No. 25-170

In the Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC.; SUNCOR ENERGY SALES INC.; EXXON MOBIL CORPORATION,
Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY; CITY OF BOULDER,
Respondents.

On Writ of Certiorari to the Supreme Court of Colorado

BRIEF OF PROFESSOR TODD ZYWICKI AND THE CENTER FOR INDIVIDUAL FREEDOM AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Professor Todd Zywicki is the George Mason University Foundation Professor of Law at George Mason University Antonin Scalia Law School, where he specializes in questions of consumer protection law, among other things. From 2020-2021, he was Chair of the Consumer Financial Protection Bureau Taskforce on Federal Consumer Financial Law, and he served as the Director of the Office of Policy Planning at the Federal Trade Commission from 2003 to 2004. In 2025, he was chosen as a member of the United States delegation to the Expert Advisory Group of the OECD Global Forum on Consumer Policy.

The Center for Individual Freedom (hereinafter "CFIF") is a non-partisan, non-profit organization established in 1998 to protect and defend individual freedom, economic liberty and fidelity to the rule of law, specifically as it constrains and disperses governmental authority. Since its founding, CFIF has appeared as *amicus curiae* in numerous cases before this Court.

Professor Zywicki and CFIF have a particular interest in this case insofar as allegations of violation of consumer deception statutes are increasingly implicated in litigation around the alleged causes and harms of global climate change, including in the complaint initially lodged by Respondents in the court of first instance below.

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[1] No party's counsel authored any part of this brief, and nobody other than *amici* and their counsel made any monetary contribution intended to fund its preparation or submission.

Accordingly, Professor Zywicki and CFIF file this brief in support of Petitioners.

INTRODUCTION AND SUMMARY OF ARGUMENT

State and local governments have increasingly invoked state laws prohibiting unfair and deceptive acts and practices ("UDAP") against alleged contributors to global climate change. A "growing chorus of state and federal courts across the United States" have dismissed these claims on the pleadings, often for several compounding reasons. *City of Charleston v. Brabham Oil Co.*, No. 2020-CP-10-03975, 2025 WL 2269770, at *3 (S.C. Ct. Com. Pl. Aug. 6, 2025) (citation omitted). "The ranks of this chorus are swelling," and for good reason. *Id.*

Respondents asserted UDAP claims against Petitioners in their complaint, but these claims were dismissed without prejudice and are not within the scope of the questions presented to this Court. In addressing those questions, the Court should take care to avoid inadvertently opining on or otherwise prejudicing the increasingly established defenses to climate-related UDAP claims being litigated across the country.

Further, if the Court opts to address UDAP claims, it should hold that they are precluded for the same reasons as Respondents' other claims. Climate-related UDAP claims are rooted in the same facts, allege the same bases for injury, and arise from the same circumstances as the parallel tort theories, and plaintiffs typically raise them in the same litigation. However the allegations are styled, they should be precluded on identical grounds to those set forth in Petitioners' briefing and adopted by several courts across the country. Plaintiffs cannot plead around

preclusion simply by repackaging their tort claims as UDAP claims.

ARGUMENT

I. UDAP Claims Must Satisfy Myriad Procedural and Substantive Requirements to Obtain Relief.

The core statutory prerequisites of UDAP claims are well defined. Across jurisdictions, UDAP statutes generally require plaintiffs to establish three foundational elements: (1) deceptive or unfair conduct, (2) in connection with a consumer transaction, and (3) which is material to the transaction. *See* Nat'l Consumer L. Ctr., *Unfair and Deceptive Acts and Practices*, App'x A (11th ed. 2025) (50-state survey). Courts further restrict such claims by enforcing the heightened pleading standard for claims of fraud and applicable statutes of limitations.

Plaintiffs in climate-related consumer protection cases do not claim the products they bought failed to work as advertised; the fuel they purchased to power their cars and machinery and light their homes and businesses did just that. Rather, their core objection is to the alleged environmental harm caused from the use of the fuels they purchased. That objection sounds in tort, not consumer protection. Otherwise, nearly every tort claim against a business could be converted into a consumer protection claim by the business's customers, who can almost always claim they wouldn't have bought from the business had they known about its allegedly tortious behavior.[2]

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[2] Although we express no opinion in this brief on the merits of public nuisance claims, Professor Zywicki has expressed his

1. *Deceptive Conduct*. To assert a UDAP claim, a plaintiff must generally first identify a statement that is deceptive—*i.e.*, "likely to mislead a reasonable consumer acting reasonably under the circumstances." *Maurizio v. Goldsmith*, 230 F.3d 518, 521 (2d Cir. 2000). Courts assessing deceptiveness consider a statement "as a whole" in light of its full context. *See Fink v. Time Warner Cable*, 714 F.3d 739, 742 (2d Cir. 2013). Statements that cannot be evaluated for their truth or falsity—including those of "aspiration, opinion, or puffery" and those too "subjective, non-specific, and vague" to be factually appraised—generally cannot be considered deceptive. *See City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 880 (N.Y. Sup. Ct. 2025).

In addition to non-verifiable affirmative statements, some jurisdictions reject UDAP claims based on failures to disclose or omissions. *See Tietsworth v. Harley-Davidson, Inc.*, 270 Wis. 2d 146, 170 (2004) (Wisconsin UDAP statute "does not purport to impose a duty to disclose, but, rather, prohibits only affirmative assertions . . . that are false"). Others limit liability to omitted information that directly contradicts a prior affirmative representation or to circumstances where a defendant owed a plaintiff a special duty of disclosure. *See Daugherty v. Am. Honda Motor Co.*, 51 Cal. Rptr. 3d 118 (Cal. Ct. App. 2006); *accord Hodsdon v. Mars, Inc.*, 891 F.3d 857, 865 (9th Cir. 2018) (California law).

Even states that recognize omission-based UDAP claims typically impose additional guardrails that

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views elsewhere. *See* Todd Zywicki, *End the Climate Lawsuit Feeding Frenzy*, Wash. Examiner (Feb. 20, 2026), https://tinyurl.com/293eupea.

limit when such omissions are actionable. For instance, many states require the omitted information to be unavailable to the consumer through reasonable alternative means. *See Capiccioni v. Brennan Naperville, Inc.*, 339 Ill. App. 3d 927, 935–36 (2003) ("failure to disclose" "a matter of public knowledge" that was "readily discoverable by the plaintiffs . . . did not violate the Consumer Fraud Act"). Still other states demand proof of purposeful concealment with the intent to mislead. *See* Del. Code Ann. tit. 6, § 2513(a) (requiring "intent that others rely upon such concealment, suppression, or omission, in connection with the sale"); *Mayer v. Cohen-Miles Ins. Agency, Inc.*, 48 Mass. App. Ct. 435, 443 (2000) (UDAP statute proscribes "material, knowing, and wilful nondisclosure" (citation omitted)).

2. *Consumer Transaction*. To be actionable under UDAP statutes, allegedly misleading statements or omissions also must generally be made "in connection with the sale . . . of consumer goods or services." N.Y.C. Admin. Code § 20-701(a); *accord* Del. Code Ann. tit. 6, § 2513(a); N.J. Stat. Ann. § 56:8-2. UDAP laws extend only to "fraud in the sale" of consumer goods, *PNC Bank, Nat'l Ass'n v. Great Gorge Vill. S. Condo. Council, Inc.*, No. 16-7648, 2017 WL 436389, at *2 (D.N.J. Feb. 1, 2017), because the statutes are "aimed basically at unlawful sales and advertising practices," *Joe Hand Promotions, Inc. v. Mills*, 567 F. Supp. 2d 719, 723 (D.N.J. 2008). Plaintiffs invoking them must therefore prove that "fraudulent conduct induced or lured the[m] into purchasing merchandise." *Id*. at 724.

In practice, plaintiffs generally cannot establish the requisite consumer connection by pointing to a

defendant's broad statements about its business—such as assertions that a company is "working to make energy that's cleaner and better" or "providing more and cleaner energy solutions for the world." *City of New York*, 226 N.Y.S.3d at 872, 881 (citations omitted); *see also id.* at 881 (dismissing these allegations because the statements "are generic in nature and implicate broad policy initiatives and statements, as opposed to the sale of Defendants' . . . products"). The fact that such statements might be "motivated by a desire to generate profit through sales of products . . . is not adequate" to establish the connection to a consumer transaction. *Lafferty v. Jones*, 229 Conn. App. 487, 545 (2024). Rather, a plaintiff must identify a deceptive statement or omission made in relation to a consumer transaction specifically "to induce the buyer to make the purchase." *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 607 (1997); *see also* S.C. Code Ann. § 39-5-20(a) (requiring deception "in the conduct of any trade or commerce").

3. *Materiality*. Linking the first two statutory UDAP requirements, the alleged deception must also be material to the alleged transaction—that is, "likely to affect consumers' conduct or decision with regard to a product." *Tomasella v. Nestlé USA, Inc.*, 962 F.3d 60, 72 (1st Cir. 2020) (citation omitted). Materiality is an objective test that turns on the behavior of a rational consumer of a defendant's products or services. A material statement is one that would "entice a reasonable consumer to purchase the product." *Commonwealth v. Exxon*, No. 1984CV03333BLS1, 2021 WL 3493456, at *9 (Mass. Super. Ct. June 22, 2021) (quoting *Aspinall v. Philip*

Morris Cos., 442 Mass. 381, 396 (2004)); *Gennari*, 148 N.J. at 607 ("[N]ot just 'any erroneous statement' will constitute a misrepresentation prohibited by [the New Jersey UDAP statute]. The misrepresentation has to be one which is material to the transaction and . . . made to induce the buyer to make the purchase." (citation omitted)).

The materiality requirement applies regardless of the level of deception actionable under a given UDAP statute. In jurisdictions that extend UDAP liability to deceptive omissions, a plaintiff must establish that the particular information that a defendant withheld would have been material to a reasonable person's conduct as a consumer. *Tomasella*, 962 F.3d at 72; *accord Tucker v. Gen. Motors L.L.C.*, 58 F.4th 392 (8th Cir. 2023) (Missouri law).

4. *Particularity*. Because deceptive-practices allegations sound in fraud, many courts—including in Colorado—impose a heightened pleading standard for plaintiffs who assert UDAP claims. *Hoffman v. Hampshire Labs, Inc.*, 405 N.J. Super. 105, 112 (App. Div. 2009) ("[A] claim under the [New Jersey UDAP statute] is essentially a fraud claim," triggering heightened pleading requirement); *accord* Pet. App. 133a. To satisfy that standard, plaintiffs must "allege with particularity the statements that were false or misleading, the particulars as to why they contend the statements were fraudulent, when and where the statements were made, and identify those responsible." Pet. App. 133a. Any complaint that fails to do so is subject to dismissal. *See Hoffman*, 405 N.J. Super. at 112.

5. *Statutes of Limitations*. Like most civil causes of action, UDAP claims must be asserted

within the applicable statute of limitations. Under the discovery rule employed by many jurisdictions, that limitations period (commonly two or three years) begins at the point when the plaintiff "knew or reasonably should have known by reasonable diligence the facts giving rise to its [UDAP] claim." *Mayor of Baltimore v. BP P.L.C.*, No. 24-C-18-004219, 2024 WL 3678699, at *15 (Md. Cir. Ct. July 10, 2024), *aff'd*, 493 Md. 427 (2025).

II. Climate-Related UDAP Claims Are Meritless and Routinely Dismissed.

The core requirements of state UDAP statutes pose serious obstacles for plaintiffs raising UDAP claims in climate-change-related cases. Over the last six years, state attorneys general and local governments have filed a growing torrent of lawsuits alleging that business activities violate local UDAP statutes in the context of climate change, including in this case. *See, e.g.,* Pet. App. 120a; *City of New York v. Exxon Mobil Corp.*, No. 451071/2021 (N.Y. Sup. Ct. filed Apr. 22, 2021); *City of Charleston v. Brabham Oil Co.*, No. 2020-CP-10-03975 (S.C. Ct. Com. Pl. filed Sept. 9, 2020); *Vermont v. Exxon Mobil Corp.*, No. 21-cv-02778 (Vt. Super. Ct. filed Sept. 14, 2021). State and lower federal courts have repeatedly dismissed these suits for failure to state a claim and for attempting to leverage state consumer protection laws to dictate national and even international energy and environmental policy.

1. *Deceptive Conduct*. UDAP claimants often struggle to allege actionable deception concerning global climate change.

Many UDAP claims focus on statements that are either objectively true or too vague, subjective, or forward-looking to be objectively verifiable. Plaintiffs frequently seek to impose liability, for instance, based on broad aspirational company policies supporting energy efficiency and transition. *E.g.*, Compl. ¶ 49, *City of New York v. Exxon Mobil Corp.*, No. 451071/2021 (N.Y. Sup. Ct. Apr. 22, 2021) ("We support the ambition to achieve net-zero emissions by 2050"); *id.* ¶ 58 ("[W]e're working to make energy that's cleaner and better."). Courts have declined to impose UDAP liability on the basis of such statements. *See People by James v. PepsiCo, Inc.*, 85 Misc. 3d 969, 979 (N.Y. Sup. Ct. 2024) (New York's UDAP law does not allow plaintiffs "to create liability for Defendants' aspirational statements to curtail [their environmental] footprint"). As one trial court found, "[n]o reasonable consumer would be misled by [such] subjective, non-specific, and vague" expressions of corporate climate ambitions and sustainability initiatives. *City of New York*, 226 N.Y.S.3d at 880–81 (dismissing climate-related UDAP claim in its entirety); *see also NetScout Sys., Inc. v. Gartner, Inc.*, 334 Conn. 396, 414 (2020) (a statement likely to mislead consumers should be "subject to objective verification").

The same goes for allegedly deceptive omissions. Many claims rely upon allegedly omitted information that is too abstract and vague for its nondisclosure to constitute deception. *See, e.g.*, Compl. ¶ 238, *Hawai'i ex rel. Lopez v. BP P.L.C.*, No. 1CCV-25-717 (Haw. Cir. Ct. May 1, 2025) (alleging that Shell "fail[ed] to disclose the extreme safety risk associated with the use of fossil fuel products"). Moreover, in jurisdictions

that require proof of intent to mislead, plaintiffs may fall short of alleging an adequate basis to infer that defendants knowingly or purposefully omitted information to induce sales—for example by focusing on the alleged nature of the omissions without plausibly alleging an intent to deceive. And plaintiffs raising omission-based UDAP claims often do not even attempt to allege the existence of a relationship giving rise to a special duty of disclosure—a prerequisite to imposing UDAP liability for deceptive omissions in some jurisdictions. *See generally* Compl., *California ex rel. Bonta v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. Sept. 15, 2023); Compl., *City of Richmond v. Chevron Corp.*, No. MSC18-00055 (Cal. Super. Ct. Jan. 22, 2018).

2. *Consumer Transaction*. Even assuming that a company's broad representations concerning its climate policy could be considered deceptive, such statements generally lack the necessary connection to a specific commercial sale. UDAP statutes prohibit deception in trade or commercial transactions, not generalized communications about a company's "brand," "business," or corporate "policy." *City of New York*, 226 N.Y.S.3d at 881 (citation omitted); *see also PNC Bank*, 2017 WL 436389, at *2 (UDAP law "only protects against fraud *in a sale*" (emphasis added)); *Gennari*, 148 N.J. at 607 (misrepresentation must be "made to induce the buyer to make [a particular] purchase"). Thus, allegations that a company overstated its commitment to sustainability or misleadingly portrayed itself as climate conscious fail to establish that the company deceived consumers in connection with a specific sale of a discrete product. *See Joe Hand*, 567 F. Supp. 2d at 724 (dismissing

UDAP claim for failure to "allege facts that establish that the alleged fraudulent conduct induced or lured the plaintiff into purchasing merchandise").

In this case, Respondents' consumer protection claims are even more far-fetched. In the litigation below, Respondents claimed that Petitioner "deceived" the public by expressing the view that the harms of global warming are overstated, or can be limited by human adaptation. Both consumer protection law and contract law have long recognized that broad, subjective, and contestable claims such as these—and that do not relate to the qualities of the product in question—cannot be characterized as having "induced" or "lured" consumers into purchasing any product.

So too for allegedly misleading omissions. Sweeping general allegations that a company deceptively withheld information on "the extreme safety risk" associated with "catastrophic climate change," Compl. ¶ 143, *City of Charleston v. Brabham Oil Co.*, No. 2020-CP-10-03975 (S.C. Ct. C.P. Sept. 9, 2020), lack a sufficient connection to any particular transaction. The fact that profit might have motivated a company not to broadcast such global risks is not enough to support a UDAP claim. *See Lafferty*, 229 Conn. App. at 545 ("That the defendants' speech was motivated by a desire to generate profit through sales of products . . . is not adequate to satisfy the 'trade or commerce' prong of [Connecticut's UDAP statute].").

Courts have repeatedly enforced these limitations by dismissing climate-related cases premised on allegations of consumer deception or other

misrepresentation. In *City of Charleston*, the South Carolina court dismissed a climate-change-focused UDAP claim after finding that the "allegations relate only to alleged deception concerning the *risks of climate change* generally—not statements concerning Defendants' specific products." 2025 WL 2269770, at *18. Likewise, in *City of New York*, a court dismissed plaintiff's climate-related action in its entirety, reasoning in part that broad "corporate greenwashing statements" could not have violated the state's UDAP statute because they "d[id] not reference [the] fossil fuel products" *actually purchased* by New York consumers. 226 N.Y.S.3d at 882. In reaching that conclusion, the court emphasized that it is not enough that a statement be motivated by a general desire to maximize a company's profitability, reasoning that such "an expansive interpretation of the [New York UDAP statute] would render the 'made in connection' requirement meaningless." *Id.* at 700; *see also PNC Bank*, 2017 WL 436389, at *2 (rejecting interpretation of UDAP statute that would reach "all unconscionable activity").

3. *Materiality*. Climate-related UDAP claims also falter on materiality. To state a viable claim, a plaintiff must plausibly allege that the challenged statement or omission was "made to induce the buyer to make [a] purchase," *Castro v. NYT Television*, 370 N.J. Super. 282, 294 (App. Div. 2004), and was, in fact, "likely to affect consumers' conduct or decision" with respect to that product, *Tomasella*, 962 F.3d at 72. That requirement is not satisfied where the supposedly deceptive statement or omission concerns widely known risks that have been the subject of scientific study, media coverage, public debate,

government action, and litigation for decades. *See Juliana v. United States*, 947 F.3d 1159, 1166 (9th Cir. 2020) ("The federal government has long understood the risks of fossil fuel use and increasing carbon dioxide emissions."); *accord Massachusetts v. EPA*, 549 U.S. 497, 507 (2007).

Inundated with the well-known benefits and risks posed by fossil fuels, a plaintiff cannot plausibly claim that a company's alleged misstatement or nondisclosure of such information would have affected his or her purchasing decisions. For this reason, plaintiffs "cannot succeed" in showing material deception under UDAP laws "where Plaintiff's own allegations concede that the connection between fossil fuels and climate change is public information." *City of New York*, 226 N.Y.S.3d at 878–79. As the court in *City of New York* explained, those allegations are mutually exclusive:

> The City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil fuels cause climate change, and, on the other hand, that the same consumers are being duped by Defendants' failure to disclose that their fossil fuel products emit greenhouse gases that contribute to climate change.

Id. at 879–80.

Even assuming that some consumers were unaware of the alleged environmental effects of fossil fuel combustion, the notion that additional corporate disclosures would have changed their consumption behavior is highly speculative. Fossil fuels provide

American consumers with significant benefits, including affordable transportation and access to commerce. In this light, the idea that consumers would alter consumption habits in response to a defendant's disclosure of concomitant risks of global climate change is implausible. Consumers might just as well discount that abstract global information, view their individual contribution to climate change as too minuscule to warrant lifestyle changes, lack feasible alternatives, be unwilling or unable to alter entrenched transportation or consumption habits, believe that one company's efforts to reduce emissions would not have meaningfully mitigated global climate change regardless, or continue to purchase fossil-fuel products for other reasons. UDAP statutes do not permit liability to rest on conjecture about how consumers might have behaved—particularly when powerful competing considerations undermine any hypothesis that the information would be material. *See Argyropoulos v. City of Alton*, 539 F.3d 724, 732 (7th Cir. 2008) (refusing to draw "[i]nferences that are supported by only speculation or conjecture").

4. *Particularity*. Plaintiffs also regularly fail to plead UDAP violations with sufficient particularity. *See Hoffman*, 405 N.J. Super. at 112; *State ex rel. Jennings v. BP Am. Inc.*, No. N20C-09-097, 2024 WL 98888, at *17 (Del. Super. Ct. Jan. 9, 2024). By grouping multiple defendants together and attributing statements, omissions, or public-relations campaigns collectively, plaintiffs often fail to identify what each defendant supposedly said, when it said it, where the statement appeared, why it was false or misleading, or how it affected consumer conduct. *See, e.g.*, Am. Compl. ¶ 78(a), *City of Hoboken v. Exxon*

Mobil Corp., No. HUD-L-3179-20 (N.J. Super. Ct. Law Div. Apr. 21, 2023) (alleging broad, collective misconduct on the part of "The Fossil Fuel Company Defendants" writ large). That group-pleading approach is inconsistent with the heightened pleading requirement, which at a minimum requires plaintiffs to "allege with particularity the statements that were false or misleading" and "identify those responsible." Pet. App. 133a.

Even when identifying specific defendants, plaintiffs routinely allege a misrepresentation—particularly in the form of omissions—in vague and imprecise terms that fail to identify particular alleged acts of misconduct. *Jennings* is instructive. There, the court dismissed climate-related UDAP claims because the State "failed to specifically identify alleged misrepresentations" at issue in the litigation. 2024 WL 98888, at *17. Such generalized accusations of deception fall short of a plaintiff's obligation to plead the who, what, when, where, and how of the alleged fraud underlying their climate-related UDAP claim.

5. ***Statutes of Limitations***. Many climate-related UDAP claims—including those initially brought in the trial court below—are also time barred because the allegedly concealed underlying facts regarding global climate change were publicly known, or reasonably knowable, long before the relevant limitations period. In *Jennings*, for example, a Delaware court held that because "the general public had knowledge of or had access to information about" concerns over the risks of fossil fuels for "decades," plaintiffs either knew or "should have known" by reasonable diligence of the facts giving rise to their

claim long before the start of the applicable limitations periods. 2024 WL 98888, at *2, 19. In other words, "ample information in the public record for decades confirm[s]" that UDAP plaintiffs have long been "on notice" of the environmental risks posed by fossil fuel consumption. *City of Charleston*, 2025 WL 2269770, at *13. Current UDAP claims thus come far too late.

III. The Court Should Avoid Opining on the Specific Merits of, or the Specific Defenses to, Climate-Related UDAP Claims.

This Court need not say anything about the specific merits of climate-related UDAP claims to resolve this case. The questions before the Court concern only whether federal law precludes state tort claims arising from the global effects of greenhouse-gas emissions. The Court can answer that question without commenting on the specific merits of UDAP claims that lower courts are addressing in climate-related consumer-protection cases across the country. *Cf. Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (observing that this Court is "a court of review, not of first view").

We respectfully urge the Court to avoid statements about Respondents' claims or Petitioners' defenses that may inadvertently affect climate-related UDAP litigation. For instance, we urge the Court to refrain from suggesting that plaintiffs whose tort claims are precluded by federal law may have a cause of action under other state laws. We also respectfully request that the Court refrain from characterizing Petitioners' statements about their fuel products as deceptive (or truthful, for that matter), commenting on the materiality of climate-related concerns to consumers'

purchasing decisions, or opining on the reasons consumers use fossil fuels. Statements on these issues—even in dicta—could inadvertently affect lower courts' assessment of climate-based UDAP claims in unpredictable ways.

IV. If the Court Addresses Climate-Related UDAP Claims, It Should Find Them to Be Precluded.

If the Court nevertheless reaches the UDAP claims, it should hold that they are precluded for the same reasons as the tort claims asserted by Respondents. As multiple courts have recognized, the same considerations that preclude state tort theories predicated upon alleged global environmental harms also apply to UDAP claims arising from identical facts.

State and local government agencies cannot skirt preclusion by simply claiming they are seeking to prevent deceptive trade practices within their home jurisdiction. This Court has made clear that in applying preclusion, courts should look to the substance of the claim and its conflict with the federal interests and policies at stake, not the form of the pleading. *See Boyle v. United Technologies*, 487 U.S. 500, 506 (1988). Lower courts have applied that principle in these cases. As recently stated by the Maryland Supreme Court, "[n]o amount of creative pleading can masquerade the fact that the local governments are attempting to utilize state law to regulate global conduct that is purportedly causing global harm." *Mayor of Baltimore v. B.P. P.L.C.*, 493 Md. 427, 482 (2025). Recognizing this principle, multiple state courts have concluded that federal common law, the Clean Air Act, and federal

constitutional structure preclude climate-change-focused claims based on common law and UDAP alike. *See, e.g.*, *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22, 2025 WL 604846 (N.J. Super. Ct. Law Div. Feb. 5, 2025); *City of Annapolis v. BP PLC*, Nos. C-02-CV-21-000250, 2025 WL 588595, at *6 (Md. Cir. Ct. Jan. 23, 2025); *City of Charleston*, 2025 WL 2269770, at *20. If it reaches the UDAP claims, this Court should do the same.

Members of the Court also have recognized in the preemption context that when a local effort to regulate conflicts with principles of federal law, the practical regulatory effect of the local action, not its label, should dictate whether it is consistent with federal interests. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 553 (1992) (Scalia, J., concurring in part and dissenting in part) ("the methodology [for assessing the scope of preemption] must focus not upon the ultimate source of the duty . . . but upon its proximate application"); *see also Altria Group, Inc. v. Good*, 555 U.S. 70, 96 (2008) (Thomas, J., dissenting) ("This 'proximate application' test, therefore, focuses not on the state-law duty invoked by the plaintiff, but on the *effect of the suit* on the [defendant] manufacturer's conduct—*i.e.*, the 'requirement' or 'prohibition' that would be imposed under state law. Put simply, if 'whatever the source of the duty, [the claim] imposes an obligation . . . because of the effect of smoking upon health,' it is pre-empted." (quoting *Cipollone*, 505 U.S. at 554) (emphasis added)).

Taken together, consistent (and recent) state court decisions and such statements of federal principle make clear that what matters is substantive

consistency between federal interests and state law actions, not the mere form of state pleadings.

CONCLUSION

For the foregoing reasons, we respectfully urge the Court to avoid opining on the specific merits of climate-related UDAP claims or defenses to such claims. In the alternative, the Court should hold that any climate-related UDAP claims are precluded by federal law for the same reasons as the Respondents' tort theories of liability.

Respectfully submitted,

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