EXHIBIT A

IN THE SUPREME COURT OF MARYLAND

Case No. SCM-REG-0011-2025
No. 11 - September Term, 2025

MAYOR AND CITY COUNCIL OF BALTIMORE,

APPELLANT,

v.

BP P.L.C., ET AL.

APPELLEES.

APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY
HONORABLE VIDETTA BROWN, JUDGE

CITY OF ANNAPOLIS,

APPELLANT,

v.

B.P. P.L.C., ET AL.,

APPELLEES.

ANNE ARUNDEL COUNTY,

APPELLANT,

v.

B.P. P.L.C., ET AL.,

APPELLEES.

APPEALS FROM THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY
HONORABLE STEVEN PLATT, SENIOR JUDGE

BRIEF OF *AMICI CURIAE* LAW PROFESSORS IN SUPPORT OF APPELLANT

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The law schools employing *amici* provide financial support for activities related to faculty members' research and scholarship, which helped defray the costs in preparing and submitting this brief. Otherwise, no person or entity has made a monetary contribution intended to fund the preparation or submission of this brief. Titles and institutional affiliations are for identification purposes only.

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Amici submit this brief because they have specific expertise with foreign relations law and civil litigation, and an interest in the application of those principles by the courts.

SUMMARY OF ARGUMENT

Plaintiff filed a lawsuit in state court alleging violations of state law related to corporate deception and consumer protection that caused direct and proximate harms in Maryland. Defendants filed a motion to dismiss, which begins: "Plaintiff Mayor and City Council of Baltimore seeks to impose liability on more than two dozen energy companies under *state* law for the alleged effects of *global* climate change." E.193 (italics in original). Defendants argue—through the power of italics—that this case should be dismissed because it potentially implicates foreign relations and overseas conduct.

The premises of these arguments are mistaken. Defendants make no showing that this case in fact affects the foreign relations of the United States. Even if it did, Defendants are wrong to suggest that foreign relations interests should nullify state law. There is no free floating constitutional rule disempowering states from regulation that may affect foreign relations. State law may be preempted by federal common law, but federal common law is only available when necessary to protect uniquely federal interests. The mere

invocation of foreign relations does not satisfy this test. Indeed, American courts routinely apply state law in cases implicating far greater foreign relations interests.

Defendants also suggest that this case should be dismissed because it seeks to regulate conduct outside of the State of Maryland. But state law routinely and uncontroversially has extraterritorial effect. "[S]ince the Founding," states have regulated with extraterritorial effect through "laws long understood to represent valid exercises of the States' constitutionally reserved powers." *National Pork Producers Council v. Ross*, 598 U.S. 356, 375 (2023).

Of course, there are various constitutional and subconstitutional rules about when states can and cannot regulate extraterritorially: the Due Process Clause; the dormant Commerce Clause; conflict of laws rules; presumptions against extraterritoriality; and more. The fact these rules exist is an acknowledgment that there is no categorical bar on the extraterritorial reach of state law—otherwise there would be no need to have such rules. If Defendants were correct, the entire field of conflict of laws, for example, could be replaced with the two words "no extraterritoriality." But that is not the law.

Notably, neither the Defendants nor the trial court—nor the Second Circuit in *City of New York v. Chevron*—grapple with those doctrines that actually regulate the reach of American law. That is an error. The reach of Maryland law in this case should face the standard set of legal constraints, not some exceptional set of rules cooked up just because a case relates to global climate change.

ARGUMENT

I. Defendants' Allusions To Foreign Relations Cannot Nullify State Law.

Defendants attempt to characterize this case as the regulation of global emissions. But as Plaintiff explains in more detail, the central bases for relief asserted in the complaint are about corporate deception. This case, therefore, is best understood as being about *illegal* activity in the form of corporate deception. This stands in contrast to the Second Circuit's decision in *City of New York*, which was predicated on that court's conclusion that the suit was grounded in attempts to regulate otherwise *legal* activity. *City of New York v. Chevron Corp.*, 993 F.3d 81, 86 (2d Cir. 2021). And because this is a case about corporate deception, there is no reason to think that this case interferes with the foreign relations of the United States.

Even if this court concludes that foreign relations interests are at play, Defendants need a theory as to why those interests justify dismissal. Defendants attempt to link foreign relations interests to a constitutional rule or to federal common law. But mere allusions to foreign relations interests do not—and should not—nullify state law or automatically justify federal common law.

A. The mere presence of foreign relations interests does not automatically nullify state law.

At times, Defendants seem to suggest that foreign relations itself—without any conflicting federal law—can negate state law. *See*, *e.g.*, E.206. Defendants do not point to any specific constitutional provision to support this argument, and there is none.

The Constitution does place limits on the role of states in foreign relations, but none are implicated here. *See* U.S. Const. Article I, § 10 (prohibiting states from entering treaties and, unless Congress consents, laying duties on imports or exports, keeping troops or ships in time of peace, and entering compacts with foreign powers). As Professor Goldsmith explained, "[t]he most natural inference from these provisions and from the Constitution's enumerated powers structure is that all foreign relations matters not excluded by Article I, Section 10 fall within the concurrent power of the state and federal governments . . . ." Jack Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617, 1642 (1997). So unless this case involved Maryland entering a treaty, laying a duty, or keeping troops in times of peace, the U.S. Constitution does not categorically bar the application of state law.

The other way state law may be negated is through preemption. As the Supreme Court clarified, state law implicating foreign relations may be preempted based on conflict preemption or field preemption. *See Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 418-20 (2003). Conflict preemption requires a "clear conflict" with an express federal policy. *Id.* at 421. To succeed on a conflict preemption argument, Defendants would need to identify a "clear conflict" between a corporate deception lawsuit and a specific and express federal policy. They do not, because there is no federal statute or other enactment that creates any conflict whatsoever with the Maryland laws at issue in this case.

The other option is field preemption, which may apply only when a state reaches out into foreign relations with "no serious claim to be addressing a traditional state responsibility." *Id.* at 419 n.11. The regulation of corporate deception and the protection of

consumers are within the core police powers of the state. Even if this case were characterized as involving environmental regulation, the Supreme Court has long recognized that protecting the environment is a traditional state responsibility. *See*, *e.g.*, *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442 (1960).

The existence of a legitimate state interest distinguishes this case from *Zschernig v. Miller*, 389 U.S. 429 (1968), on which Defendants rely. *Zschernig* is the only case in which the Supreme Court invalidated a state law as interfering with foreign affairs under what is sometimes called "dormant foreign affairs preemption." As the *Zschernig* court explained, even though the challenged state law nominally addressed probate, "[a]s one reads the Oregon decisions, it seems that foreign policy attitudes, the freezing or thawing of the 'cold war,' and the like are the real desiderata." *Id.* at 437. The Supreme Court has more recently suggested that *Zschernig* applies only when a State regulates outside areas of traditional State competence. Garamendi, 539 U.S. at 419-20 & n.11. Here, Maryland law addresses Maryland interests.

The broader message is that courts should be wary about preempting state law unless and until the federal political branches act. This approach is consistent with the intent of the Framers and longstanding historical practice. *See* Michael D. Ramsey, *The Power of the States in Foreign Affairs: The Original Understanding of Foreign Affairs Federalism*, 75 NOTRE DAME L. REV. 341, 403-418 (1999) (explaining that "[a] generalized preclusion to protect unenacted foreign policy does not appear to have been in anyone's contemplation."); Sarah H. Cleveland, *Crosby and the 'One-Voice' Myth in U.S. Foreign Relations*, 46 VILL. L. REV. 975, 991 (2001) ("U.S. history has been characterized both by

substantial actions by states that affect foreign affairs and by deference and tolerance of many such state actions by the national political branches."); *id.* at 993 n.125 (discussing 1798 Virginia and Kentucky Resolutions regarding the United States's undeclared war with France). An emphasis on political-branch action is also consistent with the recent trend in the Supreme Court. *See*, *e.g.*, *Barclays Bank PLC v. Franchise Tax Board*, 512 U.S. 298, 324 (1994); *Garamendi*, 539 U.S. at 420. And it is consistent with Maryland's own experience responding to apartheid. *See Bd. of Trustees of Emps.' Ret. Sys. of City of Baltimore v. Mayor & City Council of Baltimore*, 317 Md. 72 (1989) (discussing Maryland law targeting apartheid); *see also* Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440 § 606, 100 Stat. 1086 (preserving state and local measures targeting apartheid).

Despite this long history, it is true that the Second Circuit in the *City of New York* decision invoked foreign relations interests to dismiss a climate suit. 993 F.3d at 89-95. But that decision is not binding on this court, and it should not be persuasive. The Second Circuit does not walk through the law of conflict or field preemption, nor does its analysis respond to those doctrine's requirements. As the Fourth Circuit explained earlier in this litigation:

> *City of New York* . . . never details what those foreign relations are and how they conflict with New York's state-law claims. The same is true when *City of New York* declares that state law would "upset[] the careful balance" between global warming's prevention and energy production, economic growth, foreign policy, and national security. Besides referencing statutes acknowledging policy goals, the decision does not mention any obligatory

> statutes or regulations explaining the specifics of energy production, economic growth, foreign policy, or national security, and how New York law conflicts therewith. It also does not detail how those statutory goals conflict with New York law. *City of New York* essentially evades the careful analysis that the Supreme Court requires during a significant-conflict analysis.

Mayor and City Council of Baltimore v. BP P.L.C., 31 F.4th 178, 203 (4th Cir. 2022) (citations omitted).

In sum, this Court should not dismiss this case merely because Defendants wave their hands at foreign relations.

B. The mere presence of foreign relations interests does not automatically justify the creation federal common law.

Occasionally, Defendants invoke foreign relations considerations when asserting a need for federal common law. Federal common law also was the cornerstone in the Second Circuit's analysis in *City of New York,* 993 F.3d at 89-95.

Although the Supreme Court has applied federal common law in some cases implicating foreign relations, it has never held that cases implicating foreign relations are necessarily governed by federal common law. The legal test for the appropriateness of federal common law does not turn on the presence of foreign relations. The question, instead, is whether "a federal rule of decision is 'necessary to protect uniquely federal interests.'" *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981) (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426 (1964)).

Indeed, the Supreme Court has demonstrated across countless areas of law that the presence of foreign relations interests is not a sufficient basis to displace state law and apply federal common law. For example, cases against foreign sovereigns do not require federal common law. Surely cases against foreign sovereigns may implicate foreign relations, and yet the substantive law applied in Foreign Sovereign Immunities Act (FSIA) cases is typically state law. *See* Wright & Miller, 14A Fed. Prac. & Proc. Juris. § 3662 (4th ed.); *see*, *e.g.*, *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27 (2015); *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993). As the Supreme Court recently explained, in FSIA suits, foreign sovereigns "become subject to standard-fare legal claims involving property, contract, or the like. No one would think federal law displaces the substantive rule of decision in those suits." *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 596 U.S. 107, 116 (2022). The FSIA thus shows that state law sometimes applies in cases implicating foreign relations, and it shows that Congress condones the application of state law in these cases.

Another instructive example can be found in the federal act of state doctrine. The act of state doctrine deems valid acts of foreign states within their own territory. *See Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 (1964). The act of state doctrine is a matter of federal common law, so it can displace state law, but only in the limited zone in which it applies. *Id.* The Supreme Court has explained that the application of the act of state doctrine does not turn on foreign relations effects: "The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments." *W.S. Kirkpatrick & Co., Inc. v. Environmental Tectonics Corp.*, 493 U.S.

400, 409 (1990). This description is an admission by the Supreme Court that state laws may go so far as to embarrass foreign governments—clearly affecting foreign relations—and still they would not be preempted without a conflicting federal law.

II. There Is No *Per Se* Rule Against State Law Regulating Conduct Outside The United States.

At various times, Defendants imply that there is a *per se* constitutional bar on the application of state law to extraterritorial conduct. *See*, *e.g.*, E.193 ("[T]he federal Constitution's structure generally precludes states from using their own laws to resolve disputes caused by out-of-state and worldwide conduct."). Indeed, the first line of Defendants brief cheekily italicizes *state* law and *global* climate change. *Id.*

Defendants seek refuge in italics because they lack legal support—there is no federal constitutional provision or doctrine that generally precludes the extraterritorial application of state law, full stop.

It is true that there are various constitutional and subconstitutional rules that calibrate when state law may regulate extraterritorially, including the Due Process Clause, the dormant Commerce Clause, foreign affairs preemption, choice of law rules, and presumptions against extraterritoriality. These doctrines assure that the extraterritorial application of state law is constrained. At the same time, these doctrines validate the extraterritorial application of state law in some circumstances. If state law could never apply extraterritorially, then it would be pointless for courts and legislatures to have developed these rules to calibrate extraterritorial application—the answer would always be

no, and these doctrines would be irrelevant. By their continued existence, these doctrines show that a *per se* rule cannot be the law.

A. There is no constitutional bar on the extraterritorial application of state law.

Defendants imply that the Constitution forbids the extraterritorial application of state law. But their arguments are imprecise about the source of this limit because there is no constitutional prohibition on the extraterritorial application of state law. As the leading casebook on international litigation puts it, "[t]he Court made it clear, in a number of decisions during the 1940s and thereafter, that both Congress and the states had the constitutional authority to exercise legislative jurisdiction over persons, property, and conduct beyond their borders." GARY B. BORN & PETER B. RUTLEDGE, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 618-619 (2011).

It is true that the Due Process Clause and dormant Commerce Clause may, in some circumstances, limit the extraterritorial application of state law. In *Allstate Insurance Company v. Hague*, the Supreme Court explained that the Due Process Clause can limit state choice of law: "[F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." 449 U.S. 302, 313 (1981). And in *National Pork Producers Council v. Ross*, the Supreme Court explained that the dormant Commerce Clause can block state laws with "*specific* impermissible 'extraterritorial effect.'" 598 U.S. 356, 374 (2023).

In both lines of cases, the Court was very clear that it was not announcing a *per se* rule. In the Due Process context, the Supreme Court's "aggregation of contacts" test implies that, in some situations, there will be sufficient contacts such that a state may constitutionally regulate extraterritorially. And "[t]he Court has seldom found state choice of law decisions to violate this standard." BORN & RUTLEDGE, *supra* at 620.

The Supreme Court was even clearer in the dormant Commerce Clause context. In *National Pork Producers Council*, decided in 2023, the petitioners argued for an "almost *per se*" rule against state laws regulating conduct outside the state's borders. 598 U.S. at 373. The petitioners in that case did not even try for a *per se* rule, seeking cover in the word "almost." The Supreme Court rejected even this watered claim, suggesting that extraterritorial regulation is not problematic unless it discriminates against out-of-state interests. *Id.* at 374. Indeed, the Court supported this reading by identifying a litany of areas of state law that routinely—and constitutionally—regulates extraterritorial conduct:

> In our interconnected national marketplace, many (maybe most) state laws have the practical effect of controlling extraterritorial behavior. State income tax laws lead some individuals and companies to relocate to other jurisdictions. Environmental laws often prove decisive when businesses choose where to manufacture their goods. Add to the extraterritorial-effects list all manner of libel laws, securities requirements, charitable registration requirements, franchise laws, tort laws, and plenty else besides. Nor, as we have seen, is this a recent development. Since the founding, States have enacted an immense mass of inspection laws, quarantine laws, [and] health

laws of every description that have a considerable influence on commerce outside their borders.

Id. at 374-375 (cleaned up). The Court thus rejected the "almost *per se*" rule because it "would cast a shadow over laws long understood to represent valid exercises of the States' constitutionally reserved powers." *Id.* at 375.

For these reasons, this Court should reject any *per se* constitutional bar on the extraterritorial reach of state law.

B. Various doctrines constrain—and validate—the extraterritorial reach of state law.

The extraterritorial application of state law is subject to a web of constitutional and subconstitutional limits. The presence of these limits should give this Court confidence that states are not unconstrained in their extraterritorial regulation—there are many guardrails against abuse. These guardrails also imply that states may constitutionally regulate extraterritorial conduct in some circumstances. There would be no need to develop these numerous tests if the is answer were always no. So any suggestion from Defendants that there is a "general" bar on extraterritorial state regulation simply does not withstand scrutiny.

First, as described above, the U.S. Constitution might bar the extraterritorial application of state law if it runs afoul of the Due Process Clause, the dormant Commerce Clause, or preemption. But in each area, courts should apply specific legal tests that sort out when such regulation is permissible or impermissible. The dormant Commerce Clause,

for example, would stop Maryland from discriminating against out-of-state firms, but that is different from saying that it bars any extraterritorial effect of Maryland law.

Second, essentially the entire legal field of conflict of laws is dedicated to the question of when a state can apply its laws extraterritorially. Restatement (Second) Conflict of Laws § 1 ("Events and transactions occur, and issues arise, that may have a significant relationship to more than one state, making necessary a special body of rules and methods for their ordering and resolution."). Some conflicts rules provide that a state should apply the law of the place of the wrong. Restatement (First) of Conflict of Laws § 377. Other rules provide that courts should apply the law with the most significant relationship to the case, not necessarily the place of conduct. Restatement (Second) Conflict of Laws § 145(1). Regardless of which rule applies in a specific situation, the existence of these conflicts rules implies that state laws regularly may apply to extraterritorial conduct.

Third, in addition to the choice of law rules just mentioned, many jurisdictions apply rules of statutory interpretation that turn on extraterritoriality. The federal courts apply a presumption against extraterritoriality to federal statutes, and twenty states (including Maryland) do the same for state statutes. *See* William S. Dodge, *Presumptions Against Extraterritoriality in State Law*, 53 U.C. DAVIS L. REV. 1389 (2020). These presumptions reject the extraterritorial application of law only in some circumstances, while permitting it in others. In other words, their mere existence—again—implies that states may regulate extraterritorial conduct in some cases.

Fourth, other doctrines not expressly pegged to extraterritoriality may have the practical effect of constraining the application of state law. For example, Personal

jurisdiction limits the reach of state courts. *See*, *e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255 (2017). And the act of state doctrine provides a federal rule of decision in extraterritorial cases that may arise under state law. *See supra* Section I.B.

In sum, there are many legal doctrines that calibrate the ways state law can implicate foreign relations and extraterritorial conduct without categorically barring those effects. This court should reject Defendants' attempts to create such categorical rules.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to reverse the decision of the Circuit Court and remand for further proceedings.

June 10, 2025

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,805 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.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June 2025, a copy of the foregoing brief was filed and served electronically via the MDEC System, on all counsel of record.

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