No. 158, Original

IN THE

Supreme Court of the United States

ALABAMA, ET AL.,

Plaintiffs,

v.

CALIFORNIA, ET AL.

On Motion for Leave to File a Bill of Complaint

BRIEF OF *AMICUS CURIAE* THE BUCKEYE INSTITUTE IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae The Buckeye Institute was founded in 1989 as an independent research and education institution—a "think tank"—to formulate and promote free-market public policy in the States. The staff at The Buckeye Institute accomplish the organization's mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating sound free-market policies, and promoting those solutions for implementation in Ohio and replication across the country. The Buckeye Institute engages in litigation in support of the rights and principles enshrined in the United States Constitution.

The Buckeye Institute supports the principles of limited government and individual liberty. The Buckeye Institute has a strong interest in preserving the principles embodied in the United States Constitution. The Plaintiff States' Complaint raises important questions about the principles of horizontal federalism, interstate regulation, and development of energy policy. The Buckeye Institute supports a regulatory environment that is not unnecessarily burdensome, and which respects each State's ability to regulate activity within its own jurisdiction.

[1] Pursuant to Rule 37.6, counsel for *amicus curiae* affirm that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of the brief. Counsel of record for all parties received timely notice of the intention to file this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This action is a response by nineteen states ("Plaintiff States") to protect the availability of affordable power for their residents in the face of a concerted litigation campaign by the attorneys general of a handful of sister states that seek to impose their own energy policies on the entire nation. These states misuse state tort and consumer law in an attempt to inflict heavy penalties on the oil and gas industries for their lawful production of energy needed to meet the country's demands. The remedies that these states seek—disgorgement, civil penalties, and punitive damages in addition to unquantifiable compensatory damages—will, if imposed, make living, working, and traveling in the Plaintiff States more expensive, make their power supply less reliable, and pose a threat to their economies.

The five states named as defendants in the Bill of Complaint ("Defendant States") may make energy policy choices for their own residents and, for them, the calculus of what forms of energy serve their needs may be different than the Plaintiff States. For example, states with an abundance of oil and gas resources may understandably make different decisions when setting energy policy than states that have access to plentiful wind, solar, and hydropower resources. The ability of states to make such choices is the promise of our federal system. The Defendant States' actions, however, breach principals of horizontal federalism, jeopardizing the ability of sister states to meet the energy needs of their residents without interference.

The Defendant States' litigation seeks to impose a steep price on the oil and gas industry for lawfully supplying traditional energy sources to meet the country's growing power needs. This litigation, and the remedies the Defendant States' seek, has the same effect of enacting legislation or promulgating regulations limiting or prohibiting the production or marketing of traditional energy products in other states. Their lawsuits, while employing ordinary state tort and consumer labels, are transparent attempts at national regulation through litigation. When the actions of states threaten to have substantial effects beyond their borders—placing them in conflict with other states, as the underlying state litigation does here—this Court should resolve the resulting interstate dispute.

ARGUMENT

I. The Court Should Grant the Motion to Consider Principles of Horizontal Federalism

Evaluation of federalism concerns often focuses on the limited powers that the U.S. Constitution provides to the federal government via the Commerce Clause, Congress's ability to incentivize State conduct through the Spending Clause, the Supremacy Clause's resolution of conflicts between federal and state law, and the Tenth Amendment's instruction that powers not delegated to the federal government are reserved to the States. Less attention is paid to another fundamental aspect of federalism, which "attempts to coordinate fifty coequal states that must peacefully coexist" and is squarely at issue in this case. *See generally* Allan Erbsen, *Horizontal Federalism*, 93 Minn. L. Rev. 493, 494 (2008). This "horizontal federalism" encompasses "constitutional mecha-

nisms for preventing or mitigating interstate friction that may arise from the out-of-state effects of in-state decisions." *Id*. at 503.

Tension between states can arise when one state (or, as here, a group of states) attempts to assert its sovereign power over other states. While this type of conflict can occur in disputes over territory, *see, e.g., New Jersey v. New York*, 523 U.S. 767 (1998), it can also result when states attempt to regulate extraterritorial conduct or set national policy, as alleged in the Bill of Complaint.

The Commerce Clause is one source of horizontal federalism. U.S. Const. art. I, § 8, cl. 3. As this Court has recognized, the Commerce Clause "protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State." *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336–37 (1989). This is true regardless of whether the state law's extraterritorial reach is intended. *Id*. at 336. "The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." *Id.*; *see also Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 583 (1986) (finding it "irrelevant" that a law addressed only sales in the enacting State when its "practical effect" is extraterritorial) (citing *Southern Pac. Co. v. Arizona ex rel. Sullivan,* 325 U.S. 761, 775 (1945)); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521 (1935) (observing that a state has "no power to project its legislation" into another state). Just as individual states cannot enforce regulations that have a "serious adverse effect" on the "efficiency and economy" of the interstate transportation system, they cannot, con-

sistent with the Commerce Clause, impose their will on the interstate flow of energy resources to meet the nation's power needs. *See Southern Pac. Co.*, 325 U.S. at 781-82.

While this Court's Commerce Clause jurisprudence has often addressed the prohibited extraterritorial effect of statutes, the outcome should be no different when one or several states attempt to interfere with the policy choices of sovereign sister states through litigation. For instance, in the preemption context—a source of vertical federalism—this Court has recognized that a state tort action may "disrupt[ ] the federal scheme no less than state regulatory law to the same effect." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 325 (2008). In that instance, the Court understood that state tort claims regulating the design of medical devices would undermine the value of a definitive, uniform federal approval process unencumbered by the potentially varying and inconsistent interpretations of juries across fifty states. *See id.* at 326.

The Court has also embraced principles of horizontal federalism through its application of the Due Process Clause. In *BMW of North America, Inc. v. Gore*, for example, the Court recognized that the Due Process Clause constrains a state's ability to use its police powers as a tool for inducing regulated entities to alter their extraterritorial conduct in a manner that "infring[es] on the policy choices of other States." 517 U.S. 559, 572 (1996). This includes one state's use of the threat of punitive damages or other sanctions "to alter [a business's] nationwide policy" or to "deter conduct that is lawful in other jurisdictions." *Id.* at 572–73. "[P]rinciples of state sovereign-

ty and comity" indicate that "a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." *Id.* at 572 (reversing award of punitive damages "based in large part on conduct that happened in other jurisdictions.").

States, of course, are free to regulate economic activity within their own borders, including regulating power. Energy policy can be expected to vary. Wind energy, for example, is highly sensitive to location and the height of turbines can draw intense local opposition, even where feasible. *See* Brad Plumer & Nadja Popovich, *As Solar Power Surges, U.S. Wind Is in Trouble*, N.Y. Times, June 4, 2024. Not all states have ready access to hydroelectric power, which can collapse during droughts and, like other energy generation options, raises its own environmental concerns. *See, e.g.*, David Fickling, Op-ed, *Hydro Power is Facing a Deepening Dry Spell*, Bloomberg Law, July 14, 2024; Jacob Moore, *Grand Ronde Tribes Flag Late Federal Report on Salmon and Dams*, Willamette Week, July 15, 2024. The ability of a state to rely on solar power for a significant portion of its power is limited, not only by nightfall, but also by the amount of sunlight an area typically receives. While San Diego, California receives an average of 146 sunny days each year, Columbus, Ohio, where The Buckeye Institute is located, experiences just 72 clear days per year.[2]

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[2] *See* Average Annual Sunshine by State, Current Results, https://www.currentresults.com/Weather/US/average-annual-state-sunshine.php (last visited July 18, 2024).

Meanwhile, some states may have bountiful supplies of oil and natural gas or heavily rely upon such resources to provide affordable needed power to their residents or businesses. Location, resources, and policy preferences all play a part in an energy mix that will necessarily vary from state to state.

States may not, however, reach beyond their jurisdiction to replace other States' policy choices with their own—whether through legislation, regulation, or litigation. Here, the litigation brought by the Defendant States at issue in the Bill of Complaint attempts to set national energy policy by using the tort and consumer laws of their own states. As the Plaintiff States' allege, "The relief Defendant States seek will increase the cost to produce, distribute, and procure energy within Plaintiff States." Bill of Compl. ¶ 69.

The Court should grant the Plaintiff States' Motion to consider whether the Defendant States' extraterritorial regulation of energy policy through its concerted litigation violates constitutional principles underlying horizontal federalism.

II. The Underlying Litigation Would Impact the Availability and Affordability of Power Beyond the Defendant States' Boundaries

The remedies sought through litigation brought by the Defendant States threaten to impose extraordinary sanctions on the traditional energy industry that will have effects far beyond their borders. These remedies include disgorgement, civil penalties, and punitive damages, in addition to requiring the energy industry to pay for a wide range of public projects or other costs in the Defendant States that the attor-

neys general allege are necessitated by global climate change, regardless of whether the activities of the particular companies that they have sued actually caused the alleged harms in that state. If imposed, these remedies will raise the cost and may limit the availability of power for those who live and work in the Plaintiff States, among other adverse effects.

For example, claims brought by some of the Defendant States alleging misleading marketing or unfair business practices seek civil penalties. Unfair and deceptive acts and practices ("UDAP") laws are notoriously vague with respect to the conduct that can give rise to a violation and the amount of penalties that a state may seek and a court may impose. These laws can provide a valuable means to protect consumers through injunctions to stop deceptive business practices before they cause harm and, when consumers have lost money, to obtain restitution. *See generally* Cary Silverman & Jonathan L. Wilson, *State Attorney General Enforcement of Unfair or Deceptive Acts and Practices Laws: Emerging Concerns and Solutions*, 65 U. Kan. L. Rev. 209, 240 (2017). They also typically authorize an attorney general to request that a court punish companies that violate the law and deter others from engaging in similar conduct by seeking civil penalties. *See id.*

Maximum civil penalties under UDAP laws are often in the $1,000 to $5,000 range for each violation, though they are substantially higher in some states. *See id.* at 241 (compiling statutes).[3] No matter what

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[3] UDAP laws typically provide an upper "not to exceed" limit *per violation*, but lack any limit on the *total* civil penalty. This is unlike some federal laws that avoid excessive fines by setting

level a state sets as the statutory maximum, when a court, at the behest of a state attorney general, aggregates civil penalties "for each violation," the fines can reach extraordinarily high sums. States aggregate violations in a multitude of ways, which can result in a total civil penalty that is arbitrary and unpredictable. Attorneys general may seek civil penalties for each product sold, advertisement published or aired, or the estimated circulation or viewership of an advertisement. *See id.* at 242; *see, e.g., People v. Johnson & Johnson,* 77 Cal.App.5th 295 (2022), *cert. denied*, 143 S. Ct. 847 (2023) (in which the appellate court largely affirmed civil penalties of $2,500 for each of 153,351 violations of the state's Unfair Competition Law and 121,844 violations of the state's False Advertising Law, totaling over $300 million, associated with the manufacturer's marketing of a medical device).

Here, California's litigation against energy producers seeks a civil penalty of $2,500 "for each violation" of each of three state statutes governing misleading advertising, premised on the companies' marketing of fossil fuels.[4] Similarly, Connecticut's lawsuit against the industry seeks a civil penalty of $5,000 "for each and every willful violation" of the state's unfair trade practices act.[5] It is unclear how

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a maximum civil penalty for a series of related violations. *See, e.g.*, 15 U.S.C. §§ 1194(e)(1), 1264(c)(1), 2069(a).

[4] Complaint at 133, *People v. Exxon Mobil Corp*., No. CGC-23-609134 (Cal. Super. Ct., San Francisco County, filed Sept. 15, 2023) (seeking the maximum civil penalty authorized by Cal. Bus. & Prof. Code §§ 17206, 17536, 17580.5).

[5] First Amended Complaint at 44, *Connecticut v. Exxon Mobil Corp*., No. HHD-CV-20-6132568-S (Conn. Super. Ct., Hartford

states will aggregate per-incident violations in this context, subjecting energy producers that have mass-marketed their products to a threat of arbitrary and excessive civil penalties.

Federal courts have expressed concern that aggregating state civil penalties under UDAP laws raise "serious constitutional and other questions." *In re Zyprexa Prods. Liab. Litig.*, 671 F. Supp.2d 397, 462 (E.D.N.Y. 2009). For instance, in that litigation, a state attorney general sought a $10,000 civil penalty for each of almost one million estimated prescriptions filled in his state, in an action alleging the manufacturer had misleadingly marketed the drug and not fully disclosed its potential risks. *See id.* at 402. Imposing the per violation civil penalties sought, the court observed, would result "in a multi-billion dollar cumulative penalty grossly disproportionate" to both the state's injury and the company's alleged misconduct. *Id.* at 463. "[C]ourts cannot be used as an engine of an industry's unnecessary destruction," Judge Jack B. Weinstein cautioned. *Id.* at 463–64.

As this Court recognized a century ago, statutory damages and civil penalties may be "so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable." *St. Louis, I. M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66–67 (1919). In recent years, courts have "grappl[ed] with the constitutionality of statutory damages awards challenged in the aggregate where the award is unusually high .

County, filed Nov. 20, 2023) (seeking the maximum civil penalty authorized by Conn. Gen. Stat. § 42-110o(b)).

. . ." *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1121 (9th Cir. 2022).

In addition, through their state common law claims, some of the Defendant States seek to impose punitive damages on the energy industry for allegedly contributing to climate change, including California,[6] New Jersey,[7] and Rhode Island.[8] This Court has recognized the "stark unpredictability" of punitive damage awards. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 499 (2008). It has provided "guideposts" for evaluating whether a punitive damage award issued under state law is excessive, but the Court has declined to offer a bright-line rule. *See BMW of N. Am., Inc.*, 517 U.S. at 585. At least in cases decided under federal common law, including environmental litigation, the Court has required a closer degree of consistency and predictability. *See Baker*, 554 U.S. at 512-13 (finding that a 1:1 ratio between punitive and compensatory damages, based upon the historic median, is "a fair upper limit" in maritime cases). In *Baker*, Exxon faced a $5 *billion* punitive damage award—an amount this Court reduced to $507.5 *million*, mirroring the compensatory damage award. *Id.* at 515.

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[6] Complaint at 133, *People v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct., San Francisco County, filed Sept. 15, 2023).

[7] Complaint at 193, *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct., Law Div., Mercer County, filed Oct. 18, 2022).

[8] Complaint at 140, *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct., Bristol County, filed July 2, 2018).

Baker, however, is not binding in *state* common law actions and, despite the safeguards provided by the Court's constitutional due process jurisprudence, concerns about extraordinary punitive damage awards remain. *See, e.g.,* Cary Silverman & Christopher E. Appel, Nuclear Verdicts: An Update on Trends, Causes, and Solutions 12 (U.S. Chamber Inst. for Legal Reform, May 2024) (finding while most personal injury and wrongful death verdicts over $10 million were entirely compensatory damages, awards at the $100-million-plus level, the frequency of which reached a record high in 2023, typically included substantial punitive damage awards and verdicts above $1 billion were primarily punitive damages).

In addition to the civil penalties and punitive damages sought by the Defendant States, their lawsuits, as the Bill of Complaint notes, seek compensatory and other forms of damages that pose a threat of astronomical awards. The relief sought include disgorgement, restitution, "natural resource damages," and abatement of nuisances, for example. *See* Bill of Compl. at 27–32. In essence, these lawsuits attempt to shift costs of public projects in their states, the need for which they blame on climate change, to a single industry, despite numerous other potential contributors. *See generally* Victor E. Schwartz et al, *Can Governments Impose a New Tort Duty to Prevent External Risks? The "No-Fault" Theories Behind Today's High-Stakes Government Recoupment Suits*, 44 Wake Forest L. Rev. 923 (2009) (discussing similar efforts, most of which courts have rejected, to shift costs of addressing societal problems from governments to product manufacturers).

III. State Tort or Consumer Law is Ill-equipped to Regulate Global Climate Change

"Predicting is hard, especially when it is about the future."[9] This is especially so when attempting to foretell climate change and its practical impact, as the Defendant States' litigation alleges energy producers failed to do.

Tort law is about compensation for specific past harms and is ill-suited to regulate climate change. And trying to tie harms from certain uses of fossil fuels to past climate change is no easier. Yet, the Defendant States' attempt to cast blame on certain entities for past failures to predict the future impact of their actions. Indeed, even past computer models attempting to project climate change have been grossly wrong.[10] This is not to deny global climate change, but it does suggest that tort law is the wrong tool to punish companies that did not accurately predict and then disclose what has alluded computer models, scientists, and politicians. Tort law is good at compensating for specific harms caused by specific people for specific acts. That is not what is happening here.

Negligence, public nuisance, trespass, and product liability claims alleging economic losses from the expansive global climate change alleged by the De-

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[9] Attributed to Niels Bohr, the Nobel laureate in Physics and father of the atomic model.

[10] *See* David R. Henderson & Charles L. Hooper, *Flawed Climate Models*, Hoover Inst. (Apr. 4, 2017), https://www.hoover.org/research/flawed-climate-models; *see also* Mark Perry, *18 Spectacularly Wrong Predictions Were Made Around the Time of the First Earth Day in 1970, Expect More This Year*, AEI (Apr. 21, 2022), https://tinyurl.com/18-wrong-predictions.

fendant States are certainly creative theories, but they bear no resemblance to recognized state common law tort claims. As this Court understands, tort claims most often stem from accidental (and sometimes intentional) injuries arising from automobile accidents, slip-and-falls, complications during medical treatment, or defective products. *See, e.g.*, Andreas Kuersten, Cong. Research Serv., No. IF11291, *Introduction to Tort Law* (2023). Unlike climate change litigation, tort claims typically involve an injury to a specific person or person's property resulting from someone else's wrongful conduct. Traditional principles of tort law, such as duty and causation, confine the claim. *See Palsgraf v Long Is. R.R. Co.*, 162 N.E. 99, 99 (N.Y. 1928) ("Proof of negligence in the air, so to speak, will not do." (quoting Frederick Pollock, The Law of Torts 455 (11th ed. 1920)).

Here, the Defendant States' lawsuits generally allege energy producers concealed and misrepresented the climate impacts of their products, misleading consumers and the rest of the world. This, in turn, they say, increased overall consumption of fossil fuels, increasing greenhouse gas emissions and exacerbating climate change that led to environmental conditions that allegedly injured their States. State litigation seeks to hold the oil and gas industry responsible for the financial impact of a wide range of events, such as sea level rise, extreme weather, illnesses related to storm- and waste-water discharge, invasive species and plant diseases, and diminished availability of fresh water. This chain of events could not be more attenuated and speculative. They are a leap far beyond accepted uses of tort law. *See City of New York v. Chevron*, 993 F.3d 81, 91 (2d Cir. 2021) ("Artful pleading cannot transform the City's com-

plaint into anything other than a suit over global greenhouse gas emissions.").

Certainly, there are property-related torts, though they have little in common with the lawsuits brought by the Defendant States. Trespass, for example, typically involves a person intentionally entering the property of another. *See* Restatement (Second) of Torts § 158 (Am. Law Inst. 1965). A trespass claim may also arise when a person places an object in the air, water, or ground "with knowledge that it will to a substantial certainty" enter the property of another. *See id.*, Reporter's Notes, cmt. i. Applying this principle, there are some circumstances in which trespass claims may provide a remedy for environmental harms, such as flooding water directed from one property to another. But even courts in the Defendant States have rejected attempts to expand trespass law beyond recognized bounds. *See, e.g.*, *Johnson v. Paynesville Farmers Union Coop. Oil Co.*, 817 N.W.2d 693, 703–04 (Minn. 2012) (rejecting an invitation to abandon the physical intrusion element of the tort and allow a claim for mere invasion of "particulate matter" given the overbroad liability exposure that would result).

Likewise, a properly pled public nuisance action, which provides a means for the government to require an owner to stop an unlawful activity on its property that interferes with public health, safety, or some other public right, does not fit climate change lawsuits. *See* Restatement (Second) of Torts § 821B (Am. Law Inst. 1979). Public nuisance claims are often associated with the obstruction of a public highway or a navigable stream, or the effects of criminal activity at a particular location on the surrounding

area. *See id*. cmt. b. Several state supreme courts have rejected attempts to transform public nuisance law into an all-encompassing tort. *See, e.g*., *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021); *In re Lead Paint Litig*., 924 A.2d 484, 501 (N.J. 2007). These courts have generally found that public nuisance law, which is rooted in land use, is not the means to address alleged external costs associated with the lawful manufacturing and selling of products. *See* Victor E. Schwartz & Phil Goldberg, *The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort*, 45 Wash. L.J. 541, 552–61 (2006).

UDAP claims are similarly ill fitted for climate change litigation. As discussed earlier, states adopted these statutes to provide a means for ordinary consumers or state attorneys general on their behalf to address instances in which a business practice misleads the public when they purchase products and services. *See* Victor E. Schwartz & Cary Silverman, *Common-Sense Construction of Consumer Protection Acts*, 54 Kan. L. Rev. 1, 6 (2005). While these laws provide state attorneys general with broad authority to enjoin "unfair" or "deceptive" business practices, they often require such determinations to be guided by federal policy, such as guidance from the Federal Trade Commission, and, about two-thirds of UDAP laws exempt conduct that is regulated, permitted, approved, or authorized by government regulations. *See* Victor E. Schwartz et al., *"That's Unfair!" Says Who – The Government or Litigant?: Consumer Protection Claims Involving Regulated Conduct*, 47 Washburn L.J. 93, 102–09 (2007) (compiling state statutes).

Even if the Defendant States' asserted tort and consumer claims are viable under state law, this Court has held that actions alleging claims involving "air and water in their ambient or interstate aspects," including global climate change, are governed by federal law. *American Elec. Power v. Connecticut*, 564 U.S. 410, 421 (2011) (quoting *Illinois v. Milwaukee*, 406 U.S. 91, 103 (1972)). While states have the primary authority to regulate pollution within their borders, the Defendant States' have coordinated litigation efforts in an attempt to inflict heavy costs and penalties on oil and gas companies for the expansive global climate change that the Defendant States allege and that goes beyond their state borders.

As detailed by the Bill of Complaint, the Defendant States' attempt to impose these costs and penalties on the oil and gas industry would have significant implications for their sister states. It would hurt the economies of states, like Alabama, Alaska, Mississippi, and North Dakota, which have abundant oil and natural gas reserves, resulting in the loss of jobs and tax revenue that supports critical investments in areas such as infrastructure and education. But more than that, the result of the Defendant States' imposition of their own policy preferences above those of other states means that the cost to produce and purchase traditional energy sources in sister states will rise. That cost will be passed on to ordinary consumers. Electricity, gas, manufacturing, and shipping will become more expensive nationwide, even as the apparent goal of these lawsuits—reducing consumption of oil and gas—seems unlikely to be achieved. *See* Trevor Lewis, *California's Big Oil Lawsuit Bites the Hand That Feeds the State*, The

Buckeye Inst., Oct. 13, 2023, https://tinyurl.com/californias-big-oil-lawsuit.

In sum, litigation over whether changes in global climate patterns, to which widespread use of fossil fuels may have contributed, caused property damage or led to other economic costs in a particular state bears no resemblance to an established state common law "tort." Rather, the underlying lawsuits attempt to set national energy policy through state law claims—they are national regulation through litigation. Claims seeking redress for costs allegedly incurred as a result of interstate pollution implicate an "overriding federal interest in the need for a uniform rule of decision" that can be determined only through federal law. *Milwaukee*, 406 U.S. at 105 n.6. "[B]orrowing the law of a particular state would be inappropriate" for resolving this national issue. *See American Elec. Power*, 564 U.S. at 422. Consequently, the Court should grant the Motion to reaffirm that regulation of *interstate* emissions is a matter of federal, not state, law.

CONCLUSION

The Plaintiff States' Bill of Complaint raises important issues of horizontal federalism, interstate regulation, and environmental, energy, and economic policy that impact all Americans. Efforts to address climate change require national and global solutions, rather than overbroad state-led tort and consumer litigation that impedes the policy choices of sister states, threatens substantial penalties for lawful conduct, and is likely to harm their sister states and their residents.

For these reasons, *amicus curiae* respectfully request that this Court grant the Motion for Leave to File the Bill of Complaint.

Respectfully submitted,

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