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IN THE SUPREME COURT OF MARYLAND

NO. 11
SEPTEMBER TERM, 2025

MAYOR & CITY COUNCIL OF BALTIMORE,
Appellant,

v.

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

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

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 Senior Judge Steven Platt

AMICUS CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE MARYLAND CHAMBER OF COMMERCE IN SUPPORT OF APPELLEES

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**Motion for Special Admission Pending*

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STATEMENT OF INTEREST[1]

The Chamber of Commerce of the United States of America (U.S. Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Founded in 1968, the Maryland Chamber of Commerce (Maryland Chamber) is the leading voice for business in Maryland. It is a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families. As such, the Maryland Chamber represents the interests of the state's business community before the General Assembly, the Executive Branch, and the courts. In fulfilling that duty,

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[1] All parties have consented in writing to the filing of this brief. No counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

the Maryland Chamber regularly files amicus briefs in cases that raise material concerns to Maryland's business community.

The U.S. and Maryland Chambers have a strong interest in the legal and policy issues that underlie this case, including issues relating to climate change. The global climate is changing, and human activities contribute to those changes. There is much common ground on which all sides could come together to address climate change with policies that are practical, flexible, predictable, and durable. U.S. climate policy should recognize the need for action, while maintaining the national and international competitiveness of industry and ensuring consistency with free enterprise and free trade principles. *See* U.S. Chamber of Commerce, *The Chamber's Climate Position: 'Inaction is Not an Option'* (Oct. 27, 2021), https://tinyurl.com/3xeztkjh. Durable climate change policy must be made by Congress, which should both encourage innovation and investment to ensure significant emissions reductions and avoid economic harm for businesses, consumers, and disadvantaged communities. *See, e.g.*, Press Release, Sen. Sheldon Whitehouse, *New Bipartisan, Bicameral Proposal Targets Industrial Emissions for Reduction* (July 25, 2019), https://tinyurl.com/y49xfg3a (reporting the U.S. Chamber's support for the bipartisan Clean Industrial Technology Act). Governmental policies aimed at achieving these goals should not be made by the courts, much less by a patchwork of actions under state law that would do more harm than good.

Climate change, by its very nature, is an interstate and international problem, and putative state-law claims that would impose liability for climate change must necessarily be resolved by federal law. The cross-border nature of climate change implicates "uniquely federal interests" for which a uniform federal policy and the application of federal law are essential. And even if federal law somehow did not govern claims, like Appellants', based on cross-border climate change, the Clean Air Act (CAA) preempts state law to ensure that climate change is addressed by a uniform *federal* approach.

In the limited range of circumstances where uniquely federal interests arise, the relevant legal questions often intersect with the interests of many of the Chambers' members, as they rely on the predictability and uniformity of federal policy. This case falls within that limited range: the Chambers and their members have a strong interest in ensuring that claims for which a uniform federal standard is necessary are governed by federal law, and not by a patchwork of state laws applied in piecemeal fashion.

INTRODUCTION

Appellants' lawsuits are fundamentally about global climate change—a cross-border, multinational problem that requires a cross-border, multinational solution. The law of a single state, or an order from a single state court, simply cannot address the effects on every state and every nation from greenhouse gas emissions crossing interstate and international borders. Any possible solution can be achieved only on a national and international basis, through federal law and the

federal government acting on behalf of the United States as a whole. The need for a uniform federal standard in cases concerning cross-border emissions is why the U.S. Supreme Court has long recognized that federal common law applies to disputes about "air and water in their ambient or interstate aspects." *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972) ("*Milwaukee I*") (citation omitted). Congress may displace federal common law by statute, which then serves as the exclusive source of remedies for the claim; if Congress displaces federal common law but provides no private remedy, then there is none. Whether the federal law governing these matters is common law or statutory law, *federal* law governs—there is no room for the law of a single state.

The Circuit Courts here understood that. The courts recognized that cases about transboundary pollution, because of their interstate and international nature, must be governed by federal law, not by disjointed state-law regimes. Baltimore Op. 11-13; Anne Arundel Op. 10-11. They recognized that what Appellants really seek is to hold Appellees responsible for the effects of global climate change, and rejected Appellants' attempts to frame their cases as solely about allegedly misleading advertising. Baltimore Op. 10-12. And they understood that congressional displacement of federal common law through the CAA does not open the door to state-law rules, where this federal area demands a uniform solution. *Id.* at 14. Allowing these cases to proceed would hinder, rather than help, efforts to address global climate change. The Court should affirm.

ARGUMENT

I. Federal law exclusively governs this dispute over global greenhouse gas emissions.

A. Disputes about cross-border emissions are governed by federal law because of their interstate and international nature.

The Circuit Courts correctly recognized that state law cannot control cross-border disputes. Matters involving air pollution are a classic example, for which greenhouse gas emissions are no exception.

In the federal structure created by the U.S. Constitution, *federal* law must govern when "there is an overriding federal interest in the need for a uniform rule of decision or where the controversy touches basic interests of federalism." *Milwaukee I*, 406 U.S. at 105 n.6. "In these instances, our federal system does not permit the controversy to be resolved under state law … because the interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981).

Under this framework, the law of one state cannot control cross-border disputes implicating the interests of multiple sovereigns. These types of cross-border disputes concern "the conflicting rights of States or our relations with foreign nations," and so implicate basic principles of federalism, *Tex. Indus.*, 451 U.S. at 641, or otherwise call for a uniform federal rule, *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426-27 & n.25 (1964). In such cases, state law cannot apply because "local law will not be sufficiently sensitive to federal concerns, it is not likely to be uniform across state lines, and it will develop at various rates of

speed in different states." 19 Wright & Miller, Fed. Prac. & Proc. Juris. § 4514 (3d ed. 2022). So, unless Congress enacts a uniform federal standard by statute, the constitutional prohibition on applying state law means that federal common law supplies the federal rule of decision. In its modern form, "federal common law addresses 'subjects within national legislative power where Congress has so directed' or where the basic scheme of the Constitution so demands." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011) ("*AEP*") (quoting Henry J. Friendly, *In Praise of* Erie—*and of the New Federal Common Law*, 39 N.Y.U. L. Rev. 383, 408, 421-22 (1964)). Such disputes in which the Constitution's "basic scheme" demands an exclusively federal rule of decision include those over interstate water rights,[2] tribal land rights,[3] interstate air carrier liability,[4] interstate disputes over intangible property,[5] and foreign relations.[6]

One area in which federal decisionmaking authority is particularly essential concerns "the environmental rights of a [s]tate against improper impairment by

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[2] *Hinderlider v. La Plata & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938); *Kansas v. Colorado*, 206 U.S. 46, 95 (1907).

[3] *Cnty. of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 235-36 (1985).

[4] *Treiber & Straub, Inc. v. UPS, Inc.*, 474 F.3d 379, 384 (7th Cir. 2007); *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 926-29 (5th Cir. 1997).

[5] *Delaware v. Pennsylvania*, 598 U.S. 115, 128-30 (2023) (discussing federal common law rules for escheatment of money orders).

[6] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 (1964); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1088 (9th Cir. 2009); *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1233 (11th Cir. 2004).

sources outside its domain." *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted); *see AEP*, 564 U.S. at 421 ("Environmental protection is undoubtedly an area 'within national legislative power,' one in which federal courts may fill in 'statutory interstices,' and, if necessary, even 'fashion federal law.'" (citation omitted)). In those types of cases, the Supreme Court has held, "[f]ederal common law and not the varying common law of the individual [s]tates is ... necessary" so that a "uniform standard" may apply. *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted). Thus, "[w]hen we deal with air and water in their ambient or interstate aspects, there is a federal common law." *AEP*, 564 U.S. at 421 (quoting *Milwaukee I*, 406 U.S. at 103). As the Supreme Court has explained, where a lawsuit presses claims for liability arising from cross-border greenhouse gas emissions, "borrowing the law of a particular [s]tate would be inappropriate." *Id.* at 422.

In addition to the limits federalism places on the application of state law to a quintessentially national issue, the Due Process Clause limits each state's ability to regulate conduct in other states. "[T]here must be at least some minimal contact between a state and the regulated subject matter or transaction before the state can, consistent with the requirements of Due Process, exercise legislative jurisdiction." *Gerling Glob. Reins. Corp. v. Gallagher*, 267 F.3d 1228, 1237-38 (11th Cir. 2001); *Home Ins. Co. v. Dick*, 281 U.S. 397, 407-08 (1930). The due process question is not whether one generally does business in a state or has "minimum contacts" with it; it is whether there is a sufficient connection with the *transaction* the state seeks to regulate. *Gerling*, 267 F.3d at 1236, 1238. The

Supreme Court has referred to these "territorial limits on state authority" as "the Constitution's horizontal separation of powers." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 & n.1 (2023).

B. Appellants' claims are fundamentally about cross-border emissions and therefore cannot be resolved under state common law.

Appellants do not disagree with the proposition that the Supreme Court has held that federal common law governs cases about cross-border pollution. They instead contend that their claims can proceed despite that precedent because they assert claims about Appellees' allegedly false advertising rather than their "emissions." Appellants' Br. 14-19. But the gravamen of the dispute and the source of the alleged injuries is Appellees' alleged responsibility for the effects of global climate change caused by greenhouse gas emissions stemming from cross-border contributors. Appellants' characterization of their causes of action does not change the fundamentally interstate and international nature of this case. So, federal law applies for the same reason it always has applied when harms from cross-border pollution are at issue: there is an overriding need for the applicable standard to be a uniform, federal standard.

1. Appellants say their cases are different, because their causes of action concern Appellees' alleged "misinformation campaign" rather than cross-border pollution. Appellants' Br. 15-16. But that difference is not meaningful. The precise causes of action and their labels do not dictate whether state law can apply; the "interstate or international nature of the controversy" controls. *Tex. Indus.*, 451

U.S. at 641. And regardless of the claims and labels Appellants have selected, they are still seeking to impose liability on Appellees for "the injuries of global climate change" allegedly caused by Appellees' fossil fuel products. Baltimore Op. 11. Those injuries can occur only when fossil fuels are produced, used, and combusted, generating emissions that cross not only state lines, but international borders. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 92-93 (2d Cir. 2021); *see also City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 712 (3d Cir. 2022) (noting, in a similar case brought by state and local governments about climate change, that the harms are not "just about misrepresentations," but also derive from "trespasses and nuisances … caused by burning fossil fuels and emitting carbon dioxide"). So, regardless of whether Appellants frame the breach of "duty" to be deceptive marketing (Appellants' Br. 26) or something else, the bottom line is that they seek recovery for the effects of global climate change—effects caused by myriad interstate and international sources of emissions.

Indeed, Appellants' complaints repeatedly state that they seek recovery for "climate change-related injuries." *E.g.*, Baltimore Compl. ¶ 102; *id.* ¶ 195 (alleging "social and economic injuries associated with those physical and environmental changes"); *id.* ¶ 211 (alleging climate change-related impacts on public, industrial, commercial, and residential assets within Baltimore have caused and will continue to cause injuries). Those "climate crisis-related injuries," Appellants admit, stem from fossil fuels being "used and combusted" by interstate and international actors, emitting greenhouse gases that have "comingle[d]" in the atmosphere to

cause global climate change. *Id.* ¶¶ 191, 195, 235. And ultimately, Appellants seek to hold Appellees accountable for their alleged "contribut[ions] … to the buildup of CO2 in the environment that drives global warming." *Id.* ¶ 7. By Appellants' own admissions, then, both the emissions and the harms alleged (*and* the atmospheric phenomena that are indispensable causal links between the two) are not limited to Maryland, but span the entire globe. *Id.* ¶¶ 36-45. That gives the present dispute an "interstate or international nature," which "makes it inappropriate for state law to control." *Tex. Indus.*, 451 U.S. at 641.

2. Once Appellants' claims are seen for what they are—an attempt to hold Appellees liable for the effects of global climate change—federal law must apply. Given the "interstate [and] international nature" of both the causes and effects of climate change, applying "the law of a particular [s]tate would be inappropriate." *AEP*, 564 U.S. at 422; *Tex. Indus.*, 451 U.S. at 641. Combatting transboundary pollution demands a uniform standard that discordant state-law regimes cannot provide. *See supra*, pp. 5-7. Yet Appellants never address this need for uniformity. And that omission is all the more stark when considering the difficult policy choices inherent in balancing the United States' environmental and economic goals, and the severely disruptive impacts that ceding control of those matters to fifty states' common-law rules—and those states' varied remedies—would have on the federal equilibrium.

Although the "contest" between curbing global warming and meeting national energy and economic needs is not "zero-sum," there are still important

trade-offs. *City of New York*, 993 F.3d at 93. Selecting among them has far-reaching consequences. As the Supreme Court has explained:

> The appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be prescribed in a vacuum: As with other questions of national or international policy, informed assessment of competing interests is required. Along with the environmental benefit potentially achievable, our Nation's energy needs and the possibility of economic disruption must weigh in the balance.

AEP, 564 U.S. at 427.

The federal government has been formulating and implementing national policy in this domain for decades. Congress has long legislated concerning national energy needs. *See, e.g.*, 43 U.S.C. § 1802(1) (statutory purposes include "establish[ing] policies and procedures for managing … oil and natural gas resources … to achieve national economic and energy policy goals"). So, too, has Congress legislated to address climate change. For example, Congress recently amended the CAA to further address the domestic sources of emissions causing global climate change. Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 136, 136 Stat. 1818, 2073-74 (providing funding for "improving climate resiliency" and instructing EPA to "impose and collect a charge on methane emissions"). And the United States has long sought to ensure that actions related to climate change do not undercut economic growth; indeed, it signed a treaty nearly three decades ago committing to "employ appropriate methods" to address climate change, "*formulated and determined nationally*," that "minimiz[e] adverse effects on the

economy." U.N. Framework Convention on Climate Change art. 4(1)(f), May 9, 1992, S. Treaty Doc. No. 102-38 (emphasis added).

To allow each of the fifty states to impose their own preferred policy solutions for climate change, with each state naturally focused on *local* rather than national or international impacts, would create a plainly "irrational system of regulation" that "would lead to chaotic confrontation between sovereign[s]." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496-97 (1987) (citation omitted); *see City of New York*, 993 F.3d at 93 ("states will invariably differ in their assessment of the proper balance between … national and international objectives"). As the Second Circuit correctly concluded in a similar case, "subjecting" companies' "global operations to a welter of different states' laws" in this area could "upset[] the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other." *City of New York*, 993 F.3d at 93. In short, this is an area in which "there is an overriding federal interest in the need for a uniform rule of decision or where the controversy touches basic interests of federalism." *Milwaukee I*, 406 U.S. at 105 n.6. Federal law must therefore control.

3. The Due Process Clause's limits on extraterritorial regulation confirm the point. Appellants seek to regulate transactions far beyond their municipal borders (and even Maryland's), demanding that business practices and communications that occur elsewhere conform to their preferred standards—or be

penalized. That is exactly what the Supreme Court has held the Due Process Clause forbids: states are "without power to affect the terms of contracts" made elsewhere and performed entirely elsewhere. *Home Ins.*, 291 U.S. at 408; *see Gerling*, 267 F.3d at 1235-40; *accord John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178, 182-83 (1936) (legal significance of misrepresentation must be judged under the law of the State where the misrepresentation occurred). Appellants' theory goes well beyond the due process limits on any one state's authority to prescribe legal rules beyond its own borders.

II. The Clean Air Act's displacement of federal common law does not give life to Appellants' claims.

All but conceding that suits like this one have historically been governed by federal law, Appellants also argue that the CAA's displacement of federal common law means that state law can, for the first time, creep into the picture. Appellants' Br. 21-24. That result would be illogical—requiring courts to ignore that federal problems remain federal problems—and is not supported by the precedent on which Appellants rely.

1. Appellants contend that federal displacement of federal common law means that state law can control. If adopted, that argument would lead to nonsensical results.

To be sure, when a federal statute displaces federal common law, it eliminates the causes of action or remedies previously available under court-made rules. *See, e.g.*, *City of Milwaukee v. Illinois*, 451 U.S. 304, 332 (1981) ("*Milwaukee II*") (observing that Congress's changes to the Clean Water Act

(CWA) meant that "no federal common-law remedy was available"). But Appellants' position ignores the reality that the domain of cross-boundary air emissions is still one requiring a federal rule: its international nature implicates constitutional principles of federalism and requires a uniform standard. *Supra*, pp. 5-7, 10-12. Despite the CAA, the principles that mark this area as one where federal law—and only federal law—must apply remain as robust as ever. *Texas Indus.*, 451 U.S. at 641 ("our federal system does not permit the controversy to be resolved under state law"). To adhere to those principles, and avoid the very same uniformity problems that necessitated federal common law, the displacing statutory scheme must supply the only available remedies. State law was incompetent to address the issue before congressional action, and it remains so after it. *See, e.g.*, *Milwaukee II*, 451 U.S. at 313 n.7 ("[I]f federal common law exists, it is because state law cannot be used."). Nor can the mere displacement of a federal common law remedy authorize state extraterritorial regulation that violates due process. *See supra*, pp. 7-8, 12-13.

But as Appellants would have it, congressional attempts to supply a *uniform* federal standard by statute (with or without a private right of action) would bring to life the very same *disuniform* state-law rules that were, and remain, incompetent to address this national problem. That would be so even if that federal legislation were to "adopt[] verbatim a judge-made common law rule." *City of New York*, 993 F.3d at 98-99. Congress could enact statutes codifying the very same court-supplied rules governing interstate water rights, interstate air carrier

liability, and interstate disputes over intangible property, *supra*, p. 6, and under Appellants' view, state-law claims on those subjects would suddenly become viable, implicating the very same concerns initially prompting the formulation of a federal rule. That makes no sense. By contrast, there is nothing illogical about recognizing that federal problems remain federal problems, whether federal courts or Congress supplies the necessary uniform, federal standard to deal with them.

2. Yet Appellants nonetheless claim that because the CAA has displaced federal common law in this area, the concerns initially driving its application cannot bear on whether their state law claims are preempted. Appellants' Br. 21-24. This, they say, results from *Ouellette* and *AEP*. *Id.* But those cases do not support Appellants' claim.

True enough, the Court in *Ouellette* did frame the inquiry as "whether the [CWA] pre-empt[ed]" state-law nuisance claims asserted against an interstate pollution source. 479 U.S. at 483. But contrary to Appellants' argument, the Court did not eschew consideration of why federal common law applied before Congress enacted that statute. Appellant Br. 22. Instead, the Court considered both the comprehensive nature of the CWA and "that the control of interstate pollution is primarily a matter of federal law"—referring back to case law discussing federal common law's role in public nuisance suits concerning water pollution. *Ouellette*, 479 U.S. at 492 (citing *Milwaukee I*, 406 U.S. at 107); *see City of New York*, 993 F.3d at 99 n.10. *Ouellette* therefore does not support the notion that the overriding

federal interest in avoiding piecemeal, state-by-state regulation of transboundary emissions evaporates upon enactment of a congressional standard.

Neither does *AEP*. The question there was which *federal* actor—Congress or the courts—should craft the relevant *federal* law. The Supreme Court answered that question assuming that *federal* law must control the suit over greenhouse gas emissions. *See AEP*, 564 U.S. at 423-24 (explaining that "it is primarily the office of Congress, not the federal courts, to prescribe national policy in areas of special federal interest"); *see also Milwaukee II*, 451 U.S. at 319 & n.14 ("considering which branch of the Federal Government is the source of federal law, not whether that law pre-empts state law"). That Congress displaced federal common law simply means that the federal *courts* are no longer in the business of formulating federal standards. Congress's action in no way eliminates or undermines the overriding federal interest in the dispute; nor does it throw open the door for the courts of the fifty different states to tackle these distinctly federal issues using a variety of conflicting state and local laws.

* * * * *

In our constitutional system of divided responsibility, the federal government is tasked with addressing national questions like this one. Addressing the climate-related impacts arising from greenhouse gas emissions in a manner that comports with national energy policy, giving due weight to relevant economic, environmental, foreign-policy, and national-security considerations, is a quintessentially national job. *See AEP*, 564 U.S. at 427; *City of New York*, 993

F.3d at 93. The complex choices that bear upon interstate and international emissions require a uniform approach at the federal level, not the disconnected efforts of individual courts throughout the fifty states—each one being asked to award remedies to in-state plaintiffs that will necessarily cross state (and national) lines and collide with one another. Our federal system does not permit fifty different states to deploy their laws to govern this inherently interstate area. Congress decided to seek uniformity through the CAA rather than leave the matter to the federal courts. It did not thereby delegate the matter to *states* or to state law—which would pose the very same threat to uniformity that led the Supreme Court to recognize *federal* common law in this area.

CONCLUSION

This Court should affirm and hold that disparate state-law regimes cannot competently govern in an area where a uniform federal standard is needed, and that congressional efforts to supply just such a standard do not somehow give life to state-law claims that have never been capable of addressing cases, like this one, concerning cross-border emissions.

Dated: July 15, 2025

Respectfully submitted,

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**Motion for Special Admission Pending*

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 4,250 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 (Georgia, 13 point).

/s/ Collin M. Grier

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July 2025, a copy of the foregoing document was filed and served electronically via the Court's MDEC system, on all counsel of record.

/s/ Collin M. Grier