No.

In the Supreme Court of the United States

SUNOCO LP, ET AL., PETITIONERS

v.

CITY AND COUNTY OF HONOLULU, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF HAWAII

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are Sunoco LP; Aloha Petroleum, Ltd.; Aloha Petroleum LLC; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Chevron Corporation; Chevron U.S.A. Inc.; Woodside Energy Hawaii Inc.; BP p.l.c.; BP America Inc.; Marathon Petroleum Corp.; ConocoPhillips; ConocoPhillips Company; Phillips 66; and Phillips 66 Company.

Petitioner Sunoco LP is a publicly traded master limited partnership. Sunoco LP and its general partner, Sunoco GP LLC, are subsidiaries of Energy Transfer Operating, L.P., and Energy Transfer LP, which are publicly traded limited partnerships. No other publicly held corporation owns 10% or more of Sunoco LP's stock, and no publicly held company owns 10% or more of Energy Transfer Operating L.P.'s or Energy Transfer LP's stock.

Petitioner Aloha Petroleum, Ltd., and petitioner Aloha Petroleum LLC are wholly owned subsidiaries of Sunoco LP.

Petitioner Exxon Mobil Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner ExxonMobil Oil Corporation is a wholly owned indirect subsidiary of Exxon Mobil Corporation.

Petitioner Chevron Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Chevron U.S.A. Inc. is an indirect subsidiary of Chevron Corporation.

Petitioner Woodside Energy Hawaii Inc. is a wholly owned indirect subsidiary of Woodside Energy Group Ltd., a publicly traded company. No publicly held company owns 10% or more of Woodside Energy Group Ltd.'s stock.

Petitioner BP p.l.c. has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner BP America Inc. is a wholly owned indirect subsidiary of BP p.l.c.

Petitioner Marathon Petroleum Corp. has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner ConocoPhillips has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner ConocoPhillips Company is a wholly owned subsidiary of ConocoPhillips.

Petitioner Phillips 66 has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Phillips 66 Company is wholly owned by Phillips 66.

Respondents are the City and County of Honolulu; the Honolulu Board of Water Supply; Shell plc; Shell USA, Inc.; Shell Oil Products Company LLC; BHP Group Limited; and BHP Group plc.*

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* Pursuant to Rule 12.6, petitioners have notified the Clerk that they believe that BHP Group Limited and BHP Group plc have no interest in the outcome of the petition. Petitioners have served a copy of that notice on all parties to the proceedings below.

RELATED PROCEEDINGS

United States District Court (D. Haw.):

City & County of Honolulu, et al. v. *Sunoco LP, et al.*, Civ. No. 20-163 (Feb. 12, 2021)

United States Court of Appeals (9th Cir.):

City & County of Honolulu, et al. v. *Sunoco LP, et al.*, No. 21-15313 (July 7, 2022)

United States Supreme Court:

Sunoco LP, et al. v. *City & County of Honolulu, et al.*, No. 22-523 (Apr. 24, 2023)

Hawaii Circuit Court (1st Cir.):

City & County of Honolulu, et al. v. *Sunoco LP, et al.*, No. 1CCV-20-380 (Mar. 29, 2022) (order denying motion to dismiss for failure to state a claim)

City & County of Honolulu, et al. v. *Sunoco LP, et al.*, No. 1CCV-20-380 (Mar. 31, 2022) (order denying motion to dismiss for lack of personal jurisdiction)

City & County of Honolulu, et al. v. *Sunoco LP, et al.*, No. 1CCV-20-380 (June 3, 2022) (order granting leave to file an interlocutory appeal)

Hawaii Intermediate Court of Appeals:

City & County of Honolulu, et al. v. *Sunoco LP, et al.*, CAAP-22-429 (Mar. 3, 2023) (order granting application to transfer case to the Hawaii Supreme Court)

Hawaii Supreme Court:

City & County of Honolulu, et al. v. *Sunoco LP, et al.*, No. SCAP-22-429 (Oct. 31, 2023)

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Sunoco LP; Aloha Petroleum, Ltd.; Aloha Petroleum LLC; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Chevron Corporation; Chevron U.S.A. Inc.; Woodside Energy Hawaii Inc.; BP p.l.c.; BP America Inc.; Marathon Petroleum Corp.; ConocoPhillips; ConocoPhillips Company; Phillips 66; and Phillips 66 Company respectfully petition for a writ of certiorari to review the judgment of the Hawaii Supreme Court in this case.

OPINIONS BELOW

The opinion of the Hawaii Supreme Court (App., *infra*, 1a-72a) is reported at 537 P.3d 1173. The opinion of the trial court (App., *infra*, 73a-84a) is unreported.

JURISDICTION

The judgment of the Hawaii Supreme Court was entered on October 31, 2023. On January 16, 2024, Justice Kagan extended the time within which to file a petition for a writ of certiorari until February 28, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). See *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 178-180 (1988); *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 482-483 (1975).

CONSTITUTIONAL PROVISION INVOLVED

Article VI, clause 2, of the United States Constitution provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

STATEMENT

Rarely does a case of such extraordinary importance to one of the Nation's most vital industries come before this Court. Energy companies that produce, sell, and market fossil fuels are facing numerous lawsuits in state courts across the Nation seeking billions of dollars in damages for injuries allegedly caused by global climate change. Having litigated the question whether those cases were removable to federal court—including before this Court in *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230 (2021)—the question now is whether the plaintiffs' claims can legitimately proceed on the merits.

This case presents the Court with its only foreseeable opportunity in the near future to decide a dispositive question that is arising in every climate-change case: whether federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate. After the decision below, there is now a clear conflict on that question.

Petitioners are energy companies that produce or sell fossil fuels; the plaintiff respondents are the municipal government of Honolulu, Hawaii, and the local water utility board. Like many other state and local governments in similar cases across the country, respondents filed this action against petitioners in local state court, asserting claims purportedly arising under state law to recover for harms that respondents allege they have sustained (and will sustain) because of the physical effects of global climate change.

After unsuccessfully seeking to remove the case to federal court, petitioners moved to dismiss the complaint on the ground, *inter alia*, that federal law precludes the invocation of state law in this context. The trial court denied petitioners' motion.

The Hawaii Supreme Court affirmed. The court acknowledged this Court's precedents holding that interstate emissions constitute an inherently federal area exclusively governed by federal law, including federal common law in the absence of applicable statutory law. But the court then concluded that, because Congress had displaced any remedy previously available under federal common law by enacting the Clean Air Act, state law was presumptively competent to regulate in this inherently federal area. In so holding, the Hawaii Supreme Court expressly declined to follow the Second Circuit's decision in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021),

which held that federal law precluded materially identical state-law claims that sought damages from many of the same fossil-fuel producers sued here for the alleged effects of climate change. The Hawaii Supreme Court further held that, despite the complaint's focus on the physical effects of climate change, interstate and international emissions were not the source of respondents' injuries; petitioners' marketing and public statements were.

The Hawaii Supreme Court's decision was incorrect, and it provides this Court with the ideal opportunity to address whether the state-law claims asserted in this nationwide litigation are even allowable before the energy industry is threatened with potentially enormous judgments. Contrary to the Hawaii Supreme Court's decision, state law can only provide redress for harms caused by in-state sources of emissions. And as one prominent judge has put it, "there is no hiding the obvious" that climate-change claims like respondents' present "a clash over worldwide greenhouse gas emissions and slowing global climate change." *Minnesota* v. *American Petroleum Institute*, 63 F.4th 703, 717 (8th Cir. 2023) (Stras, J., concurring) (citation omitted), cert. denied, No. 23-168, 2024 WL 72389 (Jan. 8, 2024).

Without this Court's intervention, years might pass before another opportunity to address this pressing question comes along. The Court should grant review and clarify whether state law is competent to impose the costs of global climate change on a subset of the world's energy producers chosen by respondents.

A. Background

1. As this Court has long explained, there are certain narrowly defined areas in which "our federal system does not permit the controversy to be resolved under state law." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*,

451 U.S. 630, 640-641 (1981). Among those areas are ones where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Ibid.* (citation omitted). In those areas, "the Constitution implicitly forbids" States from "apply[ing] their own law," and disputes in those inherently federal areas must "turn on federal rules of law." *Franchise Tax Board* v. *Hyatt*, 139 S. Ct. 1485, 1498 (2019). Put another way, "the basic scheme of the Constitution" "demands" a federal rule of decision in such inherently federal areas. *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 421 (2011).

When Congress has not created a rule of decision for a particular question arising in an inherently federal area, federal courts have the power to prescribe a rule as a matter of federal common law. See, *e.g.*, *Texas Industries*, 451 U.S. at 640-641. Those court-created rules are subject to displacement by statute, however, because "it is primarily the office of Congress, not the federal courts, to prescribe national policy in areas of special federal interest." *American Electric Power*, 564 U.S. at 423-424.

2. One established category of inherently federal claims is redress for injuries allegedly caused by interstate pollution. For over a century, "a mostly unbroken string of cases has applied federal law to disputes involving" such claims. *City of New York*, 993 F.3d at 91 (collecting cases). As this Court has stated, federal law must govern such claims because they "touch[] basic interests of federalism" and implicate the "overriding federal interest in the need for a uniform rule of decision." *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 105 n.6 (1972).

In the absence of any applicable federal statute, courts previously applied federal common law to claims seeking redress for interstate air and water pollution. See, *e.g.*,

Milwaukee I, 406 U.S. at 103; *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 237 (1907). But Congress later enacted comprehensive legislation governing interstate air and water pollution—namely, the Clean Air Act and Clean Water Act.

This Court addressed the effect of the Clean Water Act on the preexisting federal common law in *City of Milwaukee* v. *Illinois* (*Milwaukee II*), 451 U.S. 304 (1981). There, the Court held that the Clean Water Act precluded federal-common-law claims seeking to abate a nuisance created by water pollution commencing in another State. *Id.* at 317. Then, in *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), the Court addressed the role of state law in the wake of that statutory displacement. The Court held that, in light of the Clean Water Act's "pervasive regulation" and "the fact that the control of interstate pollution is primarily a matter of federal law," the only permissible state-law actions seeking redress for interstate water pollution are "those specifically preserved by the Act." *Id.* at 492 (citation omitted). The Court then held that the Clean Water Act preserved only suits under the law of the State in which the source of pollution at issue was located. See *id.* at 487-498.

In *American Electric Power*, *supra*, the Court addressed the effect of the Clean Air Act on the federal common law governing air pollution. The Court held that the Act displaced nuisance claims under federal common law seeking the abatement of greenhouse-gas emissions from another State. See 564 U.S. at 424. Because the Clean Air Act "'speaks directly' to emissions of carbon dioxide from the defendants' plants," the Court saw "no room for a parallel track" under federal common law. *Id.* at 424-425. The Court left open the question whether "the law of each State where the defendants operate powerplants" could be applied. *Id.* at 429.

3. Another established category of inherently federal claims are those that threaten to "impair the effective exercise of the Nation's foreign policy." *Zschernig* v. *Miller*, 389 U.S. 429, 440 (1968). As the Court has explained, numerous constitutional and statutory provisions "reflect[] a concern for uniformity" and "a desire to give matters of international significance to the jurisdiction of federal institutions." *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 427 n.25 (1964). Accordingly, "at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy." *American Insurance Association* v. *Garamendi*, 539 U.S. 396, 413 (2003) (citation omitted).

B. Facts And Procedural History

1. Since 2017, state and local governments have filed lawsuits in state courts across the country against private energy companies, alleging that the companies' worldwide extraction, production, promotion, marketing, and sale of fossil fuels has contributed to global climate change and thereby caused injury. Dozens of actions have been brought under this theory, including in San Francisco, New York City, Baltimore, and Boulder.[1] Additional suits continue to be filed.

The litigation in these cases initially focused on the question of jurisdiction. The defendants removed the lawsuits to federal court, and the actions were largely remanded to state court. The defendants appealed. The

[1] See, *e.g.*, *City & County of San Francisco* v. *BP p.l.c.*, No. CGC-17-561370 (Cal. Super. Ct.); *Mayor & City Council of Baltimore* v. *BP p.l.c.*, No. 18-4219 (Balt. Cir. Ct.); *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, No. 2018-CV-30349 (Colo. Dist. Ct.); *City of New York* v. *Exxon Mobil Corp.*, No. 451071/2021 (N.Y. Sup. Ct.).

cases eventually reached this Court on the question of appellate jurisdiction; the Court agreed with the defendants' position and remanded the cases to allow the courts of appeals to address the defendants' other grounds for removal. See *BP*, 593 U.S. at 238-239, 246-247.

At roughly the same time, the Second Circuit issued its decision in *City of New York*, *supra*. While the claims in that case were substantively similar to those in other climate-change-related cases, there was no question of jurisdiction in the case, because the plaintiff filed directly in federal court based on diversity jurisdiction. See 993 F.3d at 81, 94. The Second Circuit thus addressed the merits of the plaintiff's climate-change claims, unanimously holding that federal law precludes state-law claims seeking redress for injuries allegedly caused by global climate change. The court concluded that the claims had to be brought under federal common law, but that the Clean Air Act had displaced any such claims with respect to emissions in the United States, and that "foreign policy concerns foreclose[d]" a "cause of action targeting emissions emanating from beyond our national borders." *Id.* at 101. The court rejected the notion that the displacement of federal common law allowed state-law claims to proceed, except to the extent that a plaintiff is seeking relief for injuries caused by in-state emissions. See *id.* at 99-100. But the plaintiff in *City of New York* was "not seek[ing] to take advantage of this slim reservoir of state common law." *Id.* at 100. The plaintiff did not seek this Court's review.

In the wake of this Court's decision in *BP*, the courts of appeals in the removal cases rejected the defendants' jurisdictional arguments. The defendants sought review from this Court; the Court called for the views of the Solicitor General in one case but then denied certiorari, with Justice Kavanaugh noting his dissent. See, *e.g.*, *Suncor Energy (U.S.A.) Inc.* v. *Board of County Commissioners*

of Boulder County, 143 S. Ct. 78 (2022), cert. denied, 143 S. Ct. 1795 (2023). The cases are now largely proceeding in state courts across the country.

2. Petitioners in this case are 15 energy companies that extract, produce, distribute, or sell fossil fuels around the world. The plaintiff respondents are the City and County of Honolulu and the Honolulu Board of Water Supply.

On March 9, 2020, the City and County of Honolulu filed a complaint against petitioners in Hawaii state court, alleging that petitioners have contributed to global climate change, which in turn has caused a variety of harms in Honolulu. The Honolulu Board of Water Supply later joined the case as a plaintiff.

Respondents allege that increased greenhouse-gas emissions around the globe have contributed to a wide range of climate-change-related effects. In particular, respondents cite "sea level rise and attendant flooding, erosion, and beach loss"; "increased frequency and intensity of extreme weather events"; "ocean warming and acidification that will injure or kill coral reefs"; "habitat loss of endemic species"; "diminished availability of freshwater resources"; and "cascading social, economic, and other consequences." Am. Compl. 89, Cir. Ct. Dkt. 45 (Mar. 22, 2021). Respondents allege that those effects have resulted in property damage; "increased planning and preparation costs for community adaptation and resiliency"; and "decreased tax revenue" because of declines in tourism. *Id.* at 90.

Respondents contend that "pollution from [petitioners'] fossil fuel products plays a direct and substantial role in the unprecedented rise in emissions of greenhouse gas pollution," which is the "main driver" of global climate change. Am. Compl. 2. At the same time, respondents concede that "it is not possible to determine the source of

any particular individual molecule of CO_2 in the atmosphere attributable to anthropogenic sources because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses quickly diffuse and comingle in the atmosphere." *Id.* at 107.

Respondents assert state-law claims for public nuisance, private nuisance, strict liability, failure to warn, negligent failure to warn, and trespass. Each claim is premised on the same basic theory of liability: namely, that petitioners knew that their fossil-fuel products would cause an increase in greenhouse-gas emissions, yet failed to warn of that risk and instead engaged in advertising and other speech to persuade governments and consumers not to take steps designed to reduce or regulate fossil-fuel consumption, thereby causing increased emissions and climate change.

3. Petitioners removed this action to federal court. The district court granted Honolulu's motion to remand; the Ninth Circuit affirmed; and this Court denied certiorari. 39 F.4th 1101 (2022), cert. denied, 143 S. Ct. 1795 (2023).

4. On remand in state court, petitioners moved to dismiss the complaint on two grounds. First, a group of petitioners not resident in Hawaii argued that the court lacked personal jurisdiction. Second, all of the petitioners argued that federal law precludes state-law claims seeking redress for injuries allegedly caused by the effects of interstate greenhouse-gas emissions on the global climate. The trial court denied both motions but granted petitioners' motion for leave to file an interlocutory appeal. In authorizing the appeal, the trial court noted that this case is "unprecedented" and that "[t]he complexity, scope, time, and cost of discovery and motion practice, let alone trial, will be enormous." App., *infra*, 73a-84a, 86a-90a.

5. After briefing was complete in the Hawaii Intermediate Court of Appeals, respondents moved to have the case transferred to the Hawaii Supreme Court. See Haw. Rev. Stat. § 602-58(a). The Hawaii Supreme Court accepted the transfer and then affirmed. App., *infra*, 1a-72a, 85a.

a. The Hawaii Supreme Court first addressed the issue of personal jurisdiction. App., *infra*, 19a-36a. Taking the allegations in the complaint as true, the court held that the state long-arm statute authorized the exercise of jurisdiction over the nonresident defendants and that the exercise of jurisdiction satisfied due process. *Ibid.* In so holding, the court rejected petitioners' argument that a sufficient connection between the claims and the forum did not exist because the use of petitioners' products in Hawaii could not have injured respondents, as Hawaii accounts for only 0.06% of the world's carbon-dioxide emissions per year. *Id.* at 23a-24a.

b. The Hawaii Supreme Court then addressed petitioners' argument that federal law precludes state-law claims seeking redress for injuries allegedly caused by greenhouse-gas emissions. See App., *infra*, 37a-53a. Although petitioners had framed their arguments in terms of whether interstate pollution is an inherently federal issue constitutionally committed to the federal government, the court reframed the argument as whether federal common law preempted respondents' state-law claims. See *id.* at 37a-38a.

The court then concluded that federal common law did not preempt respondents' claims because any remedy available under federal common law had been displaced by the Clean Air Act. According to the court, because the federal common law governing interstate-pollution suits "no longer exists," the fact that it once governed could "play[] no part in th[e] court's preemption analysis."

App., *infra*, 46a, 47a (citation omitted). "The correct preemption analysis," in the court's view, "requires an examination *only* of the [Clean Air Act's] preemptive effect." *Id.* at 48a. The court reasoned that petitioners' contrary argument was incorrect in part because it would leave respondents with "*no* viable cause of action under state or federal law." *Id.* at 45a.

The Hawaii Supreme Court expressly declined to follow the Second Circuit's decision in *City of New York*. App., *infra*, 48a. The court asserted that the Second Circuit had improperly treated "displaced federal common law" as preempting state law, and it faulted the Second Circuit for failing to explain why federal law necessarily governed suits seeking redress for interstate pollution. *Id.* at 49a. The court also declined to follow the Seventh Circuit's decision in *Illinois* v. *City of Milwaukee* (*Milwaukee III*), 731 F.2d 403, 411 (1984), cert. denied, 469 U.S. 1196 (1985), which reached a similar conclusion as *City of New York* in the context of the Clean Water Act. App., *infra*, 42a-43a n.9. The court faulted the Seventh Circuit for failing to apply the presumption against preemption and instead holding that state law could govern only as expressly permitted by Congress. *Ibid.*

Separately, the court concluded that, even if federal common law had not been displaced, it would not govern respondents' claims. App., *infra*, 49a-52a. The court recognized that federal common law governs claims where "the source of the injury * * * is pollution traveling from one state to another," but it asserted that the source of respondents' alleged injury was petitioners' "tortious marketing conduct," not "pollution traveling from one state to another." App., *infra*, 50a, 51a. The court did not attempt to reconcile that characterization with its earlier recognition that respondents' theory of liability depends

upon petitioners' conduct allegedly "dr[iving] consumption [of fossil fuels], and thus greenhouse gas pollution, and thus climate change," resulting in alleged physical and economic effects in Honolulu. *Id.* at 18a (citation omitted).

c. Finally, the court concluded that the Clean Air Act did not alone preempt respondents' claims. App., *infra*, 53a-66a. The court began its analysis with the presumption against preemption and proceeded to analyze whether respondents' state-law claims were subject to traditional preemption. *Id.* at 55a-56a. The court concluded that no form of traditional preemption applied, because respondents were only seeking to regulate petitioners' marketing, and "the source of [respondents'] alleged injury is not emissions." *Id.* at 63a. In so holding, the court concluded that this Court's decision in *Ouellette* was inapplicable because respondents' theories of tort liability involved additional elements beyond the release of emissions. *Id.* at 61a-63a.

d. Justice Eddins wrote a separate concurring opinion concerning personal jurisdiction. App., *infra*, 66a-72a. He stated that "the principles that govern personal jurisdiction arose after 1868" but that today "[a] justice's personal values and ideas about the very old days suddenly control the lives of present and future generations." *Id.* at 66a; see *id.* at 66a-67a (citing *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022); *New York State Rifle & Pistol Association, Inc.* v. *Bruen*, 597 U.S. 1 (2022); and *West Virginia* v. *EPA*, 597 U.S. 697 (2022)). He questioned whether this Court's modern personal-jurisdiction precedents would remain intact, stating that "[s]ome justices feel precedent is advisory." *Id.* at 67a, 68a.

REASONS FOR GRANTING THE PETITION

This case presents a case-dispositive and recurring question of extraordinary importance to the energy industry, which is facing dozens of lawsuits seeking billions of dollars in damages for the alleged effects of global climate change. That question is whether federal law precludes the application of state law to claims seeking redress for injuries allegedly caused by interstate and international greenhouse-gas emissions. By allowing respondents' state-law claims to proceed, the Hawaii Supreme Court's decision squarely conflicts with the Second Circuit's decision in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021), and is in serious tension with the decisions of two other federal courts of appeals. The Hawaii Supreme Court's decision is also inconsistent with this Court's precedents: regulation of interstate pollution is an inherently federal area necessarily governed by federal law, and Congress has not permitted—and indeed has preempted—resort to state law except for claims seeking redress for harms caused by in-state emissions.

In these cases, state and local governments are attempting to assert control over the Nation's energy policies by holding energy companies liable for worldwide conduct in ways that starkly conflict with the policies and priorities of the federal government. That flouts this Court's precedents and basic principles of federalism, and the Court should put a stop to it. The petition should be granted.

A. The Decision Below Creates A Conflict On The Question Presented

As the Hawaii Supreme Court recognized, its decision squarely conflicts with the Second Circuit's decision in *City of New York*, which held that federal law precluded materially identical state-law claims. The decision below

is also inconsistent with decisions of the Fourth and Seventh Circuits.

1. In *City of New York*, a municipal government sued a group of energy companies in federal court, alleging that the defendants (including several of the petitioners here) were liable for injuries allegedly caused by the contribution of interstate and international greenhouse-gas emissions to global climate change. As here, the plaintiff asserted claims for public nuisance, private nuisance, and trespass, and sought relief in the form of abatement and damages. See 993 F.3d at 88. And as here, the complaint in *City of New York* alleged that the defendants had "known for decades that their fossil fuel products pose a severe risk to the planet's climate" but had "downplayed the risks and continued to sell massive quantities of fossil fuels, which has caused and will continue to cause significant changes" to the climate. *Id.* at 86-87.

The question before the Second Circuit was "whether municipalities may utilize state tort law to hold multinational oil companies liable for the damages caused by global greenhouse gas emissions." 993 F.3d at 85. The Second Circuit unanimously held that "the answer is 'no.'" *Id.* at 85, 92.

The Second Circuit began its analysis by noting that, "[f]or over a century, a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." 993 F.3d at 91. As the court explained, that is because "such quarrels often implicate two federal interests that are incompatible with the application of state law": the "overriding need for a uniform rule of decision" on matters influencing national energy and environmental policy, and "basic interests of federalism." *Ibid.* (alterations omitted) (quoting *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 105 n.6 (1972)).

In the Second Circuit's view, claims seeking to hold defendants liable for injuries arising from "the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet" are far too "sprawling" for state law to govern. 993 F.3d at 92. The court reasoned that application of state law to the plaintiff's claims would "risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other." *Id.* at 93.

The Second Circuit rejected the plaintiff's argument that displacement by the Clean Air Act of any remedy under federal common law allows state law to govern. See 993 F.3d at 98. "[That] position is difficult to square with the fact that federal common law governed this issue in the first place," the court reasoned, because "where 'federal common law exists, it is because state law cannot be used.'" *Ibid.* (quoting *City of Milwaukee* v. *Illinois* (*Milwaukee II*), 451 U.S. 304, 313 n.7 (1981)). "[S]tate law does not suddenly become presumptively competent," the court continued, "to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *Ibid.* Such an outcome, the Second Circuit concluded, is "too strange to seriously contemplate." *Id.* at 98-99.

The Second Circuit understood Congress to have the power to "grant [S]tates the authority to operate in an area of national concern," but "resorting to state law on a question previously governed by federal common law is permissible only to the extent authorized by federal statute." 993 F.3d at 99 (internal quotation marks, alterations, and citations omitted). The court concluded that the

Clean Air Act "does not authorize the type of state-law claims" the plaintiff was pursuing. *Ibid.* In the Second Circuit's view, the Act permitted only actions brought under "the law of the [pollution's] *source* state," and the plaintiff was not proceeding under that "slim reservoir of state common law." *Id.* at 100.

The Second Circuit further explained that the Clean Air Act did not displace federal common law with respect to claims for harms caused by international emissions, because the Act "does not regulate foreign emissions." 993 F.3d at 95 n.7, 101. But the court concluded that "condoning an extraterritorial nuisance action" for global climate change "would not only risk jeopardizing our [N]ation's foreign policy goals but would also seem to circumvent Congress's own expectations and carefully balanced scheme of international cooperation on a topic of global concern." *Id.* at 103.

2. The decision below conflicts with *City of New York*. Both cases involved nuisance and trespass claims asserted under state law and premised on the contribution of defendants' conduct to interstate and international greenhouse-gas emissions.

Like the Second Circuit, the Hawaii Supreme Court recognized that the Clean Air Act displaced any "federal common law action for interstate pollution suits." App., *infra*, 44a. But the Hawaii Supreme Court proceeded to hold that, after statutory displacement, state law was presumptively competent to govern such actions concerning interstate and international pollution unless the Clean Air Act demonstrated Congress's "clear and manifest purposes" to "supersede[]" state law. *Id.* at 55a; see *id.* at 45a-49a. By contrast, the Second Circuit reached the opposite conclusion, holding that state law was presumptively incompetent to govern materially identical claims unless Congress specifically preserved the applicable

state-law claims in question. Notably, the Hawaii Supreme Court acknowledged that the Second Circuit had reached a contrary result on similar claims, but it expressly declined to follow the Second Circuit's decision. *Id.* at 48a-49a.

The Hawaii Supreme Court also failed to distinguish between the interstate and international aspects of respondents' claims, holding that the Clean Air Act displaced federal common law with respect to both aspects. See App., *infra*, 39a-44a. By contrast, the Second Circuit squarely held that "the Clean Air Act cannot displace * * * federal common law claims to the extent that they seek recovery for harms caused by foreign emissions," and it concluded instead that "foreign policy concerns foreclose" such claims. 993 F.3d at 101.

In further conflict with the Second Circuit's decision, the Hawaii Supreme Court held that respondents' materially identical claims did not arise in an inherently federal area. See App., *infra*, 49a-52a. In the Hawaii Supreme Court's view, the inherently federal area of interstate pollution covers only claims where "the source of the injury * * * is pollution traveling from one state to another," not "failure to warn and deceptive promotion." *Id.* at 50a, 52a. But the complaint in *City of New York* likewise alleged that the defendants' promotion and marketing of their products caused injury by increasing greenhouse-gas emissions. See 993 F.3d at 86-87. The Second Circuit nevertheless concluded that the plaintiff was seeking relief "precisely *because* fossil fuels emit greenhouse gases" and thereby exacerbate climate change, and it thus declined to allow the plaintiff to "disavow[] any intent to address emissions" while "identifying such emissions" as the source of its harm. *Id.* at 91.

3. The decision below is also inconsistent with the decisions of two other federal courts of appeals that have

held that the law of one State cannot govern claims seeking redress for injuries allegedly caused by interstate pollution emanating from another State.

a. In *Illinois* v. *City of Milwaukee* (*Milwaukee III*), 731 F.2d 403 (7th Cir. 1984), cert. denied, 469 U.S. 1196 (1985), the State of Illinois filed nuisance claims under federal and state common law against a municipality for allegedly polluting Lake Michigan. While the action was pending, Congress enacted comprehensive amendments to the Clean Water Act, and this Court held that those amendments had displaced the remedy previously available under federal common law. See *Milwaukee II*, 451 U.S. at 317-319.

On remand from this Court, the Seventh Circuit faced the question whether Illinois's state-law claims could proceed in light of the displacement of federal common law. See 731 F.2d at 406. The Seventh Circuit held that they could not. As the Seventh Circuit explained, under this Court's precedents, "the basic interests of federalism and the federal interest in a uniform rule of decision in interstate pollution disputes required the application of federal law." *Id.* at 407. Although Congress had displaced the cause of action previously available under federal common law, the court reasoned that the displacement "did nothing to undermine" the "reasons why the [S]tate claiming injury cannot apply its own state law to out-of-state discharges." *Id.* at 410. The court thus held that "federal law must govern * * * except to the extent that the [Clean Water Act] authorizes resort to state law." *Id.* at 411. Because Congress had not preserved state-law claims related to out-of-state sources, the Seventh Circuit determined that federal law precluded Illinois's claims. See *id.* at 413.

b. The Fourth Circuit reached a similar result in *North Carolina ex rel. Cooper* v. *Tennessee Valley Authority*, 615 F.3d 291 (2010). There, the State of North Carolina sued the Tennessee Valley Authority (TVA) over emissions from TVA plants in Alabama and Tennessee. See *id.* at 296. The district court found that the emissions created a public nuisance under North Carolina law and entered an injunction in the State's favor. See *ibid.*

The Fourth Circuit reversed. It reasoned that the "comprehensive" system of federal statutes and regulations governing air pollution left little room for nuisance actions under state law, and it concluded that North Carolina was improperly seeking to "appl[y] home state law extraterritorially." 615 F.3d at 296, 298. Applying this Court's decision in *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), the Fourth Circuit concluded that the claims could proceed only under the law of the States in which the TVA plants were located. See 615 F.3d at 308-309; see also *Merrick* v. *Diageo Americas Supply, Inc.*, 805 F.3d 685, 692 (6th Cir. 2015) (agreeing that *Ouellette*'s interpretation of the Clean Water Act's saving clauses applies to the Clean Air Act's saving clauses); *Bell* v. *Cheswick Generating Station*, 734 F.3d 188, 196-197 (3d Cir. 2013) (same), cert. denied, 572 U.S. 1149 (2014); *Freeman* v. *Grain Processing Corp.*, 848 N.W.2d 58, 80 (Iowa) (same), cert. denied, 574 U.S. 1026 (2014); *Brown-Forman Corp.* v. *Miller*, 528 S.W.3d 886, 892-893 (Ky. 2017) (same).

c. Although *Milwaukee III* and *Cooper* did not involve claims seeking redress for injuries allegedly caused by interstate greenhouse-gas emissions, both cases reflect the broader principle that state law can govern claims seeking redress for interstate pollution only to the extent permitted by federal statute.

The Hawaii Supreme Court's decision is inconsistent with that principle. The Hawaii Supreme Court concluded that, after the statutory displacement of any remedy under federal common law, state law *presumptively* governs any lawsuit seeking redress for interstate emissions. Indeed, the court specifically rejected the Seventh Circuit's decision in *Milwaukee III* on the ground that it "ignores the presumption that state laws and claims are not preempted absent 'a clear and manifest purpose of Congress' to do so." App., *infra*, 42a n.9 (citation omitted).

As a result, not only does the Hawaii Supreme Court's decision squarely conflict, on materially identical claims, with the decision in *City of New York*; it also cannot be reconciled with the decisions in *Milwaukee III* and *Cooper*. In light of that disagreement, further review is plainly warranted.

B. The Decision Below Is Incorrect Under This Court's Precedents

Respondents seek to impose damages on petitioners for injuries allegedly caused by the effect of interstate and international greenhouse-gas emissions on global climate change. Those claims fall squarely within the inherently federal areas of interstate pollution and foreign affairs and cannot proceed under state law. The Hawaii Supreme Court's contrary holding was incorrect and conflicts with this Court's precedents.

1. Although state law is presumptively competent to govern a wide variety of issues in our federal system, there are certain narrowly defined areas in which "our federal system does not permit the controversy to be resolved under state law." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). In such "inher-

ently federal areas," "no presumption against pre-emption obtains." *Buckman Co.* v. *Plaintiffs' Legal Committee*, 531 U.S. 341, 348 (2001).

For over a century, this Court has held that interstate pollution is one of the few inherently federal areas necessarily governed by federal law. For example, in *Ouellette*, the Court stated that "the regulation of interstate water pollution is a matter of federal, not state, law." 479 U.S. at 488 (citation omitted); see *id*. at 492. And in *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410 (2011), the Court reiterated that "air and water in their ambient or interstate aspects" are "meet for federal law governance." *Id*. at 421, 422; see *City of New York*, 993 F.3d at 91 (compiling additional cases).

That rule emanates from "the Constitution's structure and the principles of sovereignty and comity it embraces." *National Pork Producers Council* v. *Ross*, 598 U.S. 356, 376 (2023) (internal quotation marks and citation omitted). Under Article IV, Section 3, each State is "equal to each other in power, dignity, and authority." *Coyle* v. *Smith*, 221 U.S. 559, 567 (1911). And each State's "equal dignity and sovereignty" implies "certain constitutional limitations on the sovereignty of all of its sister States." *Franchise Tax Board* v. *Hyatt*, 139 S. Ct. 1485, 1497 (2019) (internal quotation marks, alterations, and citation omitted).

One such limitation is that "[n]o State can legislate except with reference to its own jurisdiction," *Bonaparte* v. *Appeal Tax Court*, 104 U.S. 592, 594 (1882), which is "coextensive with its territory," *United States* v. *Bevans*, 16 U.S. (3 Wheat.) 336, 387 (1818). The equality of the States also "implicitly forbids" States from applying their own laws to resolve "disputes implicating their conflicting rights." *Hyatt*, 139 S. Ct. at 1498 (alteration and citations omitted).

Allowing the law of one State to govern disputes regarding pollution emanating from another State would violate the "cardinal" principle that "[e]ach [S]tate stands on the same level with all the rest," by permitting one State to impose its law on other States and their citizens. *Kansas* v. *Colorado*, 206 U.S. 46, 97 (1907). Federal law must govern such controversies because they "touch[] basic interests of federalism" and implicate the "overriding federal interest in the need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at 105 n.6. And because "borrowing the law of a particular State would be inappropriate" to resolve such interstate disputes, federal law must govern. *American Electric Power*, 564 U.S. at 422.

2. In the absence of federal legislation governing issues of interstate pollution, this Court held that rules developed by the federal courts—federal common law—would govern lawsuits seeking redress for injuries allegedly caused by interstate pollution. See, *e.g.*, *American Electric Power*, 564 U.S. at 420-423; *Milwaukee I*, 406 U.S. at 103. But in the wake of the enactment of the Clean Air Act and Clean Water Act, this Court held that Congress has displaced any previously available causes of action under federal common law. See *American Electric Power*, 564 U.S. at 424; *Milwaukee II*, 451 U.S. at 313-314.

This Court's decision in *Ouellette* explains the limited role of state law after the displacement of federal common law by a comprehensive statutory scheme in an inherently federal area of regulation. There, the Court held that, in light of the "pervasive regulation" of the Clean Water Act and "the fact that the control of interstate pollution is primarily a matter of federal law," the only permissible state-law actions seeking redress for interstate water pollution are "those specifically preserved by the Act." 479 U.S. at 492 (citation omitted). The Court proceeded to conclude that the Clean Water Act preempts claims under any

State's law other than the law of the State in which the source of the pollution was located. See *id.* at 487-498.

As the Court explained, the imposition of liability by a downstream State would cause an upstream source of pollution to "change its methods of doing business and controlling pollution to avoid the threat of ongoing liability," regardless of whether that source complied with federal law or the law of the source State. *Ouellette*, 479 U.S. at 495. Such claims would thus "circumvent" and "disrupt" the careful "balance of interests" struck by the Clean Water Act—bypassing the "delineation of authority" adopted by Congress, through which the roles of "both the source and affected States" are "carefully define[d]." *Id.* at 494-495, 497. The Court reasoned that "[i]t would be extraordinary for Congress, after devising an elaborate * * * system that sets clear standards, to tolerate common-law suits that have the potential to undermine this regulatory structure." *Id.* at 497. The Court thus interpreted the Clean Water Act's saving clauses to permit state-law actions only under the law of the State in which the source of pollution is located. See *id.* at 495-497.

3. The foregoing precedents lead to a straightforward result here: federal law, including our constitutional structure and the Clean Air Act, precludes respondents' state-law claims seeking redress for interstate emissions.

Respondents' theory of liability is that petitioners' fossil-fuel products are "hazardous" because they "cause or exacerbate global warming and related consequences," and that petitioners acted wrongfully by promoting those products and allegedly taking actions to "conceal[] the[ir] hazards" and prevent "the[ir] regulation." Am. Compl. 101-102. Respondents are seeking relief in the form of damages and equitable remedies for physical harms allegedly caused by global climate change, including "sea level rise, drought, extreme precipitation events, extreme heat

events, and ocean acidification." *Id.* at 102; see *id.* at 105, 106, 108-109, 111, 113, 114-115. The "gravamen" of respondents' complaint, see *Kurns* v. *Railroad Friction Products Corp.*, 565 U.S. 625, 635 (2012) (citation omitted), is thus that petitioners' conduct increased the worldwide use of fossil fuels, resulting in increased global greenhouse-gas emissions, which contributed to global climate change and resulted in localized physical effects in Hawaii.

Those claims fall squarely under the principle that federal law governs claims seeking redress for interstate air and water pollution. Respondents allege that their injuries are caused by the interstate and international emissions of greenhouse gases over many decades. Respondents' requested relief—including damages, see, *e.g.*, *Kurns*, 565 U.S. at 637—is designed not only to remedy injuries allegedly caused by those emissions but to regulate worldwide activities producing those emissions. Respondents are simply attempting to recover by moving up one step in the causal chain and suing the fuel producers rather than the emitters themselves (which include the vast majority of the world's population).

As the Second Circuit recognized, an attempt to repackage these claims in terms of alleged misrepresentations is merely "[a]rtful pleading." *City of New York*, 993 F.3d at 91. Respondents are still alleging injury caused by interstate and international emissions, and the only way petitioners could have avoided liability would have been to take actions designed to reduce those emissions. Respondents thus cannot escape the conclusion that their claims fall within the inherently federal area of interstate air pollution.

To be sure, if respondents attempted to proceed under federal common law, the Clean Air Act would foreclose relief with respect to interstate emissions. See App., *infra*,

39a-44a. But the congressional displacement of federal common law does not open the door to state-law claims unless the Clean Air Act permits them.

The Clean Air Act does not permit state-law claims based on emissions emanating from another State. Instead, it provides the Environmental Protection Agency with authority to regulate greenhouse-gas emissions from stationary sources, see *American Electric Power*, 564 U.S. at 424-425; see also 42 U.S.C. 7411(b), (d), and to set greenhouse-gas emissions standards for cars, trains, airplanes, motorcycles, and other engines and equipment. See 42 U.S.C. 7521(a)(1)-(2), 7521(a)(3)(E), 7547(a)(1), (5), 7571(a)(2)(A). EPA has relied on its statutory authority to regulate a range of sources of greenhouse-gas emissions, including by setting standards for trucks and passenger vehicles, see 40 C.F.R. 86.1818-12, 86.1819-14, and by limiting emissions of methane from crude-oil and natural-gas operations—including from facilities operated by some petitioners. See 87 Fed. Reg. 74,702 (Dec. 6, 2022).

Although the Clean Air Act has two saving clauses, see 42 U.S.C. 7416, 7604(e), they are materially identical to the Clean Water Act's saving clauses and thus permit actions under state law only to the extent that the plaintiff is proceeding under the law of the State in which the source of the pollution is located. See 33 U.S.C. 1365(e), 1370; *City of New York*, 993 F.3d at 99-100; *Merrick*, 805 F.3d at 692; *Bell*, 734 F.3d at 196-197; *Cooper*, 615 F.3d at 308-309; cf. *Ouellette*, 479 U.S. at 487-498. Of course, that is impossible here, where the alleged mechanism of respondents' injuries is the combined effect of all greenhouse-gas emissions worldwide. Federal law thus precludes respondents' state-law claims. Indeed, in light of the breadth of the Clean Air Act's governance of greenhouse-gas emissions, respondents' state-law claims would

be foreclosed even if a presumption against preemption applied. Contra App., *infra*, 53a-66a.

4. Respondents' claims based on international emissions cannot proceed under Hawaii law either. As the Court has explained, there is "no question" that "at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy." *American Insurance Association* v. *Garamendi*, 539 U.S. 396, 413 (2003) (citation omitted). After all, it was a "concern for uniformity in this country's dealings with foreign nations" that "animated the Constitution's allocation of the foreign relations power to the National Government in the first place." *Ibid.* (citation omitted). The Constitution thus bestows broad power on the federal political branches to regulate foreign affairs, and it prohibits States from engaging in certain foreign-affairs-related conduct. See U.S. Const. Art. I, §§ 8, 10; U.S. Const. Art. II, §§ 2-3. In turn, state laws "must give way if they impair the effective exercise of the Nation's foreign policy." *Zschernig* v. *Miller*, 389 U.S. 429, 440 (1968).

Because respondents seek relief for climate-change-related harms, international emissions—which represent the overwhelming majority of total anthropogenic emissions—are the primary causal mechanism underlying their alleged injuries. "Greenhouse gases once emitted become well mixed in the atmosphere; emissions in New Jersey may contribute no more to flooding in New York than emissions in China." *American Electric Power*, 564 U.S. at 422 (internal quotation marks and citation omitted).

Foreign-policy principles preclude the application of Hawaii law to regulate international emissions. As the Second Circuit explained in *City of New York*, holding petitioners liable for such emissions would "affect the price and production of fossil fuels abroad"; "bypass the various

diplomatic channels that the United States uses to address this issue"; and "sow confusion and needlessly complicate the nation's foreign policy, while clearly infringing on the prerogatives of the political branches." 993 F.3d at 103. Accordingly, respondents can no more seek relief under Hawaii law for injuries allegedly caused by international emissions than for those allegedly caused by interstate emissions.

5. The Hawaii Supreme Court's contrary decision fundamentally misunderstands the ability of state law to operate in inherently federal areas and the nature of respondents' theory of liability.

The central premise of the decision below is that, when Congress enacts a statute that displaces federal common law, state law presumptively governs the issues previously governed by federal common law. But that logic ignores the reason why federal common law governed in the first place. In cases that involve "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations," only federal law can apply, because "our federal system does not permit the controversy to be resolved under state law" at all. *Texas Industries*, 451 U.S. at 641. In other words, where federal common law applies, it is precisely because "state law cannot be used." *Milwaukee II*, 451 U.S. at 313 n.7.

As the Seventh Circuit recognized in *Milwaukee III*, the displacement of federal common law by federal statutory law does "nothing to undermine" the "reasons why the [S]tate claiming injury cannot apply its own state law to out-of-state discharges." 731 F.2d at 410. State law could not govern interstate and international emissions before Congress acted, and the application of state law to such claims remains inconsistent with our constitutional structure after statutory displacement, even if federal law provides no remedy for the particular claim alleged. Were

it otherwise, Congress's decision to address an inherently federal issue directly by statute, so as to displace *federal* common-law remedies, would result in *state* common-law remedies suddenly becoming available. As the Second Circuit put it, that result is "too strange to seriously contemplate." *City of New York*, 993 F.3d at 98-99.

The Hawaii Supreme Court concluded that this Court's instructions for the remand in *American Electric Power* supported its analysis. See App, *infra*, 46a-47a. Quite the contrary. After holding that the Clean Air Act displaced any federal-common-law claim seeking abatement of defendants' greenhouse-gas emissions, the Court remanded for the lower courts to consider the plaintiffs' parallel state-law claims. *American Electric Power*, 564 U.S. at 429. In so doing, the Court directed that, "[i]n light of [its] holding that the Clean Air Act displaces federal common law, the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act." *Ibid.* The Court cited *Ouellette* for the proposition that "the Clean Water Act does not preclude aggrieved individuals from bringing a nuisance claim pursuant to the law of the *source* State." *Ibid.* (citation omitted).

Those instructions support petitioners' position, not respondents'. As already explained, see pp. 23-24, the Court held in *Ouellette* that, because of the comprehensive nature of the Clean Water Act and the fact that "control of interstate pollution is primarily a matter of federal law," "the only state suits that remain available are those specifically preserved by the Act": namely, suits under the law of the source State. 479 U.S. at 492. In *American Electric Power*, the Court was thus directing the lower courts to apply the same analysis as in *Ouellette*—the same analysis petitioners are advancing here.

The Hawaii Supreme Court separately concluded that respondents' claims did not fall within the inherently federal area of interstate pollution, because "the source of the injury" alleged by respondents is not "pollution traveling from one state to another" but instead "failure to warn and deceptive promotion." App., *infra*, 50a, 52a. That is a false dichotomy. While respondents' theory of tort liability may invoke failure to warn and deceptive promotion, the source of injury is most certainly interstate and international emissions.

The complaint is candid on this point: respondents repeatedly allege that defendants' conduct led to increased greenhouse-gas emissions worldwide, which caused or exacerbated global climate change and thereby caused localized harms in Hawaii. See Am. Compl. 105, 106, 108-109, 111, 113, 114-115. Respondents nowhere alleged harm from petitioners' alleged deceptive conduct other than through the mechanisms of increased emissions and global climate change. When faced with the same argument, the Second Circuit rightly held that a plaintiff cannot "have it both ways" by "disavowing any intent to address emissions" when convenient while simultaneously "identifying such emissions as the singular source of the [alleged] harm." *City of New York*, 993 F.3d at 91. The Hawaii Supreme Court also improperly failed to address the international aspects of respondents' claims at all. The Hawaii Supreme Court erred by holding that respondents' claims, seeking redress for interstate and international greenhouse-gas emissions, could proceed under Hawaii law.

C. The Question Presented Is Important And Warrants The Court's Review In This Case

The question presented in this case is recurring and has enormous legal and practical importance. And this

case, which cleanly presents the question, may be the Court's only opportunity to decide it for years to come.

1. The stakes in this case could not be higher. Over two dozen cases have been filed by various States and municipalities across the country seeking to impose untold damages on energy companies for the physical and economic effects of climate change. New cases continue to be filed. See, *e.g.*, *Makah Indian Tribe* v. *Exxon Mobil Corp.*, No. 23-2-25216-1 SEA (Wash. Super. Ct. filed Dec. 20, 2023); *Shoalwater Bay Indian Tribe* v. *Exxon Mobil Corp.*, No. 23-2-25215-2 SEA (Wash. Super. Ct. filed Dec. 20, 2023); *California* v. *Exxon Mobil Corp.*, No. CGC-23609134 (Cal. Super. Ct. filed Sept. 15, 2023); *County of Multnomah* v. *Exxon Mobil Corp.*, No. 23CV25164 (Or. Cir. Ct. filed June 22, 2023).

Those cases present a serious threat to one of the Nation's most vital industries. As the federal government previously stated in a similar climate-change case, "federal law and policy has long declared that fossil fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." U.S. En Banc Br. at 10, *City of Oakland* v. *BP p.l.c.*, 969 F.3d 895 (9th Cir. 2020) (No. 18-16663) (internal quotation marks and citation omitted). The current administration has similarly made clear that the Nation's approach to fossil-fuel emissions is "vital in our discussions of national security, migration, international health efforts, and in our economic diplomacy and trade talks." Press Statement, Antony J. Blinken, U.S. Secretary of State, *The United States Officially Rejoins the Paris Agreement* (Feb. 19, 2021). Indeed, in an amicus brief to this Court, two former chairmen of the Joint Chiefs of Staff recently explained how the federal

government had "actively encouraged domestic exploration and production of oil and gas" as products "critical to national security, economic stability[,] and the military preparedness of the United States." Myers & Mullen Br. at 3, *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230 (2021) (No. 19-1189).

The approach adopted by the Hawaii Supreme Court not only contravenes this Court's precedents but would also permit suits alleging injuries pertaining to global climate change to proceed under the laws of all 50 States—a blueprint for chaos. As the federal government explained in its brief in *American Electric Power*, "virtually every person, organization, company, or government across the globe * * * emits greenhouse gases, and virtually everyone will also sustain climate-change-related injuries," giving rise to claims from "almost unimaginably broad categories of both potential plaintiffs and potential defendants." TVA Br. at 11, 15 (No. 10-174). Out-of-state actors (including the nonresident energy companies here) would quickly find themselves subject to a "variety" of "vague" and "indeterminate" state-law standards, and States would be empowered to "do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Ouellette*, 479 U.S. at 495-496. That could lead to "widely divergent results"—and potentially massive liability—if a patchwork of 50 different legal regimes applied. TVA Br. at 37, *American Electric Power*, *supra*. And that is especially true to the extent that a state court attempts to exercise jurisdiction expansively over any energy company that does business in the State.

2. This case is a suitable vehicle for reviewing the question presented. The question was fully briefed in, and passed on by, the Hawaii Supreme Court. And respondents' claims are representative of the claims being brought in parallel suits across the country, meaning that

resolution of the question presented here will have immediate impact elsewhere.

The time for review is now. Litigation on the merits in these cases is beginning in earnest, with discovery and pretrial proceedings underway in state courts. A decision from this Court now would provide clarity on whether claims seeking relief for global climate change can proceed before state courts and parties spend significant effort and countless sums in litigation costs and before the energy industry is threatened with damages awards that could run into the billions of dollars. Absent the Court's review here, it could be years before the Court can decide this issue, after which point—if petitioners' arguments are ultimately upheld—state courts will have wasted years on complex litigation that should have been dismissed at the outset. The Court should grant certiorari here and resolve whether the state-law claims pressed in the climate-change cases are viable and may proceed on the merits in state courts across the country.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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