IN THE SUPREME COURT OF MARYLAND

No. 11, September Term, 2025

MAYOR AND CITY COUNCIL OF BALTIMORE,
Appellant,

v.

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

ANNE ARUNDEL COUNTY,
Appellant,

v.

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

CITY OF ANNAPOLIS,
Appellant,

v.

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

On Appeal from the Circuit Courts for Baltimore City (Hon. Videtta Brown)
and Anne Arundel County (Hon. Steven Platt)

AMICUS BRIEF OF THE UNITED STATES IN SUPPORT OF APPELLEES

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INTEREST OF THE UNITED STATES

Under our constitutional system, regulation of interstate pollution has always been primarily "a matter of federal, not state, law." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 488 (1987) (citation omitted). Although states traditionally have broad power to regulate in-state pollution sources, states "lack authority to control" "out-of-state pollution" under in-state law. *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 495 (2014). What is true for regional pollution, such as smog, is even truer for interstate greenhouse gas emissions, which are a global phenomenon exclusively subject to federal control. No one can plausibly dispute that states lack authority to decide how much greenhouse gas emissions in a neighboring state or foreign country are too much. Any attempt to do so would be preempted by federal law.

The question here is whether states can get around that preemption problem by asserting tort claims based on deceptive marketing about greenhouse gases. The answer is no. The Mayor and City Council of Baltimore, City of Annapolis, and Anne Arundel County (Plaintiffs) claim to be concerned about climate change. Seeking to extract potentially billions of dollars for city and county coffers, Plaintiffs attempt to hold a handful of multinational fossil fuel producers liable—under Maryland state tort law—for the claimed effects of greenhouse gases emitted worldwide. Plaintiffs' theory is that the producers' global marketing of their

products allegedly concealed climate-change risks from an unwitting global populace of fuel consumers. As explained below, these claims are preempted by the Clean Air Act (CAA), just as much as a state nuisance claim asserting that a neighboring state emitted too much greenhouse gases, or a state statute purporting to impose emissions standards on a neighboring state. Whether considered as field preemption, conflict preemption, or a lack of state authority under horizontal federalism principles, the result is the same. Even a cursory reading of Plaintiffs' complaints shows that these cases aren't just about local matters, or even Maryland ones.

Given that Plaintiffs' claims take aim at worldwide activities, these consolidated appeals implicate substantial federal interests. The Environmental Protection Agency (EPA) has primary regulatory authority over domestic air-pollutant emissions under the CAA. Internationally, the United States exercises exclusive authority over foreign affairs regarding emissions, energy, and climate change. Extending Maryland law to redress climate-related harms caused by activities that overwhelmingly occurred beyond state and international borders would override policy choices made by the federal government and Maryland's sister states. And when local governments attempt to regulate out-of-state energy through tort doctrines that vary in application from state to state, those suits

undermine the important goals of efficiency and predictability in the system that Congress designed.

Pursuant to Maryland Rule 8-511, the United States offers this amicus brief to explain why this Court should affirm the dismissals of Plaintiffs' claims.

BACKGROUND

I. Legal background

A. Clean Air Act

The CAA is "a comprehensive national program" that ensures uniformity and coordination in domestic air-pollution regulation and establishes standards for determining whether and how to regulate sources of air pollutants, *Gen. Motors Corp. v. United States*, 496 U.S. 530, 532–33 (1990), including with respect to greenhouse gas emissions, *Massachusetts v. EPA*, 549 U.S. 497, 528 (2007). Indeed, "[t]o say [the CAA's] regulatory and permitting regime is comprehensive would be an understatement." *North Carolina, ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 298 (4th Cir. 2010) (*TVA*).

In general terms, the CAA establishes source-specific emission control programs that assign particular and defined roles for states. Stationary sources, like power plants, are subject to "three main regulatory programs." *West Virginia v. EPA*, 597 U.S. 697, 707–11 (2022). One of these is the National Ambient Air Quality Standards (NAAQS) program, where EPA specifies national air quality

standards for air pollutants to protect public health and welfare, states adopt implementation plans (SIPs) to help achieve the standards as to in-state emission sources, and EPA retains approval and oversight authority. *Id.* at 707. There's also the New Source Performance Standards Program, where EPA again "retains the primary regulatory role" to "decide[] the amount of pollution reduction that must ultimately be achieved." *Id.* at 709–10. And the CAA contains provisions specific to hazardous air pollutants. *Id.* at 707–08. Besides these comprehensive programs for stationary sources, the CAA directs EPA to regulate emissions released from mobile sources like new motor vehicles when EPA determines that such emissions meet the statutory standard for regulation. *E.g.*, 42 U.S.C. § 7521.

Although the CAA includes a substantial role for state law as to emissions released within a state's borders, where states may adopt more stringent standards than EPA, *id.* §§ 7401(a)(3), 7416, the statute affords states "a much more limited role" in redressing harms contributed to by out-of-state emissions, *City of New York v. Chevron Corp.*, 993 F.3d 81, 88 (2d Cir. 2021). Congress added to the NAAQS program the CAA's "Good Neighbor Provision"—which requires upwind states to reduce emissions that affect air quality in downwind states, 42 U.S.C. § 7410(a)(2)(D)(i)—because "downwind States to which the pollution travels . . . lack authority to control" those emissions, *EME Homer City Generation*, 572 U.S. at 495. Generally, when it comes to out-of-state emissions, the CAA

"limits states to commenting on proposed EPA rules or on another state's emission plan." *City of New York*, 993 F.3d at 88 (citing 42 U.S.C. §§ 7607(d)(5), 7475(a)(2), 7410(a)(1)). They can also seek judicial review if their concerns remain unaddressed. 42 U.S.C. § 7604(a).

B. Foreign policy

Even assuming that global greenhouse gas emissions from fossil fuels cause harmful weather effects in Maryland, climate change "is a global problem that the United States cannot confront alone," so the federal government has "work[ed] with the international community" to address it. *City of New York*, 993 F.3d at 88. Congress directed the executive branch to develop a "coordinated national policy on global climate change" through the Global Climate Protection Act. Pub. L. No. 100-204, Title XI, § 1103, 101 Stat. 1331, 1407–09 (1987) (reprinted at 15 U.S.C. § 2901 note). The federal government has been carefully coordinating and refining that policy for decades. The United States, for example, is a party to the Senate-ratified United Nations Framework Convention on Climate Change, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107, and ratified the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Oct. 15, 2016, S. Treaty Doc. No. 117-1, C.N.730.2017. The CAA's "[i]nternational air pollution" provision authorizes EPA to require state action when certain criteria have been met, including when

another country has enacted reciprocal protections for the United States. 42 U.S.C. § 7415.

These frameworks allow for international cooperation on climate change, but more restrictive measures on greenhouse gas emissions may not be appropriate to that end and do not always serve national interests. The country is not, for example, a party to the Kyoto Protocol of 1997, which set binding greenhouse gas emission reduction targets on certain Framework Convention parties. *See* S. Res. 98, 105th Cong. (1997). Plus, the United States is withdrawing from the 2015 Paris Climate Agreement because of the unfair economic burden that the Agreement imposed on American workers, businesses, and taxpayers, when the United States has already "reduced air and water pollution, and reduced greenhouse gas emissions." *Putting America First in International Environmental Agreements*, Exec. Order 14162, § 1, 90 Fed. Reg. 8,455, 8,455 (Jan. 20, 2025). And the United States' "longstanding position in international climate-change negotiations" has been "to oppose the establishment of liability and compensation schemes at the international level." *City of New York*, 993 F.3d at 103 n.11 (citation omitted).[1]

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[1] *See also* Todd Stern, Special Envoy for Climate Change, Press Availability (Dec. 4, 2015), https://2009-2017.state.gov/s/climate/releases/2015/250363.htm ("There's one thing that we don't accept and won't accept in this agreement and that is the notion that there should be liability and compensation for loss and damage."); Saeed Shah and Matthew Dalton, COP27 Talks Weigh Who Should Pay for Climate Damage to Poor Countries, *The Wall Street Journal* (Nov. 16, 2022), https://archive.ph/F1k6I (quoting U.S. Special Presidential Envoy for Climate John

II. Procedural history

Plaintiffs filed these lawsuits against energy producers that extract, refine, and market fossil fuel products across the globe. E.46–64, ¶¶ 18–29; E.1202–33, ¶¶ 24–36.[2] They allege Maryland state law claims for public and private nuisance, strict liability and negligent failure to warn, and trespass. Opening Br. at 2. Plaintiffs are not alone in their effort to obtain monetary damages from fossil fuel producers—there are many similar lawsuits pending across the country. *See* Sabin Center for Climate Change Law, *U.S. Climate Change Litigation: Common Law Claims*, https://climatecasechart.com/case-category/common-law-claims/ (last visited July 10, 2025).

According to Plaintiffs' complaints, based on the total volume of fossil fuels that the producers have extracted over the past half-century, the producers are responsible for an increase in the overall amount of greenhouse gases in the atmosphere, which is in turn responsible for an increase in the temperature of the Earth, which is in turn responsible for localized weather harms in Baltimore and Anne Arundel. E.44, ¶ 7; E.1196, ¶ 9; *see also* Opening Br. at 2.

Kerry as saying that "[i]t's a well-known fact that the U.S. and many other countries will not establish some sort of a legal structure that is tied to compensation or liability"); Conf. of the Parties to the Framework Convention, Decision 1/CP.21, ¶ 51, U.N. Doc. FCCC/CP/2015/10/Add.1 (Dec. 12, 2015) (decision adopting the Paris Agreement, also reflecting this position).

[2] Because Anne Arundel County and Annapolis's operative complaints are almost identical, the United States cites to the County's complaint.

The producers, as Plaintiffs see it, concealed from the world that greenhouse gas emissions warm the planet and should have taken steps to limit those emissions, reduce the use of fossil fuels, and help transition the world economy to other (more expensive, less efficient) types of fuel, such as wind and solar. *E.g.*, E.43–44, ¶¶ 5–7; E.129–37, ¶¶ 177–190; E.1195–96, ¶¶ 6–8; E.1243, ¶ 60; E.1296–1301, ¶¶ 153–154; E.1302–03, ¶ 160; E.1350, ¶ 252(g); E.1353, ¶ 260(g). This conduct allegedly injures Plaintiffs because greenhouse gases emitted worldwide accumulate in the atmosphere and disrupt Earth's delicate climate—exacerbating flooding and storms, raising sea levels, bringing heat waves, and motivating Plaintiffs to invest in climate adaptation measures. E.41–42, ¶ 1; E.44–45, ¶¶ 7–9; E.1193, ¶ 1; E.1196–98, ¶¶ 10–11.

The circuit courts dismissed Plaintiffs' claims as preempted and precluded by federal law. E.11–19, 1384. These appeals followed.

ARGUMENT

I. The CAA preempts Plaintiffs' claims.

The Supremacy Clause makes the Constitution and federal statutes "the supreme Law of the Land." U.S. Const. Art. VI, cl. 2. "[I]t is not necessary for a federal statute to provide explicitly that particular state laws are pre-empted." *Ouellette*, 479 U.S. at 491 (citation omitted). Federal statutes preempt state law where Congress determines a field must be exclusively governed by federal law.

Arizona v. United States, 567 U.S. 387, 399 (2012). That intent "can be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it.'" *Id.* (alteration in original and citation omitted). State laws must also yield where they "conflict" with the text, structure, or "purposes and objectives" of federal law. *Id.*

The CAA preempts state law claims like Plaintiffs' claims here—those that effectively regulate out-of-state greenhouse gas emissions because of their alleged effects on the global climate. The CAA occupies the field of interstate air pollution, and Plaintiffs' state tort claims conflict with the text, structure, and objectives of the CAA's comprehensive regulatory framework.

1. As an initial matter, the field of interstate pollution control has long been a matter for "federal, not state, law." *Ouellette*, 479 U.S. at 488 (citation omitted). Indeed, "[f]or over a century, a mostly unbroken string of cases has applied federal law"—initially, federal common law—"to disputes involving interstate air or water pollution." *City of New York*, 993 F.3d at 91 (collecting cases). The Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*, displaced the federal common law of transboundary water pollution, *Ouellette*, 479 U.S. at 489, and the CAA did the same for transboundary air pollution, including with respect to greenhouse gas emissions, *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 424 (2011) (*AEP*). Accordingly, "federal legislation now occupie[s] the field" and determines what role, if any, there

is for state law in these areas. *Ouellette*, 479 U.S. at 489, 492; *see City of New York*, 993 F.3d at 99.

2. Even without this history, the CAA sets out detailed source- and pollutant-specific control programs for nationwide air regulation. The statute grants EPA authority to establish nationwide standards based on its expert judgment when EPA determines that emissions from, for example, stationary sources under 42 U.S.C. § 7411 and new motor vehicles under § 7521 meet the applicable statutory standard for regulation. In short, it is a "comprehensive statutory scheme that anoints the EPA as the 'primary regulator of [domestic] greenhouse gas emissions,'" *City of New York*, 993 F.3d at 99 (alteration in original, quoting *AEP*, 564 U.S. at 428), such as by delegating "the decision whether and how to regulate" such emissions "to EPA," *AEP*, 564 U.S. at 416. The statute carefully defines a role for states, including the SIP process where states implement EPA-promulgated standards as to *in-state* sources. *West Virginia*, 597 U.S. at 707–11. The CAA also expressly addresses "[i]nternational air pollution" by creating a mechanism for EPA to reduce domestic emissions' impacts in other countries under certain circumstances. 42 U.S.C. § 7415. This "extensive coverage allows regulators with expertise . . . to create empirically-based emissions standards." *TVA*, 615 F.3d at 304.

Nothing in Congress's scheme authorizes claims like Plaintiffs' claims, deeming unacceptable under Maryland law the amount of greenhouse gases emitted

across the country and the world over the past fifty years. The CAA specifically addresses the problem of "air pollution emitted in one State, but causing harm in other States." *EME Homer City Generation*, 572 U.S. at 495. Congress added the Good Neighbor Provision to "tackle [that] problem" by requiring remedial action by the *source state*—precisely *because* downwind states "lack authority to control" out-of-state emissions. *Id.*; *see* 42 U.S.C. § 7410(a)(2)(D)(i). On top of the Good Neighbor Provision, the CAA affords affected states other narrow avenues for voicing their cross-boundary pollution concerns to EPA for relevant pollutants. *See, e.g.*, 42 U.S.C. §§ 7607(d)(5), 7475(a)(2), 7410(a)(1). As this scheme makes plain, each state is alone responsible for controlling air pollution within its borders—subject to EPA oversight—and the statute contemplates no role for states reaching out and applying their law in other states.

The Supreme Court's analysis in *Ouellette* is dispositive. *Ouellette* held that the CWA preempted Vermont's nuisance suit under Vermont law for harms experienced in Vermont, but caused by New York-sourced pollution. 479 U.S. at 483–84, 492. Relying on the CWA's "comprehensive" and "pervasive regulation" of water pollution, as well as "the fact that the control of interstate pollution is primarily a matter of federal law," the Court framed the inquiry as whether the CWA "specifically preserved" the application of state law to water pollution that originated in another state. *Id.* at 492. The Court answered no, holding that the statute

"contemplate[d] a much lesser role" for states seeking to regulate out-of-state pollution, *id.* at 490–91, and precluded "applying the law of an affected State" to impose liability on "an out-of-state source," *id.* at 494. Crucially, the Court interpreted the statute's savings clause—which permits states to adopt and enforce stricter standards than required by the CWA, 33 U.S.C. § 1370—to permit liability under state law only if "pursuant to the law of the *source* [s]tate." *Ouellette*, 479 U.S. at 497. A contrary rule, the Court reasoned, would "subject [regulated entities] to an indeterminate number of potential [state] regulations," *id.* at 499, "undermine the important goals of efficiency and predictability in the [EPA's] permit system," *id.* at 496, and "undermine" the statute's comprehensive "regulatory structure," *id.* at 497.

So too here. Like the CWA as to interstate water pollution, the CAA is a comprehensive statute governing interstate air pollution, which has been historically governed by federal law to an even greater extent. The CAA has a savings clause materially identical to the clause at issue in *Ouellette*, which the Court interpreted as authorizing only state regulation "pursuant to the law of the *source* [s]tate." *Id.*; *see TVA*, 615 F.3d at 306 (*Ouellette*'s "holding is equally applicable to the Clean Air Act"); *Merrick v. Diaego Ams. Supply, Inc.*, 805 F.3d 685, 692–93 (6th Cir. 2015) (CWA savings clauses "were modeled on the Clean Air Act"); *Bell v. Cheswick Generating Station*, 734 F.3d 188, 196–97 (3d Cir. 2013) (finding "no meaningful

difference between the Clean Water Act and the Clean Air Act for the purposes of [the] preemption analysis").

And, as in *Ouellette*, Plaintiffs' claims target out-of-state emissions and thus undermine the CAA's regulatory structure and purpose. Plaintiffs seek sweeping global relief—including abatement, punitive damages, compensatory damages, and disgorgement of profits traceable to the worldwide extraction, production, and consumption of fossil fuels. *See* E.10, 14, 170, 1371. But the CAA entrusts "complex balancing" of the Nation's energy and clean-air needs "to EPA in the first instance, in combination with state regulators." *AEP*, 564 U.S. at 427. It envisions cooperation between the states and the federal government under a carefully defined regulatory program of cooperative federalism. 42 U.S.C. §§ 7401(a)(3), 7402(a), 7410(a)(2)(D), 7416. By applying Maryland tort standards to redress harms that Plaintiffs admittedly attribute to out-of-state emissions, E.44, ¶ 7; E.1196, ¶ 9, they assume for themselves EPA's discretion to determine whether regulation is appropriate and, if so, to set nationally applicable standards, along with other states' authority over emissions within their borders.

Such attempts intrude on EPA's authority as the "primary regulator of greenhouse gas emissions" and to determine whether and how to regulate with the tools that Congress provided. *AEP*, 564 U.S. at 428; *see City of New York*, 993 F.3d at 93 (discussing the "real risk," as to another city's similar claims, "that subjecting

the [p]roducers' global operations to a welter of different states' laws could undermine important federal policy choices"). The claims also impose collective liability for greenhouse gas effects from any and all emissions attributable to the producers' products, regardless of the type of emitting source, despite Congress's careful differentiation between types of emitters (e.g., stationary or mobile), the standard for regulation, and the permissible forms of emission limitations when appropriate.

Ouellette's concern about source-state entities being subject to numerous indeterminate and conflicting state law tort standards—undermining a predictable system designed by Congress—is even weightier in the greenhouse gas context than in the water-pollution context. While air pollution is generally "heedless of state boundaries," *EME Homer City Generation*, 572 U.S. at 496, any alleged greenhouse gas effects are not traceable to *any* particular domestic or global source, E.154, ¶ 235; E.1353–54, ¶ 262. Under Plaintiffs' theory, climate change occurs over decades and is allegedly caused by human emitted greenhouse gases that commingle with the much larger amount of natural greenhouse gases and disperse evenly throughout the atmosphere. E.154, ¶ 235; E.1353–54, ¶ 262. If *all* emissions attributable to the producers' products are deemed collectively responsible for that indivisible harm under one affected state's law, any one emitter could face an ill-defined patchwork of liability across all fifty states. *See TVA*, 615 F.3d at 301–02

(observing that nuisance is "an ill-defined omnibus tort of last resort"); William C. Porter, *The Role of Private Nuisance Law in the Control of Air Pollution*, 10 Ariz. L. Rev. 107, 118–19 (1968) (discussing how one Oregon plant's emissions were held a trespass under Oregon law but not Washington law).

3. Plaintiffs do not dispute that the only alleged injuries here "all stem from interstate and international emissions." Opening Br. at 29–30 (quoting E.11). Their primary response is to disclaim any attempt to reduce or regulate out-of-state emissions, maintaining the claims are best characterized as targeting deceptive marketing that misrepresented the emission-related risks of fossil fuel products. *Id.* at 14–19. But this characterization does not save Plaintiffs' claims from preemption. Even accepting Plaintiffs' characterization of the claims as deceptive-marketing ones, any finding that the producers' marketing was tortious under Plaintiffs' theories will necessarily bring state law into conflict with the CAA.

To illustrate, take Plaintiffs' public and private nuisance claims. As Plaintiffs tell it, the producers' failure to warn about "the risks posed by their fossil fuel products" created conditions that "unreasonab[ly]" "interfere" with public and private interests. E.147–48, ¶¶ 219–222; E.152, ¶ 231; E.1346–48, ¶¶ 247–250; E.1351, ¶ 258. Finding that the producers' products created such an "unreasonable" "interfere[nce]" would necessarily entail a judgment that the products were the source of too much out-of-state air pollution—that the amount of out-of-state

emissions from the products was so "unreasonable" as to create a "nuisance." But the CAA vests the judgment call as to whether and how much out-of-state air pollution is too much with EPA and the states where the pollution originates. *TVA*, 615 F.3d at 306; *City of New York*, 993 F.3d at 88.

Plaintiffs' remaining claims suffer the same flaw. The failure to warn claims allege that the producers knew that their products' "climate effects" rendered the products "dangerous." E.155, ¶ 240; E.164, ¶ 273; E.1354, ¶ 267; E.1356, ¶ 278. A court could not find that the products were "dangerous" without determining how much greenhouse gases from their consumption would make them "not reasonably safe"—which, as noted above, is a judgment the CAA vests with EPA and the states where the pollution originates. *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 635 (2012) (explaining that a "failure-to-warn" claim entails a judgment about whether the omission of warnings "renders the product not reasonably safe" (quoting Restatement (Third) of Torts: Products Liability § 2(c) (1997))). And Plaintiffs' trespass claims allege that the producers' products interfered with Plaintiffs' interests without "permission," E.167, ¶ 285; E.1358, ¶ 289, which is just another way of saying that the overwhelmingly out-of-state emissions from those products' consumption caused more air pollution than what was "permi[tted]" by the CAA. Plaintiffs would thus have Maryland law deem a "trespass" what the CAA considered acceptable.

In short, "[t]here is no hiding the obvious"—these cases present "a clash over regulating worldwide greenhouse gas emissions and slowing global climate change." *Minnesota ex rel. Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 717–19 (8th Cir. 2023) (Stras, J., concurring) (citation omitted) (construing similar claims). Plaintiffs' complaints are replete with allegations that the producers' products caused emissions, those emissions are harming the Earth (including Maryland), and the producers should have taken steps to limit emissions and the use of their products. "The inevitable result" of allowing claims like these would be that cities and counties across the country "could do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Ouellette*, 479 U.S. at 495.[3]

II. The Constitution bars Plaintiffs' claims.

Plaintiffs' attempt to project Maryland law beyond Maryland is not only barred by the CAA—it's barred by our Constitution. That one state's law may not "reach out and regulate conduct that has little if any connection with the State's legitimate interests" is "an 'obviou[s]' and 'necessary result' of our constitutional order." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 154 & n.2 (2023) (Alito, J.,

[3] In an amicus brief filed last December in a different case, the United States expressed the view that deceptive-marketing claims like those here "would not necessarily" conflict with the CAA. U.S. Amicus Br. at 18 & n.3, *Sunoco LP v. City & County of Honolulu*, 145 S. Ct. 1111 (2025) (Nos. 23-947 & 23-952). After the change in the Administration, the United States has reexamined its position and has concluded that claims like those here would necessarily conflict with the CAA.

concurring in part) (quoting *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914) and collecting cases); *see Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023).

This principle "is not confined to any one clause or section" in the Constitution "but is expressed in the very nature of the federal system that the Constitution created," *Mallory*, 600 U.S. at 154 (Alito, J., concurring in part)—one that vertically divides power between the federal government and the states, and horizontally amongst the states themselves, *New York v. O'Neill*, 359 U.S. 1, 9 (1959); *Pork Producers*, 598 U.S. at 376 n.1. Under the Constitution's "horizontal separation of powers," *Pork Producers*, 598 U.S. at 376 n.1, each state retains "a residuary and inviolable sovereignty," *Alden v. Maine*, 527 U.S. 706, 715 (1999) (citation omitted). A state exceeds that power—and contravenes the equal sovereignty of other states—when it extraterritorially regulates out-of-state conduct.

A. Plaintiffs' claims would extraterritorially regulate activities that occurred wholly within other states.

Although the principle that a state cannot regulate extraterritorially is not confined to any one constitutional provision, two provisions inform the analysis here—the Due Process Clause, U.S. Const. amend. XIV, § 1, and Commerce Clause, *id.* Art. I, § 8, cl. 3.

1. The Due Process Clause safeguards states' "status as coequal sovereigns in a federal system," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292

(1980), by restricting state law's capacity to regulate subject matters lacking any significant relationship to the state, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821 (1985); *Gerling Global Reinsurance Corp. of Am. v. Gallagher*, 267 F.3d 1228, 1236–37 (11th Cir. 2001).

The Supreme Court applied this "due process principle that a state is without power . . . to regulate and control activities wholly beyond its boundaries" in *Home Insurance Co. v. Dick*, for example. *Watson v. Emps. Liab. Assurance Corp.*, 348 U.S. 66, 70–71 (1954) (citing *Dick*, 281 U.S. 397 (1930)). There, the Court held that Texas was powerless to invalidate an insurance policy provision to be performed in Mexico and issued there, but to a Texas resident. *Dick*, 281 U.S. at 407–08; *see also Hartford Accident & Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 143, 149–50 (1934) (reasoning similarly as to Mississippi law and a Tennessee contract).

The Court has applied this same due process principle when state law is used to penalize conduct that occurred wholly beyond state lines. "[A]s a general rule," a state lacks any legitimate interest in "punish[ing] a defendant for unlawful acts committed outside of [its] jurisdiction." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003). Consider *BMW of North America, Inc. v. Gore*—where the plaintiff purchased a car from a national automobile distributor's Alabama dealership, the dealership did not disclose that the car had been repainted, and an Alabama jury awarded punitive damages after finding that the distributor's

nationwide nondisclosure policy was fraudulent. 517 U.S. 559, 562–65 (1996). Citing "principles of state sovereignty and comity" embodied by the Due Process Clause and other constitutional provisions, the Court explained that "Alabama d[id] not have the power" to regulate the distributor's disclosure policy or "impose sanctions . . . to deter conduct that [wa]s lawful in other jurisdictions." *Id.* at 571–73. While "Congress has ample authority to enact such a policy for the entire Nation, it is clear that no single State could do so." *Id.* (footnote omitted).

2. The Commerce Clause's interstate component embodies the same principles of state sovereignty and comity that the Supreme Court applied in *BMW*. State laws that burden out-of-state commercial activity are "not only subordinate to the federal power over interstate commerce, . . . but [are] also constrained by the need to respect the interests of other States." *Id.* (citations omitted). The Constitution has a "special concern" with maintaining "a national economic union unfettered by state-imposed limitations." *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 335–36 (1989). One way the Interstate Commerce Clause protects our national economic union is by precluding application of state law "to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State." *Id.* In other words, although the clause does not prohibit "*incidental* regulation of interstate commerce by the States," "direct regulation is prohibited." *Edgar v. MITE Corp.*, 457 U.S. 624, 640 (1982) (plurality op.).

Healy illustrates the principle. There, the Supreme Court considered a Connecticut statute that required beer distributors, as a condition of doing business in the state, to file monthly statements with state authorities affirming that their Connecticut prices did not exceed their prices in neighboring states. 491 U.S. at 328 & n.5. The statute did not require or prohibit any conduct outside Connecticut. The Court still recognized that the statute's "practical effect" was to constrain the distributors' ability to adjust prices in other states. *Id.* at 337–39. Accordingly, the Court held that the statute impermissibility regulated out-of-state commerce. *Id.* at 340.

To be sure, although the Court recently rejected an "almost per se" rule that the Interstate Commerce Clause bars state laws affecting out-of-state commerce, *Pork Producers*, 598 U.S. at 376, it "did not overturn" the rule *Healy* applied, *Ass'n for Accessible Meds. v. Ellison*, 140 F.4th 957, 960–61 (8th Cir. 2025). When one state's law "directly regulates transactions which take place wholly outside the [s]tate," it's barred. *Id.* (cleaned up) (quoting *Pork Producers*, 598 U.S. at 376 n.1); *see Pork Producers*, 598 U.S. at 376 n.1 (explaining that the challenged California statute "regulate[d] only products that companies choose to sell '*within*' California" (emphasis added and citation omitted)).

3. Under the standards articulated above, Plaintiffs' claims are preempted. Regardless of whether the tortious conduct that Plaintiffs seek to penalize is based

on emissions, deceptive commercial activity, or both, the boundless reach of their claims is undeniable.[4] Plaintiffs do not even try to deny it—maintaining that there is "nothing unusual" about applying Maryland tort standards to the producers' nationwide (and worldwide) commercial conduct. Opening Br. at 29–30.

But Plaintiffs are mistaken. Analyzed under the principles of coequal state sovereignty and comity inherent in our Constitution's federal structure, and the Due Process Clause and Interstate Commerce Clause in particular, *see Dick*, 281 U.S. at 407–08; *BMW*, 517 U.S. at 570–73; *Healy*, 491 U.S. at 335–37, Plaintiffs' attempted regulation of wholly out-of-state activities cannot stand. There is no relationship between that conduct and any interest unique to Maryland that would permit the local governments to exercise regulatory authority over fossil fuel production and marketing across the country. That remains true even if the producers have some marginally related contacts with Maryland, like their mere operation of gas stations

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[4] *E.g.*, E.44, ¶ 7 ("Defendants' products—based on the volume of oil, gas, and coal these companies extracted from the [E]arth—are directly responsible for at least 151,000 gigatons of [carbon dioxide] emissions between 1965 and 2015"); E.46–47, ¶ 18 ("Defendants are responsible for a substantial portion of the total greenhouse gases emitted since 1965 . . . . Defendants bear a dominant responsibility for global warming generally . . . ."); E.87–90, ¶¶ 91–102 (attributing liability to the producers based on *all* "extraction, promotion, marketing, and sale" activities); E.110–26, ¶¶ 141–170 (identifying purported misrepresentations with no apparent connection to Maryland, including a speech in Beijing, a report titled "A Cleaner Canada," and ads in the New York Times); E.137–39, ¶¶ 191–195 (alleging the producers injured Baltimore by "individually and collectively extract[ing] a substantial percentage of all raw fossil fuels extracted globally since 1965"); E.1195–99, 1243, 1269–91, ¶¶ 7, 12, 14, 61–62, 106–142 (materially similar).

within the state, or if use of their products by Maryland residents are responsible for Maryland's miniscule share of worldwide greenhouse gas emissions. *See BMW*, 517 U.S. at 570–73; *Healy*, 491 U.S. at 336. The "mechanism" of Plaintiffs' harms are not those contacts but overwhelmingly out-of-state emissions. E.70, ¶¶ 39–42; E.1239, ¶¶ 49–51.

As Plaintiffs point out, they do seek relief for injuries experienced within Maryland, and there are cases "in which a person acting outside the state may be held responsible according to the law of the state for injurious consequences within it." *Young v. Masci*, 289 U.S. 253, 259 (1933); Opening Br. at 29. But that limited exception to the prohibition on extraterritorial regulation does not apply here. The causal chain connecting the producers' out-of-state conduct to injuries within Maryland is exceedingly attenuated—requiring a court to assume that deceptive marketing within another state caused someone there to use more fossil fuels, the use added some number of greenhouse gases to the atmosphere, and the gases exacerbated climate change, which in turn caused some harm in Maryland. *See* E.154, ¶ 235; E.1353–54, ¶ 262. If that barebones connection between climate impacts in Maryland and the producers' out-of-state conduct were enough to evade the prohibition on state extraterritorial regulation, there would be no real limit on extraterritorial regulation at all.

B. Plaintiffs' claims would extraterritorially regulate activities that occurred wholly within other countries.

The Constitution vests powers over foreign affairs in the federal government "exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942). These powers, including the President's authority to negotiate treaties and appoint ambassadors, U.S. Const. Art. II, §§ 2–3, and Congress's authority to regulate commerce with foreign nations, *id.* Art. I, § 8, cl. 3, "form[] an obvious and essential branch of the federal administration," The Federalist No. 42 (James Madison). "If we are to be one nation in any respect, it clearly ought to be in respect to other nations." *Id.*; *see* U.S. Const. Art. I, § 10; *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319–20 (1936) (discussing the President's "plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress").

Two closely related doctrines inform whether state law impermissibly intrudes on federal foreign-affairs authority. One is the foreign affairs preemption doctrine. State "regulations must give way if they impair the effective exercise of the Nation's foreign policy," *Zschernig v. Miller*, 389 U.S. 429, 440–41 (1968), whether by (1) conflicting with an express federal policy or (2) intruding on foreign affairs "without addressing a traditional state responsibility," *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1071–72 (9th Cir. 2012) (en banc). "Our system of government is such that the interest of the cities, counties and states, no less than

the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference." *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941); *see also Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413–14 (2003).

The other doctrine respects Congress's authority to regulate commerce with other nations under the Foreign Commerce Clause. That provision "has long been understood . . . to provide 'protection from state legislation inimical to the national commerce [even] where Congress has not acted.'" *Barclays Bank PLC v. Franchise Tax Bd. of Cal.*, 512 U.S. 298, 310 (1994) (second alteration in original and citation omitted); *see Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue & Finance*, 505 U.S. 71, 79 (1992) (noting that this protection "is broader than the protection afforded to interstate commerce" (citing *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 444–46 (1979))). So long as the state or local burden on foreign commerce is enough to "prevent[] the Federal Government from speaking with one voice when regulating commercial relations with foreign governments," it is unconstitutional. *Japan Line*, 441 U.S. at 451 (marks omitted).

Both doctrines preclude Plaintiffs' claims. The United States has long worked to develop national policy on climate change in the international arena, both before and after Congress expressly authorized the President to do so. *See* Global Climate Protection Act § 1103, 101 Stat. at 1407–09; *cf. Youngstown Sheet & Tube Co. v.*

Sawyer, 343 U.S. 579, 635 (1952) (Jackson, J., concurring) (explaining that executive power is at its "maximum" where "the President acts pursuant to an express or implied authorization of Congress"). Doing so requires careful diplomacy with other countries, consideration of how to share costs among international stakeholders, and balancing the country's energy needs with environmental protection. But, using Maryland tort standards as the measuring stick, Plaintiffs undertake this complex balancing act for themselves—deeming a swath of wholly foreign energy activities unreasonable.

Plaintiffs' attempt to penalize foreign energy production "would obviously sow confusion and needlessly complicate the nation's foreign policy." *City of New York*, 993 F.3d at 103. The claims effectively sanction foreign commerce and energy promotion at a time the United States faces an energy crisis. *Declaring a National Energy Emergency*, Exec. Order 14156, § 1, 90 Fed. Reg. 8,433, 8,433–34 (Jan. 20, 2025); *see City of New York*, 993 F.3d at 103 (recognizing that similar claims, if successful, would "presumably affect the price and production of fossil fuels abroad"). That's despite the President specifically exempting energy imports from recent reciprocal tariffs. *Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits*, Exec. Order 14257, § 3(e), 90 Fed. Reg. 15,041, 15,046 (Apr. 2, 2025). And that is despite the United States forgoing similarly restrictive

measures to reduce global greenhouse gas emissions, like the Kyoto Protocol, the Paris Climate Agreement, and international liability or compensation schemes. *See supra* pp. 5–6; *cf. Sprietsma v. Mercury Marine*, 537 U.S. 51, 66 (2002) (reasoning that "a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated" (citation omitted)).

Plaintiffs' claims conflict with these federal policies. But, even if there is no conflict, the claims would still effectively regulate wholly foreign energy activities to redress global greenhouse effects—far afield from any area of traditional state or local responsibility. *Cf. Massachusetts*, 549 U.S. at 519 ("Massachusetts . . . cannot negotiate an emissions treaty with China or India . . . ."). The risk that foreign governments will retaliate against American energy interests is substantial, especially if other states and municipalities "followed [Plaintiffs'] example." *Japan Line*, 441 U.S. at 450–51; *see* E.57, ¶ 25(a) (noting, for example, how the Republic of Venezuela wholly owns and operates one producer's parent entity). Many already have.

CONCLUSION

This Court should affirm the dismissals of Plaintiffs' claims as preempted and precluded by federal law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief contains 6,486 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 certify that, on this 15th day of July, 2025, a copy of the document titled Amicus Brief of the United States in Support of Appellees was filed electronically and served electronically by the MDEC system on all persons entitled to service.

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