In The

Supreme Court of Maryland

No. 11

September Term, 2025

SCM-REG-0011-2025

MAYOR and CITY COUNCIL OF BALTIMORE,

Appellants,

vs.

B.P. P.L.C. *et al.*,

Appellees.

Appeal from the Circuit Court for Baltimore City
(Honorable Videtta Brown, Judge)

(For Continuation of Caption See Inside Cover)

CONSENT MOTION TO FILE AMICUS BRIEF IN SUPPORT OF APPELLEES

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CITY OF ANNAPOLIS,

Appellant,

vs.

B.P. P.L.C. *et al.*,

Appellees.

ANNE ARUNDEL COUNTY,

Appellant,

vs.

B.P. P.L.C. *et al.*,

Appellees.

Appeals from the Circuit Court for Anne Arundel County
(Honorable Steven Platt, Senior Judge)

NOW COME proposed *amici curiae* Atlantic Legal Foundation and Federation of Defense & Corporate Counsel, by and through their undersigned counsel, and in accordance with Maryland Rule 8-511, hereby move for leave to file the amicus brief appended to this motion as Exhibit A. Each party has consented to the filing of amicus briefs in this appeal and has waived service of hard copies.

Respectfully Submitted,

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Date: July 11, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above foregoing document was electronically filed with the Clerk of the Court using Odyssey File & Serve, which will electronically serve a copy to all counsel of record on July 11, 2025.

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EXHIBIT “A”

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BRIEF FOR *AMICI CURIAE* ATLANTIC LEGAL FOUNDATION AND FEDERATION OF DEFENSE & CORPORATE COUNSEL IN SUPPORT OF APPELLEES

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INTEREST OF THE *AMICI CURIAE* [1]

Established in 1977, the **Atlantic Legal Foundation** (ALF) is a national, nonprofit, public interest law firm. Its mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state appellate courts. *See* atlanticlegal.org.

The **Federation of Defense & Corporate Counsel** (FDCC) is a not-for-profit corporation with national and international membership of 1,550 defense and corporate counsel working in private practice, as

[1] Each party has provided written consent to the filing of amicus briefs in this appeal. No person other than the *amici curiae*, their members or supporters, or their attorneys, made a monetary or other contribution to the preparation or submission of this brief.

in-house counsel, and as insurance industry professionals. A significant number of FDCC members practice in the trial and appellate courts of the United States both at the federal and state level. Since 1936, FDCC's members have established a strong legacy of representing the interests of civil defendants, including publicly and privately owned businesses, public entities, and individual defendants. The FDCC seeks to assist courts in addressing issues of importance to its membership that concern the fair and predictable administration of justice.

* * *

The principal question presented by this appeal is whether federal law, primarily the U.S. Constitution, precludes these state-law tort suits brought by the City of Baltimore, the City of Annapolis, and Anne Arundel County against the nation's major fossil fuel energy (oil and gas) producers for the alleged local effects of global climate change. By extension, the issue is whether federal law precludes dozens of similar suits that state and local governments around the United States, with the assistance of the plaintiffs' bar, have filed against the same group of "major corporate members of the fossil fuel industry." E.41 (Balt. Compl. ¶ 1). The consequences of allowing these proliferating state-court suits to

proceed are readily foreseeable and potentially disastrous—not only for the fossil fuel industry, but also for the nation's economy, critical infrastructure, and homeland security.

Global climate change, which Appellants allege is primarily caused by fossil fuel-related greenhouse gas emissions, is a politically charged, scientifically controversial, multi-source, and *borderless* phenomenon. The threshold question of whether federal law preempts state-law tort suits that seek to fragment fossil fuel producers' alleged liability for causing global climate change into myriad state and local pieces, aligns with two of ALF's most important advocacy missions: defending free enterprise and advancing sound science in the nation's courtrooms. FDCC, whose defense counsel and corporate counsel members are dedicated to preserving fairness in the civil justice system, also has a deep interest in the outcome of this appeal.

STATEMENT OF THE CASE & STATEMENT OF FACTS

Amici curiae ALF and FDCC incorporate by reference Appellees' Statement of the Case and Statement of Facts.

ARGUMENT

A. The consequences of allowing climate-change tort suits are mind boggling

Like global climate change, Appellants' sweeping theory of liability has no geographic boundaries. The "disinformation campaign" that Appellants claim Appellees have conducted "to mislead consumers and the public about climate change" and fossil fuels' "central role . . . in causing it," Appellants' Op. Br. at 1, is neither directed nor limited to Baltimore, Annapolis, or Anne Arundel County. *See, e.g.*, E.110-126 (Balt. Compl. ¶¶141-170) (discussing Appellees' alleged nationwide and international concealment of fossil fuels' "known harms"); E.1016 (Annap. First Am. Compl. ¶ 4) (accusing Appellees of "deceiving the public and consumers, inside *and outside* of Annapolis, about the role of their products in causing the global climate crisis") (emphasis added); E.1194 (AAC First Am. Compl., ¶ 4) (same).

If Baltimore, Annapolis, and Anne Arundel County can cash-in on the "climate crisis" by proceeding with their individual tort suits against the nation's major fossil fuel producers for alleged local harm attributable

to global climate change, there is nothing to prevent Maryland's other 177 local governments[2] from doing the same.

And why stop there? In addition to the 50 States, there are approximately 40,000 county and sub-county general-purpose local governments throughout the nation.[3] There would be nationwide judicial chaos, as well as crippling litigation costs and burdens on the fossil fuel industry, if each and every State, or county, city, or other local government unit (e.g., a public school district or irrigation water district), were free to pursue its own multi-million dollar, state-court damages suit against the same group of fossil fuel producers. At the very least, there would be an enormous potential for conflicting or inconsistent findings of fact, conclusions of law, judgments, and imposition of astronomical and overlapping damages awards and other remedies against what Appellants boast are "the world's largest oil-and-gas companies," Appellants' Op. Br. at 1.

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[2] *See* Maryland Ass'n of Counties, Maryland Overview, https://tinyurl.com/mvxwzxht (last visited July 9, 2025).

[3] Amy Smaldone & Mark L.J. Wright, Local Governments in the U.S.: A Breakdown by Number and Type, Fed. Res. Bank of St. Louis (Mar. 14, 2024), https://tinyurl.com/cv4yhzpc.

Nationwide proliferation of these "artful but not sustainable" climate-change tort suits, E.10, is far from theoretical. For example, the website for the San Francisco law firm serving as co-counsel for each of the Appellants lists 26 such cases around the United States in which it is involved, and that firm apparently is trolling for more suits to file.[4]

If these suits are allowed to proceed, the next wave of opportunistic climate-change litigation could be brought by the plaintiffs' bar on behalf of a multitude of individual, mass-action, or class-action plaintiffs (e.g., commercial, institutional, and residential property owners) claiming to have been harmed by Appellees' alleged tortious conduct. The newly minted global tort of "causing climate change," E.44 (Balt. Compl. ¶7), masquerading here as public nuisance and other garden-variety causes of action for allegedly spreading disinformation about fossil fuels' impact on global warming and climate change, could become the plaintiff bar's next "Super Tort." *See* Am. Tort Reform Ass'n (ATRA), *The Plaintiffs'*

[4] *See* Sher Edling LLP, Climate Damage and Deception (listing the firm's climate cases), https://tinyurl.com/mssc3hyt (last visited July 9, 2025); *see also* Columbia Law School/Columbia Climate School, Center for Climate Change Law, U.S. Climate Change Litigation Database (Actions Seeking Money Damages for Losses), https://tinyurl.com/46caec5z (last visited July 9, 2005).

Lawyer Quest for the Holy Grail: The Public Nuisance "Super Tort" (Mar. 2025) 1 ("[T]oday's public nuisance litigation . . . attempt[s] to subject businesses to liability over societal and political issues—regardless of fault, how the harm developed or was caused, whether the elements of the tort are met, or even if the liability will actually address the issue. Their mantra is, 'Let's make 'Big' [insert business] pay.'").[5]

Climate-change tort suits have a transparent political, as well as pecuniary, purpose: destroying the oil and gas industry, or at least severely curtailing production, sale, and use of fossil fuels in the United States and globally. The lengthy, elaborate complaints filed in these suits read like a climate activist's manifesto against the fossil fuel industry. ATRA's recently updated "Super Tort" white paper explains as follows:

> The money trail and dynamics in these cases underscore the political nature of the litigation. By-and-large, the climate lawsuits are developed, funded and waged by environmental foundations who leverage them to exert political pressure on the oil and gas industry. Since 2004, these groups have provided grant money to lawyers and activists to circle the country recruiting governments to file lawsuits. (Of course, that hasn't stopped the lawyers from seeking 20-25% contingency fees from the governments in case they win.) The foundations hope the companies

[5] Available at https://tinyurl.com/3hxzrv5f.

> will agree to the funding and public policies they want imposed if the litigation appears viable and media around the litigation damages their reputations.

ATRA, *supra*, at 8.

An opinion by this Court affirming the trial courts' well-reasoned opinions dismissing these three suits on federal preemption grounds, E.1-35, E.1374-1386, would establish a nationally important precedent that will help guide other States' appellate and trial courts confronted with similar litigation.

B. Appellees' alleged liability for causing global climate change cannot be fragmented into a myriad of state and local pieces

1. The principal question which this Court has agreed to address reflects the borderless nature of the novel *global* tort for which Appellants seek to hold Appellees liable under Maryland state law: "Do the Federal Constitution and federal law preempt and preclude state law claims seeking redress for injuries allegedly caused by the effects of *out-of-state and international greenhouse gas emissions on the global climate?*" (emphasis added). Principal Br. of Appellees at 3.

Although Appellants argue that their suits are merely about alleged local climate change-related harm and Appellees' supposed

"disinformation campaign," Appellants' Op. Br. at 1, their complaints unequivocally allege that Appellees' "individual and collective conduct" is "a substantial factor" in causing global warming, E.138 (Balt. Compl. ¶193), and that Appellees are "responsible for causing and accelerating climate change." E.1059 (Annap. First Am. Compl.); E.1239 (AAC First Am. Compl.).

Despite Appellants' artful pleading, Baltimore City Circuit Judge Brown recognized that this litigation is "entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries." E.11. "Global warming — as its name suggests — is a global problem . . . ." *City of New York v. Chevron Corp.*, 993 F.3d 81, 88 (2d Cir. 2021).

These and similar climate-change tort suits that attempt to splinter fossil fuel producers' alleged liability for causing global climate change into countless state and/or local pieces cannot be reconciled with the scientific facts (i) that global warming due to greenhouse gas emissions, and resultant climate change, are whole-earth phenomena that have no geographic or political boundaries, and (ii) that there are a multitude of sources of carbon dioxide (CO_2) and other greenhouse gas emissions

(including non-oil-and-gas and non-fossil fuel sources) both in the United States and abroad.

Appellants cannot avoid the fact that "[g]lobal warming . . . is experienced worldwide." E.1. Indeed, Baltimore's Complaint, which refers to "global warming" or "global climate change" more than 70 times, blames Appellees' fossil fuel products for "causing climate change and the associated dire effects *on the world*, including Baltimore." E.44 (Balt. Compl. ¶ 7) (emphasis added). Along the same lines, Annapolis asserts that "[w]ithout [Appellees] exacerbation of *global* warming . . . the current physical and environmental changes caused by *global* warming would have been far less than those observed to date." E.1062-1063 (Annap. First Am. Compl. ¶58) (emphasis added). And Anne Arundel County alleges that greenhouse gas "pollution from [Appellees'] fossil fuel products . . . is the main driver of the gravely dangerous changes occurring to the *global* climate." E.1194 (AAC Compl. ¶2) (emphasis added).

2. The U.S. Environmental Protection Agency (EPA) "serves as the Nation's 'primary regulator of greenhouse gas emissions.'" *West Virginia v. EPA*, 597 U.S. 697, 754 (2022) (Kagan, J., dissenting) (quoting *Am.*

Elec. Power Co. v. Connecticut ("*AEP*"), 564 U.S. 410, 428 (2011)). EPA's website explains that climate change due to greenhouse gas emissions is a borderless, whole-earth phenomenon:

> The earth's climate is changing. Multiple lines of evidence show changes in our weather, oceans and ecosystems . . . . These changes are due to a buildup of greenhouse gases in our atmosphere and the warming of the planet due to the greenhouse effect. . . . "[G]reenhouse gases" . . . act like a blanket, making the earth warmer than it otherwise would be. This process [is] commonly known as the "greenhouse effect" . . . .

EPA, Basics of Climate Change;[6] *see AEP*, 564 U.S. at 416 (describing the global greenhouse effect).

"Since [g]reenhouse gases once emitted become well mixed in the atmosphere . . . [g]reenhouse gas molecules *cannot be traced to their source*, and greenhouse gases quickly diffuse and comingle in the atmosphere." *City of New York*, 993 F.3d at 92 (quoting *AEP*, 564 U.S. at 422) (citation modified) (emphasis added). Thus, regardless of any local harm that Appellants claim to have suffered, Appellees alleged

[6] https://tinyurl.com/2f5bhwze (last visited July 9, 2025).

tortious conduct for causing or accelerating climate change is necessarily global in scope.

EPA's website explains that greenhouse gas emissions are not limited to fossil fuels: "Greenhouse gases come from a variety of human activities, including burning fossil fuels for heat and energy, clearing forests, fertilizing crops, storing waste in landfills, raising livestock, and producing some kinds of industrial products." EPA, Basics of Climate Change, *supra*; *see also* Climate Watch, Historical GHG Emissions (listing energy and heat generation, transportation, manufacturing, agriculture, and other sources of global greenhouse gas emissions).[7]

"Anthropogenic emissions of non-CO_2 greenhouse gases, such as methane, nitrous oxide and ozone-depleting substances (largely from sources *other than fossil fuels*), also contribute significantly to warming." S. A. Montzka et al., *Non-CO_2 greenhouse gases and climate change*, Nature 476, 43-50 (2011) (Abstract) (emphasis added); *see also* Daniel E. Walters, *Animal Agriculture Liability for Climatic Nuisance: A Path Forward for Climate Change Litigation?*, 44 Colum. J. Env. L. 300, 303

[7] https://tinyurl.com/yrdp2x85 (last visited July 9, 2025).

(2019) ("The agriculture industry is responsible for a surprising amount of greenhouse gas emissions. . . . In the United States, the numbers are . . . stunning.").

Further, since 2004, coal—not oil or gas—has been the world's largest emitter of carbon dioxide. *See* Climate Watch, *supra* (chart).

3. Given the borderless, multi-source nature of greenhouse gas emissions, global warming, and climate change, Appellees' alleged liability for causing, substantially contributing to, or accelerating global climate change cannot be divided into potentially tens of thousands of local bits and pieces of liability, each subject to the vagaries of one of 50 States' differing judicial systems and tort law standards. The interstate, indeed worldwide, scope of atmospheric greenhouse gas pollution cannot be transformed into a parochial dispute merely by pointing to the damages that a local government claims it has suffered due to global climate change. "Proximate cause and certainty of damages, while both related to the plaintiff's responsibility to prove that the amount of damages he seeks is fairly attributable to the defendant, are distinct requirements for recovery in tort." *Anza v. Ideal Steel Supply Corp.*, 547

U.S. 451, 466 (2006) (Thomas, J., concurring in part and dissenting in part).

The utter impracticality of climate-change tort litigation also is underscored by the multiplicity of industrial, agricultural, and other human and natural sources of greenhouse gas emissions throughout the nation and world. Liability for the impacts of global climate change in Baltimore or any other locale cannot be attributed to any particular industry, corporation, individual, or other source of greenhouse emissions. Insofar as *any* greenhouse gas emitter can be held liable for causing global climate change, then *every* greenhouse gas emitter must be held liable.

"Such a sprawling case is simply beyond the limits of state law." *City of New York*, 993 F.3d at 92. "[I]t is painfully obvious that, even though climate public nuisance cases are repeatedly filed around the country and courts in some states are allowing them to play out for years, climate change is not a liability question for state courts, but a complex global problem requiring a global, public policy-based solution." ATRA, *supra*, at 11.

C. Global climate change claims implicate uniquely federal interests that transcend state tort law and the geographic borders of any State

1. Appellants argue, contrary to both circuit courts' opinions, that their "claims cannot regulate greenhouse gas emissions." Appellants' Op. Br. at 14. Instead, quoting out of context a passage from a Fourth Circuit opinion concerning the removability (not justiciability or merits) of Baltimore's suit, Appellants contend that their "complaints target Defendants' alleged 'misinformation campaign that contributed to [Appellants'] injuries' from the impacts of climate change." *Id.* at 15 (quoting *Mayor & City Council of Baltimore v. BP P.L.C.* ("*Baltimore IV*"), 31 F.4th 158, 217 (4th Cir. 2022)).[8]

Baltimore City Circuit Judge Brown declined to take Baltimore "at its word." Although agreeing with Appellees that "characterization of the complaint does not matter here," she squarely rejected "Baltimore's

[8] The issue in *Baltimore IV* was whether "the climate change lawsuit in question was properly removed to federal court." 31 F.4th at 194; *see* E.7 n.9. In holding that the "complete preemption doctrine" does not make the suit removable under the Clean Air Act, *id.* at 215, the court of appeals panel took "Baltimore at its word when it claims that it '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.'" 31 F.4th at 217.

arguments that it does not seek to directly penalize emitters; that it seeks damages rather than abatement; and that its claims will not result in the regulation of global emissions." E.11. Judge Brown found that

> Baltimore's complaint is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries. The explanation by Baltimore that it only seeks to address and hold Defendants accountable for a deceptive misinformation campaign is simply a way to get in the back door what they cannot get in the front door.

Id. Anne Arundel Circuit Judge Platt agreed. *See* E. 1383-1384.

Appellants nonetheless continue to rely on carefully crafted verbiage in their own complaints in a disingenuous effort to deny that their tort suits, if successful, would have the effect of regulating the interstate, indeed global, greenhouse gas emissions that they allege are primarily attributable to use of Appellees' fossil fuel products. *See* Appellants' Op. Br. at 16. They ignore the well-established principle that "regulation can be . . . effectively asserted through an award of damages . . . . The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (internal quotation marks omitted). As the Second Circuit recognized in *City of New York*, if state-

law climate-change tort suits are allowed to proceed, damages awards and other remedies sought by plaintiffs "would effectively regulate the Producers' behavior far beyond [the State's] borders.." 993 F.3d at 92.

"[W]hat matters is the crux—or, in legal speak, the gravamen—of the plaintiff[s]' complaint, setting aside any attempts at artful pleading." *Fry ex rel. E.F. v. Napoleon Cmty. Schools*, 580 U.S. 154, 169 (2017). Here, even a cursory review confirms that the gravamen of Appellants' complaints, despite their transparent "disinformation campaign" veneer, is that Appellees' fossil fuel products have caused, or at least have contributed substantially to, global warming and resultant worldwide climate change.

For example, after attempting to school the circuit court on "known causes" and "observed effects" of greenhouse gas-induced global warming, sea level rise, heat waves, and disruption to the hydrologic cycle, E.28-46, Baltimore's complaint alleges as follows:

> Defendants' individual and collective conduct, including, but not limited to, *their extraction, refining, and/or formulation of fossil fuel products*; *their introduction of fossil fuel products into the stream of commerce*; their wrongful promotion of their fossil fuel products and concealment of known hazards associated with use of those products; and their failure to pursue less

> hazardous alternatives available to them; is a *substantial factor in causing* the increase in global mean temperature and consequent increase in global mean sea surface height and disruptions to the hydrologic cycle including, but not limited to, more frequent and extreme droughts, more frequent and extreme precipitation events, increased frequency and severity of heat waves and extreme temperatures, and the associated consequences of those physical and environmental changes, since 1965.

E.138 (Balt. Compl. ¶ 198) (emphasis added). The Annapolis and Anne Arundel County complaints are even more explicit: They allege that "Defendants Are Responsible for Causing and Accelerating Climate Change." E.1059, 1239.

2. The true gravamen of Appellants' complaints—Appellees' alleged liability for global warming and climate change due to ubiquitous use of their fossil fuel products—implicates uniquely federal interests relating to interstate greenhouse gas emissions. More specifically, the alleged, worldwide tortious conduct that Appellants contend enables them to hold Appellees liable under Maryland state tort law implicates "uniquely federal interests" that "make[] it inappropriate for state law to control." *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640, 641 (1981); *see also Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988)

(discussing "uniquely federal interests" that displace state tort law). As Appellees explain, the Supreme Court repeatedly has held that interstate pollution implicates uniquely federal interests. *See* Principal Br. of Appellees at 8, 11 (discussing *AEP*, 560 U.S. at 421-22; *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 488, 492 (1987), and other cases).

Amici curiae ALF & FDCC agree with Appellees that in light of the uniquely federal interests concerning interstate pollution, "the structure of the federal Constitution precludes and preempts state-law claims seeking damages for injuries arising from global emissions." Principal Br. of Appellees at 8. Rather than repeat Appellees' discussion of this crucial point, *see id.* at 11-26, ALF and FDCC wish to supplement it by highlighting two fundamental aspects of constitutional federalism that preclude or preempt Maryland and its local political subdivisions (and every other State and its political subdivisions) from utilizing state tort law and multi-million dollar, state-court tort suits, to seek redress for alleged harms of global warming and climate change.

First, Appellants are wrong that there is "no provision of the Constitution . . . that might preempt [their] claims." Appellants Op. Br. at 13. They somehow overlook the Supremacy Clause, U.S. Const. art. VI,

cl. 2, which is one of the pillars of the Constitution and the federal system that it establishes:

> Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect. From the existence of two sovereigns follows the possibility that laws can be in conflict or at cross-purposes. The Supremacy Clause provides a clear rule that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Art. VI, cl. 2.

Arizona v. United States, 567 U.S. 387, 398-99 (2012). In other words, "[t]he constitution . . . declares, that *the constitution itself*, and the laws passed in pursuance of its provisions, *shall be the supreme law of the land* . . . ." *McCulloch v. Maryland*, 17 U.S. 316, 326-27 (1819) (emphasis added); *see also Hosford v. Chateau Foghorn LP*, 229 Md.App. 499, 510 (2016) ("The Supremacy Clause provides that federal law is supreme over state law and any state law that stands in conflict with federal law is preempted.").

"Pre-emption of state law thus occurs through the direct operation of the Supremacy Clause." *Kurns v. R.R. Friciton Prods. Corp.*, 565 U.S. 625, 630 (2012) (internal quotation marks omitted). Under the

Supremacy Clause, uniquely federal interests, *i.e.*, interests that are *exclusively* federal, necessarily preempt state law that addresses the same subject. *See Boyle*, 487 U.S. at 504 ("'uniquely federal interests' are so committed by the Constitution and laws of the United States to federal control that state-law is pre-empted") (internal citation omitted). Because state-law tort suits seeking damages and additional remedies for alleged climate change-related local harms encroach upon uniquely federal interests concerning interstate pollution, *see* Principal Br. of Appellees at 12, they necessarily conflict with, and are directly preempted by, the Supremacy Clause, *i.e.*, by the Constitution itself.

Second, allowing climate-change tort suits to proceed would imperil "the principles of interstate federalism embodied in the Constitution." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980). "Each State's equal dignity and sovereignty under the Constitution implies certain constitutional 'limitation[s] on the sovereignty of all of its sister States.'" *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 245 (2019) (quoting *Volkswagen*, 444 U.S. at 293). This is "a limitation express or implicit in the original scheme of the Constitution and the Fourteenth Amendment." *Volkswagen*, 444 U.S. at 293.

Because climate change is a nationwide, and indeed global, phenomenon, holding fossil fuel producers liable under Maryland's or any other State's tort law for causing or exacerbating global climate change would upset the balance of interstate federalism. Such a State (or political subdivision) would be using the State's tort law to exert its coercive power over the same group of major fossil fuel producers—and by so doing, make itself "more equal" than other States with regard to imposing liability on those companies. *See Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 918 (2011) ("A state court's assertion of jurisdiction exposes defendants to the State's coercive power. . . ."). "[W]hile the common-law remedy is limited to damages, a liability award 'can be, indeed is designed to be, a potent method of governing conduct and controlling policy.'" *Reigel v. Medtronic, Inc.*, 552 U.S. 312, 324 (2008) (quoting *Cipollone* 505 U.S. at 521).

And if multiple States' courts were to adjudicate the alleged liability of the same group of fossil fuel industry defendants for the same alleged global climate change-related tortious conduct—which appears to be the plan of climate tort litigation's instigators, promoters, and supporters—the resultant clash of state coercive judicial power would

seriously undermine interstate federalism. For this reason, application of state law to "disputes involving interstate air or water pollution" is incompatible with "the basic interests of federalism," and thus, federal law, beginning with the federalist structure of the Constitution, precludes or preempts climate-change tort suits. *City of New York*, 993 F.3d at 91-92 (internal quotation marks omitted).

CONCLUSION

This Court should affirm the orders of the circuit courts dismissing Appellants' claims.

/s/ *Marisa A. Trasatti*
Marisa A. Trasatti

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 4,332 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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

/s/ *Marisa A. Trasatti*
Marisa A. Trasatti