No. 21-1550

In the Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., *et al.*, PETITIONERS

v.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE AMERICAN PETROLEUM INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The American Petroleum Institute ("API") is a nationwide, non-profit trade association that represents more than 600 companies involved in every aspect of the petroleum and natural-gas industry. Its members range from the largest integrated companies to the smallest independent oil and gas producers. API's members include producers, refiners, suppliers, marketers, pipeline operators, and marine transporters, as well as service and supply companies that support the industry. API is

[1] Pursuant to S. Ct. Rule 37.6, counsel for all parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part and no person or entity other than *amicus*, its members, or counsel made a monetary contribution to its preparation or submission.

also the worldwide leading body for establishing standards that govern the oil and natural-gas industry.

This case is one of many that have been brought against the petroleum and natural-gas industry, all by state and local governments suing in their home courts, many represented by the same outside plaintiffs' counsel. Although API is not a party to this case, state plaintiffs have named API as a defendant in other cases, contending that API's exercise of its First Amendment rights to advocate for its members and petition the government are a basis for tort liability. API has been among the defendants removing these cases to federal court, in part based on the removal statute, 28 U.S.C. § 1441(a), that is at issue here. *See*, *e.g.*, *Minnesota* v. *Am. Petroleum Inst.*, No. 20-cv-1636-JRT/HB, 2021 WL 1215656 (D. Minn. Mar. 31, 2021) (appeal pending); *Delaware* v. *BP Am. Inc.*, No. 20-cv-1429-LPS, 2022 WL 58484 (D. Del. Jan. 5, 2022) (appeal pending). Accordingly, API has a concrete stake in ensuring that claims that ought to be governed by federal law are heard in federal court.

At bottom, these cases seek to hold the energy industry liable for emissions of "greenhouse gasses," but the effects of such emissions do not stop at any one state's borders. API believes that policies that can have a meaningful impact on climate change must come from the national government, and in particular from Congress and the Executive Branch. Ad hoc and unpredictable decisions of individual state courts, seeking to govern the worldwide conduct of a handful of individual defendants, are not a sensible way to address issues of this scope and magnitude.

API has extensive familiarity with the uniquely federal interests that this litigation implicates. This case,

like others that similar plaintiffs and their outside counsel have brought against API, raises cross-border issues that have always been the subject of federal common law, not state law. Because these claims necessarily and exclusively arise under federal law, defendants like petitioners and API have a right to remove these claims to federal court.

With over a century of institutional knowledge, API is well situated to provide the Court with a contemporary perspective on the need for uniform and coherent federal policy, especially in light of recent events. API and its members are currently meeting with the Biden administration and federal agencies to help avert a potential energy crisis, in part by increasing the output of petroleum products that respondents simultaneously claim constitute a public nuisance. Recent events, and the vital role that energy plays in U.S. domestic and foreign policy, underscore the need for federal jurisdiction in cases like this one.

SUMMARY OF ARGUMENT

1. The Tenth Circuit erred in ruling that the artful pleading doctrine is coextensive with complete preemption. This error, if allowed to stand uncorrected, would prevent federal adjudication of issues crying out for a uniform, national answer. It would mean that petroleum companies would be subject to a patchwork of lawsuits alleging harm for the same underlying conduct. And it would result in conflicting liability rules, and potentially inconsistent judgments. This Court has never adopted such a crabbed view of the artful pleading doctrine. Artful pleading extends to claims that are inherently federal, even when disguised under state law, ensuring that those claims can be heard in an appropriate federal forum.

The Tenth Circuit's constrictive conception of artful pleading conflicts with decisions of the Second, Fifth, and Eighth Circuits, which have affirmed removal where the state-law claims were premised on non-statutory sources of federal law—foreign affairs powers, tribal sovereignty, and other forms of federal common law. By contrast, two other courts of appeals have held that federal question removal does not provide jurisdiction over claims necessarily governed by federal common law. The Court should grant the writ of certiorari to resolve this circuit split.

2. The Tenth Circuit's artful-pleading error is magnified in this case because respondents' claims involving cross-border carbon emissions are plainly federal and have been recognized as such for a century. *See Int'l Paper Co.* v. *Ouellette*, 479 U.S. 481, 488 (1987) ("[T]he regulation of interstate water pollution is a matter of federal, not state, law."); *accord Illinois* v. *City of Milwaukee*, 406 U.S. 91 (1972) (*Milwaukee I*); *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases).

As this Court recently held, a policy that causes "a nationwide transition" on energy use—a decision of "magnitude and consequence"—necessarily "rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." *West Virginia* v. *EPA*, No. 20-1530, slip op. at 31 (June 30, 2022). Yet that is precisely the democratic process respondents and their outside counsel seek to avoid with a torrent of federal claims masquerading as state-law torts. By pursuing these claims in state courts across the country, respondents and other cities, counties, and states intend to override federal energy policy from their home courts.

Climate change is a complex and worldwide issue that requires attention at the national level, not a local one that can be resolved by the blunt instrument of nuisance lawsuits. The state-law adjudication of these claims would obstruct the development of coherent and uniform energy policy, and impede important progress combating climate change. API's members are leaders in developing technologies to reduce carbon emissions, while simultaneously meeting growing energy demand. Exposing domestic producers to overlapping, inconsistent, and unpredictable state-law nuisance standards will throw off this delicate balance.

3. The jurisdictional questions presented in this case are even more pressing in light of current events. In response to rising gas prices following Russia's invasion of Ukraine, the Biden administration has just recently taken steps to increase the supply of oil and gas, including by tapping strategic reserves and encouraging producers to increase output. But while industry leaders work with the federal government, respondents and other cities, counties, and states are suing for billions of dollars in damages based on past sales of those same products. The lawsuits, if successful, could deter future petroleum sales and hinder the national policy of working toward stability through supply.

***

The Court should take up this case now, and prevent a deluge of state-court litigation that will create energy uncertainty. The result of the Tenth Circuit's decision is that state courts will decide in the first instance whether and how to regulate petroleum sales in all 50 states and around the world, even as the federal government and industry leaders work toward a careful bal-

ance of affordable, reliable, and sustainable energy. Enabling state-court control over the decision to fashion a novel global tort would allow individual state courts to favor local concerns without adequately weighing national interests. API submits that federal courts, with their inherently national perspective, should make that decision first.

ARGUMENT

I. This Court Should Decide Whether Plaintiffs Can Defeat Federal Jurisdiction Through "Artful Pleading"

The Tenth Circuit wrongly held that the artful pleading doctrine is coterminous with complete preemption, misconstruing the reach of this Court's precedents and ignoring the underlying purpose of the artful pleading doctrine. Pet. App. 21a ("The Supreme Court treats the 'artful pleading' and 'complete preemption' doctrines as indistinct." (citing *Rivet* v. *Regions Bank of La.*, 522 U.S. 470, 475 (1998))).

1. An "independent corollary" to the well-pleaded complaint rule, the artful pleading doctrine simply recognizes that a plaintiff cannot evade federal jurisdiction by artfully pleading claims to omit their necessarily federal character. *Rivet*, 522 U.S. at 475. Accordingly, it is not narrowly and formalistically confined to complete preemption, as the Tenth Circuit held. *See* Richard H. Fallon Jr., et al., *Hart & Weschler's Federal Courts and the Federal System* 818 (7th ed. 2015) (there is "no plausible reason" why "the appropriateness of a need for a federal forum should turn on whether the claim arose under a federal statute or under federal common law"); *see also Newton* v. *Cap. Assurance Co.*, 245 F.3d 1306, 1309 (11th Cir. 2001) ("The federal cause of action or

question of federal law must be apparent from the face of the well-pleaded complaint and not from a defense or anticipated defense. But the federal question need not be statutory; federal common law will suffice." (citation omitted)).

Rather, the doctrine serves the overarching and important purpose of preventing circumvention of federal authority where the claims are "necessarily federal," even if labeled as state law claims. 14C Wright & Miller, *Federal Practice & Procedure* § 3722.1 (rev. 4th ed. 2020) ("[A] plaintiff cannot frustrate a defendant's right to remove by pleading a case without reference to any federal law when the plaintiff's claim is necessarily federal."). Thus, when a case involves an "inherently federal cause of action," a plaintiff cannot "block removal" by artfully pleading its claims under state law. *Ibid.* As discussed below, that is precisely the case here: respondents' climate-change claims are inherently federal, even though they have been artfully disguised under state law.

To be sure, artful pleading often involves complete preemption. But this Court has never cabined its application to complete preemption. The *Rivet* Court recognized that in *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394 (1981), the Court had agreed with the Ninth Circuit that "at least some of the claims had a sufficient federal character to support removal." 522 U.S. at 477. While the *Rivet* Court clarified that "*Moitie* did not create a preclusion exception to the rule … that a defendant cannot remove on the basis of a federal defense," it nowhere limited the reach of the artful pleading doctrine to complete preemption. *Id.* at 478. Rather, it merely explained that "claim preclusion by reason of

a prior federal judgment is a defensive plea that provides no basis of removal." *Ibid.*; *see also Ohio ex rel. Skaggs* v. *Brunner*, 629 F.3d 527, 531 (6th Cir. 2010) (where removal under *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), and complete preemption were unavailable, "[t]hat leaves the possibility that these state-law claims amounted to federal claims in disguise"); *Indeck Me. Energy, L.L.C.* v. *ISO New England Inc.*, 167 F. Supp. 2d 675, 685 (D. Del. 2001) ("Analysis of the two doctrines"—i.e., artful pleading and complete preemption—"is not the same"); Wright & Miller, *supra* § 3722.1 ("This view of the coextensiveness of the complete preemption and artful pleading doctrines has not been expressly embraced by most federal courts[.]").

Moreover, in applying the artful pleading doctrine, this Court has recognized complete preemption under only three federal statutes. *See Avco Corp.* v. *Aero Lodge No. 735*, 390 U.S. 557 (1968) (Labor Management Relations Act); *Metro. Life Ins. Co.* v. *Taylor*, 481 U.S. 58 (1987) (ERISA); *Beneficial Nat'l Bank* v. *Anderson*, 539 U.S. 1 (2003) (National Bank Act). If the entire reach of the artful pleading doctrine were statutory—as would be true under the Tenth Circuit's view—then the doctrine could not accomplish its broader goal of discerning "inherently federal causes of action" that are disguised as state-law claims.

Not all important federal claims derive from statutory provisions. Under the Tenth Circuit's rule, plaintiffs in several other cases, which do not involve those statutes, could easily circumvent federal law, even if federal courts had traditionally recognized that the type of claims involve uniquely federal interests. As discussed below, the results would be deeply problematic

because it would hinder the development of uniform and coherent policy in areas of national concern, such as global climate change. *Cf. Grable*, 545 U.S. at 312 (recognizing the "commonsense notion" that certain types of state-law claims "justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues").

Other circuits have recognized that the artful pleading doctrine is not coterminous with complete preemption, and instead can turn on non-statutory sources of federal law. In *In re Otter Tail Power Co.*, 116 F.3d 1207 (8th Cir. 1997), the Eighth Circuit recognized that a "plaintiff's characterization of a claim as based solely on state law is not dispositive." *Id.* at 1213. The court concluded that removal was proper, despite the state-law claims, because the case raised questions regarding tribal sovereignty, which is "manifestly a federal question." *Id.* at 1214. Similarly, in *Sam L. Majors Jewelers* v. *ABX, Inc.*, 117 F.3d 922 (5th Cir. 1997), the Fifth Circuit affirmed removal where claims against an air carrier were premised on federal common law due to regulation of the shipping industry. Neither of these cases involved complete preemption, yet both allowed removal. In contrast, two other courts of appeals have held that federal question removal does not provide jurisdiction over claims necessarily governed by federal common law, yet pled as state law claims. *See* Pet. 21-22 (citing *City of Oakland* v. *BP plc*, 969 F.3d 895 (9th Cir. 2020), and *Mayor & City Council of Balt.* v. *B.P p.l.c.*, 31 F.4th 178 (4th Cir. 2022)).

The Second Circuit's decision in *Republic of the Philippines* v. *Marcos*, 806 F.2d 344 (2d Cir. 1986), is a particularly compelling example of why the artful pleading

doctrine extends beyond complete preemption. In *Marcos*, the Republic of the Philippines brought suit in New York state court to restrain the sale of certain properties. The case was removed to district court, and the Southern District of New York enjoined the sale.

On appeal, the Second Circuit held that removal was proper because an examination of the plaintiff's state-law claims demonstrated "that the plaintiff's claims necessarily require determinations that will directly and significantly affect American foreign relations." *Id.* at 352. The Second Circuit explained:

> The question whether to honor such a request by a foreign government [to freeze property in the United States] is itself a federal question to be decided with uniformity as a matter of federal law, and not separately in each state.

Id. at 354. At bottom, despite the state-law label, the claim raised a question of international relations, an inherently and inescapably federal matter. To relegate such a claim to state court because it is not completely preempted by statute exalts form over function, and prevents the proper resolution of federal issues in an appropriate federal forum.

2. The purpose behind the well-pleaded complaint rule, as well as its artful pleading corollary, is to (1) allow the plaintiff to be the "master of the complaint," enabling the plaintiff to have "the cause heard in state court" by "eschewing claims based on federal law" he could have raised, (2) to avoid "radically expand[ing] the class of removable cases," and (3) to provide a "quick rule of thumb." *Holmes Grp., Inc.* v. *Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831-32 (2002) (citations omitted).

These concerns are not relevant here primarily because there is no choice for respondents to make between state or federal law. Respondents' claims are necessarily federal in nature, and there is no alternative state law to choose. *See Tex. Indus., Inc.* v. *Radcliffe Materials, Inc.*, 451 U.S. 630, 640 (1981) (state law is inappropriate when a uniform national rule is necessary to protect "uniquely federal interests"); *cf. Boyle* v. *United Techs. Corp.,* 487 U.S. 500, 507 (1988) (in "an area of uniquely federal interest[,] . . . [t]he conflict with federal policy need not be as sharp as that which must exist for ordinary pre-emption when Congress legislates in a field which the States have traditionally occupied" (citations omitted)). There is also no affront to federalism or state sovereignty because states do not and have never set national energy policy. *See Ouellette*, 479 U.S. at 488 ("[T]he regulation of interstate water pollution is a matter of federal, not state, law."); *accord Milwaukee I*, 406 U.S. at 103; *City of New York*, 993 F.3d at 91 (collecting cases).

Nor would removal here radically expand removable cases or be difficult to apply in future cases as a "quick rule of thumb." As discussed below, the claims here are exceptionally broad, as they purport to regulate national emissions standards, regardless of the source of emissions. There is no doubt that the federal nature of the claims is easily discernible and applicable only to a well-defined class of transboundary emissions lawsuits.

II. This Court Should Decide Whether Carbon Emissions Lawsuits "Arise Under" Federal Law

1. This Court has repeatedly recognized that environmental protection is a national and global issue. The regulation of greenhouse gas emissions is "[a] decision

of such magnitude and consequence" that it "rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." *West Virginia*, slip op. at 31. It does not reside in the vagaries of state tort law.

Because emissions intermix in the atmosphere from worldwide sources, and the potential effects of global climate change are felt nationwide (indeed, worldwide), the claims here are inherently federal. *Milwaukee I*, 406 U.S. at 103 ("When we deal with air and water in their ambient or interstate aspects, there is a federal common law[.]"). While respondents ostensibly challenge the sale and marketing of petroleum products, this lawsuit—and the others like it pending across the country—is an open effort to circumvent Congress and the EPA, and to dictate global emissions standards from the local level. Respondents cannot claim that the sale of fossil fuels caused their alleged injury. Only the combustion of fuel around the world by third parties—including states and cities themselves—could possibly cause the alleged public nuisance. *See* Pet. App. 3a ("Stated broadly, this is a lawsuit about damages related to climate change" caused by "carbon dioxide in the atmosphere").

For a state court to determine whether the "carbon dioxide in the atmosphere" constitutes a public nuisance, it would need to consider whether the emissions "unreasonably interfere[s]" with a public right. *See* Restatement (Second) of Torts § 821B (1979). And here, because the claims are premised on the effects of climate change regardless of the source of emissions, respondents are asking the state court to evaluate the reasonableness—i.e., the costs and benefits—of petroleum use worldwide. They are also asking the court to determine

who, amongst a world full of energy producers and users, should bear the costs of a complex, global problem, and whether those damages should inure to the benefit of local constituencies. *Native Vill. of Kivalina* v. *ExxonMobil Corp.*, 663 F. Supp. 2d 863, 876-77 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012) ("Plaintiffs also fail to confront the fact that resolution of their nuisance claim requires the judiciary to make a policy decision about *who* should bear the cost of global warming.").

Moreover, any decision would have extraordinary reach: it would affect the sale of fossil fuels anywhere in the world, including past and otherwise lawful sales. Even focusing on the American manifestations of the global phenomenon of climate change, the claims still implicate the interests of all *50* states,[2] as well as the United States' relationships with other nations. *See*, *e.g.*, *Am. Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 422 (2011) (*AEP*) ("[E]missions in New Jersey may contribute no more to flooding in New York than emissions in China[.]").

2. This case thus exemplifies the purpose of the federal removal statute, and the importance of the artful pleading doctrine. If allowed to proceed in state court, notwithstanding the propriety of federal jurisdiction, respondents' lawsuit will frustrate—and indeed override—federal policy.

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[2] While many cities, counties, and states have filed similar lawsuits, several other states have filed *amicus* briefs supporting removal and adjudication of those claims in federal court. *See*, *e.g.*, Brief of Indiana et al. as *Amici Curiae* in Support of Petitioners, *Chevron Corp.* v. *City of Oakland* (U.S. Mar. 11, 2021) (No. 20-1089) (brief of nineteen states). This lack of consensus among the states further demonstrates the need for a federal solution.

Climate change is a complex, global phenomenon. A rational response requires uniform and coherent policies, which must carefully balance energy demands, macroeconomics, scientific innovations, and a host of other factors. Such policies have to be implemented at the national level in coordination with other sovereign nations. In this country, they must be authorized by Congress and implemented by expert agencies, with participation from scientists, industry members, foreign partners, and other stakeholders. The issue simply is not conducive to ad hoc regulation at the state level by state courts.

State-court nuisance lawsuits, like this one, would sharply undermine the predictability and uniformity of federal policy, and impede progress already being made. And they would compel producers to conform to various, conflicting state standards to avoid future liability. *Ouellette*, 479 U.S. at 496 (allowing "a number of different states to have independent and plenary regulatory authority over a single discharge would lead to chaotic confrontation between sovereign states." (citation omitted)).

It would be inappropriate for state courts to try to decide such vital questions of both national and international importance in the first instance. *See West Virginia*, slip op. at 31 (whether "[c]apping carbon dioxide emissions" is sensible policy, a decision of "such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body"). The political branches of the federal government, and not the several states, are best suited to render policy on these important issues. *AEP*, 564 U.S. at 428 (noting that Congress "designated an

expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions.").

A patchwork of 50 different state nuisance laws would also be unworkable. This is particularly true for API and its members, which would be subject to overlapping and potentially inconsistent laws, all governing the same conduct elsewhere in the nation or the world. How would one business, whose products are sold globally, be able to change its behavior in each different state? It would be "virtually impossible" for businesses to "predict the standard" governing their conduct nationwide. *Ouellette*, 479 U.S. at 497. No state here has a superior interest over another, and certainly not over the national polity. Accordingly, uniform action is needed.

The harm alleged is widespread and crosses state and international lines. Thus, the "interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus.*, 451 U.S. at 641. The claims here are plainly federal and should be heard in a federal forum in the first instance.

III. The Jurisdictional Issues In This Case Are Exceptionally Important To U.S. Energy Policy and Environmental Protection

The ability to remove a case implicating uniquely federal concerns is important to API and its members, who are defendants in similar climate-change lawsuits in state courts across the country. The scope of removal jurisdiction in these cases will have a real and immediate impact on global energy policy and climate change, and should be reviewed by the Court in this case.

1. As of this writing, the United States is confronting a potential energy crisis. Russia's invasion of Ukraine has disrupted energy markets and, along with

other factors, caused fuel prices to rise to record levels. *See* Omar Abdel-Baqui & Hardika Sing, *Gasoline Prices Reach $5 a Gallon Nationwide for the First Time*, Wall St. J. (June 11, 2022), https://www.wsj.com/articles/gasoline-prices-reach-5-a-gallon-nationwide-for-the-first-time-11654910506. At the same time, energy demand continues to grow on the whole as the world emerges from the Covid-19 pandemic. These market imbalances have had a rippling effect through global markets and industries, which rely heavily on American petroleum products.

In response to rising energy prices, the Biden administration has taken steps to increase domestic production of oil and gas, including by ordering releases from the Strategic Petroleum Reserve at "historic" volumes. *See* White House, *Fact Sheet: President Biden Calls for a Three-Month Federal Gas Tax Holiday* (June 22, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/22/fact-sheet-president-biden-calls-for-a-three-month-federal-gas-tax-holiday. The administration is also encouraging oil companies and refiners to increase their capacity and output to get more supply on the market. *Ibid.* Federal energy policy is thus developing in real time to address global strife and domestic inflation. Industry executives and API have had ongoing discussions with the Biden administration about how to help address rising energy costs and achieve greater energy security. *See* Am. Petroleum Inst., *AFPM Joint Statement on Sec. Granholm's Meeting with U.S. Refiners* (June 23, 2022), https://www.api.org/news-policy-and-issues/news/2022/06/23/api-afpm-joint-statement-on-sec-granholm-meeting-with-us-refiners.

American natural gas and oil producers play a critical role in ensuring a stable supply of affordable energy amidst geopolitical volatility, not just in the United States, but for our European allies, too. In March of this year, the United States and European Commission formed a joint Task Force on European Energy Security to address these issues. *See* White House, *Joint Statement by President Biden and President von der Leyen on European Energy Security* (June 27, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/27/joint-statement-by-president-biden-and-president-von-der-leyen-on-european-energy-security/. U.S. producers have stepped up and nearly tripled liquid natural gas exports to Europe. *Ibid.* These efforts, and energy supply in general, have been vital to U.S. foreign policy. *See*, *e.g.*, Matthew Dalton et al., *U.S. to Boost Gas Deliveries to Europe Amid Scramble for New Supplies*, Wall St. J. (Mar. 25, 2022), https://www.wsj.com/articles/u-s-to-boost-gas-deliveries-to-europe-amid-scramble-for-new-supplies-11648198062.

2. Nonetheless, while industry members, the federal government, and foreign partners work carefully toward pragmatic, supply-side solutions to help avert a crisis, respondents and other cities, counties, and states are trying to impose billions of dollars in damages for the supply of petroleum products. *See* Pet. 8 (citing 23 related cases pending in federal courts nationwide after removal from state court). Disappointed with the outcome in *AEP*, state officials and their outside contingent-fee counsel brought a second wave of lawsuits (including this case) in state courts attempting to impose liability under novel theories, ostensibly using state common and statutory law.

This salvo of state-court lawsuits will undermine federal policy. The obvious and intended effect of imposing damages in these cases is to control behavior prospectively and deter petroleum sales. But local attempts to punish fuel output conflict with the Biden administration's calls to increase it, and indeed with the administration's own actions to release historic amounts of strategic oil reserves. Under respondents' theory, API and its members could be subject to substantial liability for following the lead of the federal government and helping to avert a potential energy crisis.

The state-court lawsuits will not only hinder the administration's policy to combat energy inflation at home, but will undermine the federal government's ability to increase exports to European partners and enter into executive agreements to that effect. As this Court has recognized, "[t]he exercise of the federal executive authority"—particularly in the area of foreign affairs—"means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two." *Am. Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 421 (2003). The "clear conflict" in this case will undermine our most pressing foreign policy goals: quickly regaining energy stability around the world and combatting Russian aggression.

3. For these reasons, the jurisdictional questions presented in this case will have a substantial and immediate impact on global energy policy and security. Respondents' lawsuit—if allowed to proceed in state court—will not only undermine near-term policy goals, it will also frustrate the federal government's and the American natural gas and oil industry's longer-term efforts to reduce emissions.

America has made substantial progress and seen a significant decline in greenhouse emissions over the last 20 years, despite increases in energy demand and use. *See* Am. Petroleum Inst., *Key Investments in Greenhouse Gas Mitigation Technologies from 2000 Through 2016 by Oil and Gas Companies, Other Industry and the Federal Government*, at 2-3 (Apr. 2018), https://www.api.org/~/media/Files/News/2018/18-May/2017_API_GHG_Investment_Study.pdf. In part because of uniform and relatively predictable federal policy, the American natural gas and oil industry has been able to make substantial investment in emission-reducing innovations technologies with great success. *Id.* at 8-11, 24-25. And API's members continue to deliver industry-based solutions that reduce the risks of climate change while also trying to meet society's growing energy needs. *See* Am. Petroleum Inst., *Climate Action Framework* (Apr. 2021), https://www.api.org/climate#technology.

Without federal removal jurisdiction, petroleum producers will be exposed to multiple, crosscutting tort actions lacking uniformity and coherence, stymying these recent innovations. *See City of New York*, 993 F.3d at 93 (nuisance lawsuits "upset[] the careful balance that has been struck between the prevention of global warming," on the one hand, and "energy production, economic growth, foreign policy, and national security, on the other"); Jonathan H. Adler, *A Tale of Two Climate Cases*, 121 Yale L.J. Online 109, 112 (2011) ("[T]he application of variable state standards to matters of a global, interjurisdictional concern could further frustrate the development of a coherent climate change policy.").

Because of their responsiveness to local interests, state courts are not well suited to make these major political determinations in the first instance. The Federalist No. 81, at 421 (Alexander Hamilton) (The Gideon ed., George W. Carey & James McClellan eds., 2001) (the "prevalency of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes"). The same is true for the state officials who file the nuisance lawsuits and attempt to control national emissions standards on behalf of small, local constituencies. *See* Jonathan H. Adler, *Hothouse Flowers: The Vices and Virtues of Climate Federalism*, 17 Temp. Pol. & Civ. Rts. L. Rev. 443, 449 (2008) ("Consider the various public nuisance lawsuits filed by state attorneys general against out-of-state firms. State officials who file such suits get the political benefits of appearing to take action against climate change, without having to bear the costs of imposing economic burdens on in-state firms" (footnote omitted)). Global climate-change lawsuits drag courts into a geopolitical debate assigned to the political branches of the federal government, and would have disastrous consequences for the development of coherent policy.

This case is an ideal vehicle for the Court to resolve open questions about removal jurisdiction. Not only will these questions have an immediate impact on ongoing policy developments, the jurisdictional issues have been presented cleanly and briefed by both parties. A decision on the scope of removal jurisdiction would not only determine the appropriate forum here, and allow this case to proceed accordingly, it would also resolve the open jurisdictional question in more than 20 other cases pending in federal courts around the country. It would settle an important question applicable to an entire wave of

climate-change litigation that has a profound impact on domestic and foreign policy.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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