintiffs' claims. *See City & County of Honolulu v. Sunoco LP*, 153 Haw. 326, 334 (2023), *cert. denied*, 2025 WL 76706 (Jan. 13, 2025) (declining to find suit preempted because it "does not seek to regulate emissions and does not seek damages for interstate emissions"); *id.* at 354 (stressing that "the source of Plaintiffs' alleged injury is Defendants' allegedly tortious marketing conduct, not pollution traveling from one state to another").

Given that plaintiffs' claims arise out of conduct other than emissions, and do not seek to regulate emissions, they are not barred by federal law. Indeed, they can fully coexist with the regulation of emissions under the Clean Air Act. *See, e.g.*, *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984) (stressing that conflict preemption exists only if state law "stands as an obstacle to the accomplishment and execution of [federal law's] full purposes and objectives"); *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 486 (2017) (explaining that when "weighing whether a state law poses an obstacle to congressional purposes or objectives," a court must "apply a presumption that Congress did not intend to preempt state law"). Nor are they subject to any body of federal common law. *See City & County of Honolulu*, 153 Haw. at 355 (noting defendants' failure "to point to any case recognizing federal common law governing tortious marketing suits" and declining to expand federal common law to cover the regulation of "marketing conduct").

The *Ouellette* decision, on which both circuit courts relied, does not support their conclusions that these suits are preempted. *Ouellette* held that the Clean Water Act preempts a suit against an out-of-state polluter when the suit is brought under the receiving state's law. 479 U.S. at 497. In these cases, however, defendants are not being sued as out-of-state polluting sources. Instead, they are being sued as allegedly deceptive

marketers and distributors of products. (*E.g.*, E. 41-45 ¶¶ 1-7, 10; E. 1015-20 ¶¶ 1-12; E. 1193-99 ¶¶ 1-12.) *Ouellette*, which relies heavily on the Clean Water Act's comprehensive permitting scheme *for polluting sources*, says nothing about suits like these. *See* 479 U.S. at 492 (emphasizing the Clean Water Act's creation of an "all-encompassing program of water *pollution* regulation" (emphasis added)).

For similar reasons, there is no merit to the circuit courts' suggestions that plaintiffs' claims are preempted because they purportedly ask courts to regulate emissions or impose liability for emissions. (*See* E. 17-19, 1385-86.) Plaintiffs' claims seek no such thing. Instead, they seek recompense for defendants' allegedly tortious marketing and distribution of their products. *See Anne Arundel County v. B.P. P.L.C.*, 94 F.4th 343, 349 (4th Cir. 2024) (stressing that the plaintiffs' claims "do not challenge the companies' production and supply of fossil fuels" and that, "[i]nstead, the local governments attack the companies' 'widely disseminated misleading marketing materials'; attempts to 'discredit the scientific knowledge generally accepted at the time' and to 'advance[] pseudo-scientific theories of their own'; and 'develop[ment of] public relations materials that prevented reasonable consumers from recognizing the risk that fossil fuel products would cause grave climate changes'" (brackets in original)); *Mayor & City Council of Baltimore v. B.P. P.L.C.*, 31 F.4th 178, 233-34 (4th Cir. 2022) (emphasizing that, according to Baltimore's complaint, "it is the concealment and misrepresentation of [fossil fuel] products' known dangers—and the simultaneous promotion of their unrestrained use—that allegedly drove consumption, and thus greenhouse gas pollution, and thus climate change"). Thus, liability in these cases would not interfere or overlap with any decision by any other entity—state

or federal—to regulate or penalize emissions as such.[1] And from the standpoint of a fossil fuel company, complying with duties to refrain from deceptive marketing and distribution would not stand in the way of complying with any applicable limits on emissions.

Nor does the Supreme Court's decision in *AEP* aid arguments for preemption, whether by the Clean Air Act or otherwise. (*See* E. 12, 14.) For one thing, *AEP* concerned the scope of the Clean Air Act's displacement of federal common law, not preemption. *See, e.g.*, *AEP*, 564 U.S. at 424. *AEP* held that the Clean Air Act displaced the federal common law of nuisance as applied to abatement of greenhouse gas emissions. *Id.* at 423. Whether the Clean Air Act displaces federal common law logically has nothing to do with the extent to which it preempts *state* law.

For another thing, *AEP* involved claims against emitters, arising out of their emissions. *See id.* at 418 (recounting plaintiffs' allegations that "the defendants are the five largest emitters of carbon dioxide in the United States," and describing tort claims based on "the defendants' carbon-dioxide emissions"). *AEP* thus involved conduct—emitting greenhouse gases—that differs from the allegedly deceptive marketing and

[1] The federal appellate decisions on which defendants relied below do not establish preemption under *Ouellette*, for each of them involved claims that the defendants themselves had unlawfully emitted pollutants. *See Merrick v. Diageo Ams. Supply, Inc.*, 805 F.3d 685, 686 (6th Cir. 2015) (addressing "whether the Clean Air Act preempts common law claims brought against an emitter based on the law of the state in which the emitter operates"); *Bell v. Cheswick Generating Station*, 734 F.3d 188, 189-90 (3d Cir. 2013) (addressing "whether the Clean Air Act preempts state law tort claims brought by private property owners against a source of pollution located within the state"); *North Carolina ex rel. Cooper v. Tennessee Valley Auth.*, 615 F.3d 291, 296 (4th Cir. 2010) (overturning injunction "based on the district court's determination that [defendant's] plants' emissions constitute a public nuisance").

distribution of fossil fuels at issue in this case. The existence of "federal legislation authorizing EPA to regulate carbon-dioxide emissions," *id.* at 422, a cornerstone of *AEP*'s reasoning, is therefore irrelevant here.

So is the statement in *AEP*, cited by the circuit courts (E. 14, 1385), that "[f]ederal judges . . . lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order." *AEP*, 564 U.S. at 429. In so stating, the *AEP* Court was contrasting the judiciary's role with that of the Environmental Protection Agency, which "Congress designated" in the Clean Air Act "as best suited to serve as primary regulator of greenhouse gas emissions." *Id.* at 428; *see id.* (chiding plaintiffs for "propos[ing] that individual federal judges determine in the first instance, what amount of carbon-dioxide emissions is 'unreasonable,' and then decide what level of reduction is 'practical, feasible and economically viable'" (citations omitted)). Here, unlike in *AEP*, plaintiffs are not asking the courts to regulate or penalize greenhouse gas emissions; they are asking the courts to hold defendants accountable for their allegedly deceptive marketing and distribution of products whose use has harmed plaintiffs.

If anything, the manner in which *AEP* addressed state law claims provides support for *plaintiffs'* position here. After holding that the Clean Air Act had displaced federal common law, the Supreme Court expressly declined to invalidate the state-law nuisance claims brought in that case. 564 U.S. at 429. Instead, the Court remanded the case for the lower court to consider the availability of state nuisance law to remedy the defendants'

conduct. *See id.*[2] Relying on *AEP* to hold plaintiffs' state-law claims preempted, as the circuit courts did here, turns the Supreme Court's decision on its head.

II. CLIMATE CHANGE HAS STATE AND LOCAL DIMENSIONS AND OFTEN DEMANDS STATE AND LOCAL RESPONSES.

A recurring theme of the circuit courts' decisions, and of defendants' arguments below, is that climate change is a peculiarly national or global problem that can be addressed only with a national or global response. (*See, e.g.*, E. 11, 12, 14, 1383-85.) In fact, and as these cases demonstrate, climate change often has discrete local consequences. (E. 44 ¶ 8; E. 1018-20 ¶¶ 9-11; E. 1196-98 ¶¶ 9-11); *see, e.g.*, *Massachusetts v. Environmental Prot. Agency*, 549 U.S. 497, 522-23 (2007) (describing harms to coastal property owned by Commonwealth of Massachusetts). State and local governments, in turn, play a critical role in crafting and implementing solutions.

Rising sea levels, for example, are a global phenomenon, but that phenomenon often takes its toll at the local level. In the Chesapeake Bay, for instance, sea levels are rising even more quickly than the global average.[3] Swiftly rising seas are affecting communities from Baltimore to Annapolis to Smith Island (the last inhabited island in the Chesapeake

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[2] In remanding, *AEP* noted *Ouellette*'s holding that the Clean Water Act "does not preclude aggrieved individuals from bringing a 'nuisance claim pursuant to the law of the *source* State." 564 U.S. at 429. As explained above, however, *Ouellette* articulated that limitation in the context of claims brought against out-of-state *polluters*, so it has no relevance here.

[3] *See* Benjamin D. DeJong et al., *Pleistocene Relative Sea Levels in the Chesapeake Bay Region and Their Implications for the Next Century*, GSA Today, Aug. 2015, at 4, https://tinyurl.com/mkfx98zd.

Bay).[4] Acting under a mandate from the General Assembly, *see* Md. Code Ann., Env't §§ 2-1301, 2-1303(a)(3) (LexisNexis Supp. 2024), the Maryland Commission on Climate Change's Adaptation and Resiliency Working Group continues to study the threat presented by rising sea levels and to develop recommendations for adaptation measures and funding.[5] Whatever measures are undertaken, the cost to state and local governments will be enormous.[6]

The direct effects of rising temperatures also are felt locally. Urban development means that temperatures often are highest in densely populated inner-city neighborhoods.[7] In Baltimore City, for example, temperatures can vary significantly even from one neighborhood to the next. This "heat islanding" can increase the health risk to sensitive populations like the elderly, children, and people with preexisting pulmonary conditions.[8]

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[4] *See generally* Univ. of Md. Ctr. for Envt'l Sci. & Md. Comm'n on Climate Change, *Sea Level Rise Projections for Maryland 2023* (2023), https://tinyurl.com/syh933d2.

[5] *See, e.g.*, Md. Comm'n on Climate Change, *Maryland Climate Adaptation and Resilience Framework Recommendations 2021-2030*, https://tinyurl.com/37p4m66e (last visited June 6, 2025).

[6] *See, e.g.*, United States Global Change Research Program, *Fourth National Climate Assessment*, Vol. II, at 1321 (2018), https://tinyurl.com/2uy7x54a; *id.* at 760 (describing $235 million spent by Charleston, South Carolina as of 2016 to respond to increased flooding).

[7] *See* Nadja Popovich & Christopher Flavelle, *Summer in the City Is Hot, but Some Neighborhoods Suffer More*, N.Y. Times (Aug. 9, 2019), https://tinyurl.com/yc7xfhjz, *see also Fourth National Climate Assessment*, Vol. II, at 441 (depicting projected change in number of "very hot days" for five U.S. cities).

[8] Baltimore Off. of Sustainability, *Urban Heat Island Sensors*, https://tinyurl.com/45p7d4bw (last visited June 6, 2025).

States, for their part, have long been recognized as having the power to combat environmental harms. *See, e.g.*, *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442-43 (1960) (observing that local regulation of ships' smoke "clearly falls within the exercise of even the most traditional concept of what is compendiously known as the police power"). As to climate change in particular, one federal court of appeals deemed it "well settled that the states have a legitimate interest in combatting the adverse effects of climate change on their residents." *American Fuel & Petrochemical Mfrs. v. O'Keeffe*, 903 F.3d 903, 913 (9th Cir. 2018) (citing *Massachusetts*, 549 U.S. at 522-23); *see id.* (noting that states' "broad police powers" allow them "to protect the health of citizens in the state").

And indeed, states have used their police powers to do just that. The overwhelming scientific consensus is that immediate and continual progress toward net-zero greenhouse gas emissions by mid-century is necessary to avoid catastrophic consequences,[9] so many states have adopted "renewable portfolio standards" that aim to reduce reliance on high-emitting sources of electricity. Maryland's standard, for instance, requires that each utility company operating in the state provide at least 52.5% of its electricity from certain renewable sources by 2030. Md. Code Ann., Pub. Util. § 7-703(b)(25) (LexisNexis 2020). New York not only requires 70% of all retail electricity sales to come from renewable sources by 2030, but also requires the statewide electrical demand system to be zero-

[9] *See, e.g.*, Intergovernmental Panel on Climate Change, *Climate Change 2023 Synthesis Report, Summary for Policymakers* 19-22 (2023), https://tinyurl.com/4wjs8kmy.

emission by 2040. N.Y. Pub. Serv. Law § 66-P(2). Oregon requires its largest utilities to achieve 35% reliance on renewables by 2030 and 50% by 2040, Or. Rev. Stat. § 469A.052(1)(f), (h), and to cease reliance on coal-generated electricity by 2030, *id.* § 757.518(2). And Connecticut has required utilities to obtain 34% of their energy from renewable sources by 2025 and 44% by 2030, Conn. Gen. Stat. §§ 16-245a(a)(20), (25), while also creating funding sources for encouraging private renewable growth, *see id.* § 16-245n.

Other state measures mandate direct emissions reductions or prescribe other steps to reduce a state's carbon footprint. For example, California has codified an objective of reducing emissions to 40% percent below 1990 levels by 2030. Cal. Health & Safety Code § 38566. Oregon has adopted a Clean Fuels Program to reduce the carbon intensity of fuel. Or. Rev. Stat. §§ 468A.265 – 468A.277; Or. Admin. R. 340-253-0000 – 340-253-8010. New Jersey's Global Warming Response Act requires reductions in carbon dioxide emissions—culminating in a 2050 level that is 80% lower than 2006—and establishes funding for climate-related projects and initiatives. N.J. Stat. Ann. §§ 26:2C-37 – 26:2C-58.

States also have collaborated on successful regional efforts to reduce greenhouse gas emissions in an economically efficient manner. Maryland, Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont currently participate in the Regional Greenhouse Gas Initiative (RGGI), a regional cap-and-trade program codified and implemented through the laws and regulations of each state, which uses increasingly stringent carbon emissions budgets to

reduce carbon pollution from power plants over time.[10] Participating states have reduced carbon emissions from the electricity-generating sector by more than fifty percent since the program launched.[11] In addition, on the West Coast, the Pacific Coast Collaborative represents a series of agreements among California, Oregon, Washington, British Columbia, and the cities of Los Angeles, Oakland, San Francisco, Portland, Seattle, and Vancouver to reduce greenhouse gas emissions by at least 80 percent by 2050.[12] The backbone of these regional agreements is state law that aims to reduce carbon pollution.

Further, the compatibility of state action with national and global efforts to address climate change is borne out by the breadth of state-law cases that courts already hear related to the issue. A database maintained by the Sabin Center for Climate Change Law at Columbia Law School and Arnold & Porter Kaye Scholer LLP lists 645 past and ongoing lawsuits throughout the country raising state-law claims related to climate change.[13] The claims in these cases derive from a wide range of laws. For example, courts routinely address climate change in the context of challenges to land-use decisions under state equivalents to the National Environmental Policy Act. *See, e.g.*, *Cleveland Nat'l Forest*

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[10] *See* Reg'l Greenhouse Gas Initiative, *Elements of RGGI*, https://tinyurl.com/4b6vxtvu (last visited June 6, 2025).

[11] *See* Reg'l Greenhouse Gas Initiative, *CO_2 Emissions from Electricity Generation and Imports in the Regional Greenhouse Gas Initiative: 2021 Monitoring Report* 9-10 (Dec. 19, 2024), https://tinyurl.com/2r8f92cv.

[12] *See* Pacific Coast Collaborative, https://tinyurl.com/mwarrjw5 (last visited June 6, 2025).

[13] Sabin Center for Climate Change Law, *State Law Claims*, https://tinyurl.com/4rzencdv (last visited June 6, 2025).

Found. v. San Diego Ass'n of Gov'ts, 3 Cal. 5th 497 (2017); *Cascade Bicycle Club v. Puget Sound Reg'l Council*, 175 Wash. App. 494 (Ct. App. 2013). They also adjudicate the operation and validity of states' regulatory efforts to reduce greenhouse gas emissions. *See, e.g.*, *Maryland Off. of People's Counsel v. Maryland Pub. Serv. Comm'n*, 461 Md. 380, 406 (2018) (observing that "[r]enewable energy, distributed generation, and related practices have the potential to advance Maryland environmental policy" with respect to climate change, and upholding the manner in which the Public Service Commission took account of these issues); *California Chamber of Com. v. State Air Res. Bd.*, 10 Cal. App. 5th 604, 613-14 (Ct. App. 2017) (upholding California's economy-wide cap-and-trade program); *New England Power Generators Ass'n, Inc. v. Department of Envt'l Prot.*, 480 Mass. 398, 411 (2018) (upholding Massachusetts's greenhouse gas emissions limits for power plants).

Especially when viewed in light of the many other ways in which states seek to address climate change and its consequences, plaintiffs' state-law claims are unremarkable. Plaintiffs do not seek to impose a system of global emissions regulation—or, indeed, emissions regulation of any sort. Instead, they seek to hold defendants accountable for foreseeable harm that their allegedly deceptive conduct has caused in Maryland, in a fashion providing no basis for deeming their claims preempted.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,597 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Joshua M. Segal
_____
Joshua M. Segal

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CERTIFICATE OF SERVICE

I certify that, on this 10th day of June, 2025, the Brief of Amicus Curiae Attorney General of Maryland in the captioned case was filed electronically and served electronically by the MDEC system on all persons entitled to service.

/s/ Joshua M. Segal

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Joshua M. Segal