No. 25-170

IN THE

Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., ET AL.,
Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, ET AL.,
Respondents.

On Writ of Certiorari to the Supreme Court of Colorado

BRIEF OF PROFESSOR WILLIAM W. BUZBEE AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

William W. Buzbee holds the inaugural Edward and Carole Walter Professor chair and is a Professor of Law at Georgetown University Law Center and the Faculty Director of the Georgetown Climate Center.[1]

Professor Buzbee's work has extensively addressed the application of preemption and statutory interpretation principles to federal environmental statutes. *See, e.g.*, Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question (William W. Buzbee ed., 2008); William W. Buzbee, *Federalism-Facilitated Regulatory Innovation and Regression in a Time of Environmental Legislative Gridlock*, 28 Geo. Env't L. Rev. 451 (2016). He believes that legal scholarship should be concerned with, and made useful to, courts' resolution of these issues. To that end, he has drawn on that work in amicus briefs in prior cases that implicated these issues. *See, e.g.*, Br. of Preemption Scholars, *Montgomery v. Caribe Transport II, LLC*, 146 S. Ct. 1199 (2026) (No. 24-1238); Br. of Admin. & Fed. Regul. L. Professors, *Loper Bright Enters. v. Raimondo,* 603 U.S. 369 (2024) (No. 22-451); Br. of Pub. L. Scholars*, Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299 (2019) (No. 17-290).

Professor Buzbee submits this amicus brief solely in his individual capacity as a lawyer and scholar, and the views expressed in this amicus brief should not be attributed to his institution.

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel, party, or other person or entity—other than amicus curiae and his counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

"Courts interpret statutes, no matter the context, based on the traditional tools of statutory construction, not individual policy preferences." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 403 (2024). Petitioners ask this Court to depart from those traditional rules of statutory interpretation in two different ways here: by creating a bespoke clear-statement rule and by applying a presumption of preemption. Both would burden Congress with an obligation to speak clearly on an issue, to a court's satisfaction, before its laws will be read to preserve state authority to touch on that issue. And both are so malleable as to risk allowing judicial preferences to substitute for the political branches' actual choices.

Petitioners' proposed good-for-this-case rules "may suit [their] present needs," but each "lacks any grounding in law," *Bowe v. United States*, 607 U.S. 13, 57–58 (2026) (Gorsuch, J., dissenting). This Court should reject both.

As to the proposed new clear-statement rule, it is exactly the kind of vague, values-enforcing substantive canon that members of this Court have pointed to when expressing "skeptic[ism] about adding new ones to the mix." *Learning Res., Inc. v. Trump*, 607 U.S. 229, 303 (2026) (Barrett, J., concurring). When asking this Court to invent a new substantive canon, a party must—at a minimum—explain why the canon's purported value outweighs its costs. *Cf.* Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 181 (2010) ("The point is simply to say that such an inquiry must be undertaken.").

Petitioners' three-sentence treatment of their proposed clear-statement rule (at 30–31) does not contain that explanation. This Court can reject it for that reason alone. But even taken on its own terms, the proposed rule is indefensible.

All clear-statement rules impose a clarity tax on Congress, but petitioners' proposed rule would levy a particularly severe one. It is deeply unclear when, exactly, petitioners' rule would be triggered, as they refer only (at 30) to when a statute upsets some unspecified balance of power between the federal and state governments. And it is equally unclear what statutory text, exactly, could overcome their rule once triggered. Adopting petitioners' proposed rule would hold the Clean Air Act's drafters to a standard that they could not have known of, would provide future drafters with no guidance about how to navigate the rule, and would put future courts at risk of navigating the rule's fuzziness based on policy preferences.

As to petitioners' proposal to presume preemption, it is an attempt to reach the same place dressed up in different, but equally doctrinally lacking, garb. Petitioners rely on cases addressing the few areas that implicate uniquely federal interests, but those cases do *not* presume preemption. Instead, in those few areas, state law is preempted only if there is "a significant conflict between an identifiable federal policy or interest and the operation of state law." *Hencely v. Fluor Corp.*, 608 U.S. 31, 39 (2026) (quotation and brackets omitted). Regardless, the Clean Air Act does not address uniquely federal interests within the meaning of the cases petitioners invoke. The Act's very first provision "encourag[es] . . . reasonable Federal, State, and local governmental actions, consistent with the [Act], for pollution prevention" as "[a] primary goal." 42 U.S.C. § 7401(c). It contains multiple savings clauses that make clear that federal standards operate as a floor, not a ceiling. *See id.* §§ 7416, 7604(e). And where the Act does limit state and local authority, it does so expressly. The Clean Air Act thus *welcomes* state and local government efforts to address air pollution.

It would disrespect the political branches to presume preemption here. As a general matter, very few federal statutes expressly push traditional state police powers out of the picture. Presuming that a given statute *implicitly* does so therefore risks undermining legislative supremacy by assuming that Congress has taken a step that it almost never does. Given the Clean Air Act's invitation to state and local governments, presuming that it implicitly precludes traditional state tort claims is especially unwarranted.

There is much else wrong with petitioners' arguments, but this brief focuses on these two statutory interpretation issues because of the consequences of getting them wrong. Parties often ask courts to create bespoke interpretive rules to tilt a case in their favor, especially if they are concerned that the ordinary rules do not favor them. But statutory interpretation rules apply across the U.S. Code, and so a rule issued in one case will almost inevitably escape containment and be invoked across other cases, and other statutes. Petitioners' desire to win their case does not justify new rules that will create problems for Congress and the courts going forward.

This Court should affirm.

ARGUMENT

I. This Court Should Decline Petitioners' Request That It Create A Bespoke Clear Statement Rule To Resolve This Case.

Petitioners claim that respondents' suit implicates a set of issues that are "distinctively federal in character" and that Congress must have "clearly express[ed] its intention to" authorize state tort law to address those issues before respondents' suit can proceed. Petrs' Br. at 30 (quotation omitted). In doing so, petitioners ask this Court to fashion a new clear-statement rule to resolve this case. As members of this Court and scholars of its jurisprudence alike have recognized, rules of this kind often stand on shaky footing. Petitioners do not attempt to explain why their proposed new rule would avoid the doctrinal problems associated with clear-statement rules.[2] It would not. This Court should not accept the invitation to adopt their rule.

1. Petitioners are asking this Court to "conjur[e] up a clear-statement rule to support their course." *Bowe*, 607 U.S. at 57 (Gorsuch, J., dissenting). They claim that when a question arises over whether a federal statute allows a state tort suit that allegedly implicates a "dispute[] over the regulation of air and water in their ambient or interstate aspects," Petrs' Br. at 13, the federal statute must expressly authorize state tort suits of this kind, or else the suit cannot proceed. If a clear-statement applied in this context, then this

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[2] As respondents note, the United States does not join in petitioners' request. Resps' Br. 29–30.

Court would have applied it in cases that implicate that question. But it has not.

Instead, this Court has applied ordinary statutory interpretation principles to look for affirmative evidence *of* preemption. In *International Paper Co. v. Ouellette*, the question was "whether the [Clean Water] Act pre-empts Vermont common law to the extent that law may impose liability on a New York point source." 479 U.S. 481, 491 (1987). In laying out the framework for deciding the question, this Court noted that "courts should not lightly infer pre-emption" but might still find it under circumstances evidencing field, conflict, or obstacle preemption. *Id.* at 491–492.

Ouellette applied that familiar framework even after it specifically recognized that the Clean Water Act did "not speak directly to the" question before the Court. *Id.* at 493. That is, the Act did not "clearly express its intention to," Petrs' Br. at 30, authorize the Vermonters' suit at issue. If a clear-statement rule applied (as petitioners contend), that would have ended the matter in *Ouellette*. But this Court went on to "examin[e] the [Act] as a whole, its purposes and its history." *Ouellette*, 479 U.S. at 493. Only then did it conclude that the Act "precludes a court from applying the law of an affected State against an out-of-state source. *Id.* at 494. Instead, the law of the pollution source's state applied to the claims for interstate pollution harms. *See id.* at 497 ("[N]othing in the Act bars aggrieved individuals from bringing a nuisance claim pursuant to the law of the source State.").

Tellingly, petitioners do not identify any case in which this Court has mentioned, or applied, their proposed clear-statement rule in this context. Instead, they point (at 30–31) to a series of disconnected cases that addressed distinct contexts. These cases provide no support for their proposed new rule.

Petitioners' first case, to the extent that it establishes a clear-statement rule, did so based on concerns about a federal statute's potential *reduction* of state land-use authority. There, the question was whether the U.S. Forest Service "has authority under the Mineral Leasing Act to grant rights-of-way through lands within national forests traversed by the Appalachian Trail." *U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 607–608 (2020) (citation omitted). In answering yes, this Court examined another statute, the National Trails System Act, to determine whether it transferred jurisdiction of the lands in question to another agency and concluded that it had not. *See id.* at 613–619. It described the contrary interpretation as "ha[ving] striking implications for federalism and private property rights," expressing concern about the policy consequences of giving the National Park Service some degree of control over private, state, and local lands that fall within the National Park System. *Id.* at 621. That concern about diminishment of state authority led this Court to state that its "precedents require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property." *Id.* at 621–622.[3] Petitioners' proposed rule would, in

[3] For this proposition, this Court did not direct the reader to multiple "precedents." *Cowpasture River Pres. Ass'n*, 590 U.S. at 621. It offered only a *cf.* citation to *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). *See Cowpasture River Pres. Ass'n*, 590 U.S. at

contrast, diminish traditional state police powers.

Petitioners' second case did not require this Court to resolve whether a clear-statement rule applied to the statute before it, nor did the case address environmental harms. The question was whether a state workers' compensation law "that provide[d] an increased award for injuries resulting from an employer's violation of a state safety regulation" applied to "a private contractor operating a federally owned nuclear production facility." *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 176 (1988). This Court stated that the Supremacy Clause shields "activities of federal installations . . . from direct state regulation unless Congress provides clear and unambiguous authorization." *Id.* at 180 (internal quotation marks omitted). But the state law at issue did not involve "direct state regulation"; it involved a supplemental workers' compensation award. *Id.* at 181–182. The Court did not need to decide whether—despite that difference—the Supremacy Clause barred that award absent authorization because a federal statute *did* authorize it. *See id.* at 182.

And petitioners' third case is similarly far afield, as it addressed the displacement of tribal jurisdiction. There, the question was whether a state court could "exercise jurisdiction over civil suits by non-Indians

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622. That case, in turn, referred to "an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Ashcroft*, 501 U.S. at 461. *Ashcroft*, then, like *Cowpasture River Preservation Association*, was concerned with federal statutes' ability to diminish traditional state authorities. *See* Resps' Br. at 45 n.18.

against Indians though the action arises on an Indian reservation." *Williams v. Lee*, 358 U.S. 217, 218 (1959). In answering no, this Court explained that "tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive." *Id.* at 220. No federal statute gave the state court jurisdiction over the controversy at issue. *See id.* at 222.

In sum, petitioners are proposing a new, bespoke clear-statement rule for this case. As discussed next, this Court should reject their proposal.

2. Petitioners' proposed clear-statement rule falls within the category of substantive canons: "rules of construction that advance values external to a statute." *Biden v. Nebraska*, 600 U.S. 477, 508 (2023) (Barrett, J., concurring).[4] Petitioners do not clarify what value, exactly, their proposed rule advances. But it appears to be an unquantified view about the appropriate balance of power between the federal and state governments. *See* Petrs' Br. at 30.

Petitioners do not claim that their proposed rule is necessary to avoid a constitutional problem, but even if they did, that justification would not suffice. As respondents note, *see* Resps' Br. at 29–30, their state tort suit is either constitutionally permissible or it is not. If not, the Act's clarity is irrelevant. Petitioners' proposed rule thus does work—that is, determines the

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[4] These "stand in contrast to linguistic or descriptive canons, which are designed to reflect grammatical rules . . . or speech patterns." *Nebraska*, 600 U.S. at 508 n.1 (Barrett, J., concurring). Petitioners do not (at 30–31) defend their proposed clear-statement rule as a linguistic canon (that is, one based in an understanding of how specific statutory language is ordinarily used and understood).

viability of respondents' suit—only if the suit *is* constitutionally permissible but the Act's text does not allow it with some unspecified required level of clarity. In that circumstance, "it is difficult to see how nullifying that [suit]—based on . . ., a federalism canon, or the like—could possibly be justified as a means of averting a constitutional violation that does not exist." Benjamin Eidelson & Matthew C. Stephenson, *The Incompatibility of Substantive Canons and Textualism*, 137 Harv. L. Rev. 515, 561 (2023); *see also Learning Res., Inc.*, 607 U.S. at 302 (Barrett, J., concurring) ("But if the Constitution permits Congress to give . . . a particular power, who are we to get in the way?").

The shaky case for vague, values-enforcing clear-statement rules like the one that petitioners propose here have generated "skeptic[ism] about adding new ones to the mix. *Learning Res.,* 607 U.S. at 303 (Barrett, J., concurring). That skepticism is more than warranted here. Petitioners' proposed rule bears all the hallmarks of the kind of rule that members of this Court and a robust academic literature have explained are *least* justifiable.

Petitioners' proposed rule will "impose a clarity tax on the legislative process" in service of "personal preferences about which commitments to emphasize." John F. Manning, *Clear Statement Rules and the Constitution*, 110 Colum. L. Rev. 399, 426 (2010). "[B]y demanding that [the legislature] speak unequivocally if it wants to accomplish certain ends," it intrudes on the province and duty of that branch to enact policy decisions into law. *Nebraska*, 600 U.S. at 508 (Barrett, J., concurring). This risk is especially high when—as here—a new rule is floated that would apply to an existing statute. In that circumstance, the statute's enactors had no notice that judicially created heightened clear statement demands might apply to the bill before them. *See* Anita S. Krishnakumar, *Reconsidering Substantive Canons*, 84 U. Chi. L. Rev. 825, 883 (2017) (The problem "is particularly disturbing when" a new rule is applied "to an older statute, enacted . . . when different statutory interpretation techniques predominated . . . .").

Petitioners' proposed rule imposes an especially high clarity tax because its trigger is indeterminate. At some level, all federal antipollution and natural resource-protecting laws overlap with state and local governmental authority to address land use, conservation, public health, and safety risks. *See, e.g.*, Kirsten H. Engel, *Harnessing the Benefits of Dynamic Federalism in Environmental Law*, 56 Emory L.J. 159, 166 (2006) (explaining that "jurisdictional overlap is the norm, not the exception"). When the political branches act, what balance that they strike within this jurisdictional overlap will "significantly alter[] the balance between federal and state power" and trigger petitioners' proposed rule? Petrs' Br. at 30 (quotation omitted). Who can say? (And petitioners do not say.) Petitioners' proposed rule provides no guidance to future legislative drafters about how clear they will need to be to accomplish their policy goals. *See* Manning, *supra*, at 434 (Rules triggered by "statutes that (in [a court's] view) disrupt federalism" address "a structural value . . . abstracted to an unhelpful level of generality.").

Petitioners' proposed rule would impose a tax on the judiciary as well. Once mentioned, clear-statement rules of this kind must be addressed in future cases. This often requires judges to answer questions that the creating court may have left unanswered. Is the rule a clear-statement rule after all?[5] Has it been triggered?[6] *See* William N. Eskridge, Jr., et al., *Textualism's Defining Moment*, 123 Colum. L. Rev. 1611, 1683 (2023) ("Should the judge apply the canon? . . . Should there be an exception to the canon?"). And if it is triggered, "[h]ow specific does that statutory language have to be?"[7] *Id.*; *see also id.* ("Once launched," these canons typically evolve "from presumptions to clear statement rules to super-strong clear statement rules.").

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[5] *See, e.g.*, Tr. of Oral Arg. at 15, *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546 (2026) (No. 24-345) (Barrett, J.) ("I don't read *Sandoval* to necessarily require or to require a clear statement.").

[6] *See, e.g.*, Tr. of Oral Arg. at 63–64, *Hencely v. Flour Corp.*, 608 U.S. 31 (2026) (No. 24-924) (Thomas, J.) ("[H]ow would you define uniquely federal interests? . . . I mean, you could argue that the interstate highway system is uniquely federal. I just – I don't understand how we are going to limit that.").

[7] *See, e.g.*, Tr. of Oral Arg. at 10, *Riley v. Bondi*, 606 U.S. 259 (2025) (No. 23-1270) (Roberts, C.J.) ("I mean, is it really a magic words case, that the statute has to say 'and this is jurisdictional'?"); Tr. of Oral Arg. at 25, *Boechler, P.C., v. Comm'r of Internal Revenue*, 596 U.S. 199 (2022) (No. 20-1472) (Kagan, J.) ("[W]e've always said that there are no magic words. So how do we draw that line? . . . [H]ow can we insist that there are no magic words and yet insist that there be conditional language of some kind?"); Tr. of Oral Arg. at 48, *Dep't of Ag. Rural Dev. Rural Housing Serv. v. Kirtz*, 601 U.S. 42 (No. 22-846) (Jackson, J.) ("[I]s the government not conceding that we have said that you can satisfy the clear statement rule by implication? . . . [S]o an implication could occur when what?").

Perhaps future courts might find ways to avoid answering these difficult questions. *See* Nina A. Mendelson, *Change, Creation, and Unpredictability in Statutory Interpretation: Interpretive Canon Use in the Roberts Court's First Decade*, 117 Mich. L. Rev. 71, 135 (2018) (conducting an empirical study to describe a pattern of "devising new interpretive canons, abandoning old ones, and deciding whether to deploy them based on reasons that appear difficult to pin down"). But that would only compound the problems that these clear-statement rules pose. "Unpredictable canon use, blurry canon contours, or a general atmosphere of changeability" undermine arguments that these rules provide a predictable "interpretive background" and likely reduce "drafters' incentives to maintain overall awareness of canon use." *Id.* at 88.

Clear-statement rules like the one that petitioners propose here impose "a lot of trouble," Antonin Scalia, A Matter of Interpretation 28 (1997). Their "rule may suit [petitioners'] present needs," but it "lacks any grounding in law," *Bowe*, 607 U.S. at 57–58 (Gorsuch, J., dissenting). This Court should reject it.

II. Ordinary Preemption Principles Govern The Statutory Question Here.

Petitioners offer another route to the same problematic destination when they urge this Court (at 30, 44) to say that respondents' state-law suit implicates uniquely federal interests and is therefore preempted absent statutory authorization. Again, this Court has not followed that route when addressing this context before in *Ouellette*; it did the opposite. *See supra* at 6 (discussing the inclusion of the presumption against preemption in the framework for analyzing preemption). And because this argument lands in the same place as petitioners' proposed clear-statement rule—flipping the default of non-preemption and imposing a burden on Congress to act affirmatively—the objections to that rule apply equally here.

There are more reasons to reject petitioners' presumption-of-preemption argument. To start, they far overread the "uniquely federal interest" line of cases that they try and fit this case into, ignoring guidance that this Court provided just a few months ago. In any event, the Clean Air Act's text and structure make clear both that it does not implicate that line of cases and that it is incompatible with a presumption of preemption. "[O]rdinary statutory preemption analysis applies." Resps' Br. at 45.

1. Petitioners argue that "there is no need for" Congress to act affirmatively "to foreclose the application of state law" if a case implicates an "issue [that] is 'distinctively federal in character.'" Petrs' Br. at 30 (quoting *United States v. Standard Oil Co. of Cal.*, 332 U.S. 301, 305 (1947)). Even if this case did implicate some uniquely federal interest (more on that later), that is not how preemption would work.

Even in "rare areas of uniquely federal interest," "the identification of a uniquely federal interest does not . . . end the inquiry" into preemption. *Hencely,* 608 U.S. at 39–40 (quotation omitted). Instead, state law is preempted only if there is "a significant conflict . . . between an identifiable federal policy or interest and the operation of state law." *Id.* at 39 (quotation and brackets omitted).[8] *Hencely* just made quite clear that

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[8] This is a "narrow[]" doctrine, one that "will rarely apply

petitioners' view (at 44)—that a mere inconsistency or dull conflict will result in preemption in the rare areas of uniquely federal interests—is not the law.

What is more, *Hencely* rejected an attempt—the same play that petitioners run here—to expand the uniquely federal interest line of cases. There, "[w]ithout any constitutional or statutory text expressly supporting preemption," a party asserted that "all claims against contractors engaged in combatant activities under the military's command" are preempted because they implicate uniquely federal interests. *Hencely*, 608 U.S. at 38. But this Court described prior precedent as limiting preemption to the "special circumstance in which the contractor has a defense because the government has directed a contractor to do the very thing that is the subject of the claim." *Id.* at 41 (quotation omitted). In rejecting broader preemption, this Court explained that its conclusion "should come as no surprise" because "Congress knows full well how to make its intention to preclude private liability known." *Id.* at 42 (quotation omitted).

2. The text and structure of the Clean Air Act also make clear that it does *not* implicate uniquely federal interests and that there is no basis to assume a significant conflict between state tort suits and the Act.

The Clean Air Act's text and structure preclude a conclusion that the Act addresses uniquely federal interests. After all, the Act states "that air pollution prevention . . . and control at its source is the primary responsibility of States and local governments." 42

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when litigation is purely between private parties." *Hencely*, 608 U.S. at 39 (quotation omitted).

U.S.C. § 7401(a)(3); *see also Sackett v. EPA*, 598 U.S. 651, 680 (2023) (reading 33 U.S.C. § 1251(b), a parallel provision of the Clean Water Act, to counsel against narrowing state authority). The Act also "encourag[es] . . . reasonable Federal, State, and local governmental actions, consistent with the [Act's provisions], for pollution prevention" as "[a] primary goal." 42 U.S.C. § 7401(c). And the Act, like other environmental statutes that address harm from interstate pollution, assigns "roles to federal regulators, but also seek[s] to entice state and local regulators to join in the pursuit of federally identified ends." William W. Buzbee, *Asymmetrical Regulation: Risk, Preemption, & the Floor/Ceiling Distinction*, 82 N.Y.U. L. Rev. 1547, 1564–1565 (2007). The enactors of this text would not have viewed the Act as implicating a uniquely federal interest as the cases petitioners invoke use that phrase.[9]

And those enactors would not have thought that any use of state law that relates in some way to air pollution would be preempted unless the Act specifically authorized it. Such federal boxing out of state authority is the exception, not the norm. "[F]ew statutes explicitly preempt state common law actions." *Id.* at 1591; *see also id.* at 1561 n.36 (providing

[9] It is difficult to see what would *not* implicate a uniquely federal interest if the Clean Air Act does. *See* Resps' Br. at 40–41 (criticizing the haziness of this phrase); *see also* Heather K. Gerken, *Federalism 3.0*, 105 Cal. L. Rev. 1695, 1699–1700 (2017) (explaining that "neither the state nor the federal government presides over its own empire" but instead "[o]verlap and interdependence are the rule" and offering environmental law, health care, telecommunications, and financial regulation as examples).

examples). Most "say nothing precluding common law liabilities." *Id.* at 1591. As a result, arguments that any given statute precludes any additional state and local protections when its text does not expressly do so raise "a serious question about fealty to legislative supremacy." *Id.* "[T]he Framers equipped Congress with considerable power to . . . preempt contrary state laws," and "extreme caution is warranted before a court deploys . . . implied authority" to infer preemption that Congress has not written into law. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 390 (2023) (quotation omitted).

The Clean Air Act cannot be read to contain some implicit preference for boxing out state and local law; instead, its text invites the use of state and local law to address air pollution. *See supra* at 15–16 (discussing provisions that describe air pollution control as a joint federal, state, and local project). Indeed, the Act takes care not to "preclude or deny the right of any State or political subdivision thereof" to adopt its own emissions standards, limitations, or controls, except that they may not adopt any that are "less stringent" than a relevant federal standard under the Act. 42 U.S.C. § 7416. And the Act makes plain that it does not "restrict any right which any person (or class of persons) may have under any statute *or common law* to seek enforcement of any emission standard or limitation or to seek any other relief." *Id.* § 7604(e) (emphasis added). The Act preempts state and local powers in only a few circumstances, and where it does, it does so with clear, express language. *See, e.g.*, *id.* § 7573 ("No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part."); *see also id.* § 7416 (exempting cross-referenced express preemption provisions).

Given this, Petitioners' claim (at 33–34) that the Act's savings clauses are evidence that the Act kills off any room for state law that the clauses do not expressly preserve is wrong. These kinds of savings clauses simply make clear that the Clean Air Act sets a regulatory floor, rather than a ceiling that prohibits state and local law from going further. Buzbee, *supra*, at 1554 ("Federal floors preclude less stringent state and local regulation, but allow for additional and more stringent regulation and typically are accompanied by savings clauses and cooperative regulatory structures."). They do not close the door to all other state and local law that may touch on air pollution, especially given the express invitation to the use of state and local law in the rest of the Act. *See* Resps' Br. at 48–49 (discussing *Ouellette*'s rejection of field preemption in the Clean Water Act for similar reasons).

Again, "Congress undoubtedly knows how to effect a strongly or completely preemptive regime, much as it knows how to retain significant state, local, and common law roles . . . ." Buzbee, *supra*, at 1613. The Act's text and context show that Congress did the latter when it comes to air pollution, welcoming and preserving state and local authority. This Court should respect this congressional judgment, which reflects longstanding federalism norms, and reject petitioners' presumption of preemption.

CONCLUSION

The Court should affirm.

Respectfully submitted,

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