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**

## RESPONDENT STATE OF MINNESOTA'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI


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## QUESTION PRESENTED

Should this Court create a novel exception to the well-pleaded complaint rule for claims "governed by federal common law" that would purportedly confer federal-question jurisdiction over respondent's state-law complaint, where: (1) seven circuit courts have unanimously declined to recognize that exception in cases materially similar to this one; and (2) removal would not be proper in this case under any theory because (a) the common law on which petitioners rely here has been displaced by a federal statute; (b) the displacing statute does not completely preempt state law; and (c) respondent's state-law claims do not satisfy *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), because they do not necessarily present a substantial federal question that could be adjudicated in federal court without upsetting the federal-state division of judicial responsibility.

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## INTRODUCTION

Respondent, the State of Minnesota, brought state-law statutory and common-law claims against petitioners for their alleged long-standing pattern of deceptive marketing. The State alleges petitioners have known for decades that their fossil-fuel products create greenhouse-gas pollution that increases global atmospheric, surface, and ocean temperatures, and were aware of the catastrophic consequences that would result. They nevertheless misled consumers and the public about the existence of climate change and their products' role in causing it. That alleged deception is the gravamen of this action. Seeking redress for deceptive marketing and failure to warn is a traditional method by which state attorneys general exercise their states' police authority to protect consumers and the public, and to that end the State filed this action in Minnesota state court, alleging causes of action under Minnesota law.

The Eighth Circuit affirmed the District of Minnesota's order remanding this case to state court, noting that this was not "the first time [petitioners], or their oil producing peers, have made these jurisdictional arguments," and that its "sister circuits rejected them in each case." Pet. App. 3a. No court has adopted petitioners' positions—the opinion below adds to a chorus of seven appellate decisions across six other circuits affirming remand in materially similar cases, to which many petitioners here have been parties.[1]

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[1] *See Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44 (1st Cir. 2022), *cert. denied*, 143 S. Ct. 1796 (2023); *Connecticut v. Exxon Mobil Corp.*, __ F.4th __, No. 21-cv-1446, 2023 WL 6279941 (2d Cir. Sept. 27, 2023); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022), *cert. denied*, 143 S. Ct. 2483 (2023); *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023); *Cnty. of San*

This Court denied petitions for certiorari from six of those opinions just last term, each of which raised the same Question Presented as this petition and relied on the same arguments and authorities. On this Court's invitation, the United States argued as amicus curiae in the *Suncor* case that "the petition for a writ of certiorari should be denied." Brief for the United States as Amicus Curiae at 1, *Suncor*, No. 21-1550 (Mar. 16, 2023). The United States reasoned—as the Eighth Circuit did here—that the plaintiffs' complaints could not be "removed to federal court on the ground that [their] state-law claims should be recharacterized as claims arising under federal common law" and "no exception to the well-pleaded complaint rule applies." *Id.* Moreover, "the Clean Air Act has displaced any relevant federal common law in this area." *Id.* The landscape is the same now as it was earlier this year when the Court denied identical petitions in *Suncor* and five other cases. The result should be the same as well.

## SUMMARY OF ARGUMENT

1. There is no circuit conflict on the Question Presented. *See* S. Ct. R. 10(a). The seven circuits that have considered the issue are in alignment.

The petition wrongly argues the decision below is in conflict with Second Circuit's opinion in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). But

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*Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 1797 (2023); *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023); *see also City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020) (vacating order denying remand), *cert. denied*, 141 S. Ct. 2776 (2021).

recent developments confirm no conflict exists. After this petition was filed, the Second Circuit issued a decision affirming remand in a case materially similar to this one, and expressly rejecting the exact "freestanding federal-common-law exception from the well-pleaded complaint rule" that petitioners advance here. *See Connecticut*, 2023 WL 6279941, at *7. The *Connecticut* opinion—authored by the same judge who wrote *City of New York*—found that the defendant's grounds for removal were "well-trodden by our sister circuits," and "join[ed] them" in holding that the state-law consumer-protection claims alleged there were not removable. *See id.* at *15.

Further, the *City of New York* decision did not consider subject-matter jurisdiction at all. Instead, it affirmed dismissal for failure to state a claim in a diversity case originating in federal court. *See* 993 F.3d at 85–86, 88. The court expressly "reconcile[d]" its conclusions with the "parade of recent opinions" affirming remand in analogous cases like this one, because "their reasoning does not conflict with [its] holding." *Id.* at 93–94. The subsequent *Connecticut* opinion confirms that the circuits agree on the jurisdictional question at issue here.

Petitioners cite a handful of additional outdated cases that likewise do not demonstrate any conflict. *See* Pet. 12–14. None address whether *congressionally displaced* federal common law could convert state-law claims into federal ones for jurisdictional purposes, which is what petitioners argue for here. Plus, they all predate this Court's efforts to circumscribe the removability of state-law claims in the *Grable* line of cases, discussed further below. Those earlier decisions are "not good law" to the extent they purport to recognize additional exceptions to the well-pleaded complaint

rule, *Hoboken*, 45 F.4th at 708, and are otherwise consistent with the decision below.

Petitioners' authorities did not demonstrate the existence of a circuit split six months ago. They still do not.

2. The circuits are aligned in their analysis and results because they apply this Court's precedents correctly, as did the decision below.

This Court has acknowledged its prior caselaw construing the federal-question jurisdiction statute "was for many decades . . . highly 'unruly.'" *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 385 (2016) (quoting *Gunn v. Minton*, 568 U.S. 251, 258 (2013)). But it has since worked to synthesize "that muddled backdrop" into "what we now understand as the 'arising under' standard." *Id.* Beginning with *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005) ("*Grable*"), the Court "condensed [its] prior cases" into a straightforward test. *Gunn*, 568 U.S. at 258. A claim arises under federal law for statutory purposes where "federal law creates the cause of action asserted," or where state law creates the cause of action but a federal question is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Id.* Rarely, a state cause of action may also arise under federal law where Congress has "so completely pre-empt[ed] a particular area that any civil complaint raising this select group of claims is necessarily federal in character." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63–64 (1987). As the United States explained in *Suncor*, "[c]omplete preemption is ultimately a matter of congressional intent" to federalize an area of law. *Suncor*, U.S. Br. at 15.

Petitioners seek to avoid both *Grable* and complete preemption by invoking and then misapplying the "artful pleading principle." Pet. 28. They assert that some state-law causes of action "inherently *are* federal claims, arising under federal law" regardless how they are pleaded, because they involve subjects that are "necessarily and exclusively governed by federal common law." *Id.* But the court below noted that it had never treated "artful pleading" as a "standalone exception" to the well-pleaded complaint rule independent of complete preemption, and held that federal common law cannot completely preempt state law because, by definition, it "does not express congressional intent of any kind." *See* Pet. App. 5a n.4 & 7a. The court of appeals correctly held that petitioners' attempts to broaden the "artful pleading principle" would contravene this Court's careful progress settling the boundaries for arising-under jurisdiction.

Even if petitioners' artful pleading theory had precedential support, it could not apply in this case. This Court held twelve years ago that the federal common law of air pollution nuisance, on which petitioners rely, has been "displaced by the federal legislation authorizing EPA to regulate carbon-dioxide emissions," namely the Clean Air Act. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 423 (2011) ("*AEP*"); *see* 42 U.S.C. § 7401 *et seq.* Every court to consider the question has concluded that a defendant "cannot premise removal on a federal common law that no longer exists." *Rhode Island*, 35 F.4th at 53–54; *see also Baltimore*, 31 F.4th at 204–07; *San Mateo*, 32 F.4th at 747; *Oakland*, 969 F.3d at 906; *Suncor*, 25 F.4th at 1260.

3. The petition should also be denied because the Question Presented is neither important nor frequently recurring. *See* S. Ct. R. 10(c). Petitioners do not

identify any class of cases impacted by the issues here other than ones to which they themselves are parties, and there is no confusion in jurisdictional analysis the Court could relieve by hearing this case.

Petitioners argue this petition presents "enormous stakes as it relates to the national-security, economic, and energy policy of the United States." Pet. 31. Tellingly, however, the United States did not address either military readiness or civilian energy resources in its amicus brief in *Suncor*. And as the United States explained in that same brief, "all five courts of appeals that have considered the issue have rejected the position that the government took" in support of the petitioners in the *Baltimore* case. *Suncor*, U.S. Br. at 7. The Second and Eighth Circuits have since joined the consensus. The fact that the United States "reexamined its position" on the certworthiness of the Question Presented in light of that unanimous authority does not show the question is important. *See id.*

4. Finally, this petition is not a viable vehicle to resolve the Question Presented. As petitioners concede, the Eighth Circuit did not consider or resolve whether federal common does or could "govern" the State's claims. This Court would therefore be required to resolve the issue in petitioners' favor in the first instance to reverse.

The petition should be denied.

## FACTS AND PROCEDURAL HISTORY

The State brought this matter in Minnesota state court. Like plaintiffs in other analogous circuit decisions affirming remand, the State "sued various energy companies for promoting fossil fuels while allegedly concealing their environmental impacts,"

asserting state law claims "centered on the defendants' alleged failure to warn about the dangers of their products—and the injuries the [State] says it suffered as a result." *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1535–36 (2021) (addressing scope of appellate jurisdiction over order granting remand). The complaint "alleges that [petitioners] developed a widespread campaign to deceive the public about the dangers of fossil fuels and to undermine the scientific consensus linking fossil fuel emissions to climate change." Pet. App. 29a.

Petitioners removed, asserting seven different theories of federal jurisdiction, among them federal-question jurisdiction premised on federal common law and federal-question jurisdiction premised on *Grable*. *See id.* 33a. The district court remanded, rejecting each basis for removal. The court found that "the State's action here is far more modest than the caricature defendants present," holding that "[s]tates have both the clear authority and primary competence to adjudicate alleged violations of state common law and consumer protection statutes, and a complex injury does not a federal action make." *Id.* 57a.

As relevant to the Question Presented, the district court held that the State's claims do not arise under federal law. The court held that petitioners' federal-common-law theories "lack[ed] a substantial relationship to the actual claims alleged and would require the Court to invent a separate cause of action" not pleaded in the complaint. *Id.* 41a. The court declined to hold that "implied federal common law claims establish a separate and independent exception to the well-pleaded complaint rule," which would be "contrary to Supreme Court precedent establishing the specific and defined parameters for federal jurisdic-

tion over exclusively state law claims." *Id.* Adopting petitioners' reasoning would "not [be] a sound foundation for asserting federal jurisdiction." *Id.* 41a–42a.

The Eighth Circuit affirmed. The court stated that "[t]here are two important exceptions to the well-pleaded complaint rule," namely complete preemption and *Grable*. Pet. App. 5a. It reasoned that the complete preemption doctrine "ask[s] whether Congress intended a federal statute to provide 'the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action.'" Pet. App. 6a (quoting *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003)). Federal common law thus could not completely preempt the State's claims because it provides "no substitute federal cause of action for the state-law causes of action Minnesota brings," and "more importantly" because federal common law "does not express Congressional intent of any kind—much less intent to completely displace any particular state-law claim." *Id.* 7a.

With respect to *Grable*, the court of appeals stated that while petitioners "list[ed] a variety of federal interests potentially impacted should a court hold them liable," they did not identify any "specific elements of Minnesota's claims" that would "require the court to interpret and apply federal common law or second-guess Congress's cost-benefit rationales" in regulating fossil fuels. *Id.* 9a–10a. The court held to the contrary that "none of Minnesota's claims try to hold [petitioners] liable for production activities—only marketing." *Id.* 17a. As such, "any implied conflict between the . . . state-law claims and federal cost-benefit determinations speaks to a potential defense on the merits of those claims, specifically a preemption defense, rather than to the jurisdictional issue." *Id.* 10a (quoting *Suncor*, 25 F.4th at

1266). Because no federal issue is necessarily raised in the State's complaint, "the *Grable* exception to the well-pleaded complaint rule does not apply." *Id.*

Concurring, Judge Stras "agree[d] with the court that, as the law stands now, the suit does not 'aris[e] under' federal law." *Id.* 20a. Judge Stras nonetheless wrote that because this case involves the "global issue" of climate change, on which states have "strong views," it is "in effect, an interstate dispute," in the sense of being a "disput[e] between states." *Id.* 21a. He continued that "somehow, when interstate disputes are litigated through the surrogate of a private party as the defendant, fifty state courts get to handle them." *Id.* 24a. Citing precedent predating the 1887 and 1888 statutes that have carried forward into 28 U.S.C. §§ 1331 and 1441, Judge Stras offered that "perhaps for a 'uniquely federal interest' like interstate pollution, it *should* still be" possible to exercise federal-question jurisdiction based on an anticipated federal defense, "even if 'the claim . . . might[ ] possibly be determined by reference alone to state enactments.'" *Id.* 25a (quoting *R.R. Co. v. Mississippi*, 102 U.S. 135, 140 (1880)). Judge Stras concluded, however, that "even the strongest arguments for removal don't work here," and concurred with the majority in full. *Id.* 26a, 27a.

## REASONS THE PETITION SHOULD BE DENIED

The basic principles governing federal-question jurisdiction are well understood. "Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." *Gunn*, 568 U.S. at 256 (cleaned up). Congress has granted district courts original subject-matter jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States," and such ac-

tions "may be removed by the defendant" from state to federal court. 28 U.S.C. §§ 1331, 1441(a).

"[U]nder the present statutory scheme as it has existed since 1887," the Court has applied a "powerful doctrine," known as the well-pleaded complaint rule, which requires that jurisdiction under Sections 1331 and 1441 "must be determined from what necessarily appears in the plaintiff's statement of his own claim." *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 9–10 (1983) (quotation omitted). For more than 120 years, the well-pleaded complaint rule has been "the basic principle marking the boundaries of the federal question jurisdiction of the federal district courts." *Metro. Life Ins.*, 481 U.S. at 63; *see also, e.g.*, *Third St. & Suburban Ry. Co v. Lewis*, 173 U.S. 457, 460 (1899) (describing well-pleaded complaint rule as "thoroughly settled"). The rule "makes the plaintiff the master of the claim" such that "he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). "Jurisdiction may not be sustained on a theory that the plaintiff has not advanced," *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 809 n.6 (1986), and cannot be "predicated on an actual or anticipated defense," *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009), "including the defense of preemption," *Franchise Tax Bd.*, 463 U.S. at 14.

The well-pleaded complaint rule has two recognized exceptions. The first is the complete preemption doctrine, which applies when "the pre-emptive force of a statute is so 'extraordinary' that it 'converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.'" *Caterpillar*, 482 U.S. at 393 (quoting *Metro. Life Ins.*, 481 U.S. at 65). A statute can completely preempt state law "[o]nly if Congress intended [it] to provide the

exclusive cause of action" for claims within its scope. *Beneficial Nat'l Bank*, 539 U.S. at 9. "If Congress intends a preemption instruction completely to displace ordinarily applicable state law," moreover, "and to confer federal jurisdiction thereby, it may be expected to make that atypical intention clear" because doing so necessarily impinges on state sovereignty. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 698 (2006). This Court has thus been "reluctant to find that extraordinary pre-emptive power," *Metro. Life Ins.*, 481 U.S. at 65, and has identified only three statutes that wield it, *see Beneficial Nat'l Bank*, 539 U.S. at 2, none of which are at issue here.

The second recognized exception is *Grable* jurisdiction, which this Court developed to resolve lower courts' longstanding difficulty applying the well-pleaded complaint rule in cases where "a question of federal law is lurking in the background" of an entirely state-law complaint. *See Gully v. First Nat'l Bank*, 299 U.S. 109, 117 (1936). The *Grable* doctrine applies to a "special and small category" of cases pleaded under state law in which "a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 at 258 (citing *Empire Healthchoice*, 547 U.S. at 699; *Grable*, 545 U.S. at 314).

## I. There is no circuit conflict.

There is no division among the circuits on the Question Presented, let alone an "entrenched" one requiring this Court's intervention. Pet. 23. Every court confronting the issue has held that state-law claims like the State's—which allege petitioners "mounted an aggressive campaign" to "mislead consumers and the general public about the scientific consensus around

climate change, the relationship between climate change and their fossil-fuel products, and the urgency of the dangers of climate change," Pet. App. 31a–32a—are not removable from state court.

Petitioners' broad contention that "federal common law provides a basis for removal of claims artfully pleaded under state law," Pet. 16, is not the law in any circuit. The courts are unanimous that state-law causes of action only "arise under" federal law for purposes of federal-question jurisdiction when they either (1) are completely preempted by a federal statute, or (2) satisfy the four-part *Grable* test. No court recognizes the unguided analysis petitioners advocate here, whereby a district judge may squint at a state-law cause of action, determine it is "inherently federal in nature," Pet. 21, then "transform [the] state-law claim into a federal one" based vaguely on "the structure of the constitution" and rest its own jurisdiction on that finding. Pet. 29.

The decision below also does not conflict with *City of New York*, because that case did not address subject-matter jurisdiction. The *Connecticut* opinion, which *did* consider removal jurisdiction, affirmed remand of materially similar state-law consumer protection claims. The court rejected the defendant's invitation to recognize new exceptions to the well-pleaded complaint rule by "cast[ing] the artful-pleading doctrine in looser, more conceptually capacious terms," 2023 WL 6279941, at *5, which was "really an invitation to find federal-question jurisdiction on the basis of ordinary preemption," *id.* at *6. Petitioners make the same invitation here, and the circuits are unanimous that "[t]hat proposition . . . is contrary to 'settled law' dating back 'since 1887.'" *Id.* (quoting *Franchise Tax Bd.*, 463 U.S. at 14).[2]

[2] Petitioners also argue that the Question Presented has "di-

### A. The decision below does not conflict with the pre-*Grable* cases petitioners cite.

Petitioners do not contend in this Court that the State's claims are completely preempted or that *Grable* is satisfied. The petition instead asks the Court to grant review and carve out a novel exception to the well-pleaded complaint rule applicable only to "claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate." Pet. 3. Petitioners try to manufacture a circuit conflict on that question, relying on the same outdated cases this Court already considered when it recently denied six petitions presenting the same issue. *See* Pet. 12–17. Their efforts fail for at least three independent reasons.

1. None of petitioners' pre-*Grable* decisions involved *congressionally displaced* federal common law. Petitioners do not dispute that the Clean Air Act displaced the federal common law of interstate air pollution—the same body of judge-made law on which they predicate removal. *See* Pet. 30. When Congress displaces federal common law by statute, "the need for such an unusual exercise of law-making by federal courts disappears," and with it any substantive law crafted by the courts. *AEP,* 564 U.S. at 423 (quoting *City of Milwaukee v. Illinois*, 451 U.S. 304, 314 (1981) ("*Milwaukee II*")). As the United States explained in *Suncor* with respect to the Clean Air Act, "far from expressing an intent that federal common law be given complete-preemptive force with respect

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vided two consecutive presidential administrations." Pet. 21. Because that has nothing to do with whether "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals," S. Ct. R. 10(a), respondents discuss the United States' position in Part III, *infra.*

to the sorts of claims that respondent[] allege[s], Congress *displaced* any federal-common-law remedy that respondent[] might otherwise have invoked." *Suncor*, U.S. Br. at 15.

Petitioners argue that federal common law might provide a separate basis for federal-question jurisdiction, in derogation of the well-pleaded complaint rule, even after Congress displaces that common law and extinguishes the judiciary's limited lawmaking authority. *E.g.*, Pet. 12. But the circuits are not divided on that issue. Petitioners do not identify any appellate decision upholding jurisdiction on that basis, and the State is aware of none.

2. Even if Congress had not displaced the federal common law petitioners invoke, the decision below would remain fully consistent with the results of petitioners' pre-*Grable* cases. *See* Pet. 13–14.

In all but one of petitioners' cases, the appellate courts applied a precursor of the *Grable* test, holding that federal-question jurisdiction existed because the plaintiffs' state-law claims necessarily raised "a substantial question of federal law."[3] This Court clarified that analysis in *Grable*: "claims recognized under state law that nonetheless turn on substantial questions of federal law" will "arise under" federal law for purposes of federal subject-matter jurisdiction only when they (1) necessarily raise federal issues that are (2) substantial, (3) actually disputed,

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[3] *Newton v. Cap. Assurance Co.*, 245 F.3d 1306, 1308–09 (11th Cir. 2001); *Torres v. S. Peru Copper Co.*, 113 F.3d 540, 542–43 (5th Cir. 1997); *Republic of Philippines v. Marcos*, 806 F.2d 344, 352, 354 (2d Cir. 1986); *compare Connecticut*, 2023 WL 6279941, at *7 ("We said nothing [in *Marcos*] to suggest the existence of a *freestanding* 'federal-common-law exception' from the well-pleaded complaint rule.").

and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. *Grable*, 545 U.S. at 312, 314; *Gunn*, 568 U.S. at 258. The Eighth Circuit applied *Grable*'s controlling analysis below, and concluded that "the complaint doesn't 'necessarily raise' a federal issue" because "[a] federal issue is necessarily raised when it 'is a *necessary* element of one of the well-pleaded state claims' in the plaintiff's complaint" and "federal law is not a necessary element to any of Minnesota's claims." Pet. App. 9a–10a (quoting *Franchise Tax Bd.*, 463 U.S. at 13). Had the panel applied a less precise articulation of the substantial-question standard drawn from earlier cases, it would have reached the same conclusion.

That leaves *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922 (5th Cir. 1997); *see* Pet. 13. But as "most courts recognize," that decision is "not good law" to the extent it endorsed an alternative exception to the well-pleaded complaint rule for state-law claims "governed by" federal common law. *Hoboken*, 45 F.4th at 708. The Fifth Circuit itself appears to have abandoned any such endorsement, holding instead that arising-under jurisdiction will lie over a state-law claim "only if" the claim satisfies *Grable* or is completely preempted. *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551 (5th Cir. 2008). Post-*Grable*, the Fifth Circuit has never cited *Sam L. Majors* for any jurisdictional holding, and has never suggested federal common law can provide an independent basis to circumvent the well-pleaded complaint rule.

In any event, the "narrow holding" in *Sam L. Majors* is "necessarily limited" by two conditions not present here. 117 F.3d at 929 nn. 15 & 16; *see also Connecticut*, 2023 WL 6279941, at *8 ("[N]ot even

the Fifth Circuit panel that decided *Sam L. Majors Jewelers* took its own holding at face value."). First, the plaintiff there alleged that an airline mishandled its jewelry, and the court identified a "clearly established federal common law cause of action against air carriers for lost shipments." *Sam L. Majors*, 117 F.3d at 928. Second, Congress affirmatively "preserv[ed]" that federal-common-law cause of action in the Airline Deregulation Act of 1978. *Id.* Here, by contrast, petitioners identify no federal-common-law cause of action that gives the State a right to sue petitioners for the deceptive and wrongful promotion of their products, and Congress displaced the one body of federal common law petitioners say "governs." *See AEP*, 564 U.S. at 423. There is no reason to believe this materially different case would be decided differently under whatever former Fifth Circuit jurisprudence *Sam L. Majors* may represent.

3. Finally, even if there were some tension between the decision below and petitioners' pre-*Grable* cases, that tension would only illustrate the previously "muddled backdrop" of arising-under jurisprudence that lower courts struggled to apply and this Court has endeavored to clean up. *Manning*, 578 U.S. at 385. "[F]or many decades" before *Grable*, there was no "well-defined test" to determine whether federal-question jurisdiction existed over state-law causes of action. *Id.* The "canvas" of opinions on the subject looked instead "like one that Jackson Pollock got to first." *Gunn*, 568 U.S. at 258. "It should [therefore] come as no surprise that different circuits" attempting to apply the well-pleaded complaint rule have, over time, "defined and classified [its] exceptions using slightly different labels and subgroupings." *Connecticut*, 2023 WL 6279941, at *6 n.1.

Beginning with *Grable*, this Court has sought to "bring some order to this unruly doctrine." *Gunn*, 568 U.S. at 258. It has succeeded. Today, courts in every circuit use *Grable* to determine whether, absent complete preemption, a state-law claim arises under federal law for jurisdictional purposes. *Grable* and its progeny successfully ended any disunity that existed among the circuits.

### B. In *Connecticut v. Exxon Mobil Corp.*, the Second Circuit confirmed that claims like Minnesota's are not removable, as every circuit to consider the question has held.

Petitioners attempt to engineer a circuit split, relying on the Second Circuit's decision in *City of New York*. *See* Pet. 17–21. This Court denied certiorari petitions in six cases raising the same purported conflict last term, *see supra* n.1, and there is no basis for the Court to revisit those denials here. To the contrary, the Second Circuit has since affirmed remand in the materially similar *Connecticut* case, and rejected the exact arguments petitioners advance.

1. The complaint in *Connecticut* brought claims under that state's consumer protection statute, alleging "that Exxon Mobil had engaged in a decades-long 'campaign of deception' to knowingly mislead and deceive Connecticut consumers about the negative climatological effects" of its fossil fuel. 2023 WL 6279941, at *1. Exxon removed, asserting as petitioners do here "that 'the artful-pleading doctrine' provides a broad, flexible exception from the well-pleaded complaint rule," separate from the *Grable* and complete-preemption analyses. *Id.* at *5.

The court examined its precedent discussing the doctrine, and held that "the 'artful-pleading doctrine'

is simply a label for" the exercise of removal jurisdiction over a state-law claim that is completely preempted, or is expressly made removable by statute. *Id.* at *6. The court rejected "Exxon Mobil's argument for a 'federal-common-law exception' [that] would appear to hinge on the proposition that the well-pleaded complaint rule must yield not only in situations of complete preemption, but also in certain situations of *ordinary* preemption." *Id.* at *6 (cleaned up). The court was "wholly unpersuaded by Exxon Mobil's efforts to push the boundaries of the exceptions" to the well-pleaded complaint rule, *id.* at *8, and held that Connecticut's claims did not arise under federal law and were not removable on any basis, *id.* at *9–16. In both reasoning and results, the Second Circuit aligns with the decision below.[4]

2. The *City of New York* decision addressed an entirely different issue. There, the Second Circuit held that certain state-law claims brought against oil-and-gas companies were preempted, and affirmed dismissal under Fed. R. Civ. P. 12(b)(6). 993 F.3d at 88–89. The court expressly "pause[d]" to "reconcile [its] conclusion" with "the parade of [other] recent opinions holding that state-law claims for public nuisance brought against fossil fuel producers do not arise under federal law" for purposes of removal jurisdiction. *Id.* at 93 (cleaned up). The Second Circuit acknowl-

[4] Petitioners may reply that *Connecticut* illustrates a *different* circuit split: the Second Circuit there declined to resolve whether federal common law can ever "give rise to complete, jurisdictional preemption" while the Eighth Circuit here held that it cannot. *Compare* 2023 WL 6279941, at *9 n.4, *with* Pet. App. 7a. But the Second Circuit panel expressly stated that the issue would "have to wait for another day," because Exxon waived the argument. 2023 WL 6279941, at *9 n.4. The Second Circuit cannot conflict with another court as to an issue it has declined to consider.

edged that, under the well-pleaded complaint rule, "the fact that a defendant might ultimately prove that a plaintiff's claims are pre-empted under federal law does not establish that they are removable to federal court." *Id.* at 94 (quoting *Caterpillar*, 482 U.S. at 398, in parenthetical) (cleaned up). It thus concluded that its holding did not conflict with the "fleet of [other] cases" holding that "anticipated defenses"—including defenses based on federal common law—cannot "singlehandedly create federal-question jurisdiction under 28 U.S.C. § 1331 in light of the well-pleaded complaint rule." *Id.*

That conclusion has been reaffirmed by the First, Third, Fourth, and Tenth Circuits, all of which addressed *City of New York* in affirming remand of analogous cases to state court. *See Rhode Island*, 35 F.4th at 55; *Hoboken*, 45 F.4th at 708; *Baltimore*, 31 F.4th at 203; *Suncor*, 25 F.4th at 1262. Even before the *Connecticut* ruling, those courts distinguished *City of New York* based on its "completely different procedural posture" and held that it shed no light on the removability of state-law claims. *E.g.*, *Baltimore*, 31 F.4th at 203. And the *Connecticut* opinion affirmed remand, expressly "declin[ing]" the defendant's "invitation to find federal-question jurisdiction on the basis of ordinary preemption." 2023 WL 6279941, at *6; *see also id.* at *9 n.4 (distinguishing *City of New York*).[5]

[5] To the extent any tension might remain between *Connecticut* and *City of New York*, that tension does not "present a reviewable conflict, since such differences of view are deemed an intramural matter to be resolved by the Court of Appeals itself." John Marshall Harlan, *Manning the Dikes*, 13 Rec. Ass'n B. N.Y. City 541, 552 (1958); *see also, e.g.*, *Joseph v. United States*, 574 U.S. 1038, 135 S. Ct. 705, 707 (2014) (Kagan, J., respecting denial of certiorari) ("[W]e usually allow the courts of appeals to clean up intra-circuit divisions on their own.").

## II. The decision below is correct.

The decision below correctly follows this Court's precedent explaining how to determine whether a state-law cause of action presents a federal question. Petitioners' contention that "[t]he artful-pleading principle allows the removal of [Minnesota's] claims" notwithstanding the well-pleaded complaint rule because "claims alleging injury from interstate and international air pollution . . . inherently *are* federal claims" governed by federal common law is wrong for multiple reasons. Pet. 28. First, the State's claims are not within the scope of any body of federal common law this Court has ever recognized. Second, the court of appeals correctly held that jurisdiction could not be sustained under the well-pleaded complaint rule or its exceptions, because the State's state-law claims are not completely preempted and are not removable under *Grable*.

1. Petitioners concede that "the Clean Air Act has displaced the remedy for federal-common-law claims involving interstate emissions," Pet. 30, but nonetheless assert that federal common law still "governs" and dramatically confines the lawmaking and law enforcement authority of the states. That striking proposition cannot be reconciled with this Court's analyses in *AEP* and *Int'l Paper Co. v. Ouellette*, 479 U.S. 481 (1987).

In *Ouellette*, the Court considered a preemption challenge to state-law public nuisance claims that were formerly governed by the federal common law of interstate pollution. 479 U.S. at 484, 487. Because the Clean Water Act had displaced that body of judge-made law, the Court framed the relevant inquiry as whether the Act preempted state law—a question it

answered by conducting a traditional statutory preemption analysis. *See id.* at 491–500.

Twenty years later, this Court conducted the same analysis when discussing the displacement of federal common law as it related to greenhouse gas emissions—the same law petitioners invoke here. *AEP*, 564 U.S. at 429. After holding that the Clean Air Act displaced the plaintiffs' federal-common-law claims, the Court remanded the plaintiffs' *state* claims for further consideration by the lower courts, noting that "the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act." *Id.* The Court did not directly or indirectly instruct lower courts to borrow from the displaced federal common law to conduct that analysis. *Id.*[6]

These decisions make clear that "federal common law ceases to exist" after it has been displaced by a statute, leaving the statute as the sole basis for preempting or "control[ling]" a plaintiff's state-law claims. *Baltimore*, 31 F.4th at 204–05. To conclude otherwise would be incompatible with this Court's "commitment to the separation of powers"—a commitment "too fundamental" to permit "rel[iance] on federal common law" after Congress has spoken. *Milwaukee II*, 451 U.S. at 315 (quotations omitted).

In any event, the Eighth Circuit correctly held that even assuming some federal common law of interstate

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[6] Petitioners read *AEP* as holding only that the CAA displaced "the *remedy* for federal-common-law claims involving interstate emissions," Pet. 30 (emphasis added), but that misstates the decision. The Court held that Congress "displace[d] the *claims* the plaintiffs s[ought] to pursue," *AEP*, 564 U.S. at 415 (emphasis added), because "[a]ny such *claim* would be displaced by the federal legislation authorizing EPA to regulate carbon-dioxide emissions," *id.* at 423 (emphasis added).

pollution nuisance still exists, it "doesn't occupy the same substantive realm as [the] state-law fraud, negligence, products liability, or consumer protection claims" the State brought here. Pet. App. 7a. This Court has only ever applied the federal common law of interstate pollution in nuisance cases where a sovereign State seeks to reduce or mitigate the amount of pollution released from a specific out-of-state source. *See AEP*, 564 U.S. at 421 ("Decisions of this Court . . . have approved federal common-law suits brought by one State to abate pollution emanating from another State.").[7] Minnesota has not pleaded a nuisance claim.

There has never been a federal common law that would apply to the State's claims, precisely because they vindicate the core state "interest in ensuring the accuracy of commercial information in the marketplace," *Edenfield v. Fane*, 507 U.S. 761, 769 (1993), and target alleged misconduct the States have traditionally regulated, *see, e.g.*, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541–42 (2001) (identifying "advertising" as "a field of traditional state regulation" (cleaned up)); *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989) (identifying "unfair business practices" as "an area traditionally regulated by the States"); *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 150 (1963) (underscoring States' "traditional power to enforce otherwise valid regulations designed

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[7] *See also Illinois v. City of Milwaukee*, 406 U.S. 91, 107 (1972) ("*Milwaukee I*"); *New Jersey v. City of New York*, 283 U.S. 473, 476–77, 481–483 (1931) (seeking "an injunction" that would "restrain[] the city from dumping garbage into the ocean or waters of the United States off the coast of New Jersey and from otherwise polluting its waters and beaches"); *Georgia v. Tenn. Copper Co.*, 240 U.S. 650, 650–51 (1916) (seeking to enjoin copper smelters from discharging noxious gas); *Missouri v. Illinois*, 180 U.S. 208, 241–43, 248 (1901) (seeking to restrain sewage discharge).

for the protection of consumers."). "There is no substitute federal cause of action for the state-law causes of action Minnesota brings," regardless whether some vestigial common law survived displacement by the Clean Air Act. Pet. App. 7a.

2. The Eighth Circuit's determination that federal common law cannot provide an independent short-cut around the well-pleaded complaint rule—"[e]ven if federal common law still exists in this space and provides a cause of action to govern transboundary pollution cases"—is also correct. *See* Pet. App. 7a. That conclusion flows from this Court's clear guidance.

For more than a century, the Court has held that a case arises under federal law "only when the plaintiff's statement of his own cause of action shows that it is based upon federal law." *Vaden*, 556 U.S. at 60 (quoting *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908)). "It does not suffice that the facts alleged in support of an asserted state-law claim would also support a federal claim." *Beneficial Nat'l Bank*, 539 U.S. at 12 (Scalia, J., dissenting). "Nor does it even suffice that the facts alleged in support of an asserted state-law claim *do not support* a state-law claim and would *only* support a federal claim," because "[j]urisdiction may not be sustained on a theory that the plaintiff has not advanced." *Id.* (quoting *Merrell Dow Pharms. Inc.*, 478 U.S. at 809 n.6). That is true even if federal law preempts the state cause of action. As early as 1936, the Court recognized that "[b]y unimpeachable authority, a suit brought upon a state statute does not arise under an act of Congress or the Constitution of the United States because prohibited thereby." *Gully*, 299 U.S. at 116.

The court of appeals observed that the well-pleaded complaint rule has "two important exceptions," name-

ly complete preemption and *Grable*. Pet. App. 5a. The court then correctly reasoned that federal common law could not completely preempt the State's claims because "Congress has not acted," so "[e]ven if federal common law still exists in this space," "the presence of federal common law here does not express Congressional intent of any kind." Pet. App. 7a. That holding correctly applies this Court's precedent that only "*Congress* may so completely pre-empt a particular area that any civil complaint raising" claims within that area "is necessarily federal in character," *Metro. Life Ins.*, 481 U.S. at 63–64 (emphasis added), and "may be expected to make that atypical intention clear" when it is present, *Empire Healthchoice*, 547 U.S. at 698. This Court has thus been "reluctant to find that extraordinary pre-emptive power" even within federal statutory schemes that are expansive, detailed, and national in scope. *See Metro. Life Ins.*, 481 U.S. at 65.

Petitioners relatedly fault the court of appeals for "treat[ing] the artful-pleading principle as synonymous with complete preemption," Pet. 28, but that is what this Court's precedents hold. This Court recognizes, in petitioners' words, "an 'independent corollary' of the well-pleaded complaint rule," whereby "a plaintiff cannot 'block removal' by artfully pleading its claims" to obscure their federal-law basis. Pet. 28. What the Court said in *Caterpillar*, however, is that there "exist[s] . . . an 'independent corollary' to the well-pleaded complaint rule, . . . *known as the complete pre-emption doctrine*," that operates when "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Caterpillar*, 482 U.S. at 393 (cleaned up) (emphasis added). Citing the same authority relied on in *Caterpillar*, the Court reiterated a

decade later that "as an 'independent corollary' to the well-pleaded complaint rule . . . [t]he 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).[8] The Court has never held that federal common law may completely preempt state law and has never applied the artful pleading doctrine outside the context of complete preemption. The Court has certainly never suggested that the constitution vests authority in *federal judges* to craft common law rules with complete preemption's "extraordinary" preemptive power. *See Caterpillar*, 482 U.S. at 393 (cleaned up).

Still, petitioners say "[t]here is no plausible reason why" only federal statutes and not federal common law should be capable of carrying complete preemptive force. Pet. 29 (citation omitted). But the reasons are obvious. Judge-made federal law "plays a necessarily modest role under a Constitution that vests the

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[8] Petitioners cite the second footnote in *Federated Dep't Stores, Inc. v. Moitie*, for its statement that a court should sometimes "determine whether the real nature of the claim is federal, regardless of [the] plaintiff's characterization." 452 U.S. 394, 397 n.2 (1981). But the Court in *Rivet* expressly limited "*Moitie*'s enigmatic footnote" to its "case-specific context," because it "caused considerable confusion in the circuit courts" and "will not bear the heavy weight lower courts have placed on it." 522 U.S. at 477–78. *See also* Arthur R. Miller, *Artful Pleading: A Doctrine in Search of Definition*, 76 Tex. L. Rev. 1781, 1781–82, 1800–18 (1998) (discussing "criticisms leveled against the artful-pleading doctrine," based in part on courts' persistent "misreading of a footnote" in *Moitie*, which *Rivet* "summarily rejects"). The *Rivet* and *Caterpillar* opinions indicate that the "artful pleading" and "complete preemption" doctrines are co-extensive. *Cf. Connecticut*, 2023 WL 6279941, at *6 (under circuit precedent, artful pleading "is simply a label for" state-law claims that are either completely preempted or expressly made removable by statute).

federal government's 'legislative Powers' in Congress and reserves most other regulatory authority to the States," *see Rodriguez v. FDIC*, 140 S. Ct. 713, 717 (2020), and petitioners' theory would radically expand federal courts' substantive and jurisdictional lawmaking authority. In petitioners' view, a district judge presented with a complaint pleading only state-law causes of action may (1) craft a new substantive rule of federal common law, (2) hold that the newly minted law replaces all state law within its field, including the plaintiff's claims, (3) hold that state causes of action within the new common law's scope are thus actually federal claims, and then (4) bootstrap federal-question jurisdiction over the complaint—all with no guidance from Congress. Petitioners would not even require the court to tether its decision to a specific federal statute or constitutional provision, if it finds "the structure of the Constitution" supports "transform[ing] a state-law claim into a federal one." Pet. 29. Worse still, petitioners say Congress would be powerless to undo that ruling, even if it displaces the federal common law by statute—if a court determines federal common law "governs" a certain subject, petitioners say the states are forevermore constitutionally barred from applying their laws to that subject, or even exercising jurisdiction over litigation pertaining to that subject, even "after the statutory displacement" and "even if federal law provides no remedy" for the plaintiff's alleged injuries. *See* Pet. 30. The federalism and separation of powers problems that follow from petitioners' theory are self-evident and enormous. Understandably, no court has adopted that approach.

3. Petitioners' separate insinuation that the court of appeals was wrong to apply the well-pleaded complaint rule at all because "federal common law provides a basis for removal of claims artfully pleaded

under state law," Pet. 16, is unsupportable and not a basis for review. Relying on Judge Stras's concurrence, Petitioners say "there are strong reasons to believe that claims such as respondent's should proceed in federal court," Pet. 23, and "'(p)erhaps for a uniquely federal interest like interstate pollution,' removal of a putative state-law claim *'should'* be permissible," irrespective of the well-pleaded complaint rule. Pet. 11 (quoting Pet. App. 25a). That position is irreconcilable with the controlling statutes and a century of precedent interpreting them.

As noted above, Section 1441's earliest ancestor was enacted in 1887 as an amendment to the federal removal statute, and the Court has always "interpret[ed] that amendment to authorize removal only where original federal jurisdiction exists." *Caterpillar*, 482 U.S. at 393. That is true, in turn, "when the plaintiff's statement of his own cause of action shows that it is based upon [federal] laws or th[e] Constitution." *Mottley*, 211 U.S. at 152. The Court has repeatedly rejected "attempts to justify removal on the basis of facts not alleged in the complaint," and repeatedly held that "[t]he 'artful pleading' doctrine cannot be invoked in such circumstances." *See Caterpillar*, 482 U.S. at 397.

Judge Stras's concurrence opines that removal jurisdiction sometimes "operate[s] in . . . confounding way[s]," Pet. 25a, because "the complaint usually does not say whether a federal defense is available and, if so, whether anyone will raise it," or "whether the federal issue, if raised, will play a 'substantial' role in the litigation." Pet. App. 25a. When "[n]one of those mysteries exist," in Judge Stras's view, and "no one doubts" that a defendant will "raise a federal-preemption defense," the case should come within the district courts' federal-question jurisdiction. *See id.* But this Court

has time and again gauged the limits of federal-question jurisdiction conferred by Congress, and has time and again held that "the party who brings a suit is master to decide what law he will rely upon, and therefore does determine whether he will bring a 'suit arising under'" the laws of the United States. *See The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913). "[A]nd accordingly[,] jurisdiction cannot be conferred by the defense, even when anticipated and replied to" in the complaint. *Id.* The Court has repeated that construction of the federal-question and removal jurisdiction statutes countless times, and Congress has never changed the substance of either Section 1331 or Section 1441.

When Congress determines federal jurisdiction is necessary for a certain class of cases, it can enact jurisdictional statutes specific to that class, and has done so many times. Officers of the United States may remove state-law civil and criminal proceedings for or relating to acts under color of office, for example, so long as they present a colorable federal defense. *See, e.g.*, *Mesa v. California*, 489 U.S. 121, 139 (1989); 28 U.S.C. § 1442; *see also, e.g.*, 28 U.S.C. §§ 1334, 1452 (providing original and removal jurisdiction over any claim "arising in or related to" a bankruptcy proceeding); 42 U.S.C. § 2014(hh) (providing original and removal jurisdiction over any claim involving a nuclear power accident). There is no reason to reconsider this Court's longstanding decisions construing the general federal question and general removal statutes, which Congress has left undisturbed.

Existing precedent is more than capable, moreover, of predictably and fairly resolving jurisdictional disputes. The *Grable* analysis, which this Court has taken pains to develop, "provides ready answers to juris-

dictional questions" and "gives guidance whenever borderline cases crop up." *Manning*, 578 U.S. at 392. The Court applied exactly that "guidance" in *Manning*, when it held that *Grable* provides the appropriate analytical framework for determining whether a state-law cause of action arises under the Securities Exchange Act and is thus within the exclusive jurisdiction of the district courts. *See id.* at 383–84; 15 U.S.C. § 78aa(a). The petitioner there urged that "a judge should go behind the face of a complaint to determine whether it is the product of 'artful pleading.'" *Id.* at 392. The Court disagreed: "[w]e have no idea how a court would make that judgment," and "a tortuous inquiry into artful pleading" would be "excruciating for courts to police." *Id.* at 392, 393. The Court declined to adopt that "untested approach" because "[j]urisdictional tests are built for more than a single dispute" and "forcing courts to toggle back and forth between [an 'artful pleading' analysis] and the 'arising under' standard, would undermine consistency and predictability in litigation." *Id.* at 392, 393; *see also Hertz Corp. v. Friend*, 559 U.S. 77, 79 (2010) ("[A]dministrative simplicity is a major virtue in a jurisdictional statute.").

## III. The Question Presented is neither recurring nor important.

Denying certiorari is also appropriate because the petition does not present any questions of recurring importance. Urging otherwise, petitioners rehash the same flawed arguments they unsuccessfully advanced in past petitions.

1. Petitioners present an exceedingly narrow, atypical question: whether defendants can remove state-law claims to federal court based on congressionally displaced federal common law, even though they fail

to satisfy the requirements of *Grable* and complete preemption. The cases affected by the Question Presented are necessarily few, because federal common law applies only in "limited areas" that are "few and restricted." *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981) (quotations omitted). The only potentially affected cases petitioners identify are other lawsuits concerning fossil-fuel companies' allegedly deceptive conduct related to climate change, a vanishingly small fraction of the thousands of cases remanded to state court each year.

2. Denying certiorari would not upset federal policies relating to "global warming, . . . energy production, economic growth, foreign policy, [or] national security." *See* Pet. 32. Again, the only question raised in this Petition is whether the State's lawsuit should proceed in state or federal court. Petitioners cannot seriously argue that their vaguely defined federal interests would be jeopardized by a state court entertaining the merits rather than a federal court. Pet. 33. "Our system of 'cooperative judicial federalism' presumes federal and state courts alike are competent to apply federal and state law," *McKesson v. Doe*, 592 U.S. __, 141 S. Ct. 48, 51 (2020), and this Court has already said "it is less troubling for a state court to consider such an issue than to lose all ability to adjudicate a suit raising only state-law causes of action," *Manning*, 578 U.S. at 392.

3. Petitioners invoke the United States' amicus brief in *Suncor*, which recommended denying that petition, as a reason for granting review here. But far from confirming that the Question Presented "involves significant, consequential issues that require resolution," Pet. 23, the government cogently explained why petitioners' novel theory of federal-common-law removal

does not warrant this Court's time and resources. *See generally Suncor*, U.S. Br.

To the extent, moreover, that the amicus brief conflicts with past positions taken by the United States, the government had good reason to "reexamin[e]" petitioners' jurisdictional theory considering its unanimous rejection by "five courts of appeals," since increased to seven. *Id.* at 7. Those "intervening developments" amply support the Solicitor General's conclusion "that state-law claims like those pleaded here should not be recharacterized as claims arising under federal common law." *Id.*

4. Finally, petitioners make passing reference to the need for clarity and uniformity in jurisdictional rules. Pet. 32. But it is petitioners who seek to undo this Court's progress clarifying the "muddled backdrop" of jurisdictional rules that existed prior to *Grable*. *Manning*, 578 U.S. at 385. "Jurisdictional tests are built for more than a single dispute," and the district courts have no need for a one-off jurisdictional test that applies only to judge-made federal law; the *Grable* analysis "provides ready answers to jurisdictional questions" and already "gives guidance whenever borderline cases crop up." *Id.* at 392, 393.

## IV. This case is a poor vehicle.

This case is a poor vehicle for reviewing petitioners' unusual theory of federal-common-law removal. To reverse the judgment below, this Court would need to (1) conclude that a congressionally displaced body of federal common law "governs" the State's state-law claims, then (2) create a new exception to the well-pleaded complaint rule that stands separate and apart from both *Grable* and complete preemption. But as petitioners necessarily concede, "the court of appeals did

not reach the question whether federal common law governs claims" like the State's. Pet. 17, 29. As a result, this Court would need to function as a court of "first view," not "a court of review," if it were to grant certiorari in this case. *Jennings v. Rodriguez*, 583 U.S. __, 138 S. Ct. 830, 851 (2018) (citation omitted).

## CONCLUSION

The Court should deny the petition.

Respectfully Submitted,

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