No.

In the Supreme Court of the United States

BP P.L.C., ET AL., PETITIONERS

v.

MAYOR AND CITY COUNCIL OF BALTIMORE

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate.

2. Whether a federal district court has jurisdiction under 28 U.S.C. 1331 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are BP p.l.c.; BP America Inc.; BP Products North America Inc.; Chevron Corporation; Chevron U.S.A., Inc.; CITGO Petroleum Corporation; CNX Resources Corporation; ConocoPhillips; ConocoPhillips Company; CONSOL Energy Inc.; CONSOL Marine Terminals LLC; Crown Central LLC; Crown Central New Holdings LLC; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Hess Corporation; Marathon Petroleum Corporation; Phillips 66; Shell plc; Shell USA, Inc.; and Speedway LLC.

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

Petitioners BP America Inc. and BP Products North America Inc. are wholly owned indirect subsidiaries of petitioner BP p.l.c.

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 a wholly owned subsidiary of petitioner Chevron Corporation.

Petitioner CITGO Petroleum Corporation is a wholly owned indirect subsidiary of Petróleos de Venezuela S.A. No publicly held company owns 10% or more of Petróleos de Venezuela S.A.'s stock.

Petitioner CNX Resources Corporation has no parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of CNX Resources Corporation's 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 petitioner ConocoPhillips.

Petitioner CONSOL Energy Inc. has no parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of CONSOL Energy Inc.'s stock.

Petitioner CONSOL Marine Terminals LLC is a wholly owned indirect subsidiary of petitioner CONSOL Energy Inc.

Petitioner Crown Central New Holdings LLC is the sole member of petitioner Crown Central LLC. The sole member of Crown Central New Holdings LLC is Rosemore Holdings, Inc., a wholly owned subsidiary of Rosemore, Inc. No publicly held company owns 10% or more of Rosemore, Inc.'s stock.

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 petitioner Exxon Mobil Corporation.

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

Petitioner Marathon Petroleum Corporation has no parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of Marathon Petroleum Corporation's stock.

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

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

Petitioner Shell USA, Inc., is a wholly owned indirect subsidiary of petitioner Shell plc.

Petitioner Speedway LLC is an indirect subsidiary of Seven & i Holdings Co., Ltd. Seven & i Holdings Co., Ltd., through itself or its subsidiaries, owns 10% or more of Speedway LLC's stock.

Respondent is the Mayor and City Council of Baltimore.

Marathon Oil Corporation and Marathon Oil Company were parties to the proceedings below.

Marathon Oil Corporation has no parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of Marathon Oil Corporation's stock.

Marathon Oil Company is a wholly owned subsidiary of Marathon Oil Corporation.

RELATED PROCEEDINGS

United States District Court (D. Md.):

Mayor & City Council of Baltimore v. *BP p.l.c.*, Civ. No. 18-2357 (June 10, 2019)

United States Court of Appeals (4th Cir.):

Mayor & City Council of Baltimore v. *BP p.l.c.*, No. 19-1644 (Apr. 7, 2022)

United States Supreme Court:

BP p.l.c. v. *Mayor & City Council of Baltimore*, No. 19A368 (Oct. 22, 2019)

BP p.l.c. v. *Mayor & City Council of Baltimore*, No. 19-1189 (June 18, 2021)

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BP p.l.c.; BP America Inc.; BP Products North America Inc.; Chevron Corporation; Chevron U.S.A., Inc.; CITGO Petroleum Corporation; CNX Resources Corporation; ConocoPhillips; ConocoPhillips Company; CONSOL Energy Inc.; CONSOL Marine Terminals LLC; Crown Central LLC; Crown Central New Holdings LLC; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Hess Corporation; Marathon Petroleum Corporation; Phillips 66; Shell plc; Shell USA, Inc.; and Speedway LLC respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-86a) is reported at 31 F.4th 178. The opinion of the district court (App., *infra*, 87a-137a) is reported at 388 F. Supp. 3d 538. A prior opinion of this Court is reported at 141 S. Ct. 1532, and a prior opinion of the court of appeals is reported at 952 F.3d 452.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 2022. A petition for rehearing was denied on May 17, 2022. App., *infra*, 138a-139a. On August 1, 2022, the Chief Justice extended the time within which to file a petition for a writ of certiorari until October 14, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1331 of Title 28 of the United States Code provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Section 1441(a) of Title 28 of the United States Code provides:

> Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

STATEMENT

This case now returns to the Court, presenting two questions the Court left open in its earlier decision related to claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate.

Last year in this case, the Court held that a court of appeals has jurisdiction under 28 U.S.C. 1447(d) to review all grounds for removal in a case where removal is premised in part on the federal-officer or civil-rights removal statutes. The Court declined at the time to decide whether the district court had federal-question jurisdiction over the climate-change claims alleged here based on the Court's precedents applying federal rules of decision to common-law claims seeking redress for injuries allegedly caused by interstate pollution. On remand from this Court, the court of appeals held that a district court lacks jurisdiction over such claims.

The questions presented in this case are, first, whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate, and second, whether a federal district court has jurisdiction under 28 U.S.C. 1331 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. The circuits are in conflict on both questions, and the Court recently invited the Solicitor General to file a brief expressing the views of the United States on those questions in *Suncor Energy (U.S.A.) Inc.* v. *Board of County Commissioners of Boulder County*, No. 21-1550. The United States has previously expressed the view that climate-change claims similar to those alleged here are removable because they are inherently and necessarily federal in nature.

As in *Suncor*, petitioners are energy companies that produce or sell fossil fuels; respondent is the municipal government of Baltimore, Maryland. Like a number of other state and local governments in similar cases across the country, respondent filed this action against petitioners in local state court, asserting claims purportedly arising under state law to recover for harms that respondent alleges it has sustained and will sustain from petitioners' operations because of global climate change.

As in other similar cases, petitioners removed this case to federal district court, asserting federal subject-matter jurisdiction on multiple grounds. Among other grounds, petitioners contended that respondent's claims necessarily and exclusively arise under federal common law and that removal was warranted under the federal-officer removal statute because respondent's complaint encompasses petitioners' exploration for and production of fossil fuels at the direction of federal officers. The district court remanded the case to state court, and petitioners appealed.

The court of appeals affirmed. It initially held that it lacked appellate jurisdiction to review any grounds for removal other than the federal-officer ground. It then rejected petitioners' arguments for removal on that ground. After this Court held that the court of appeals' view of appellate jurisdiction was incorrect and remanded for further proceedings, the court of appeals once again affirmed. The court of appeals proceeded to reject all of petitioners' remaining grounds for removal, including removal on the basis of federal common law. The court reasoned that the longstanding federal common law of interstate pollution did not apply to respondent's claims and in any event no longer existed due to statutory displacement. The court further held that the well-pleaded complaint rule allows a plaintiff to avoid federal jurisdiction

by affixing state-law labels to claims necessarily and exclusively governed by federal common law.

The court of appeals' decision was incorrect, and it implicates circuit conflicts on two important and recurring questions of federal law that have arisen with particular frequency in the numerous and materially identical climate-change cases pending in federal courts across the Nation. Because the Court has already invited the Solicitor General to file a brief addressing those questions in *Suncor*, the petition for a writ of certiorari in this case should be held pending a decision on the petition in *Suncor*. If the Court grants review in *Suncor*, the petition here should be held pending a decision on the merits there and then disposed of as is appropriate. Otherwise, the petition should be granted.

A. Background

As the Court has long explained, "federal courts are courts of limited jurisdiction." *Home Depot U.S.A., Inc.* v. *Jackson*, 139 S. Ct. 1743, 1746 (2019) (citation and alteration omitted). Article III, Section 2, of the Constitution sets forth the categories of cases "over which federal judicial authority may extend." *Ibid.* (citation omitted). And the jurisdiction of lower federal courts is "further limited to those subjects encompassed within a statutory grant of jurisdiction." *Ibid.* (citation omitted). A federal district court thus "may not exercise jurisdiction absent a statutory basis" for doing so. *Ibid.* (citation omitted).

In addition to creating jurisdiction over certain actions originally filed in federal court, Congress also authorized the removal to federal court of certain cases initially filed in state court. Of particular relevance here, the general removal statute, 28 U.S.C. 1441(a), authorizes the removal of "any civil action brought in a [s]tate court of which the

district courts of the United States have original jurisdiction." A defendant may thus remove a case to federal court if the plaintiff "could have filed its operative complaint in federal court" in the first instance. *Home Depot*, 139 S. Ct. at 1748.

One of the most familiar statutes conferring original jurisdiction on the district courts is the federal-question statute, 28 U.S.C. 1331. It provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Although the Constitution similarly authorizes federal jurisdiction over all cases "arising under this Constitution, the laws of the United States, and treaties made," Art. III, § 2, cl. 1, this Court has interpreted the jurisdictional grant in Section 1331 to stop short of constitutional limits. Instead, under the well-pleaded complaint rule, an action arises under federal law for purposes of Section 1331 "only when the plaintiff's statement of his own cause of action shows that it is based upon federal law." *Vaden* v. *Discover Bank*, 556 U.S. 49, 60 (2009) (citation and alteration omitted). An "actual or anticipated defense" under federal law does not give rise to jurisdiction under Section 1331. *Ibid.* At the same time, an "independent corollary" to the well-pleaded complaint rule is that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 22 (1983). The well-pleaded complaint rule thus sometimes requires a federal court to "determine whether the real nature of the claim is federal, regardless of [the] plaintiff's characterization." *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 n.2 (1981) (citation omitted).

The grant of jurisdiction in Section 1331 covers not only constitutional or statutory claims, but also those

"founded upon federal common law." *National Farmers Union Insurance Cos.* v. *Crow Tribe of Indians*, 471 U.S. 845, 850 (1985). Despite this Court's familiar pronouncement in *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, 78 (1938), that "[t]here is no federal general common law," the "federal judicial power to deal with common law problems" remains "unimpaired for dealing independently, wherever necessary or appropriate, with essentially federal matters, even though Congress has not acted affirmatively about the specific question," *United States* v. *Standard Oil Co.*, 332 U.S. 301, 307 (1947). Of particular relevance here, federal law necessarily supplies the rule of decision for certain narrow categories of claims that implicate "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640-641 (1981) (citation omitted).

One established category of claims governed by federal common law is claims seeking redress for injuries allegedly caused by interstate pollution. Indeed, "[f]or over a century, a mostly unbroken string of cases has applied federal law to disputes involving" such claims. *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases); see, *e.g.*, *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 420-423 (2011); *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 103 (1972) (*Milwaukee I*). As the Court has explained, federal common 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. The "basic scheme of the Constitution" requires the application of a federal rule of decision, because "borrowing the law of a particular

State would be inappropriate" to resolve such interstate disputes. *American Electric Power*, 564 U.S. at 421, 422.

B. Facts And Procedural History

1. In 2017, a number of state and local governments began filing lawsuits in state courts against various energy companies, most of them nonresidents of the forum States. The plaintiffs alleged that the companies' worldwide production, sale, and promotion of fossil fuels led to the emission of greenhouse gases and thereby contributed to global climate change. The plaintiffs have primarily asserted that the production, sale, and promotion of fossil fuels violate various state-law duties, including common-law nuisance; they have sought compensatory and punitive damages as well as equitable relief.

The defendants removed those lawsuits to federal court. They asserted multiple bases for federal jurisdiction, including that the allegations in the complaints pertain to actions the defendants took at the direction of federal officers, see 28 U.S.C. 1442, and that the plaintiffs' climate-change claims necessarily and exclusively arise under federal common law, see, *e.g.*, *American Electric Power*, 564 U.S. at 420-423; *Milwaukee I*, 406 U.S. at 103. As of the filing of this brief, 23 related cases are pending in federal courts nationwide in which the parties are actively litigating the question of removal, either in district court or on appeal.[1]

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[1] See *City of Hoboken* v. *Exxon Mobil Corp.*, 45 F.4th 699 (3d Cir. 2022) (appeal consolidating two actions); *City & County of Honolulu* v. *Sunoco LP*, 39 F.4th 1101 (9th Cir. 2022) (consolidating two actions); *Rhode Island* v. *Shell Oil Products Co.*, 35 F.4th 44 (1st Cir. 2022); *County of San Mateo* v. *Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022) (appeal consolidating six actions); *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022) (petition for cert. filed June 8, 2022); *Minnesota*

2. Petitioners are 21 domestic and foreign energy companies that produce or sell fossil fuels around the world (or have previously done so). In 2018, respondent filed a complaint in Maryland state court against petitioners and others, alleging that petitioners had caused or will cause harms by contributing to global climate change. Respondent seeks damages for the effect of climate change on its property, as well as an order requiring petitioners to "abate" the "nuisance" they allegedly created by their activities. App., *infra*, 4a-5a, 87a-88a.

Petitioners removed this action to the United States District Court for the District of Maryland. App., *infra*, 5a. In their notice of removal, petitioners raised many of the same bases for federal jurisdiction as have the defendants in other climate-change lawsuits, including that respondent's climate-change claims necessarily and exclusively arise under federal common law and that removal was permissible under the federal-officer removal statute. *Id.* at 5a-6a, 89a.

The district court remanded the case to state court based on a lack of subject-matter jurisdiction. App., *infra*, 87a-137a. With respect to federal common law as a basis for removal, the district court concluded that the well-pleaded complaint rule precluded removal because the complaint did not expressly assert claims under federal

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v. *American Petroleum Institute*, No. 21-1752 (8th Cir.) (argued Mar. 15, 2022); *Connecticut* v. *Exxon Mobil Corp.*, No. 21-1446 (2d Cir.) (argued Sept. 23, 2022); *Anne Arundel County* v. *BP p.l.c.*, Civ. No. 21-1323, 2022 WL 4548226 (D. Md. Sept. 29, 2022) (decision consolidating two actions); *City of New York* v. *Exxon Mobil Corp.*, Civ. No. 21-4807 (S.D.N.Y.); *City of Oakland* v. *BP p.l.c.*, Civ. No. 17-6011 (N.D. Cal.) (consolidating two actions); *County of Charleston* v. *Brabham Oil Co.*, Civ. No. 20-3579 (D.S.C.); *District of Columbia* v. *Exxon Mobil Corp.*, Civ. No. 20-1932 (D.D.C.); *Pacific Coast Federation of Fishermen's Associations, Inc.* v. *Chevron Corp.*, Civ. No. 18-7477 (N.D. Cal.); *Vermont* v. *Exxon Mobil Corp.*, Civ. No. 21-260 (D. Vt.).

common law. *Id.* at 100a-101a. With respect to the federal-officer ground for removal, the district court determined that the connection between the "wide array of conduct for which [petitioners] have been sued" and the "asserted official authority" was too "attenuated" to permit removal. *Id.* at 126a.

3. In its initial opinion in this case, the court of appeals affirmed the district court's remand order, addressing only the district court's conclusion that federal jurisdiction did not lie under the federal-officer removal statute. App., *infra*, 6a. The court of appeals did not review the portions of the district court's remand order rejecting petitioners' other grounds for removal, reasoning that 28 U.S.C. 1447(d) deprived it of appellate jurisdiction over those grounds. *Ibid.*

Petitioners filed a petition for a writ of certiorari with this Court, presenting the question whether the court of appeals' jurisdiction extended beyond the federal-officer ground for removal. See 19-1189 Pet. i. This Court granted certiorari and held that Section 1447(d) permits appellate review of all grounds for removal in a case removed in part on federal-officer grounds. See 141 S. Ct. 1532, 1538 (2021). The Court then vacated the court of appeals' judgment and remanded for further consideration in light of its decision. See *id.* at 1543.

4. On remand, the court of appeals once again affirmed the district court's remand order. App., *infra*, 1a-86a. As is relevant here, the court of appeals first held that federal common law did not provide a basis for removal because the complaint "never expressly asserts any claim under federal common law." *Id.* at 12a. Despite recognizing that respondent's claims seek redress for harms allegedly caused by the contribution of transboundary

emissions to global climate change, *id.* at 4a, the court proceeded to hold that no federal rule of decision governs respondent's claims.

The court of appeals began its analysis by setting forth "two strict conditions" that it understood must be satisfied before it could create a "new federal rule of decision": namely, the presence of a "uniquely federal interest[]" and a "significant conflict" between that interest and the application of state law. App., *infra*, 14a, 20a (citation omitted). But instead of "immediately proceed[ing] to [this] Court's authorities dealing with global warming and interstate pollution," the court of appeals "deem[ed] it prudent" to apply the test for determining whether to extend federal common law to a new area. *Id.* at 15a-16a. The court faulted petitioners for relying on this Court's decisions regarding interstate pollution, holding that petitioners had failed to "establish a significant conflict between [plaintiff's] state-law claims" and any "federal interests." *Id.* at 16a. The court further held that the absence of any identified conflict "substantively precludes the creation of federal common law." *Id.* at 17a.

The court of appeals 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 common law governs claims seeking redress for injuries allegedly caused by the contribution of global greenhouse-gas emissions to climate change. See *id.* at 89-95. The court of appeals reasoned that the Second Circuit's decision arose in a different procedural posture and "suffers from the same legal flaw as [petitioners'] arguments": namely, that it "fails to explain a significant conflict between the state-law claims before it and the federal interests at stake." App., *infra*, 18a.

The court of appeals additionally concluded that removal based on federal common law was improper because the Clean Air Act had displaced any remedy otherwise available under federal common law. App., *infra*, 21a-24a. The court reasoned that "[p]ublic nuisance claims involving interstate pollution, including issues about greenhouse-gas emissions, are nonexistent under federal common law," rendering removal based on federal common law impermissible. *Id.* at 24a.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision implicates a circuit conflict on the question whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate. The decision also deepens an existing conflict on the question whether federal district courts have jurisdiction under 28 U.S.C. 1331 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. The court of appeals reached the incorrect conclusion on both questions.

This Court recently invited the Solicitor General to file a brief in *Suncor Energy (U.S.A.) Inc.* v. *Board of County Commissioners of Boulder County*, No. 21-1550, expressing the views of the United States on the same questions presented here. In light of that request, the petition here should be held pending a decision on the petition in *Suncor*. If the Court grants review in *Suncor*, the petition here should be held pending a decision on the merits there and then disposed of as is appropriate. Otherwise, the petition should be granted.

A. The Decision Below Implicates A Conflict Among The Courts Of Appeals On The First Question Presented

In the decision below, the court of appeals declined to apply a federal rule of decision to claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate. In reaching that determination, the court of appeals expressly rejected the Second Circuit's reasoning in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021), which held that federal common law governs similar climate-change claims. The First and Tenth Circuits—in other climate-change cases on remand from this Court—have also declined to follow *City of New York* and held that federal common law does not govern claims like the ones alleged here. Review of this important question is warranted to resolve the conflict among the courts of appeals.

1. In *City of New York*, the municipal government of New York City filed suit in federal court based on diversity jurisdiction, alleging that the defendant energy companies (including some of the petitioners here) were liable for injuries allegedly caused by the contribution of interstate greenhouse-gas emissions to global climate change. As does respondent here, the plaintiff asserted claims for public nuisance, private nuisance, and trespass under state law. See 993 F.3d at 88.

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'" and that claims seeking redress for global climate change presented "the quintessential example of when federal common law is most needed." *Id.* at 85, 92.

Relying on this Court's precedents, 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. The Second Circuit explained that "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.* (internal quotation marks and alterations omitted) (quoting *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972)).

And 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 explained that application of state law to the city'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 "snap back into action." 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*, 451 U.S. 304, 313 n.7 (1981)). In the court's view, "state law does not suddenly become presumptively competent 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.

2. The decision below is irreconcilable with *City of New York*. According to the court of appeals, petitioners could not invoke the federal common law of transboundary pollution on which the Second Circuit relied. See App., *infra*, 15a, 18a-19a. Instead, the court of appeals reasoned that petitioners needed to satisfy the test for determining whether to create federal common law in the first place or to extend it to a new area. See *id.* at 18a.

In so holding, the court of appeals expressly declined to "follow *City of New York*." App., *infra*, 19a. The court reasoned that the Second Circuit's decision "fails to explain a significant conflict between the state-law claims before it and the federal interests at stake." *Id.* at 18a. According to the court of appeals, the Second Circuit had thereby "evad[ed] the careful analysis" necessary to determine whether federal common law applies. *Id.* at 19a.

The court of appeals further departed from the Second Circuit by holding that federal common law did not govern because the Clean Air Act displaced any federal-common-law remedy. See App., *infra*, 21a. The Second Circuit expressly concluded in *City of New York* that the plaintiff—whose claims long postdated the Act—brought "federal claims" that must arise "under federal common law." 993 F.3d at 95; see *id.* at 95, 98, 101 (describing the claims as "federal common law claims"). In addition, the Second Circuit declined to apply a "traditional statutory preemption analysis" after concluding that the plaintiff's claims were federal claims, instead reasoning that "state law does not suddenly become presumptively competent 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." *Id.* at 98. *City of New York* can thus only be understood to hold—

contrary to the decision below—that federal common law continues to govern in this area, even decades after the Clean Air Act displaced any *remedy* available under federal common law.

The court of appeals additionally attempted to distinguish *City of New York* on the ground that the plaintiff there filed its complaint in federal court based on diversity jurisdiction. See App., *infra*, 18a. The effect of federal common law thus arose on a motion to dismiss for failure to state a claim. See *City of New York*, 993 F.3d at 88-89. The Second Circuit itself acknowledged that *City of New York* differed from other cases in that respect. See *id.* at 93-94.

But that difference does not eliminate the conflict on the first question presented. The court of appeals' conclusion that the federal common law of interstate emissions does not govern has nothing to do with the logically subsequent question of whether the well-pleaded complaint rule allows a plaintiff to avoid federal jurisdiction if federal common law governs. The court of appeals' conclusion on the former question cannot be squared with the Second Circuit's.

3. Like the court of appeals, the Tenth Circuit, on remand from this Court, declined to hold that federal common law governs claims seeking redress for injuries allegedly caused by the effect of greenhouse-gas emissions on the global climate. See *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (2022). The Tenth Circuit held that federal jurisdiction was not present because, after statutory displacement by the Clean Air Act, the otherwise-applicable federal common law "no longer exists." *Id.* at 1260 (citation and emphasis omitted). In reaching that conclusion, the Tenth Circuit relied on the reasoning of the concurring opinion in *Native Village of Kivalina* v. *ExxonMobil*

Corp., 696 F.3d 849, 865 (9th Cir. 2012) (Pro, J.)—a similar case involving claims of injury from climate change—to the effect that, "[o]nce federal common law is displaced, state nuisance law becomes an available option to the extent it is not preempted by federal law." *Suncor*, 25 F.4th at 1261. The Tenth Circuit thus departed from the Second Circuit's holding that state law did not (and could not) "snap back into action" after the Clean Air Act displaced any remedy under federal common law. *City of New York*, 993 F.3d at 98.

As did the court of appeals below, the Tenth Circuit attempted to distinguish *City of New York* on the ground that the Second Circuit did not need to apply the well-pleaded complaint rule, because "the city initiated the action in federal court." *Suncor*, 25 F.4th at 1262. But again, that distinction does not avoid the conflict: the Tenth Circuit held that the relevant "federal common law no longer exists," *id.* at 1260 (citation omitted), whereas the Second Circuit held that similar climate-change claims "must be brought under federal common law," *City of New York*, 993 F.3d at 95.

4. In *Rhode Island* v. *Shell Oil Products Co.*, 35 F.4th 44 (2022), the First Circuit reached the same conclusion as the court of appeals below. Expressly agreeing with the court of appeals' reasoning, the First Circuit held that the district court lacked jurisdiction on the basis of federal common law, faulting the defendants for relying on this Court's precedents rather than describing "any significant conflict" between the "federal interests" at issue and the plaintiff's "state-law claims." *Id.* at 54 (citation omitted).

The First Circuit expressly declined to rely on the Second Circuit's reasoning to find a conflict between the application of state law to climate-change claims and "the federal government's relations with foreign countries." 35

F.4th at 55. It reasoned that *City of New York* was "distinguishable" because the complaint there was filed "in federal court in the first instance." *Ibid.* (emphasis omitted) (citing App., *infra*, 17a-19a). Like the court of appeals below, the First Circuit did not explain how that fact alters the answer to the distinct question whether federal common law governs the claims.

The First Circuit next held that, even if such a conflict were present, removal based on federal common law would still have been improper. See 35 F.4th at 55. The First Circuit concluded that the displacement of federal common law by the Clean Air Act meant that no "federal common law controls [the plaintiff's] claims," even assuming that the claims implicated the type of "transboundary pollution" at issue in this Court's precedents. *Ibid.* The First Circuit's decision thus similarly conflicts with the Second Circuit's decision in *City of New York* on the question whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate.

B. The Decision Below Deepens A Conflict Among The Courts Of Appeals On The Second Question Presented

The court of appeals further held that the well-pleaded complaint rule precludes federal jurisdiction under 28 U.S.C. 1331 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. See App., *infra*, 20a. That holding deepens another existing circuit conflict among the courts of appeals that warrants the Court's review.

1. Two courts of appeals have squarely held that a district court has jurisdiction under Section 1331 over claims artfully pleaded under state law but necessarily governed by federal common law.

a. In *In re Otter Tail Power Co.*, 116 F.3d 1207 (1997), the Eighth Circuit affirmed the removal of putative state-law claims because they were governed by federal common law. At issue in *Otter Tail* was the effect of a judgment in an earlier federal action concerning the scope of an Indian tribe's "inherent sovereignty," which is governed by federal common law. See *Otter Tail*, 116 F.3d at 1209-1210; *Devils Lake Indian Sioux Tribe* v. *North Dakota Public Service Commission*, 896 F. Supp. 955, 961 (D.N.D. 1995); see generally *United States* v. *Lara*, 541 U.S. 193, 207 (2004). After the first federal action ended, a party to the judgment filed a subsequent action against the tribe and other defendants in state court, seeking to enjoin the defendants from allegedly violating the earlier federal judgment. One of the defendants removed the case to federal court.

The Eighth Circuit held that the district court had jurisdiction over the case under 28 U.S.C. 1331 and that removal was thus proper. The court began its analysis by acknowledging that, under the well-pleaded complaint rule, removal based on federal-question jurisdiction is permitted only when the complaint establishes that "federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Otter Tail*, 116 F.3d at 1213 (citation omitted). It noted, however, that "[a] plaintiff's characterization of a claim as based solely on state law is not dispositive of whether federal question jurisdiction exists." *Ibid.* (citation omitted).

Turning to the complaint before it, the Eighth Circuit concluded that removal based on federal-question jurisdiction was proper because the district court's order in the first action concerned "the extent of an Indian Tribe's authority to regulate nonmembers on a reservation," which is "manifestly a federal question." 116 F.3d at 1214. In

reaching that conclusion, the court cited the Supreme Court's decision in *National Farmers Union*, *supra*, which held that a claim concerning an Indian tribe's sovereign powers was governed by federal common law and thus gave rise to federal-question jurisdiction. See *ibid.*

b. In *Sam L. Majors Jewelers* v. *ABX, Inc.*, 117 F.3d 922 (1997), the Fifth Circuit similarly upheld the removal of putative state-law claims on the ground that they were governed by federal common law. There, the plaintiff filed claims in state court for breach of contract, negligence, and violations of a state statute, seeking damages from an airline that allegedly lost some of the plaintiff's goods. See *id.* at 924. The defendant removed the case to federal court.

In assessing whether removal was proper, the Fifth Circuit recognized that jurisdiction under Section 1331 exists only "when a federal question is presented on the face of a plaintiff's properly pleaded complaint." 117 F.3d at 924. The court further noted that, under Section 1441(a), "only actions that originally could have been filed in federal court can be removed to federal court." *Ibid.* The court then reasoned that there are "three theories that might support federal question jurisdiction" in the case: where "the complaint raises an express or implied cause of action that exists under a federal statute"; where the relevant "area of law is completely preempted by the federal regulatory regime"; and where "the cause of action arises under federal common law principles." *Ibid.* The court concluded that removal was proper under the third theory, because an action against a common air carrier for lost or damaged goods "arises under federal common law." *Id.* at 929; see *Torres* v. *Southern Peru Copper Corp.*, 113 F.3d 540, 542-543 (5th Cir. 1997) (permitting removal where a state-law claim raised "substantial questions of federal common law").

2. In the decision below, the court of appeals held that, under the well-pleaded complaint rule, federal common law cannot provide a basis for jurisdiction under Section 1331—and removal is thus improper under Section 1441(a)—where the plaintiff omits any reference to federal law in the complaint. See App., *infra*, 12a, 20a. The court of appeals noted that the complaint "never alleges an existing federal common law claim" and "only brings claims originating under [state] law." *Id.* at 12a. The court then concluded that "subject-matter jurisdiction via federal common law" does not exist where the complaint did not "clearly seek recovery under federal law." *Ibid.* (citation omitted).

Under the court of appeals' logic, a district court is bound by the labels the plaintiff applies to the claims in the complaint, even where federal common law necessarily and exclusively governs the issues pleaded on the face of the complaint. That conclusion conflicts with the decisions of the Fifth and Eighth Circuits permitting the removal of putative state-law claims necessarily and exclusively governed by federal common law.

3. In addition to the court below, three other courts of appeals have held—in the particular context of climate-change litigation—that Section 1331 does not permit the exercise of jurisdiction over claims necessarily governed by federal common law but labeled as arising under state law.

a. In *City of Oakland* v. *BP p.l.c.*, 969 F.3d 895 (2020), cert. denied, 141 S. Ct. 2776 (2021), the Ninth Circuit faced arguments similar to those raised here regarding the removal of climate-change claims on the basis of federal common law. In particular, the defendants argued that claims pleaded under state law but necessarily and exclusively governed by federal common law were subject to federal-question jurisdiction because they were, in fact,

federal claims. See 20-1089 Pet. at 20-22. The defendants thus contended that removal of such claims was permissible without resort to the doctrine of *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), which permits the removal of state-law claims that necessarily raise substantial and disputed federal issues. See *id.* at 314; 20-1089 Pet. at 20. The district court agreed with the defendants' approach and held that removal based on federal common law was proper. See Civ. No. 17-6011, 2018 WL 1064293, at *2-*5 (N.D. Cal. Feb. 27, 2018).

The Ninth Circuit disagreed. 969 F.3d at 903-907. It started from the premise that, under the well-pleaded complaint rule, "a civil action arises under federal law for purposes of [Section] 1331 when a federal question appears on the face of the complaint." *Id.* at 903. The court saw only two "exceptions" to that rule: removal under *Grable* and complete preemption. See *id.* at 904-906. Having framed the issue that way, the Ninth Circuit rejected the district court's jurisdictional analysis without comment. See *id.* at 906.

The Ninth Circuit instead addressed removal on the basis of federal common law as part of the *Grable* inquiry. See 969 F.3d at 906-907. And it held that, "[e]ven assuming that the [plaintiffs'] allegations could give rise to a cognizable claim for public nuisance under federal common law, the district court did not have jurisdiction under [Section] 1331 because the state-law claim for public nuisance fails to raise a substantial federal question." *Id.* at 906 (citation omitted). The Ninth Circuit reasoned that the plaintiffs' claim neither "require[d] an interpretation of a federal statute nor challenge[d] a federal statute's constitutionality." *Ibid.* (citations omitted). The Ninth Circuit thus declined to permit the removal of a claim pleaded under state law but necessarily governed by federal common

law. See *ibid.* (opining that it was "not clear that the claim require[d] an interpretation or application of federal law at all," because it was unclear whether "there is a federal common law of public nuisance relating to interstate pollution" and because the Clean Air Act might displace any such claim); see also *County of San Mateo* v. *Chevron Corp.*, 32 F.4th 733, 747-748 (9th Cir. 2022) (following *City of Oakland* in similar climate-change cases).

b. In *Suncor*, *supra*, the Tenth Circuit likewise rejected the premise that federal common law provides a basis for removal of claims artfully pleaded under state law. The Tenth Circuit acknowledged the principle that a plaintiff cannot defeat removal by omitting necessary federal questions from the complaint. See 25 F.4th at 1261. But the court concluded that the so-called "artful pleading" doctrine is coextensive with the doctrine of complete preemption, which allows the removal of a state-law claim where "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." *Id.* at 1256 (internal quotation marks and citation omitted); see *id.* at 1261. The court proceeded to hold that federal common law cannot have complete preemptive effect. See *id.* at 1262.

c. In *City of Hoboken* v. *Chevron Corp.*, 45 F.4th 699 (2022), the Third Circuit reached the same conclusion. Like the Tenth Circuit, it held that a federal court can "recharacterize a state law claim as a federal claim removable to federal court * * * only when some federal statute completely preempts state law." *Id.* at 707 (internal quotation marks, citations, and alterations omitted). The court further concluded that federal common law cannot provide a basis for removal of claims artfully pleaded under state law, because federal common law provides only

a "garden-variety preemption" defense in that circumstance. *Id.* at 708. In so concluding, the Third Circuit departed from the Fifth and Eighth Circuits' decisions holding that artfully pleaded state-law claims that arise under federal common law are subject to removal.

* * * * *

In sum, the decision below implicates two conflicts of federal law among the courts of appeals. As matters currently stand, one court of appeals has held that federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate; three other courts of appeals, including the court below, have rejected that conclusion. Two courts of appeals have held that 28 U.S.C. 1331 provides a basis for jurisdiction over claims necessarily and exclusively governed by federal common law but labeled as arising under state law; three other courts of appeals, including the court below, have reached the opposite conclusion. Those conflicts are developed and entrenched, and the Court's intervention is necessary.

C. The Decision Below Is Incorrect

The court of appeals rejected petitioners' arguments on both questions presented and held that this case was not removable to federal court. That decision was erroneous.

1. The court of appeals erred by holding that federal common law does not necessarily and exclusively govern respondent's claims, which allege that the combustion of petitioners' fossil-fuel products led to greenhouse-gas emissions, which contributed to global climate change, which caused harms within its jurisdiction.

a. Federal common law supplies the rule of decision for certain narrow categories of claims that implicate "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640-641 (1981) (citation omitted). For over a century, this Court has applied uniform federal common-law rules of decision to claims seeking redress for interstate pollution. See *City of New York*, 993 F.3d at 91 (collecting cases). For example, in *Illinois* v. *City of Milwaukee*, 406 U.S. 91 (1972) (*Milwaukee I*), the Court reasoned that "[f]ederal common law," and not the "varying common law of the individual States," is "necessary to be recognized as a basis for dealing in uniform standard with the environmental rights of a State against improper impairment by sources outside its domain." *Id.* at 108 n.9 (citation omitted). And in *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), the Court unambiguously reaffirmed that "the regulation of interstate water pollution is a matter of federal, not state, law." *Id.* at 488 (citation omitted); see *id.* at 492.

The Court recently reinforced that conclusion in *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410 (2011), with respect to similar nuisance claims alleging injury from global climate change caused by greenhouse-gas emissions. See *id.* at 418, 421. Writing for a unanimous Court, Justice Ginsburg reiterated that federal common law "undoubtedly" governs claims involving "air and water in their ambient or interstate aspects." *Id.* at 421.

As those precedents demonstrate, the Constitution dictates that federal law must govern controversies over interstate pollution, because those controversies "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 103 n.6. The Constitution prohibits States from "regulat[ing] the conduct of out-of-state sources" of pollution. *Ouellette*, 479 U.S. at 495. Because "borrowing the law of a particular State would be inappropriate" to resolve such interstate disputes, "the basic scheme of the Constitution" requires the application of a federal rule of decision. *American Electric Power*, 564 U.S. at 421, 422.

Applying the foregoing precedents here leads to a straightforward result: respondent's climate-change claims necessarily arise under federal, not state, law. Through those claims, respondent is seeking damages based on interstate—and indeed international—emissions of greenhouse gases over many decades, allegedly resulting in part from the use of fossil-fuel products produced or sold by petitioners and consumed throughout the world. See App., *infra*, 3a. Those claims fall squarely within the long line of cases holding that federal common law governs claims seeking redress for interstate air and water pollution. In the words of the United States, climate-change claims like those alleged here "must be governed by federal common law." En Banc Br. at 11, *Oakland*, *supra* (No. 18-16663); *see id.* at 6-12; U.S. Br. at 26-28, *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021) (No. 19-1189).

That remains true whether the plaintiff claims that the defendant emitted greenhouse gases directly or instead claims that the defendant contributed to greenhouse-gas emissions by producing and promoting fossil-fuel products. Whatever the allegedly tortious conduct, the alleged injury is the result of greenhouse-gas emissions and their effect on the global climate.

b. In the decision below, the court of appeals offered two reasons why, in its view, federal law does not provide the rule of decision for respondent's claims. Both are erroneous.

The court first criticized petitioners (and the Second Circuit) for "immediately proceed[ing] to [this] Court's authorities dealing with global warming and interstate pollution" and failing to establish the "requirements for expanding federal common law." App., *infra*, 15a. But petitioners never asked the court of appeals to *expand* federal common law; instead, they relied on a long line of precedent in which this Court has already recognized that federal law alone necessarily governs interstate pollution. See pp. 25-26, *supra*. The court of appeals thus erred by applying the test for determining whether to extend federal common law to a new context—and by faulting petitioners for failing to satisfy that test. See App., *infra*, 15a-17a.[2]

The court of appeals next concluded that "federal common law in this area ceases to exist due to statutory displacement" by the Clean Air Act, allowing respondent to assert "state-law claims." App., *infra*, 21a. That reasoning impermissibly "conflate[s]" "jurisdiction" and "merits-related determinations." *Arbaugh* v. *Y&H Corp.*, 546

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[2] To the extent that the court of appeals couched its rejection of petitioners' position in terms of waiver, see App., *infra*, 17a, petitioners did explain that the application of state law would create a "significant conflict" with uniquely federal interests because it would improperly allow States to "regulate the conduct of out-of-state sources," Pet. C.A. Br. 25, 28 (citations omitted); would create an "unworkable" "patchwork of fifty different answers to the same fundamental global issue," *id.* at 26 (citation omitted); and would require a court to second-guess the federal government's decisions in "setting national and international policy on matters involving energy, the environment, and national security," *id.* at 24; *see also* Pet. Supp. C.A. Br. 5, 8-9.

U.S. 501, 511 (2006) (citation omitted). Whether a party can obtain a remedy under federal common law is a distinct question from whether federal common law applies in the first instance. Indeed, a claim governed by federal common law arises under federal law for "jurisdictional purposes" even if that claim "may fail at a later stage for a variety of reasons." *Oneida Indian Nation* v. *County of Oneida*, 414 U.S. 661, 675 (1974); see *United States* v. *Standard Oil Co.*, 332 U.S. 301, 307, 313, 316 (1947) (deciding first whether federal common law governed and only then whether a remedy under federal common law exists).

More fundamentally, the court of appeals misunderstood the relationship between state law and federal common law. 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, "state law cannot be used." *City of Milwaukee* v. *Illinois*, 451 U.S. 304, 313 n.7 (1981) (*Milwaukee II*).

Accordingly, there is no state law for the Clean Air Act (or any other federal statute) to resurrect: state law did not govern interstate emissions before Congress acted, and the application of state law to interstate-pollution claims remains inconsistent with our constitutional structure after the statutory displacement, even if federal law provides no remedy for the particular claim alleged. As the United States explained in its amicus brief in *BP*, *supra*, "[a]lthough the enactment of the Clean Air Act displace[d] federal common law" in the area of interstate emissions, "that alone does not mean the door was opened for tort claims based on the common law of an affected

State targeting conduct in another State." U.S. Br. at 27 (internal quotation marks and citation omitted).

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

2. The court of appeals also erred by concluding that the grant of federal-question jurisdiction in 28 U.S.C. 1331 does not extend to claims necessarily and exclusively governed by federal common law but labeled as arising under state law, with the result that removal under 28 U.S.C. 1441(a) was improper.

Under Section 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." That includes claims "founded upon federal common law as well as those of a statutory origin." *National Farmers Union*, 471 U.S. at 850 (citation omitted). As a result, if the "dispositive issues stated in the complaint require the application" of a uniform rule of federal law, the action "arises under" federal law for purposes of Section 1331, *Milwaukee I*, 406 U.S. at 100 (citation omitted), and the case is removable to federal court, see 28 U.S.C. 1441(a).

The court of appeals declined to permit removal on the basis of federal common law because respondent did not expressly plead any claims under federal common law. App., *infra*, 12a, 20a. But that reasoning misunderstands the well-pleaded complaint rule. That rule provides that federal-question jurisdiction exists only when "a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 392 (1987). An "independent corollary" of the

rule, however, is that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Construction Laborers Vacation Trust*, 463 U.S. at 22. Put another way, a plaintiff cannot "block removal" by artfully pleading its claims in an effort to "disguise [an] inherently federal cause of action." 14C Charles Alan Wright et al., *Federal Practice and Procedure* § 3722.1, at 131-132 (4th ed. 2018).

The artful-pleading principle allows the removal of respondent's claims. Petitioners' invocation of federal common law is not merely a defense to respondent's claims alleging injury from interstate and international air pollution. For the reasons explained above, see pp. 25-26, respondent's claims do not just implicate federal-law issues; they inherently *are* federal claims, arising under federal law. No state law exists in this area for respondent to invoke. The artful-pleading principle prohibits plaintiffs from avoiding federal jurisdiction over such claims by dressing them in state-law garb.

The court of appeals suggested that the artful-pleading principle applies only in complete-preemption cases involving federal statutes. App., *infra*, 10a-11a. But this Court has never so held. And there is "[n]o plausible reason" why "the appropriateness of and need for a federal forum should turn on whether the claim arose under a federal statute or under federal common law." Richard H. Fallon, Jr., et al., *Hart & Wechsler's Federal Courts and the Federal System* 819 (7th ed. 2015). Whether one views a putative state-law claim governed by federal common law as a disguised federal claim or as a state-law claim the elements of which each raise substantial federal questions, see *Grable*, 545 U.S. at 314, such a claim is properly understood to arise under federal law.

Accordingly, district courts have federal-question jurisdiction under 28 U.S.C. 1331, and thus removal jurisdiction under 28 U.S.C. 1441(a), over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. The court of appeals erred by reaching a contrary conclusion, and its decision to remand this case to state court warrants further review.

D. The Questions Presented Are Important And Warrant The Court's Review In This Case

As suggested by the Court's call for the views of the United States in *Suncor*, the questions presented in this case are recurring and have substantial legal and practical importance. This case, which cleanly presents both questions, is a suitable vehicle for the Court's review.

1. The questions presented squarely implicate the longstanding principle that federal law alone necessarily governs disputes related to interstate pollution. As the Second Circuit recognized, a "mostly unbroken string of cases" spanning a century has applied federal law to such disputes. *City of New York*, 993 F.3d at 91. More broadly, whether a putative state-law claim is removable because it arises necessarily and exclusively under federal common law is a significant jurisdictional question that arises in several contexts of unique federal importance, from interstate pollution to foreign affairs to tribal relations. The Court has long recognized the "great importance" of maintaining clear and uniform rules on issues relating to removal more generally. *Tennessee* v. *Davis*, 100 U.S. 257, 260 (1879).

The decision below creates particularly problematic results in light of those precedents. Under the court of appeals' understanding of the operation of federal common law and federal-question jurisdiction, an artfully

pleaded claim for interstate pollution could never be removed to federal court absent complete diversity between the parties (which able plaintiffs' lawyers will readily avoid). Such outcomes cannot be squared with this Court's decisions holding that claims seeking redress for interstate air and water pollution arise under federal law alone and thus are properly heard in federal court.

Resolution of the questions presented is especially important in the context of the nationwide climate-change litigation brought by state and local governments against energy companies. The decision below opens the door to countless state-court lawsuits applying state nuisance law to claims seeking redress for the global phenomenon of climate change. The potentially conflicting results of such lawsuits could "upset[] the careful balance that has been struck between the prevention of global warming," on the one hand, and "energy production, economic growth, foreign policy, and national security," on the other. *City of New York*, 993 F.3d at 93. Absent intervention by this Court, our national energy policy may be decided by juries in state courts applying varying standards of state nuisance law.

In addition, if the Court does not weigh in on the threshold question of jurisdiction in the near term, these cases may gallop ahead in state court. If the Court later holds that similar climate-change claims are removable to federal court, countless resources spent litigating in state court could be wasted.

2. This case is a suitable vehicle for resolution of the questions presented. Those questions were pressed below, fully briefed by the parties, and passed on by the court of appeals. And notably, this case has previously been before the Court, making it a logical vehicle in which to address the questions presented.

The petition for a writ of certiorari provides the Court with another opportunity to consider and resolve the questions presented. Those questions are undeniably important; they have divided the courts of appeals; and the decision of the court of appeals was erroneous. If the Court does not resolve those questions in *Suncor*, it should grant certiorari here and provide clarity as to whether the climate-change cases should proceed in federal or state court.

CONCLUSION

The petition for a writ of certiorari should be held pending a decision on the petition in *Suncor Energy (U.S.A.) Inc.* v. *Board of County Commissioners of Boulder County*, No. 21-1550. If the Court grants review in *Suncor*, the petition here should be held pending a decision there and then disposed of as is appropriate. Otherwise, the petition should be granted.

Respectfully submitted.

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