No. 23-168

IN THE
Supreme Court of the United States

AMERICAN PETROLEUM INSTITUTE, ET AL.,

Petitioners,

v.

STATE OF MINNESOTA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE SUPPORTING PETITIONERS

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INTEREST OF THE AMICUS CURIAE[1]

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

The Chamber has a strong interest in legal and policy issues relating to climate change. The global climate is changing, and human activities contribute to these changes. There is much common ground on which all sides could come together to address climate change with policies that are practical, flexible, predictable, and durable. The Chamber believes that durable climate policy must be made by Congress, which should both encourage innovation and investment to ensure significant emissions reductions and avoid economic harm for businesses, consumers, and disadvantaged communities. *See, e.g.*, Press Release, Sen. Sheldon Whitehouse, *New Bipartisan, Bicameral Proposal Targets Industrial Emissions for Reduction* (July 25, 2019), https://www.whitehouse.senate.gov/news/release/new-bipartisan-bicameral-proposal-targets-industrial-emissions-for-reduction

[1] Amicus curiae timely provided notice of intent to file this brief to all parties. 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 intended to fund the preparation or submission of this brief.

(reporting the Chamber's support for the bipartisan Clean Industrial Technology Act). U.S. climate policy should recognize the urgent need for action, while maintaining the national and international competitiveness of U.S. industry and ensuring consistency with free enterprise and free trade principles. *See* U.S. Chamber of Commerce, The Chamber's Climate Position: 'Inaction is Not an Option', https://www.uschamber.com/climate-change/the-chambers-climate-position-inaction-is-not-an-option (Oct. 27, 2021). Governmental policies aimed at achieving these goals should not be made by the courts, much less by a patchwork of actions under state law.

Under this Court's precedent, cases involving "uniquely federal interests," for which a uniform federal policy is necessary, should be decided under federal common law. In the limited range of circumstances in which such uniquely federal interests arise, the relevant legal questions often intersect with the interests of many of the Chamber's members, who rely on the predictability and uniformity of federal policy. This case presents an example of a court veering from this Court's precedent and allowing a claim about *global* emissions—for which no State can claim a superior tie or interest—to be decided by a single state's law. The Chamber has an interest in ensuring that claims for which a uniform federal standard is necessary, because of their interstate or international aspects, are heard in federal court.

SUMMARY OF ARGUMENT

I. Climate change is a global phenomenon. The emissions that cause climate change cross state and national borders. As a result, claims about those emissions necessarily concern the interests of more than one State or foreign sovereign.

In our federal system, such cross-border claims implicate "uniquely federal interests" that trigger the application of federal common law. Federal common law applies where state law cannot. State laws are designed to address localized problems; they are ill-equipped to deliver effective cross-border solutions. Moreover, applying the law of one particular State to a cross-border claim risks intruding on the sovereign prerogatives of other States and nations, which may have a different perspective on how to resolve a cross-border problem.

Here, the State of Minnesota wants Minnesota courts to apply Minnesota law to address allegations regarding *global* climate change. The court of appeals failed to recognize that this case presents a paradigmatic example of where federal common law should apply, and where federal common law supplies federal jurisdiction. Applying complete preemption principles, the court concluded that, because federal common law does not provide the remedies that Minnesota seeks through the vindication of its own laws, the State could continue pursuing its claims of transboundary pollution under its own laws, in its own courts. But that holding cannot be squared with the rule that federal common law provides a cause of action where *no* state law can apply. That principle holds true even if federal common law does not also provide a remedy.

This Court should grant certiorari to resolve the split over whether federal common law applies to claims seeking liability for the local impact of global climate change (thereby giving rise to federal jurisdiction). In an area where the need for a uniform federal approach is at its highest, piecemeal decisions applying the laws of the 50 states will only undermine efforts to find a workable and effective solution. A proliferating number of lawsuits similar to Minnesota's are already underway in state courts across the country; if they proceed on that course, the result will be competing state courts ordering the same companies to change their behavior in different, irreconcilable ways.

II. This Court should also grant certiorari to address the conflict regarding whether a plaintiff may evade federal jurisdiction by artfully pleading its federal common law claims as state-law claims. A plaintiff may be the master of its complaint, but this Court has repeatedly reaffirmed the principle that a plaintiff cannot frustrate federal jurisdiction by characterizing an inherently federal claim as a state-law claim.

The court of appeals limited "artful pleading" to only those cases where a state-law claim is completely preempted by a federal statute. But Judge Stras was right to recognize in his concurrence (as other courts of appeals have held) that "[a]rtful pleading comes in many forms," Pet. App. 20a (Stras, J., concurring), and should not be limited to complete preemption. None of the principles underlying the well-pleaded-complaint rule supports such a narrow construction of artful pleading.

For these reasons, and those set forth below, this Court should grant the petition.

ARGUMENT

I. This Court should grant certiorari to reconcile conflicting decisions on whether federal common law applies to claims based on alleged global emissions.

Federal courts may consider any claim arising under federal law, including federal common law. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 850, 852 (1985). While federal common law is limited in scope, common-law claims arising from a transboundary dispute that implicates the interests of more than one State or other sovereign must, by necessity, arise under federal common law, because a single state's law cannot adequately reconcile competing sovereign interests in resolving the claim. For decades, this Court has identified claims regarding the air and water in their "ambient and interstate aspects" as entailing the sort of dispute that is fit for the application of federal common law. Because emissions cross state and national borders, the laws of a single state cannot resolve an emissions dispute like this one. Such a nationally and internationally significant dispute necessarily arises under federal common law and belongs in federal court.

The court of appeals nevertheless incorrectly held that Minnesota's purported state-law claims—which invoke both state common law and state consumer protection statutes, but concern *global* emissions—should proceed in state court. The court began its analysis by expressing skepticism about whether "federal common law still exists in this space and

provides a cause of action to govern transboundary [disputes]," in light of "subsequent federal environmental legislation." Pet. App. 7a. It then concluded that, even if federal common law did apply to the State's allegations, it did not supply a basis for removal jurisdiction because (1) federal common law did not completely preempt the state-law causes of action, as it did not supply a substitute cause of action, *id.*, and (2) the State's claims did not "necessarily raise" an issue of federal common law. Pet. App. 9a-10a.

The Eighth Circuit's reasoning was flawed in three respects. First, to the extent that the court of appeals doubted whether federal common law applies to Minnesota's allegations, Pet. App. 7a, this Court's decisions—which apply federal common law in cases involving "air and water in their ambient or interstate aspects"—resolve any such doubts. Second, where federal common law applies, state law does not—and cannot. Thus, even if a federal statute prevents the plaintiff from obtaining a *remedy* under federal common law, that does not make a claim based on interstate (indeed, global) air emissions any less "federal" in character. Finally, the court of appeals erred in treating displacement as an issue affecting jurisdiction, not remedies.

A. Federal common law governs where a dispute implicates interstate and international interests.

1. "There is no federal *general* common law," *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (emphasis added), but federal courts may "fashion federal law" in limited areas "where federal rights are concerned." *Illinois v. City of Milwaukee (Milwaukee I)*, 406 U.S.

91, 103 (1972) (citation omitted). *Erie* does not undermine this principle. Indeed, on "the same day *Erie* was decided, the Supreme Court released an opinion in which Justice Brandeis, the author of *Erie*, relied upon federal common law to resolve a case." *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 927 n.8 (5th Cir. 1997) (citing *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938)).

Courts typically apply federal common law in cases presenting one (or more) of three characteristics. First, federal common law applies in cases where "common lawmaking must be 'necessary to protect uniquely federal interests.'" *Rodriguez v. FDIC*, 140 S. Ct. 713, 717 (2020) (quoting *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981)). Second, federal common law is used in "those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law." *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U.S. 173, 173-74 (1942). Finally, federal common law applies "[w]hen Congress has not spoken to a particular issue," *City of Milwaukee v. Illinois (Milwaukee II)*, 451 U.S. 304, 313 (1981), but federal policy calls for a "uniform standard." *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted).

Several types of cross-border disputes—particularly those that implicate the interests of more than one State or sovereign—present "uniquely federal interests" that require the application of a federal common law because state law cannot govern. Courts have applied federal common law in cases involving interstate

water disputes,[2] tribal land rights,[3] interstate air carrier liability,[4] interstate disputes over intangible property,[5] and foreign relations.[6] In such cases, federal common law is necessary because "local law will not be sufficiently sensitive to federal concerns, it is not likely to be uniform across state lines, and it will develop at various rates of speed in different states." Wright & Miller, 19 Fed. Prac. & Proc. Juris. § 4514 (4th ed. 2022). Moreover, the structure of the Constitution does not allow States to engage in such cross-border regulation. *Tex. Indus.*, 451 U.S. at 641 ("In these instances, our federal system does not permit the controversy to be resolved under state law….").

Cases about global emissions, like this one, squarely give rise to the concerns that necessitate federal common law. As this Court has recognized, allowing states to apply their own varying common-law rules to environmental concerns crossing state lines would mean "more conflicting disputes, increasing assertions and proliferating contentions" about the standards for adjudging claims of "improper impairment." *Milwau-*

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[2] *Hinderlider*, 304 U.S. at 110; *Kansas v. Colorado*, 206 U.S. 46, 95 (1907).

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

[4] *Treiber & Straub, Inc. v. UPS, Inc.*, 474 F.3d 379, 384 (7th Cir. 2007).

[5] *Delaware v. Pennsylvania*, 598 U.S. 115, 128-29 (2023) (discussing federal common law rules for escheatment of money orders).

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

kee I, 406 U.S. at 107 n.9 (quoting *Texas v. Pankey*, 441 F.2d 236, 241-42 (10th Cir. 1971)). Thus, "[w]hen we deal with air and water in their ambient or interstate aspects, there is a federal common law." *Id.* at 103 (citing *Texas v. Pankey*, 441 F.2d 236 (10th Cir. 1971)); *accord Am. Elec. Power Co. v. Connecticut* ("*AEP*"), 564 U.S. 410, 421 (2011); *see also Hinderlider*, 304 U.S. at 110 (apportionment of interstate stream "is a question of 'federal common law'"). "Environmental protection" is, after all, "an area 'within national legislative power,'" and thus, it is appropriate for federal courts to "fill in 'statutory interstices,' and, if necessary, even 'fashion federal law.'" *AEP*, 564 U.S. at 421 (citation omitted).

Because claims regarding transboundary emissions implicate "uniquely federal interests," "our federal system does not permit the controversy to be resolved under state law," as the "interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus.*, 451 U.S. at 640-41 & n.13; *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 855 (9th Cir. 2012) ("[F]ederal common law can apply to transboundary pollution suits."). And where, as here, a claim falls within an area that is exclusively federal in nature, the case falls within federal jurisdiction. *Nat'l Farmers*, 471 U.S. at 850, 852.

2. Climate change is an international and interstate phenomenon. In order for climate change to occur, as alleged by the State here, myriad events caused by myriad actors must occur all around the world. *City of N.Y. v. BP P.L.C.*, 325 F. Supp. 3d 466, 472 (S.D.N.Y. 2018) (climate-change claims "are ultimately based on the 'transboundary' emission of greenhouse gases"), *aff'd sub nom. City of N.Y. v. Chevron Corp.*,

993 F.3d 81 (2d Cir. 2021). As Judge Stras recognized, what Minnesota seeks is "a global remedy for a global issue," an issue on which other states may have a different point of view, Pet. App. 21a (Stras, J., concurring). That makes the State's case "in effect, an interstate dispute." *Id.* And in interstate disputes like this one, "[s]tate law is no substitute," as "[a]pplying state law … only raises the risk of conflict between states, which never 'agree[d] to submit to whatever might be done' to their citizens." Pet. App. 22a (quoting *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907)). Allowing Minnesota to "set national energy policy through its own consumer-protection laws would 'effectively override the policy choices made by' the federal government and the other states." Pet. App. 24a (citation omitted).

That the State's claims are about "air and water in their ambient or interstate aspects" would be enough by itself to "undoubtedly" call for the application of federal common law, *AEP*, 564 U.S. at 421 (citation omitted); *Milwaukee I*, 406 U.S. at 103. But there is more. Because Minnesota seeks to press a "global issue," its claims also implicate foreign policy and the United States' sovereign interests, which, too, call out for federal common law. *Tex. Indus.*, 451 U.S. at 641 (identifying instances where "our federal system does not permit [a] controversy to be resolved under state law, … because the interstate or international nature of the controversy makes it inappropriate for state law to control").

No state or local government can claim a unique tie to the phenomenon of *global* climate change. To be sure, some commercial activity may happen within a particular state's or locality's borders, but that local-

ized activity is not the sole basis of Minnesota's claims. And localized activity hardly justifies allowing the law of one state to decide a sweeping claim concerning emissions that cross state and national borders. After all, Minnesota is not arguing that what happened within its jurisdiction caused the alleged harm of *global* warming. Nor could Minnesota do so: as this Court explained in *AEP*, "emissions in New Jersey may contribute no more to flooding in New York than emissions in China." 564 U.S. at 422; *see also* Pet. App. 23a (Stras, J., concurring) (noting that, as alleged, global climate change may have "allegedly led to a host of costly problems within Minnesota," but "they are by no means limited to the 'effects of [local] emissions'" (quoting *New York*, 993 F.3d at 92)).

The Eighth Circuit's decision favoring the application of state law over federal common law encourages a patchwork of outcomes arising under disparate state laws, which are poor frameworks for "regulat[ing] the conduct of out-of-state sources." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 495 (1987). Allowing claims about global emissions to be decided by the varied laws of the 50 states would lead to fragmentation of judicial decisionmaking that in turn would hinder a coordinated and effective federal response to climate change. Moreover, leaving state courts to adjudicate disputes about interstate emissions while applying disparate standards would only make it "increasingly difficult for anyone to determine what standards govern." *North Carolina ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 298 (4th Cir. 2010).

B. Displacement does not cause a federal-common-law claim regarding global climate change to lose its federal "character."

The court of appeals effectively concluded that, because Minnesota's claims did not neatly check one of two jurisdictional boxes—either complete preemption, or "federal ingredient" jurisdiction under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 312 (2005)—those claims should move forward in state court. The court of appeals thought that outside those two boxes, the federal common law governing transboundary air issues could not supply a basis for federal jurisdiction even if it did apply to the State's claims.

But the court of appeals' reasoning overlooks a critical problem: where federal common law applies, state law *cannot* govern. *Tex. Indus.*, 451 U.S. at 641 (federal common law governs where the nature of the claim "makes it inappropriate for state law to control"); *Milwaukee II*, 451 U.S. at 313 n.7 ("[I]f federal common law exists, it is because state law cannot be used."). Congress's decision to displace any right to sue under federal common law does not make state law capable of resolving interstate disputes. "[C]onflicts between states with different tolerances for greenhouse-gas emissions can only be resolved at the federal level because of the 'unique[] federal interests' involved." Pet. App. 23a (Stras, J., concurring) (citation omitted). That does not change simply because federal common law does not "supply a substitute cause of action." Pet. App. 7a.

As the Second Circuit explained—using reasoning that conflicts with the Eighth Circuit's reasoning here, Pet. 19—the notion that a state-law claim lies dormant and may "snap back into action" once federal law is displaced is "difficult to square with the fact that federal common law governed [the] issue in the first place." *New York*, 993 F.3d at 98. When a federal statute displaces federal common law, it eliminates the causes of action or remedies that might have been available under common law—"our federal system" does not allow state-law claims into an area that is exclusively federal in character. *Tex. Indus.*, 451 U.S. at 641. Thus, for example, a State may surrender its federal common-law cause of action over water rights in an interstate compact. *See Hinderlider*, 304 U.S. at 104-05. But that does not invite state-law causes of action that otherwise are plainly displaced by federal common law. *See id.* at 110. "Such an outcome is too strange to seriously contemplate." *New York*, 993 F.3d at 98-99.

In discussing whether complete preemption provided a basis for removal jurisdiction in this case, the court of appeals remarked that "there is a serious question about whether, and to what extent, this area of federal common law [concerning transboundary air and water pollution] survived subsequent federal environmental legislation." Pet. App. 7a. But whether "subsequent federal environmental legislation" displaced any causes of action provided by federal common law is not relevant to the jurisdictional analysis. Congress's displacement of a federal common law cause of action goes to remedy, not jurisdiction. In *AEP*, for example, this Court explained that the scope of the displacement was to be determined by the "reach of

remedial provisions" available in the displacing statute. 564 U.S. at 425 (citing *Cnty. of Oneida*, 470 U.S. at 237-39); *see also Milwaukee II*, 451 U.S. at 332 (observing that Congress's changes to the Clean Water Act meant that "no federal common-law remedy was available"); *Illinois v. Outboard Marine Corp.*, 680 F.2d 473, 476 (7th Cir. 1982) (statutory displacement of "the federal common law remedy for nuisances resulting from discharges of pollutants"); *Kivalina*, 696 F.3d at 857 ("displacement of a federal common law right of action means displacement of remedies.").

Displacement concerns "whether the field has been occupied, not whether it has been occupied in a particular manner." *Milwaukee II*, 451 U.S. at 324. When a state-law claim is impermissible because of the federal nature of the interests at stake, and federal common law is displaced by a federal statute, the case continues to arise under federal law and establish federal jurisdiction. The fact that federal common law provides no *remedy* does not make the interests at stake any less federal; it means only that Congress has exercised its right to make rules for an exclusively federal area, and has elected not to create a remedy in that space.

Here, the claims concerning interstate emissions do not become any less "interstate" simply because an environmental statute displaces remedies under federal common law. The court of appeals' reasoning looks nothing like displacement by Congress; it is *re*placement of Congress—by state courts.

C. The practical problems created by allowing inherently federal claims for climate change to be recast as state-law claims will only worsen without immediate review.

In 2017 and 2018, 13 state and local governments filed lawsuits in their respective home state courts against petitioners, alleging, as Minnesota does here, that petitioners violated state law by producing and marketing fossil fuels in a way that altered global climate.[7] The number of lawsuits has only ballooned over the years; just last week, the State of California sued petitioners over purported conduct that allegedly increased "anthropogenic [greenhouse gas] emissions and accelerated global warming."[8]

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[7] *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018); *King Cnty. v. BP p.l.c.*, No. 18-2-11859-0 (Wash. Super. Ct. May 9, 2018); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, No. 2018CV030349 (Colo. Dist. Ct. Apr. 17, 2018); *City of Richmond v. Chevron Corp.*, No. C18-00055 (Cal. Super. Ct. Jan. 22, 2018); *Mayor & City Council of Balt. v. BP p.l.c.*, No. 24-C-18-004219 (Md. Cir. Ct. July 20, 2018); *City of Imperial Beach v. Chevron Corp.*, No. C17-01227 (Cal. Super. Ct. July 17, 2017); *Cnty. of Marin v. Chevron Corp.*, No. CIV1702586 (Cal. Super. Ct. July 17, 2017); *Cnty. of San Mateo v. Chevron Corp.*, No. 17CIV03222 (Cal. Super. Ct. July 17, 2017); *City of Santa Cruz v. Chevron Corp.*, No. 17CV03243 (Cal. Super. Ct. Dec. 20, 2017); *Cnty. of Santa Cruz v. Chevron Corp.*, No. 17CV03242 (Cal. Super. Ct. Dec. 20, 2017); *Cal. ex rel. Herrera v. BP p.l.c.*, No. CGC-17-561370 (Cal. Super. Ct. Sept. 19, 2017) (San Francisco); *Cal. ex rel. Oakland City Att'y v. BP p.l.c.*, No. RG17875889 (Cal. Super. Ct. Sept. 19, 2017) (Oakland).

[8] Compl. ¶ 5, *People of the State of Cal. ex. rel. Bonta v. Exxon Mobil Corp.*, No. CGC23609134 (Cal. Super. Ct. Sept. 15, 2023).

The essence of Minnesota's claims, filed in 2020, is no different from the thrust of the claims brought by other governmental entities; the crux of the State's case is that "energy production has 'caused a substantial portion of global atmospheric greenhouse-gas concentrations,'" which, in turn, "have resulted in 'climate change.'" Pet. App. 21a (Stras, J., concurring) (citation omitted). The State seeks recovery for the "environmental and social harms from increased consumption of fossil fuels, including changes in climate, damage to infrastructure, and worsening public health." Pet. App. 32a.

The ambitious scope of the State's case makes it a cross-border dispute. "There is no hiding the obvious, and Minnesota does not even try: it seeks a global remedy for a global issue." Pet. App. 21a (Stras, J., concurring). In our federal system, global issues are not resolved in state court—whether one or many. *See* pp. 5-11, *supra*. But under the Eighth Circuit's too-narrow construction of removal jurisdiction, "fifty state courts get to handle" what is essentially an interstate and international dispute by quirk of the fact that "surrogate[s] of … private part[ies]" are the defendants. Pet. App. 24a.

Unless this Court grants review, state courts across the country, entertaining claims similar to Minnesota's, will begin to deliver a patchwork of decisions resolving interstate pollution claims under disparate state laws. Rulings in the plaintiffs' favor will inevitably attempt to "[r]egulat[e] the production and sale of fossil fuels worldwide," using the limited tools of state law in a misguided attempt to solve problems that are "'simply beyond the limits of state law.'" Pet. App. 24a (Stras, J., concurring) (quoting *New York*, 993 F.3d at

92). In doing so, the decisions will only promote the unraveling of our federal system, undermining "national energy policy" and collectively "'overrid[ing] … the policy choices made by' the federal government and other states." *Id.* (quoting *Ouellette*, 479 U.S. at 495). Each case seeks to "change the companies' behavior on a global scale." *Id.* And so long as the cases remain in state court, nothing will compel any one state's court to conform its decision to that of any other. The result will be competing states ordering the same companies to change their companies' behavior in different, and quite possibly irreconcilable, ways.

To resolve the question whether federal common law applies to claims of global climate change, this Court should grant certiorari now, before the effects of an individualized, state-by-state approach begin to take hold.

II. This Court should grant certiorari to resolve the split on whether the artful pleading doctrine encompasses more than just complete preemption.

A. Under the well-pleaded complaint rule, "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). But an "independent corollary" of the rule is that "a plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint." *Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 22 (1983) (citation omitted). Thus, a plaintiff may be the "master of his complaint" and ordinarily may choose to bring a state-law claim in state court, but he cannot deliberately disguise an "in-

herently federal cause of action." Wright & Miller, 14C Fed. Prac. & Proc. Juris. § 3722.1 (4th ed. 2022). Where a plaintiff obscures the inherently federal nature of her claim, the plaintiff's case is removable to federal court. *United Jersey Banks v. Parell*, 783 F.2d 360, 367 (3d Cir. 1986) (noting "ample precedent" demonstrating that federal jurisdiction lies where "the state claim pleaded is 'really one' of federal law" (citation omitted)).

In other jurisdictional contexts, this Court has looked to the "gravamen" of the complaint, not just to the label the plaintiff attaches, to determine whether the complaint invokes federal jurisdiction. *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 35-36 (2015) (looking not just at how the plaintiff "recast[s]" her negligence claims, but instead at the "'essentials' of her suit," to determine whether jurisdiction existed under the Foreign Sovereign Immunities Act (citation omitted)); *see also Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 169 (2017) (courts must look to the "gravamen" of the plaintiff's complaint and "set[] aside any attempts at artful pleading" to determine whether the plaintiff's claim requires exhaustion under federal law). What matters is "substance, not surface": "[t]he use (or nonuse) of particular labels and terms is not what matters." *Fry*, 580 U.S. at 169. Focusing on the "gravamen" of a complaint, rather than whether a plaintiff used or avoided the right "magic words," ensures that a plaintiff cannot manipulate federal jurisdiction "through artful pleading." *Id.* at 169-70 (citation omitted).

The rule is no different in the narrow but important circumstances where a claim is inherently federal; in those situations, casting the claim in different lan-

guage does not make it arise under different law. One such inherently federal claim is a common law cause of action governed by a uniform federal decisional standard, *e.g.*, *Sam L. Majors*, 117 F.3d at 924, 929, which the Eighth Circuit disavowed here by effectively limiting artful pleading to complete preemption. Pet. App. 5a-10a. "Artful pleading comes in many forms," Pet. App. 20a (Stras, J., concurring); where the claim arises in an area that is governed exclusively by federal law, a plaintiff cannot "deny a defendant a federal forum" by artfully pleading "a federal claim … as a state law claim." *United Jersey*, 783 F.2d at 367. Thus, a federal common law claim may be readily apparent from the "essentials" of a complaint if the allegations involve matters such as "air and water in their ambient or interstate aspects," *Milwaukee I*, 406 U.S. at 103, or other "especial federal concerns to which federal common law applies," such as "the rights and obligations of the United States," or "the conflicting rights of States or our relations with foreign nations." *Tex. Indus.*, 451 U.S. at 641 & n.13. In those areas where "especial federal concern[s]" are implicated, the *only* claim that can be pleaded is a federal one, as federal common law governs where the nature of the claim "makes it inappropriate for state law to control." *Id*. at 641. That claim can be governed only by the laws of the United States and thus is properly brought in federal court. *See Milwaukee I*, 406 U.S. at 100.

B. The "longstanding policies" justifying the application of the well-pleaded complaint rule support allowing the removal of federal-common-law claims. *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831-32 (2002). Put another way, none of these policies—(1) respect for plaintiffs' deliberate

choice to "eschew[] claims based on federal law"; (2) avoiding the unnecessary expansion of "the class of removable cases"; and (3) preventing the "undermin[ing] [of] the clarity and ease of administration of the well-pleaded-complaint doctrine" as a "'quick rule of thumb'"—justifies leaving a case in state court when its subject matter is inherently federal. *Id.* (citations omitted).

First, a plaintiff cannot invoke the prerogative to choose the law and forum when the plaintiff alleges a common-law claim that is inherently federal; where federal common law applies, there is no state-law option to choose. As explained above, where federal common law governs, the "implicit corollary" is that there is no state law to apply. *Ouellette*, 479 U.S. at 488. That corollary is best demonstrated in cases where federal common law necessarily governs because the claim is interstate and international in nature; transboundary issues cannot be resolved by a patchwork of state courts applying local law in an uncoordinated manner. *E.g.*, *New York*, 993 F.3d at 85-86 (observing that climate change is "not well-suited to the application of state law").

Second, there is no risk of flooding federal courts with a new wave of removal cases premised on federal common law. *Holmes*, 535 U.S. at 832. Federal common law plays "a necessarily modest role," *Rodriguez*, 140 S. Ct. at 717, and thus the "instances where [federal courts] have created federal common law are few and restricted," *Wheeldin v. Wheeler*, 373 U.S. 647, 651 (1963). *See Tex. Indus.*, 451 U.S. at 641 (federal common law exists only in "narrow areas"). In those few areas where federal common law applies, there is little risk of intruding upon the "independence of state gov-

ernments," as those areas necessarily fall outside state authority. *Holmes*, 535 U.S. at 832 (citation omitted).

Conversely, failing to recognize federal common law claims for what they are, just because the plaintiff refuses to acknowledge it, risks allowing state courts and state law to intrude upon federal priorities. As the Second Circuit has warned, attempting to apply state law in an area where federal common law should apply risks "upsetting the careful balance" of federal prerogatives. *New York*, 993 F.3d at 93. In *AEP*, a case very similar to this one that presented claims for relief based on climate change, this Court made clear that "[e]nvironmental protection" is one such area that is "undoubtedly … within *national* legislative power, one in which federal courts may fill in statutory interstices, and, if necessary, even fashion federal law." *AEP*, 564 U.S. at 421 (emphasis added, citation and internal quotation marks omitted); *see id.* (quoting *Milwaukee I*, 406 U.S. at 103); *id.* at 422 (noting not only that the subject of tort law claims based on climate change "is meet for federal law governance," but that "borrowing the law of a particular State would be inappropriate" for federal common law claims based on climate change).

Finally, using the artful pleading doctrine to recognize federal jurisdiction in cases presenting federal common law claims does not make the well-pleaded complaint rule any more complicated to apply as a "rule of thumb." It is not difficult to identify the few specific areas of the law that raise the sorts of "especial federal concerns to which federal common law applies." *Tex. Indus.*, 451 U.S. at 641 n.13; *e.g.*, *id.* at 641 (identifying "narrow areas" in which federal common law applies). The subject of "air and water in their ambient

or interstate aspects," *AEP*, 564 U.S. at 421 (quoting *Milwaukee I*, 406 U.S. at 103), is one such category, and a claim of harm resulting from global climate change from interstate and international emissions fits squarely into it. There is no mystery that in the State's litigation, which focuses on allegations of transboundary pollution, federal law will become "the focal point." Pet. App. 25a (Stras, J., concurring).

C. The court of appeals concluded that artful pleading can defeat removal, with only two exceptions: complete preemption and "federal ingredient" jurisdiction as articulated in *Grable*. Pet. App. 5a-10a. But as other courts have recognized, artful pleading exists as a basis for federal jurisdiction beyond complete preemption. *E.g.*, *Ohio ex rel. Skaggs v. Brunner*, 629 F.3d 527, 532 (6th Cir. 2010) (artful pleading doctrine may apply independently of complete preemption "where federal issues necessarily must be resolved to address the state law causes of action"); 15A Moore's Fed. Practice—Civil § 103.43 (2022) (observing that "the complete preemption doctrine is a specific application of the artful pleading doctrine"). "The artful pleading doctrine allows removal where federal law completely preempts a plaintiff's state-law claim," *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998), but that is not all it does. Pet. App. 26a-27a n.14 (Stras, J., concurring) ("artful pleading … applies whenever the complaint obscures the suit's federal nature"). Complete preemption is not the only circumstance where claims have a "sufficient federal character to support removal." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.2 (1981). Claims that must necessarily arise under federal common law due to their interstate

and transboundary character constitute another such circumstance. *Milwaukee I*, 406 U.S. at 103.

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Without this Court's intervention, state-court decisions on competing claims of global climate change will give rise to the very problem that the application of federal common law is intended to prevent: conflicting decisions on a common interstate (and international) problem that requires a uniform approach. Different states applying their own laws will have different views on how to "change the companies' behavior on a global scale," Pet. App. 24a (Stras, J., concurring), which will result in inconsistent judgments governing the very same activities crossing state and national borders. This Court should grant certiorari now, before those competing interests collide.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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