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 Videtta A. 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.

Appeal from the Circuit Court for Anne Arundel County
Honorable Steven I. Platt

BRIEF OF *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF MANUFACTURERS

Philip Goldberg (AIS #0112110287)
Christopher Appel (AIS #0612120023)
SHOOK, HARDY & BACON L.L.P.
1800 K Street, NW, Suite 1000
Washington, D.C. 20006
Tel: (202) 783-8400
Fax: (202) 783-4211
pgoldberg@shb.com
cappel@shb.com

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

QUESTIONS PRESENTED

1. 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?

2. Does Maryland law preclude nuisance claims based on injuries allegedly caused by the worldwide production, promotion, and sale of a lawful consumer product?

3. Does Maryland law preclude failure-to-warn claims premised on a duty to warn every person in the world whose use of a product may have contributed to a global phenomenon with effects that allegedly harmed the plaintiff?

4. Does Maryland law preclude trespass claims based on harms allegedly caused by global climate changes arising from the use of a product by billions of third parties around the world outside of the producer's control?

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae is the National Association of Manufacturers ("NAM"). The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every

[1] The parties consented 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 *amicus curiae*, its members, or its counsel, made any monetary contribution toward the preparation of this brief.

industrial sector. Manufacturing employs 13 million men and women, contributes $2.94 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States, including in Maryland.

The NAM is dedicated to manufacturing safe, innovative, and sustainable products that provide benefits and protect the environment and human health. Climate change is a major public policy issue, and the NAM fully supports national efforts to address climate change through appropriate laws and regulations. The NAM is concerned about attempts, as here, to impose state liability over the production, promotion, and sale of lawful, beneficial energy products. These claims, no matter how pleaded or framed, do not provide appropriate vehicles for deciding these critical federal public policy issues, which implicate federal law and complex policymaking.

ARGUMENT

The trial courts in this consolidated appeal properly recognized that, regardless of how pleaded or framed, claims about addressing injuries from global climate change from interstate and international emissions go "beyond the limits of Maryland state law." No state can reach outside its boundaries to

govern, let alone impose liability on, the production, promotion and sale of fossil fuels—and the use of those fuels—in other states and countries that have no nexus to the state. Further, the trial courts rightfully recognized that these climate lawsuits are governed and barred by the U.S. Supreme Court's jurisprudence in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) (hereafter "*AEP*"). In doing so, the trial courts aligned their reasoning with other courts that have dismissed similar lawsuits under various other state laws. The Court should affirm these decisions, reinforce their reasoning, and additionally find that plaintiffs have failed to state a cause of action because Maryland liability law does not allow governments to impose on self-selected defendants the types of broad, unprincipled liability sought here.

As an initial matter, the Court should be guided by *AEP*. There, the U.S. Supreme Court heard a case in which state and local governments sought to impose liability on energy companies for contributing to global climate change, holding the federal law claims were displaced by the Clean Air Act. In doing so, it made clear that the determinations courts would have to make in hearing such climate lawsuits require "federal law governance" and that "borrowing the law of a particular State would be inappropriate." *Id.* at 422. It also explained that these issues, ultimately, are regulatory—not liability—in nature, and that it was appropriate for Congress to delegate the authority to address these issues to the Environmental Protection Agency ("EPA"). As

acknowledged by the trial courts below, the Second Circuit along with state courts in Delaware, New Jersey, New York, and Pennsylvania, have ruled to dismiss lawsuits comparable to the case at bar for these very reasons.

The legal issues here are the same as those in *AEP* and the other cases: can any individual entity—or group of entities—be subject to liability and subsequent remedial measures because their products, conduct or operations contribute to greenhouse gas ("GHG") emissions, which, when taken together with all other GHG sources, is causing climate change and impacts in local communities? As the Supreme Court explained in *AEP*, climate change is a by-product of modern life; it is the result of a vast array of sources from around the world for more than 150 years. *See id.* at 416-18. GHG emissions and global climate change, therefore, are neither local to any state or country, nor are they caused by any group of companies in a given state, such that one state's liability law can govern. That is why the Supreme Court stated the issues here are "of special federal interest" and concluded that judges should not be making these types of decisions, regardless of the cause of action. *Id.* at 424.

Nevertheless, here, Baltimore, Annapolis, and Anne Arundel County are trying to use the state's law to determine the rights and responsibilities for climate change around the world, including which companies are to blame and how much they should have to pay. No state law has this reach. The vast majority of actions—including the extraction, production, promotion,

marketing, and sale of energy, worldwide GHG emissions, and public discourse over these issues—occurred outside of Maryland's borders, have no nexus to the State, and are not subject to Maryland law. Thus, imposing liability on them would have the unconstitutional effect of regulating and penalizing conduct in other states and countries. That is why nearly twenty states have filed briefs *opposing* this climate litigation campaign; it infringes on their own state's sovereignty and hampers their ability to make decisions about these issues within their own borders.[2] In addition, in choosing to name only these defendants, the plaintiffs are making a subjective determination as to whom to blame for global climate change—a decision not subject to Maryland law.

This Court should affirm the decision below and make clear that the state law claims here lie outside Maryland's judicial authority. Determining how to address climate change—its causes and impacts—is one of the most important public policy issues the Maryland legislature and Congress, state and federal agencies, and international bodies have been working on for decades. These matters are beyond the reach of the state's liability law.

[2] *See* Bill of Complaint, *Alabama v. California*, No. 158 (Original) (U.S., filed May 22, 2024).

I. UNDER U.S. SUPREME COURT JURISPRUDENCE, LITIGATION OVER GLOBAL CLIMATE CHANGE ARISES UNDER FEDERAL LAW

When *AEP* was filed in 2004, it was the first major case seeking to impose liability over GHG emissions and climate change. The targets for the litigation were utilities that generated electricity for much of the country. Three other lawsuits followed, each testing other ways climate litigation could be framed. In *California v. General Motors Corp.*, California sued auto manufacturers for making products that emit GHGs. *See* No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007). In *Native Village of Kivalina v. ExxonMobil Corp.*, a village sued oil and gas producers for damages related to rising sea levels. *See* 696 F.3d 849 (9th Cir. 2012). As here, the village alleged the defendants were "substantial contributors to global warming" in part caused by "conspir[ing] to mislead the public about the science of global warming." *Id.* at 854. And, in *Comer v. Murphy Oil USA, Inc.*, Mississippi residents filed a class action against oil and gas producers for costs associated with Hurricane Katrina under the theory that the defendants caused emissions that made the hurricane more intense. *See* 718 F.3d 460 (5th Cir. 2013).

The common underpinnings of these cases echo those here: climate change is caused by GHG emissions, including fossil fuel use around the world. *See AEP*, 564 U.S. at 416. These emissions have accumulated in the atmosphere for more than 150 years and are impacting the Earth. The

defendants are violating some federal or state law in the way they are contributing to GHG emissions through their products, operations, or other activities. Therefore, the defendants are responsible for climate change and its impacts, and the governments are entitled to whichever remedy they seek. *See id.* at 418.

In *AEP*, the Obama administration's brief to the U.S. Supreme Court opposed such liability as being too subjective and unprincipled: there are "almost unimaginably broad categories of both potential plaintiffs and potential defendants." Brief for the Tennessee Valley Authority, *American Electric Power Co. v. Connecticut*, No. 10-174 (U.S., filed Jan. 31, 2011). The "[p]laintiffs have elected to sue a handful of defendants from among an almost limitless array of entities that emit greenhouse gases. Moreover, the types of injuries that [the] plaintiffs seek to redress, even if concrete, could potentially be suffered by virtually any landowner, and to an extent, by virtually every person." *Id.* at 15. It is "impossible to consider the sort of focused and more geographically proximate effects" characteristic of U.S. liability law. *Id.* at 17.

The U.S. Supreme Court agreed in a unanimous ruling. Its reasoning demonstrates why claims over global climate change, including those here, cannot be adjudicated under any state's law. First, the Court cited its precedents to underscore the inherent federal nature of claims related to global GHG emissions. In *United States v. Standard Oil Co. of California*, the Court

stated that certain claims invoke the "interests, powers and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings." 332 U.S. 301, 307 (1947). And, in *Illinois v. City of Milwaukee*, the Court held that "the basic scheme of the Constitution so demands" that federal law govern "air and water in their ambient or interstate aspects." 406 U.S. 91, 103 (1972). In *AEP*, the Court made clear that determining the rights and responsibilities for interstate and international GHG emissions and climate change are among these federal law subjects.

Second, the Court held that Congress displaced through the Clean Air Act judicial remedies that might otherwise have been available under federal common law. *See AEP*, 564 U.S. at 425. In doing so, it recognized that any court adjudicating such a claim would end up regulating defendants' products or conduct "by judicial decree." *Id.* at 425, 427. "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." *Id.* at 427. Courts do not have the ability to weigh these extrajudicial factors; they can only decide legal disputes on the evidence presented. The Court also explained the institutional deficiencies with courts being enmeshed in the climate change debate at all, regardless of legal doctrine, stating climate policy should not be decided by judges on an "ad hoc, case-by-case" basis. *Id.* at 428. These concerns

are magnified by the litigation here, which asks individual state court judges to apply their own, separate liability laws to these same issues.

Given the U.S. Supreme Court's clear direction against this type of litigation, courts dismissed the remaining climate cases. In *Kivalina*, the Ninth Circuit stated even though the theories pursued differed from *AEP*, given the U.S. Supreme Court's broad message, "it would be incongruous to allow [such litigation] to be revived in another form." 696 F.3d at 857. It appreciated that climate suits are the type of "transboundary pollution" claims the Constitution exclusively commits to federal law. *Id.* at 855. This is true regardless of how the suits are framed—over energy use or products, by public or private plaintiffs, under federal or state law, or for injunctive relief, abatement, or damages. In *Comer*, a judge held that under *AEP* the state law claims in that case were preempted. *See* 839 F. Supp. 2d 849 (S.D. Miss. 2012).

In California's case, the Northern District of California explained the constitutional concerns with imposing liability for emissions "originating both within, and well beyond, the borders of the State of California." *General Motors Corp.*, 2007 WL 2726871, at *22. The court quoted from *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 519 (2007): "When a State enters the Union, it surrenders certain sovereign prerogatives. Massachusetts cannot invade Rhode Island to force reductions in greenhouse gas emissions. . . . These sovereign prerogatives are now lodged in the Federal Government."

Id. at *15. Thus, the law was and is clear: claims over GHG emissions and climate change are governed exclusively by federal law and the Clean Air Act.

II. REPACKAGING CLAIMS REJECTED IN *AEP* DOES NOT CHANGE THE FACT THAT TODAY'S CLIMATE LITIGATION ALSO SEEKS TO REGULATE INTERSTATE AND INTERNATIONAL EMISSIONS

After *AEP*, the climate litigation campaign was re-tooled to *appear* different from *AEP* but have the same effect of regulating interstate and international fuel emissions. *See Establishing Accountability for Climate Damages: Lessons from Tobacco Control, Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies*, Union of Concerned Scientists & Climate Accountability Inst. (Oct. 2012), at 28.[3] Rather than asking a court to directly regulate emissions or put a price on carbon, the campaign would ask for damages and penalties. *See id.* at 13 ("Even if your ultimate goal [is] to shut down a company, you still might be wise to start out by asking for compensation for injured parties."). Thus, even though today's global climate-related claims have been reframed under a variety of state liability laws—from public nuisance to consumer protection—they all present the same central concerns identified in *AEP* and these other cases. Accordingly, they should also fail for the same reasons those cases failed.

[3] https://www.ucs.org/sites/default/files/attach/2016/04/establishing-accountability-climate-change-damages-lessons-tobacco-control.pdf.

Also, the substantive narrative promoted by the campaign's advocates in an attempt to justify these cases, *i.e.*, there is some widespread "campaign of deception," is undermined by the way the lawsuits are packaged. In these cases, governments are naming anywhere from one to several dozen defendants, including local entities in an effort to keep the cases in state court. This ever-changing list of defendants that engage in different aspects of the energy industry undermines the existence of any such conspiracy. It also highlights why imposing liability on any one or group of defendants a plaintiff chooses to name for its suit lacks any principled legal basis.

Indeed, outside of court, the advocates openly acknowledge the desired effect of this litigation is to impose costs on the worldwide production, promotion, sale and use of fossil fuels—what they call the fuel's "true cost"—on consumers. Kirk Herbertson, *Oil Companies vs. Citizens: The Battle Begins Over Who Will Pay Climate Costs*, EarthRights Int'l, Mar. 21, 2018. They want to force energy companies to raise the price of fossil fuels "so that if they are continuing to sell fossil fuels, that the cost of [climate change] would ultimately get priced into them." Julia Caulfield, *Local Lawsuits Asks Oil and Gas to Help Pay for Climate Change*, KOTO, Dec. 14, 2020.[4] They also believe that because the "companies are agents of consumers . . . holding oil companies

[4] https://coloradosun.com/2021/02/01/boulder-climate-lawsuit-opinion/.

responsible *is* to hold oil consumers responsible." Jerry Taylor & David Bookbinder*, Oil Companies Should be Held Accountable for Climate Change*, Niskanen Ctr., Apr. 17, 2018.[5]

To mask these goals and make this litigation more politically palatable, the advocates partnered with state and local governments, which would seek to use this monetary penalty to deal with local impacts of climate change. The governments often disclaim any attempt to regulate or put costs on emissions; they say they just want money to deal with the impacts of climate change in their jurisdictions. However, artful pleading and disclaimers cannot hide the true federal, public policy nature of this litigation. The lawsuits are being funded by non-profit organizations *because* the litigation would impact federal energy policy. *See, e.g.,* City of Hoboken Press Release, *Hoboken Becomes First NJ City to Sue Big Oil Companies, American Petroleum Institute for Climate Change Damages*, Sept. 2, 2020 (noting legal fees would be paid by the Institute

[5] A reporter who follows the litigation has observed the incongruity between the ways the cases are presented in and out of court: "State and local governments pursuing the litigation argue that the cases are not about controlling GHG emissions . . . But they also privately acknowledge that the suits are a tactic to pressure the industry." Dawn Reeves, *As Climate Suits Keeps Issue Alive, Nuisance Cases Reach Key Venue Rulings*, Inside EPA, Jan. 6, 2020, at https://insideepa.com/outlook/climate-suits-keeps-issue-alive-nuisance-cases-reach-key-venue-rulings.

for Governance and Sustainable Development).[6] As one jurist stated, the governments and backers are waging this federal energy dispute "through the surrogate of a private party as the defendant." *Minnesota v. American Petroleum Inst.*, 63 F.4th 703, 719 (8th Cir. 2023) (Stras, J., concurring).

In short, the purpose of this litigation is to use state law to penalize national energy use and direct money from energy consumers across the country to local governments, unbridled by the checks and balances of Congress's legislative process. In addition, these groups are using political-style tactics to recruit local governments to bring these cases and to leverage the litigation to hinder the energy companies politically. Unlike traditional state lawsuits, therefore, success here includes filing and maintaining state lawsuits they can use for these national goals.

Overall, three dozen of these lawsuits have now been filed in carefully chosen jurisdictions in an effort to "side-step federal courts and [U.S.] Supreme Court precedent" and convince local courts to help them advance their preferred public policy agenda by awarding money to state and local jurisdictions. Editorial, *Climate Lawsuits Take a Hit*, Wall St. J., May 17, 2021. If this gambit is successful, it will give activists a road map for using state

[6] https://www.hobokennj.gov/news/hoboken-sues-exxon-mobil-american-petroleum-institute-big-oil-companies.

liability law to drive a wide variety of federal legal and public policy matters irrespective of decisions made in Congress, state legislatures, or other courts.

III. REGARDLESS OF STATE LAW LABELS, PLAINTIFFS' CLAIMS ARE PREEMPTED BY THE CONSTITUTION

The state law theories in this litigation—whether public nuisance, consumer protection, trespass or other state liability law—have proven to be mere fig leaves. The allegations do not meet the elements or nature of the claims asserted, the chain of causation is anything but local, and the theories of harm are not moored to any plaintiff, defendant, or jurisdiction—as the permutations of the cases show. In this regard, the predictions of the Obama administration in *AEP* have been borne out. There are almost unimaginably broad categories of plaintiffs and defendants for these cases, and imposing liability on any group of defendants would be unprincipled.

Federal courts were the first to assess the validity of this purposeful reframing. They concluded that because the claims still seek to impose liability for GHG emissions, the specific allegations and legal theories do not change the outcome: the claims are barred by federal law because the basic scheme of the U.S. Constitution so demands. *See, e.g., City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021); *City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017 (N.D. Cal. 2018), *vacated pursuant to remand order*, 960 F.3d 570 (9th Cir. 2020). The Second Circuit called the reframing a false veneer: "[W]e

are told that this is merely a local spat about the City's eroding shoreline, which will have no appreciable effect on national energy or environmental policy. We disagree. Artful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions." *City of New York*, 993 F.3d at 91. It is immaterial whether the case is "styled as" an action for injunction, damages or penalties; the litigation has "the same practical effect" of regulating national and international GHG emissions. *Id.* at 96.

The Second Circuit also explained the constitutional deficiencies with these state law claims: "a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." *Id.* at 91. That is because "a substantial damages award like the one requested by the City would effectively regulate the Producers' behavior far beyond New York's borders." *Id.* at 92. "Any actions the Producers take to mitigate their liability, then, must undoubtedly take effect across every state (and country). And all without asking what the laws of those other states (or countries) require." *Id.* Such "sprawling" claims seeking "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," are "simply beyond the limits of state law." *Id.* at 92.

Several state courts have followed the Second Circuit. In Delaware, the court held Delaware cannot sue fuel producers for emissions outside of Delaware because federal law "preempts state law to the extent a state

attempts to regulate air pollution originating in other states." *Delaware ex rel. Jennings v. BP America Inc.*, 2024 WL 98888, at *10 (Del. Super. Ct. Jan. 9, 2024). "[S]eeking damages for injuries resulting from out-of-state or global emissions and interstate pollution" is "beyond the limits of [state] common law." *Id.* at *9.

The New Jersey court hearing that state's suit also agreed with the "logic and reasoning" of the Second Circuit and other decisions "that have rejected the availability of state tort law in the climate change context." *Platkin v. ExxonMobil Corp.*, No. MER-L-001797-22, at *6-7 (N.J. Super. Ct. Feb. 5, 2025). Despite Plaintiffs' artful pleading, the court found "Plaintiffs' complaint, even under the most indulgent reading, is entirely about addressing the injuries of global climate change." *Id.* at *9.

The New York court dismissing New York City's latest attempt at climate litigation further stated that any allegation over the impact of fossil fuel emissions on the climate involves public information, meaning "a reasonable consumer cannot have been misled." *City of New York v. Exxon Mobil Corp.*, 2025 WL 209843, *13 (N.Y. Sup. Ct. Jan. 14, 2025). "The City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil fuels cause climate change, and, on the other hand, that the same consumers are being duped by

Defendants' failure to disclose that their fossil fuel products emit greenhouse gasses that contribute to climate change." *Id.* at *14.

Most recently, a Pennsylvania court dismissed a similar climate lawsuit brought by Bucks County, finding the claims "solely within the province of federal law." *Bucks County v. BP P.L.C.*, No. 2024-01836, *15 (Pa. Ct. Comm. Pleas May 16, 2025). The court expressly adopted "the logic and reasoning" of the Second Circuit and other courts rejecting climate litigation to "conclude that our federal structure does not allow Pennsylvania law, or any State's law, to address the claims raised." *Id.* at *16.

Other jurists have made similar observations at other stages of climate cases. In a venue ruling, a California court observed: "If ever there were litigations that could be described as truly global in scope, they are these. . . . These are not lawsuits with a local focus or local stakes." *California v. ExxonMobil Corp.,* No. CGC-23-609134, Not. of Entry of Order Granting Pet. for Coordination, Ex. 1, Ex. A, at 12 (Cal. Super. Ct. Feb. 07, 2024) (citing *Fuel Industry Climate Cases, JCCP 5310*, Tentative Ruling (Cal. Super. Ct. Jan. 25, 2024)). And, in Boulder's climate case, the dissent observed: "While Boulder's state-law claims masquerade as tort claims for damages, a closer look at the substance of those claims' allegations reveals that Boulder seeks to effectively abate or regulate interstate emissions," which "state law remains incompetent"

to do. *In re: Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, 2025 WL 1363355, at *13, *16 (Colo. May 12, 2025) (Samour, J., dissenting).

Finally, President Biden's Solicitor General, in asking the U.S. Supreme Court not to review Honolulu's climate case, fully acknowledged that state law climate claims may be foreclosed by federal law "to the extent they are based on emissions or other conduct outside of Hawaii." Brief for the United States as Amicus Curiae, *Sunoco LP v. City and County of Honolulu*, Nos. 23-947, 23-952, 2024 WL 5095299, at *7 (U.S., filed Dec. 10, 2024). She added: "To be sure, petitioners may ultimately prevail on their contention that respondents' claims are barred by the Constitution—specifically, the Interstate and Foreign Commerce Clause, the Due Process Clause, and federal constitutional structure...." *Id.* at *13. The current administration has intensified the federal government's view that this litigation is substantively unsound, calling climate lawsuits "illegitimate impediments to the production of affordable, reliable energy that Americans deserve." Alexa St. John, *Justice Department Sues Hawaii, Michigan, Vermont and New York Over State Climate Actions*, Assoc. Press, May 1, 2025 (quoting U.S. Attorney General Pamela Bondi).[7]

[7] https://apnews.com/article/trump-doj-climate-states-policy-lawsuits-a5228e1dd6348f09d2a70f460142531a.

Thus, administrations of both political parties and courts in a multitude of states have reached the same conclusion: determining the rights and responsibilities for climate change is a federal, public policy matter.

IV. THE COURT SHOULD AFFIRM THAT CLAIMS ALLEGING HARM FROM GLOBAL CLIMATE CHANGE RAISE UNIQUELY FEDERAL INTERESTS

Finally, invoking various state laws to subject a handful of American, Canadian, and European energy manufacturers to liability for global GHG emissions would interfere with exclusive federal interests. At the heart of these claims is the notion that America should increase the price on and reduce the production of fossil fuels because of their impact on the climate. *See City of New York*, 993 F.3d at 93. This may be some people's preferred public policy response to climate change, but it is not the role of individual state courts to impose these changes on an ad hoc basis and outside of the legislative process. Congress, unlike state courts, can weigh competing factors, such as affordability and energy security, and assess the impact of imposing these costs on companies that sell fuel in the United States, including whether doing so will achieve any positive climate outcomes, how much the penalty should be, and how money should be spent.

For example, state courts do not control the global energy markets. As the *New York Times* reported, these companies are already "slowing down production as they switch to renewable energy. . . . But that doesn't mean the

world will have less oil." Clifford Krauss, *As Western Oil Giants Cut Production, State-Owned Companies Step Up*, N.Y. Times, Oct. 14, 2021.[8] "[S]tate-owned oil companies in the Middle East, North Africa and Latin America are taking advantage of the cutbacks . . . by cranking up" production, which could make America "more dependent on [OPEC], authoritarian leaders and politically unstable countries . . . that are not under as much pressure to reduce emissions." *Id.* This litigation would not impose these costs on the state-owned oil companies or reduce their emissions. It could make them worse.

Further, artful pleading does not change the deficiencies with this litigation. The U.S. Constitution is not so fragile as to be swayed by the Plaintiffs' reframing of the federal law issues at play in this case. The basic truths about this litigation remain inviolate:

This case is about interstate and international emissions. The heart of Baltimore, Annapolis, and Anne Arundel County's claims is that Defendants exacerbated global climate change by increasing GHG emissions through their conduct and products. But these government plaintiffs cannot change the fact that global climate change is not the result of emissions solely from defendants' products, operations or other activities solely in Maryland, but everyone, everywhere for more than 150 years. As the Second Circuit

[8] https://www.nytimes.com/2021/10/14/business/energy-environment/oil-production-state-owned-companies.html.

explained, that is why repackaging the allegations under state liability laws "cannot transform [the litigation] into anything other than a suit over global greenhouse gas emissions." *City of New York*, 993 F.3d at 97.

Federal law exclusively governs interstate and international GHG emissions. The U.S. Supreme Court in *AEP* held that climate litigation (like all interstate and international pollution cases) is governed by federal law and, if a cause of action is allowed, the dispute would be determined by federal common law. However, the Court continued that Congress gave the EPA the authority to make determinations with respect to interstate GHG emissions in the Clean Air Act, which displaced such federal causes of action. Plaintiffs assert that the Supreme Court's displacement ruling means that disputes over interstate GHG emissions, which required federal law governance and have been assigned to the EPA, can now suddenly be decided by any state court. The Second Circuit described this theory as "too strange to seriously contemplate." *Id.* at 99. The court hearing Baltimore's case also correctly pointed out that federal law would govern in any event because foreign emissions are not subject to the Clean Air Act and are still governed by federal law: "State law cannot provide a remedy to claims involving foreign emissions."

Imposing liability here would regulate conduct with no nexus to Maryland. The U.S. Supreme Court has long held that liability can be "a potent method of governing conduct and controlling policy." *San Diego Bldg.*

Trades Council v. Garmon, 359 U.S. 236, 247 (1959). Here, Plaintiffs seek to impose such liability on and govern conduct almost exclusively outside of Maryland, thereby impermissibly regulating conduct in other states and countries. Under this theory, each state could impose its "own climate standards" on other states and countries. Bill Schuette, *Energy, Climate Policy Should be Guided by Federal Laws, Congress, Not a Chaotic Patchwork of State Laws*, Law.com, Apr. 25, 2024 (Schuette was Michigan Attorney General from 2011-2019). The result would be "a chaotic mix of state approaches [that] risks interfering with an effective, unified process to solve the climate problems the plaintiffs seek to abate." Donald Kochan, *Supreme Court Should Prevent Flood of State Climate Change Torts*, Bloomberg Law, May 20, 2024.

Imposing a carbon penalty is a legislative, not judicial, function. This litigation is premised on the fact that "forcing companies to raise the price of the energy they don't like, like fossil fuel energy, will make it too expensive for people and businesses thus decreasing the amount used." Danielle Zanzalari, *Government Lawsuits Threaten Consumers' Pockets and Do Little to Help the Environment*, USA Today, Nov. 1, 2023. Legislative direction is needed here. Deciding whether to impose this cost, how much, and where the money should be spent involves factors beyond the disputes of these parties and facts subject to the rules of evidence—including energy affordability, economic impacts of raising energy costs, national energy security, and the

impacts of shifting energy production to less environmentally conscience countries. This litigation also ignores the needs of others to pay for their own climate needs. As one local leader said in response to Hoboken's suit: "Hoboken is sticking the rest of us with the bill" as its case "will make it much more expensive for us to put gas in our cars and turn on our lights." Michael Thulen, *Why Hoboken's Climate Change Lawsuit Is Bad for New Jersey*, NJBiz, Oct. 11, 2021 (Thulen served as President of the Point Pleasant Borough Council).[9]

This litigation is an exercise in political decision-making. Because there are innumerable sources of GHG emissions in every state and country—and there have been for more than 150 years—plaintiffs could have named innumerable combinations and permutations of entities, including entirely different companies in entirely different industries. Plaintiffs made a *political* decision as to whom to sue. Indeed, the climate litigation campaign leadership has conceded that "[i]t's no secret that we go around and talk to elected officials" and "look at the politics" in deciding whom to approach to bring these lawsuits. Lesley Clark, *Why Oil Companies Are Worried About Climate Lawsuits From Gas States,* E&E News, Nov. 7, 2023. Imposing liability for climate change on any group of defendants is wholly unprincipled,

[9] https://njbiz.com/opinion-wrong-course/.

which, again, is underscored by the fact that there is an ever-changing list of defendants in these cases.

* * *

Ultimately, *amicus* believes the best way to address the impact of energy on the climate is for federal and local governments to work with manufacturers and others on developing public policies and technologies that can reduce emissions and mitigate damages. *See* Ross Eisenberg, *Forget the Green New Deal. Let's Get to Work on a Real Climate Bill*, Politico, Mar. 27, 2019. Today's challenge is to provide affordable and reliable energy while mitigating its climate impacts, not to artfully plead lawsuits.

CONCLUSION

For these reasons, the Court should affirm the decisions below.

Dated: July 15, 2025

Respectfully submitted,

/s/ Philip Goldberg

Philip Goldberg (AIS #0112110287)
Christopher Appel (AIS #0612120023)
SHOOK, HARDY & BACON L.L.P.
1800 K Street NW, Suite 1000
Washington, DC 20006
Tel: (202) 783-8400
Fax: (202) 783-4211
pgoldberg@shb.com
cappel@shb.com

Attorneys for Amicus Curiae

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 5,458 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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

/s/ Philip Goldberg
Philip Goldberg (AIS #0112110287)

RULE 8-504(a)(8) STATEMENT OF FONTS

This brief was printed utilizing proportionally spaced font. The body and footnotes are printed in Century Schoolbook, 13 Point.

/s/ Philip Goldberg
Philip Goldberg (AIS #0112110287)

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July 2025, the foregoing Brief of *Amicus Curiae* National Association of Manufacturers was filed and served electronically via MDEC upon all counsel of record.

/s/ Philip Goldberg
Philip Goldberg (AIS #0112110287)