SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-1641-24

MATTHEW J. PLATKIN, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY; NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND CARI FAIS, ACTING DIRECTOR OF THE NEW JERSEY DIVISION OF CONSUMER AFFAIRS, Plaintiffs-Appellants, v. EXXON MOBIL CORP.; EXXONMOBIL OIL CORP.; BP P.L.C.; BP AMERICA INC.; CHEVRON CORP.; CHEVRON U.S.A. INC.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; SHELL PLC; SHELL OIL COMPANY; and AMERICAN PETROLEUM INSTITUTE, Defendants-Respondents.	Civil Action On Appeal from an Order of the Superior Court of New Jersey, Civil Division Docket No. MER-L-1797-22 Sat Below: Hon. Douglas H. Hurd, PJ. Cv.

BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF DEFENDANTS/RESPONDENTS

Philip S. Goldberg, Esq.
N.J. Attorney No. 36772001
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

Attorney for Amicus Curiae
National Association of Manufacturers

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STATEMENT OF INTEREST

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 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 New Jersey. The NAM is dedicated to manufacturing safe, innovative, and sustainable products that provide benefits to consumers while protecting human health and the environment. Climate change is a major public policy issue, and the NAM fully supports national efforts to address climate change and improve public health through appropriate laws and regulations.

The NAM is concerned about attempts to impose state liability over the production, promotion, and sale of lawful, beneficial energy products. As the U.S. Supreme Court stated in American Electric Power Co. v. Connecticut, 564 U.S. 410 (2011), climate litigation implicates federal law and complex policymaking. State claims, no matter how pleaded, cannot achieve these goals and are

not appropriate vehicles to decide these critical national issues. The NAM has a substantial interest in attempts by state governments to subject energy manufacturers to unprincipled state liability for harms associated with climate change and impose these costs on American manufacturers generally, particularly when doing so will not meaningfully address climate change and will harm manufacturers' ability to compete in the international marketplace.

ARGUMENT

In issuing its order to dismiss this case, the trial court properly recognized that regardless of how pleaded, claims that are "about addressing the injuries of global climate change" from interstate and international emissions over the past two centuries cannot be adjudicated under New Jersey law. No state court can reach outside its boundaries to govern, let alone impose liability on, conduct related to the production, promotion and sale of fossil fuels, as well as the use of those fuels in other states and countries without any nexus to that state. Further, the trial court rightfully held that all such climate lawsuits are governed by the U.S. Supreme Court's jurisprudence in American Electric Power Co. v. Connecticut, 564 U.S. 410 (2011) (hereafter "AEP"). There is no exception for artfully pleaded state law claims. In doing so, the trial court aligned its reasoning with other courts that have

dismissed similar lawsuits under various state laws. The Court should affirm the trial court's order and reinforce its reasoning.

In AEP, the U.S. Supreme Court heard a case similarly seeking to impose liability on companies in the energy industry for causing or contributing to climate change. In holding that the federal law claims were displaced by the Clean Air Act, the Court made clear that determinations that courts would have to make in hearing climate litigation against the energy industry require "federal law governance" and that "borrowing the law of a particular State would be inappropriate." Id. at 422. As acknowledged by the trial court and detailed below, the Second Circuit, along with state courts in Maryland, Delaware, and New York have ruled to dismiss lawsuits comparable to the case at bar for this very reason. Also, since the trial court's ruling, a Pennsylvania state court dismissed another similar climate lawsuit. See Bucks County v. BP P.L.C., No. 2024-01836 (Pa. Ct. Comm. Pleas May 16, 2025).

The legal issues here are the same as those in AEP and these other cases: can an entity be subject to liability for interstate and international conduct contributing to global climate change, which, in turn, is causing impacts in local communities? As the Supreme Court explained in AEP, climate change is the result of a vast array of sources from around the world for more than 150 years, and a by-product of modern life. See id. at 416-18. Greenhouse gas ("GHG") emissions and their impact on global climate

change are neither localized to any state or country, nor are they caused by any group of companies in a given state, such that one state's law can govern. That is why the Supreme Court stated the issues here are "of special federal interest." Id. at 424.

Nevertheless, New Jersey is trying to use state law to determine the rights and responsibilities for climate change, namely which industries (and companies within industries) are to blame and how much they should have to pay. No state law has this reach. The vast majority of actions at issue in this litigation—— including the extraction, production, promotion, marketing, and sale of energy, worldwide GHG emissions, and public discourse over these issues——have occurred outside of New Jersey's borders, have no nexus to the State, and are thus not subject to New Jersey law. Indeed, this case is one of three dozen similar lawsuits filed in chosen jurisdictions around the country, and nearly twenty states have filed briefs *opposing* this litigation campaign precisely because of the adverse impact it would have on their state's sovereignty to make decisions about these issues in their borders.[1]

As detailed below, state law cannot apply to this case for at least the following three reasons. First, any determination that out-of-state actions give rise to liability in New Jersey would have the unconstitutional effect of regulating conduct in other

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

states. See Kurns v. R.R. Friction Prods. Corp., 565 U.S. 625, 637 (2012) ("[R]egulation can be effectively exerted through an award of damages, and the obligation to pay compensation can be, indeed is designed to be, a potent method of government conduct and controlling policy.") (cleaned up). Second, if New Jersey were to impose liability here, it would be unconstitutionally penalizing activities and emissions in other states and countries. And, third, in naming these Defendants, the state is making a subjective determination as to whom to blame for global climate change——a decision not subject to New Jersey law.

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

I. U.S. SUPREME COURT JURISPRUDENCE MAKES CLEAR THAT LITIGATION OVER HARM FROM GLOBAL CLIMATE CHANGE ARISES UNDER FEDERAL LAW

When AEP was filed in 2004, it was the first major case seeking to impose liability over climate change. Three other lawsuits followed, each testing variations of climate litigation. In California v. General Motors Corp., the state 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. See 718 F.3d 460 (5th Cir. 2013). They alleged the defendants' conduct and products caused emissions that contributed to climate change and made the hurricane more intense. See id.

The underpinnings of these cases were the same and echo those here: climate change is caused by GHG emissions, including fossil fuel use around the world. See AEP, 564 U.S. at 416. The emissions have accumulated in the atmosphere since the industrial revolution, and are creating impacts on Earth. By causing or contributing to GHG emissions through their products, operations, or other activities, the plaintiffs said the defendants violated federal or state liability laws and are responsible for these climate-related harms. See id. at 418.

In AEP, the Obama administration submitted a brief to the U.S. Supreme Court opposing such liability, explaining the inherent shortcomings with any such climate cases: 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 traditional liability law. Id. at 17.

The U.S. Supreme Court agreed in a unanimous ruling. Important to the case here, the Court followed the analysis from United States v. Standard Oil Co. of California, 332 U.S. 301 (1947), which makes clear that claims over global climate change cannot be adjudicated under any state's law. First, the Court determined that federal common law addresses subjects "where the basic scheme of the Constitution so demands," including "air and water in their ambient or interstate aspects." AEP, 564 U.S. at 422 (quoting Illinois v. City of Milwaukee, 406 U.S. 91, 103 (1972)). As Standard Oil instructs and affirmed in AEP, certain claims invoke the "interests, powers and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings." Standard Oil, 332 U.S. at 307. Determining rights

and responsibilities for interstate and international GHG emissions and climate change are among them.

Second, the Court held that Congress displaced through the Clean Air Act remedies that might be granted under federal common law. See AEP, 564 U.S. at 425. In doing so, it expressly recognized that any court adjudicating such a claim would end up regulating defendants' products or conduct "by judicial decree." Id. at 425, 427. The Court stated 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. It also explained institutional deficiencies with courts being enmeshed in the climate change debate, regardless of legal doctrine. These concerns are magnified by the litigation represented by this case, which suggests that each state could apply its own, separate liability laws to these global issues.

Given the U.S. Supreme Court's clear direction in 2011, courts soon thereafter dismissed the remaining climate cases. In Kivalina, which involved comparable damages claims as here, 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 acknowledged the interstate dynamics in these cases, observing California seeks "to impose damages on a much larger and unprecedented scale by grounding the claim in pollution originating both within, and well beyond, the borders of the State of California." General Motors Corp., 2007 WL 2726871, at *22. In explaining the constitutional concerns with this proposition, 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.[2] 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, they should fail for the same reasons the previous cases failed.

Also, to enhance the public relations aspects of the litigation, the supporters asserted some widespread "campaign of deception," yet the many, often-changing companies named in the lawsuits undercuts this narrative. Here and in other similar lawsuits, governments have named anywhere from one or two defendants to several dozen companies, including local entities in an effort to keep the cases in state court. This ever-changing

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

list of defendants in different aspects of the energy industry highlights the specious nature of this conspiracy-like narrative and the fact that liability here lacks any principled basis.

Indeed, outside of the courtroom, the advocates have openly acknowledged that the desired effect of this litigation is to penalize the worldwide production, promotion, sale and use of fossil fuels——what they call imposing the "true cost" of fuels on consumers. Kirk Herbertson, Oil Companies vs. Citizens: The Battle Begins Over Who Will Pay Climate Costs, EarthRights Int'l, Mar. 21, 2018. They have said that they want to use the litigation 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.[3] They believe that because the "companies are agents of consumers . . . holding oil companies 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.[4]

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

[4] 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,

In an effort to mask this goal, the advocates chose to partner with state and local governments seeking money to deal with local impacts of global climate change. These governments often disclaim any attempt to regulate emissions, but artful pleading and disclaimers cannot mask the true federal nature of this litigation. The lawsuits are being funded by non-profit organizations because the litigation raises inherent federal legal and energy issues. 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 for Governance and Sustainable Development).[5] As one jurist stated, the governments and backers are waging this federal policy 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).

Thus, the purpose of this litigation is to use state liability law to penalize national energy use and direct money from 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 encourage and recruit local governments to bring these cases and to leverage the

2020, at https://insideepa.com/outlook/climate-suits-keeps-issue-alive-nuisance-cases-reach-key-venue-rulings.

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

litigation to hinder energy companies politically. Unlike traditional state lawsuits, success here includes filing and maintaining state lawsuits they can use for their national goals.

Overall, three dozen of these lawsuits have been filed since 2017 in carefully chosen jurisdictions in an effort to "side-step federal courts and [U.S.] Supreme Court precedent" and convince local state courts to help them advance their preferred national and international 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 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 STRUCTURE OF THE CONSTITUTION AND FEDERAL LAW

The state law theories in this litigation have proven to be mere fig leaves. The theory of harm is not moored to any plaintiff, defendant, or jurisdiction, as the permutations of the cases show. And, the chain of causation is anything but local. 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 in these cases.

Federal courts were the first to assess the validity of this reframing. They concluded that because the claims seek to impose

liability for GHG emissions, the specific allegations and legal theories do not change the outcome; the claims are still 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." 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. For these reasons, the court held, "a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may [not] proceed under [state] law." Id. at 91. 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, in response to motions to dismiss in other climate cases, have followed the Second Circuit's reasoning and holding. 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 court hearing Baltimore's case echoed that the claims are "artful" but "not sustainable." Mayor and City Council of Baltimore v. BP P.L.C., No. 24-C-18-004219, at *10 (Md. Cir. Ct. July 10, 2024). Regardless of whether the claims seek to directly regulate emitters, as in AEP, or seek damages, as here, "the Constitutional federal structure does not allow the application of state law to claims like those presented by Baltimore." Id. at *11. "Global

pollution-based complaints were never intended by Congress to be handled by individual states." Id. at *12. Soon thereafter, a court hearing two other Maryland cases concurred with this ruling and dismissed those cases. See City of Annapolis v. BP PLC, No. C-020CV-21-250 (Md. Cir. Ct. Jan. 23, 2025).

The New York court dismissing New York City's latest attempt at climate litigation 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.

Since the trial court's ruling in this case, a Pennsylvania court dismissed a similar climate lawsuit brought by a county, finding the claims "solely within the province of federal law." Bucks County, No. 2024-01836 at *15. 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).

Further, Biden's Solicitor General in asking the U.S. Supreme Court not to review Honolulu's climate case, fully acknowledged that its state law 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.

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

Finally, using state law to subject a handful of American, Canadian, and European energy manufacturers to liability for global GHG emissions would interfere with exclusive federal interests, as the Supreme Court explained in AEP. At the heart of these claims is the notion that America should increase the price and reduce the production of fossil fuels because of the impact these fuels are having on the climate. See City of New York, 993 F.3d at 93 ("If the Producers want to avoid all liability, then their only solution would be to cease global production altogether."). Some may consider this to be their preferred public policy response to climate change, but it is not the role of state courts to impose these changes outside the legislative process.

For starters, state courts do not control the global fuel market, so forcing a reduction in western oil production would not reduce GHG emissions. As the New York Times reported, many of 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.[6] "[S]tate-owned oil companies in the Middle East, North Africa and Latin America are taking advantage of the cutbacks . . . by cranking up their production." Id. "This massive shift could . . . make America more dependent on [OPEC], authoritarian leaders and politically unstable countries . . . that are not under as much pressure to reduce emissions." Id.

Here, the trial court was not fooled by Plaintiffs' attempt to reframe these federal law issues under state law claims. It recognized that "even under the most indulgent reading" of Plaintiffs' complaint, the claims allege injury and seek damages from global climate change. As other courts explained when identifying, seeing through, and rejecting this litigation, the Constitution is not swayed by such reframing attempts because they cannot change the following basic truths about this litigation:

This case is about the impact of interstate and international GHG emissions. The heart of New Jersey's claim is that Defendants exacerbated global climate change by increasing GHG emissions through their conduct and products. The State argues this litigation is limited to only certain things Defendants did in producing, promoting, and selling fuels. But, it cannot change the

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

fact the claims seek to impose liability because of the impact of those fuels' GHG emissions——not just from Defendants and not just in New Jersey, but from everyone, everywhere over the past 150 years——are having in the State. As the U.S. Court of Appeals for the Second Circuit explained, "focus[ing] on [an] 'earlier moment' in the global warming lifecycle" "cannot transform [the lawsuit] into anything other than a suit over global greenhouse gas emissions." City of New York, 993 F.3d at 97. The Third Circuit similarly recognized in another climate lawsuit that "Delaware and Hoboken try to cast their suits as just about misrepresentations. But their own complaints belie that suggestion" because they also allege trespasses and nuisances from GHG emissions generally. City of Hoboken v. Chevron Corp., 45 F.4th 699, 712 (3d Cir. 2022).

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, Congress through the Clean Air Act gave the Environmental Protection Agency authority to make determinations with respect to interstate GHG emissions, which displaced such federal causes of action. The trial court here appropriately rejected what the Second Circuit described as a "too strange to seriously contemplate" argument, City of New York, 993 F.3d at 99,

that this displacement meant that interstate GHG emission cases, which required federal law governance, can now suddenly be decided by any state. The court also correctly pointed out that federal law would govern in any event because foreign emissions not subject to the Clean Air Act are still governed by federal law that would preempt any state claims sounding in global GHG emissions. As the court appreciated, "[t]here is simply no counter to the argument that federal law has not been displaced with respect to foreign emissions."

Imposing liability on conduct in other states impermissibly regulates conduct with no New Jersey nexus. 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, the State seeks to impose liability for conduct Defendants engaged in wholly outside of New Jersey, thereby impermissibly regulating conduct in other states and countries. Under this theory, each state could impose its "own climate standards" on other states. 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 penalty on carbon use is a legislative, not judicial, function. As indicated, liability penalizes conduct. Plaintiffs' lawyers in these cases have said this cost is intended to force energy companies to raise prices so if they sell fuels, "the cost" of climate change would "get priced into them." Caulfield, supra. "They believe 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, including energy affordability for people and businesses, economic impacts of raising energy costs, national energy security, the climate impacts of shifting energy production to less environmentally conscience countries, and the needs of other communities to pay for their own climate mitigation needs. As one New Jersey leader said in response to Hoboken's lawsuit: "Hoboken is sticking the rest of us with the bill" as the litigation "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).[7]

This litigation is an exercise in subjective, political decision-making. Finally, this lawsuit seeks to force a handful of entities to pay for climate change in New Jersey; the other climate suits similarly name anywhere from one defendant to dozens. *See* Lesley Clark, Why Oil Companies Are Worried About Climate Lawsuits From Gas States, E&E News, Nov. 7, 2023 (quoting a climate litigation campaign leader: "It'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.). This ever-changing list of defendants demonstrates the subjective nature of selecting who to blame for global climate change, and, again, highlights the specious nature of any civil conspiracy or extravagant misinformation campaign.

* * *

Ultimately, amicus believes the best way to address the impact energy use is having 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 affordably and reliably provide energy

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

while mitigating its climate impacts, not to artfully plead lawsuits.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision below.

Respectfully submitted,

/s/ Philip S. Goldberg
Philip S. Goldberg, Esq.
N.J. Attorney No. 36772001
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

Attorney for Amicus Curiae
National Association of
Manufacturers

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CERTIFICATE OF SERVICE

I certify that on June 5, 2025, I electronically filed the foregoing Brief using New Jersey's eCourts system.

The parties in this case are registered eCourts users and will be served by the eCourts system.

/s/ Philip S. Goldberg
Philip S. Goldberg