No. 158, Original

In the Supreme Court of the United States

STATE OF ALABAMA, *et al.*,

Plaintiffs,

v.

STATES OF CALIFORNIA, CONNECTICUT, MINNESOTA, NEW JERSEY, AND RHODE ISLAND,

Defendants.

ON MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

BRIEF IN OPPOSITION

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August 21, 2024

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STATEMENT

1. States are "vested with the responsibility of protecting the health, safety, and welfare of [their] citizens." *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342 (2007). That responsibility includes guarding against "unfair business practices" and "'prevent[ing] the deception of consumers.'" *California v. ARC America Corp.*, 490 U.S. 93, 101 (1989) (quoting *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146 (1963)).

To carry out that responsibility, States empower their attorneys general to, among other things, file civil actions to enforce state consumer protection and tort laws against defendants who engage in unfair and deceptive practices that occur in or substantially injure the State. *See, e.g.*, *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 533 (2001) (describing settlement of state lawsuits against tobacco companies for deceptive practices); *Dunaway v. Purdue Pharma L.P.*, 391 F. Supp. 3d 802, 813 (M.D. Tenn. 2019) (collecting opioid-related actions by States and municipalities); *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 15-md-2672, 2017 WL 2258757, at *1-2, *5-11 (N.D. Cal. May 23, 2017) (remanding state lawsuits challenging alleged deceptive efforts to evade emissions requirements); *In re Standard & Poor's Rating Agency Litig.*, 23 F. Supp. 3d 378, 389-391, 393-400 (S.D.N.Y. 2014) (remanding state lawsuits challenging national credit-rating agency's alleged misrepresentations).

2. Consistent with that tradition, the attorneys general of California, Connecticut, Minnesota, New Jersey, and Rhode Island (the Defendant States) filed civil enforcement actions against certain oil and gas companies that deceived consumers in their respective

States about the causal relationship between fossil-fuel products and climate change. Those suits were filed in different courts, allege localized injuries particular to the States that brought them, plead a variety of state-law claims, and seek a range of remedies. *See* App. 1a-782a. But each responds to a decades-long campaign of misinformation and deception by the corporate defendants about the harmful effects of their products.

As alleged in the Defendant States' complaints, the oil and gas defendants have known for more than half a century that fossil fuel products contribute to global warming. For example:

- In 1954, scientists alerted the American Petroleum Institute (API), the country's largest oil and gas trade association, that "fossil fuels had caused atmospheric carbon dioxide levels to increase by about 5% since 1840." *E.g.*, App. 37a, 52a.
- API and several member companies then began funding, conducting, and sharing research on the climate-related effects of fossil fuel products. *E.g.*, App. 429a-459a.
- Over the ensuing decades, researchers cautioned the companies that if current trends in the use of fossil fuels continued, the climate-related impacts would be "'dramatic'" and "'catastrophic'"—with "'serious consequences for man's comfort and survival.'" *E.g.*, App. 684a, 686a-690a, 694a (quoting internal memoranda and reports).
- In 1968, API received a report from a research team it had hired, concluding that "'[s]ignificant

temperature changes are almost certain to occur by the year 2000, and . . . there seems to be no doubt that the potential damage to our environment could be severe.'" *E.g.*, App. 283a (quoting report).

- A senior scientist at Exxon informed company executives in 1977 that "'current scientific opinion overwhelmingly favors attributing atmospheric carbon dioxide increase to fossil fuel consumption,'" and that the planet could experience "'a mean temperature increase of about 2°C to 3°C.'" *E.g.*, App. 56a (quoting internal memorandum).
- Two years later, an internal Exxon memo concluded that the "'most widely held theory'" is that the increase in atmospheric carbon dioxide "'is due to fossil fuel combustion,'" that "'[t]he present trend of fossil fuel consumption will cause dramatic environmental effects before the year 2050,'" and that the "potential problem is great and urgent.'" *E.g.*, App. 57a-58a (quoting internal memorandum).

The complaints allege that the corporate defendants knew their products contribute to climate change and its attendant harms, but failed to share that information with the public, instead disseminating false and misleading statements to discredit the emerging scientific consensus and to undermine public awareness of the risks posed by fossil fuels. *E.g.*, App. 52a-104a, 112a-116a. Those statements included the following (among many others):

- Certain defendant companies funded a public relations campaign in the 1990s that included print media with statements like "'Who told you

the earth was warming . . . Chicken Little?'" and "'The most serious problem with catastrophic global warming is—it may not be true.'" *E.g.*, App. 300a-302a.

- A 1996 Exxon publication stated that rising temperatures were due to "'natural fluctuations that occur over long periods of time'" and that "a slightly warmer climate would be more healthful." *E.g.*, App. 82a-83a.
- A 1996 API book claimed that "'no conclusive—or even strongly suggestive—scientific evidence exists that human activities are significantly affecting sea levels, rainfall, surface temperatures or the intensity and frequency of storms.'" *E.g.*, App. 502a.
- Mobil told *New York Times* readers in 1997 that "'climatologists are still uncertain how—or even *if*—the buildup of man-made greenhouse gases is linked to global warming.'" *E.g.*, App. 239a-240a.[1]

A scientist who researched climate change as a consultant for Exxon later testified to Congress that these public statements amounted to a "'climate science denial program campaign.'" *E.g.*, App. 293a-294a. That campaign included running advertisements "'in major newspapers raising doubt about climate change'" that "'were contradicted by the scientific work'" the company had done, and "'publicly promoting views that [Exxon's] own scientists knew were wrong.'" *E.g.*, App.

[1] More recently, certain defendant companies have added misleading labels asserting that their products are "green" or "clean," and exaggerated the potential climate benefits of their alternative energy investments. *E.g.*, App. 507a-540a.

294a. A study of Exxon's climate-related communications between 1989 and 2004 found that "80% of its internal documents acknowledged the reality and human origins of climate change," while "81% of its [public-facing] advertorials communicated doubt about those conclusions." *E.g.*, App. 477a.

The complaints allege that the companies' deceptive statements and other misconduct caused consumers to use substantially more fossil fuels than they otherwise would have and delayed a transition to alternative energy sources. *E.g.*, App. 50a-51a, 75a-76a, 105a-106a, 119a, 148a-150a. The emissions resulting from that misconduct accelerated climate change and exacerbated its harms to the Defendant States, which include more extreme weather events like wildfires, droughts, heat waves, and heavy rainstorms; sea-level rise and depleted fisheries; and worsened air quality. *E.g.*, App. 150a-183a, 732a-750a.

As detailed in the complaints, the oil and gas companies targeted their deceptive conduct at (or knowingly reached) each Defendant State and its residents and caused injuries there. For example, New Jersey alleges that Chevron "spent millions of dollars" advertising its fossil fuel products in New Jersey. App. 404a-405a. Those advertisements "contained no warning commensurate with the risks of Chevron's products" and "obfuscat[ed] the connection between Chevron's fossil fuel products and climate change." *Id.* at 405a. New Jersey further alleges that the defendants' deception contributed to the harms of climate change in that State. App. 376a-377a, 380a-390a, 543a-565a. Those local harms include a "rate of sea-level rise" that has "exceeded the global rate over the last several decades," putting more than 352,000 resi-

dents at risk of flooding and causing rapidly increasing acidity levels in the water along New Jersey's coastline, imperiling shellfish species critical to New Jersey's economy. App. 543-546a, 552a-553a.

3. In response to the companies' alleged deception, each of the five Defendant States filed a civil enforcement lawsuit in its own state court between 2018 and 2023.[2] Each suit is tailored to the State's particular injuries. For example, Connecticut is pursuing claims under the Connecticut Unfair Trade Practices Act against a single defendant, whereas New Jersey is pursuing consumer protection and tort claims against five sets of corporate entities and a national trade association. *Compare* App. 216a, 249a-257a, *with* App. 392a-418a, 566a-604a.[3]

The defendant companies sought to remove all but one of these five cases to federal court. They invoked various theories for removal, including that federal common law governing interstate emissions supplied federal question jurisdiction. The federal courts of appeals uniformly rejected the companies' arguments for removal—not just in these cases, but in every other

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[2] *People ex rel. Bonta v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. Sept. 15, 2023); *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct. Oct. 18, 2022); *Connecticut v. Exxon Mobil Corp.*, No. HHD-CV-20-6132568-S (Conn. Super. Ct. Sept. 14, 2020); *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct. June 24, 2020); *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018).

[3] California, Minnesota, and Rhode Island also are pursuing both consumer protection and tort claims. *See* App. 183a-201a, 356a-367a, 751a-779a.

similar case—and this Court repeatedly denied petitions seeking certiorari on that issue.[4]

These five suits are now in early stages of litigation in state court. California's case has been coordinated with cases brought by several local governments; the parties are briefing personal jurisdiction and anti-SLAPP motions. *See California*, No. CJC-24-005310 (Cal. Super. Ct.). Connecticut's case survived a motion to dismiss for lack of personal jurisdiction and the defendants now have an opportunity to advance substantive defenses in a motion to strike. *See Connecticut*, No. HHD-CV-20-6132568-S (Conn. Super. Ct.). The Minnesota and New Jersey cases are at the motion to dismiss stage. *See Minnesota*, No. 62-CV-20-3837 (Minn. Dist. Ct.); *Platkin*, No. MER-L-

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[4] *See Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44 (1st Cir. 2022), *cert. denied*, 143 S. Ct. 1796 (2023) (No. 22-524); *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703 (8th Cir. 2023), *cert. denied*, 144 S. Ct. 620 (2024) (No. 23-168); *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023); *see also Anne Arundel Cnty. v. BP P.L.C.*, 94 F.4th 343 (4th Cir. 2024); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022), *cert. denied*, 143 S. Ct. 2483 (2023) (No. 22-821); *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023) (No. 22-361); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023) (No. 21-1550); *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023) (No. 22-523); *City of Oakland v. BP PLC*, Nos. 22-16810, 22-16812, 2023 WL 8179286 (9th Cir. Nov. 27, 2023); *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 1797 (2023) (No. 22-495); *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2776 (2021) (No. 20-1089); *cf. Platkin v. Exxon Mobil Corp.*, No. 22-cv-06733 (RK) (JBD), 2023 WL 4086353 (D.N.J. June 20, 2023).

001797-22 (N.J. Super. Ct.). And Rhode Island is conducting jurisdictional discovery. *See Rhode Island*, No. PC-2018-4716 (R.I. Super. Ct.).

4. After this Court repeatedly denied petitions for certiorari regarding the removal issue, Alabama and 18 other States moved for leave to file a bill of complaint seeking to halt the civil enforcement actions filed by the five Defendant States. Compl. ¶¶ 70-84. The proposed complaint does not address the pending climate-deception lawsuits filed by other States, the District of Columbia, local governments, or Tribes.

Alabama characterizes the state-court lawsuits filed by the five Defendant States as seeking to impose "a global carbon tax on the traditional energy industry"; to "regulate interstate gas emissions" and "nationwide energy policy"; and to "enjoin the promotion, production, and use of [fossil fuel] products" in other States. Compl. ¶¶ 2, 9, 11, 47. It asserts that the suits "seek[] damages for emissions from the promotion, use, and/or sale of traditional energy products around the world, including wholly within Plaintiff States." *Id.* ¶ 33. And it alleges that, if the suits are successful, "a small gas station in rural Alabama could owe damages to the people of Minnesota simply for selling a gallon of gas." *Id.* ¶ 2. Alabama asks this Court to "[e]njoin" the Defendant States from pursuing their state-court enforcement actions, and to block any other litigation seeking similar relief in the future. Compl. p. 37.

To support that request, Alabama offers three constitutional theories. First, it alleges that the civil enforcement actions the Defendant States are pursuing in their own state courts violate what Alabama calls the horizontal separation of powers. Compl. ¶¶ 85-88.

Second, it claims that the state-court actions are federally preempted because they allegedly seek to "regulate interstate emissions." *Id.* ¶¶ 89-93. Finally, it contends that the actions violate the dormant Commerce Clause. *Id.* ¶¶ 94-98.

ARGUMENT

Alabama asks this Court to exercise original jurisdiction to enjoin ongoing civil enforcement actions brought by five state attorneys general, in their own state courts, to seek redress for violations of state law by private parties that caused harms in those five States. But Alabama cannot satisfy the demanding standard governing this Court's exercise of original jurisdiction. It cannot establish that there are no alternative forums in which the issues raised in the proposed complaint can be litigated, because those issues *are* being litigated in the very actions Alabama seeks to halt. And the "sovereign" injury Alabama asserts (*e.g.*, Compl. ¶¶ 41-42) rests on a misunderstanding of the state-court actions Alabama seeks to block: those actions do not aim to impose liability for the production or sale of fossil fuels generally; they instead address local harms resulting from unlawful deceptive conduct by private defendants. Alabama's desire to protect those private defendants from liability is not the kind of sovereign concern that warrants an exercise of this Court's original jurisdiction. Indeed, in this posture, this Court could not even reach Alabama's novel and meritless claims without first grappling with multiple threshold issues, including standing and abstention.

I. ALABAMA MUST SATISFY A DEMANDING STANDARD TO INVOKE THIS COURT'S ORIGINAL JURISDICTION

This Court's authority to adjudicate original disputes between States "is of so 'delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute.'" *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992). Original actions require this Court to "exercise its extraordinary power under the Constitution to control the conduct of one state at the suit of another." *New York v. New Jersey*, 256 U.S. 296, 309 (1921). They also require the Court to assume the role of fact-finder, burden the Court's resources, and thereby constrain its capacity to address questions of national importance arising in cases that have proceeded through the lower courts in the ordinary course. *See Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 498-499 (1971).

Given those considerations, the Court has "said more than once that [its] original jurisdiction should be exercised only 'sparingly'" and "only in appropriate cases." *Mississippi*, 506 U.S. at 76. The "threatened invasion of rights" must be "of serious magnitude." *New York*, 256 U.S. at 309. The State seeking to initiate the original proceeding "must allege . . . facts that are clearly sufficient to call for a decree in its favor." *Alabama v. Arizona*, 291 U.S. 286, 291 (1934). "The burden upon the plaintiff state fully and clearly to establish all elements of its case is greater than that generally required to be borne by one seeking an injunction in a suit between private parties." *Id.* at 292. Original jurisdiction "will not be exerted in the absence of absolute necessity." *Id.* at 291.

Moreover, "[o]riginal jurisdiction is for the resolution of *state* claims" of a uniquely sovereign character,

South Carolina v. North Carolina, 558 U.S. 256, 277 (2010) (Roberts, C.J., concurring in the judgment in part and dissenting in part), such as claims "concerning boundaries . . . [and] interstate lakes and rivers," Shapiro et al., *Supreme Court Practice* § 10.2, p. 10-7 (11th ed. 2019) (collecting cases). It is not appropriate where a State is "merely litigating as a volunteer the personal claims of its citizens." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976) (per curiam).

The Court has distilled these principles into two factors that guide whether an original suit is appropriate for its resolution. First, the Court examines "'the nature of the interest of the complaining State,' focusing on the 'seriousness and dignity of the claim.'" *Mississippi*, 506 U.S. at 77. Second, it considers "the availability of an alternative forum in which the issue tendered can be resolved." *Id.* Alabama's proposed bill of complaint fails on both scores.[5]

II. ALABAMA CANNOT ESTABLISH A LACK OF ALTERNATIVE FORUMS

Starting with the second factor, the availability of alternative forums is self-evident. The private defendants in the very state-court lawsuits Alabama seeks to enjoin (and in similar actions) can litigate the same

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[5] This Court has consistently held that its original jurisdiction over disputes between States is discretionary, not mandatory. *See, e.g.*, *Wyoming v. Oklahoma*, 502 U.S. 437, 450-451 (1992) (collecting cases). Alabama invites the Court to reconsider that discretionary approach (Br. 26-27) but does not attempt to advance the kind of "special justification" that this Court demands before disturbing settled precedent, *see, e.g.*, *Dickerson v. United States*, 530 U.S. 428, 443 (2000). The Court has declined similar invitations in the recent past and should do so here as well. *See, e.g.*, *Arizona v. California*, No. 150, Orig., Pltf. Br. 36; *Missouri v. California*, No. 148, Orig., Pltfs. Br. 13 n.1.

issues that Alabama is asking this Court to address—and many already have.

The defendant companies have argued, among other things, that the state-law claims against them are preempted by federal common law, both as a basis for removal to federal court and a ground for dismissal. *See, e.g.*, Mot. to Dismiss 9-20, *Platkin*, No. MER-L-1797-22 (N.J. Sup. Ct. Oct. 16, 2023); Br. of Exxon Mobil Corp. 13-23, *Connecticut*, 83 F.4th 122 (2d Cir. 2023) (No. 21-1446-cv), 2021 WL 4399175, at *13-23. They have also argued, like Alabama, that even though the Clean Air Act displaced federal common law governing interstate air pollution, federal common law still preempts these particular state-law claims. *See, e.g.*, Mot. to Dismiss 13, *Platkin*, No. MER-L-1797-22 (N.J. Sup. Ct. Oct. 16, 2023).

Corporate defendants have also mounted defenses akin to Alabama's horizontal separation of powers theory. For example, the defendants in Rhode Island's action sought dismissal on the ground that Rhode Island allegedly seeks to "punish commercial conduct that occurred outside [its] borders in violation of the limits of interstate federalism." Mot. to Dismiss 21, *Rhode Island*, No. PC-2018-4716 (R.I. Super. Aug. 1, 2022), 2022 WL 20403333; *see also, e.g.*, Mot. to Dismiss 17-19, *Delaware v. BP Am. Inc.*, No. N20C-09-097 MMJ CCLD (Del. Super. Ct. Jan. 9, 2024).

And several companies have argued that the state-law claims against them violate the dormant Commerce Clause because the claims allegedly attempt to "regulat[e] extraterritorially." Br. 20; *see, e.g.*, Mot. to Dismiss 18-19, *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, No. 2018CV30349 (Colo. Dist. Ct. June 21, 2024); Mot. to Dismiss 47-50,

Rhode Island, No. PC-2018-4716 (R.I. Super. Ct. Jan. 13, 2020).

Those examples confirm the availability of alternative forums to consider the claims advanced by Alabama. Indeed, state courts have already issued decisions addressing some of those claims on the merits. *See, e.g.*, *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, No. 2018CV30349 (Colo. Dist. Ct. June 21, 2024); *Delaware v. BP Am. Inc.*, No. N20C-09-097 MMJ CCLD (Del. Super. Ct. Jan. 9, 2024); *City & Cnty. of Honolulu v. Sunoco LP*, 153 Haw. 326, 348, 537 P.3d 1173, 1195 (2023). And if a lower court's ruling on those claims ever gave rise to a cert-worthy question, this Court could exercise certiorari jurisdiction to review it.[6]

As this Court has recognized in similar circumstances, the availability of an alternative forum is reason enough to deny a motion for leave to file a bill of complaint. In *Arizona v. New Mexico*, 425 U.S. 794 (1976) (per curiam), for example, Arizona sought to challenge a New Mexico law that imposed a tax on electricity generated in New Mexico. *Id.* at 794-795. The law also provided a tax credit "in the amount of the electrical energy tax paid for electricity consumed

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[6] The pending petitions in *Sunoco LP v. City & County of Honolulu* and *Shell PLC v. City & County of Honolulu* illustrate the ability of state courts to adjudicate federal defenses—and defendants' ability to seek plenary review of those issues in this Court. *See* Nos. 23-947, 23-952 (June 10, 2024) (calling for the views of the United States Solicitor General). Those petitions do not raise a cert-worthy question, however, given the lack of any genuine conflict of authority and case-specific vehicle problems. *See* Br. in Opp. 7-16, 29-33, *Honolulu*, Nos. 23-947, 23-952 (May 1, 2024).

in New Mexico"—but not elsewhere, including Arizona. *Id.* at 795. The Court noted that Arizona utilities that operated generating facilities in New Mexico and sold energy to consumers in Arizona had already filed a lawsuit in New Mexico state court challenging the tax and raising the same constitutional issues Arizona sought to press. *Id.* at 794, 796. Because "the pending state-court action provides an appropriate forum in which the issues tendered here may be litigated," the Court "den[ied] the State of Arizona leave to file," observing that the Court could exercise its appellate jurisdiction if the state courts rejected the utilities' challenge. *Id.* at 797 (emphasis omitted); *see also Louisiana v. Mississippi*, 488 U.S. 990 (1988) (denying leave to file bill of complaint where issue was being litigated in state court); *Alabama*, 291 U.S. at 292 (denying leave to file bill of complaint where Alabama "fail[ed] to show" that the issues it sought to raise "may not, or indeed will not," be pressed by the private party "directly concerned").

Alabama has no persuasive response. It argues that there is "no alternative forum" in which it can "bring this suit against Defendant States" because this Court has "'exclusive' original jurisdiction over controversies between States." Br. 24 (citing 28 U.S.C. § 1251(a)). But the relevant question is not whether *Alabama* can sue Defendant States elsewhere; it is whether there is an "alternative forum in which *the issue tendered* can be resolved." *Mississippi*, 506 U.S. at 77 (emphasis added). If Alabama were correct, the existence of an alternative forum would never be rele-

vant to this Court's decision whether to exercise original jurisdiction in a dispute between two States. *But see, e.g.*, *Arizona*, 425 U.S. at 797.[7]

Alabama also asserts that it "should not be forced to rely on private parties litigating in sister-state courts to vindicate [its] rights" because the state-court forums in which these issues are being litigated are "suspect" and not "fair to" Alabama and other like-minded States. Br. 2, 25. That assertion is unsubstantiated and puzzling. After all, Alabama purports to champion "our system of federalism and equal sovereignty among States." *E.g.*, Compl. ¶ 2. A critical precept of that system is respect for the "judicial Proceedings of every other State." U.S. Const. art. IV, § 1. And this Court has stressed that "state courts have inherent authority, and are thus presumptively competent, to adjudicate" federal law defenses. *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *see Missouri Pac. Ry. Co. v. Fitzgerald*, 160 U.S. 556, 583 (1896). Even were it otherwise, this Court remains available to review final state-court judgments implicating federal claims.

Next, Alabama contends that the availability of an alternative forum is irrelevant "in suits over energy policy." Br. 25. But these are not disputes over energy policy; they are disputes over whether corporate defendants unlawfully deceived consumers. *See infra*, pp. 18-21. In any event, this Court has never suggested an "energy policy" exception to its alternative forum rule. The availability of an alternative forum is one of the two factors this Court examines every time

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[7] And Alabama has already demonstrated its ability to raise its arguments as amicus curiae in the actions where these issues are being litigated. *See, e.g.*, Br. for Alabama et al. as Amici Curiae Supporting Petitioners, *Honolulu*, Nos. 23-947, 23-952 (Apr. 1, 2024).

it determines "whether a case is 'appropriate' for [its] original jurisdiction"—regardless of the subject matter. *Mississippi*, 506 U.S. at 77. Indeed, the Court has declined to exercise its original jurisdiction in a suit over energy policy and pointed to the availability of an alternative forum as a basis for that decision. *See Arizona*, 425 U.S. at 794-797.

Contrary to Alabama's contentions, *see* Br. 25, *Maryland v. Louisiana*, 451 U.S. 725 (1981), does not establish that original jurisdiction is always available for suits over energy policy. In that case, the Court exercised original jurisdiction over a challenge to Louisiana's "first-use" tax on natural gas, despite Maryland's argument that pending lawsuits offered an alternative forum for resolving the constitutional issues. *Maryland*, 451 U.S. at 740. But the decision to exercise original jurisdiction was expressly based on case-specific considerations that do not apply here. *See id.* at 743-745. The Court emphasized that the plaintiff States in *Maryland* were already suffering a direct economic injury in the form of annual natural gas costs. *See id.* at 736 n.12, 743. It distinguished that situation from a case—like this one, *see infra* pp. 24-25—where the plaintiff State "had itself not suffered any direct harm as of the time that it moved for leave to file a complaint" and where "it was highly uncertain whether" that State would suffer any actual future injury. *Id.* at 743. And the Court's exercise of original jurisdiction was further supported by the United States' status as a party with "interests in the administration of the" Outer Continental Shelf. *Id.* at 744-745. The federal government has no comparable interest in this case and has not moved "to intervene as [a] plaintiff[]." *Id.* at 734.

Alabama also cites *Pennsylvania v. West Virginia*, 262 U.S. 553, 591 (1923), which involved a threat of "serious injury" to "substantial" interests. The West Virginia law at issue there was poised to "largely curtail or cut off" entirely "the supply of natural gas" to Pennsylvania and Ohio, putting their residents at risk of imminent and "grave" harm. *Id.* at 581, 592; *infra* p. 22. There is no similar threat here. What is more, the *Pennsylvania* Court did not apply the modern standards governing the discretionary exercise of original jurisdiction; it considered only the justiciability and ripeness of the claims and whether "requisite parties" necessary to effectuate relief were involved. 262 U.S. at 590-595.

Finally, Alabama is incorrect in suggesting that it would be "anomalous" (Br. 25) for the Court to deny Alabama's motion based on the ongoing litigation in which private defendants are pressing the same theories as Alabama. There is nothing anomalous about adhering to precedent governing the exercise of this Court's original jurisdiction. It instead would be anomalous if the Court were to depart from that precedent—and ignore the alternative forums in which these issues can be litigated—in response to Alabama's novel request to block ongoing civil enforcement actions brought by sovereign States in their own courts against private defendants.

III. ALABAMA HAS NOT ADVANCED THE TYPE OF CLAIM NECESSARY TO INVOKE THIS COURT'S ORIGINAL JURISDICTION

Even setting aside the myriad alternative forums in which the issues presented here may be (and are being) litigated, the claims advanced by Alabama are not of the type necessary to invoke the Court's original jurisdiction.

A. The Proposed Claims Seek to Protect Private Interests, Not Sovereign Rights

This Court's "[o]riginal jurisdiction is for the resolution of *state* claims, not private claims." *South Carolina*, 558 U.S. at 277 (Roberts, C.J., concurring in the judgment in part and dissenting in part). But here, "'the nature of the interest of the complaining State'" (*Mississippi*, 506 U.S. at 77) is defending the interests of private companies that are the subject of ongoing civil enforcement actions for wrongdoing in other States. That is not the type of sovereign interest necessary to invoke this Court's original jurisdiction.

1. Alabama asserts that its claims implicate a "colli[sion]" of "sovereign" rights, because the enforcement actions "have created interstate controversies" and "would interfere with the sovereign power of every other State to regulate within its own borders." Br. 13, 15. That assertion rests on a fundamental mischaracterization of the state-court actions that Alabama wants this Court to cut off.

As Alabama describes it, those actions aim "to regulate energy nationwide" by "seek[ing] to enjoin anyone who sells or uses traditional energy anywhere in the country." Br. 5. They would "proscribe wholly extraterritorial conduct based on its alleged effect on the global atmosphere," *id.* at 6, and "impos[e] massive liquidated damages for every gallon of gasoline sold in a neighboring State," *id.* at 7, amounting to "a global carbon tax on the traditional energy industry," Compl. ¶ 2. Not one of those characterizations is accompanied by a citation to actual pleadings, and not one is remotely accurate.

What the complaints actually allege is that the defendant companies knew their products contributed to climate change and associated harms; withheld that

information and misled customers about that relationship; and, as a result, accelerated and exacerbated the local harms of climate change in the Defendant States. *See* App. 1a-206a (California); *id.* at 207a-261a (Connecticut); *id.* at 262a-371a (Minnesota); *id.* at 372a-610a (New Jersey); *id.* at 611a-782a (Rhode Island); *see generally supra* pp. 1-6. The complaints seek to remedy the harms caused in the Defendant States by that particular deception. The requested relief includes injunctions to prevent further consumer deception; equitable relief for the local impacts of climate change caused by that deception; and, in some cases, damages and abatement to address and remedy those same local impacts. *See* App. 201a-205a (California); *id.* at 257a-259a (Connecticut); *id.* at 367a-369a (Minnesota); *id.* at 605a-606a (New Jersey); *id.* at 779a-780a (Rhode Island).

The complaints do not seek liability for the production or sale of fossil fuels in general. Nor do they seek to force companies to reduce or cease their emissions or their production or sale of fossil fuels. *See* App. 1a-206a (California); *id.* at 207a-261a (Connecticut); *id.* at 262a-371a (Minnesota); *id.* at 372a-610a (New Jersey); *id.* at 611a-782a (Rhode Island). As New Jersey recently explained in its state-court lawsuit, the defendant companies "can produce and sell as much fossil fuel as they are able without incurring any additional liability under the State's theory of the case, just so long as they provide adequate warnings and stop deceiving the public." Opp. to Mot. to Dismiss 10, *Platkin*, No. MER-L-1797-22 (N.J. Sup. Ct. Dec. 15, 2023). The First Circuit recognized the same thing when it declined to remove the Rhode Island action: the State "seeks to hold 'defendants' liable for their 'tortious conduct' that 'deliberately and unneces-

sarily deceived' consumers about the scientific consensus on climate change and its devastating effects." *Rhode Island*, 35 F.4th at 55 n.8 (alterations omitted). The object of the complaint, it concluded, is "*not* to regulate greenhouse-gas emissions." *Id.*[8]

Indeed, courts have repeatedly rejected "the caricature" of these types of actions drawn by Alabama and its allies. *E.g. Minnesota v. Am. Petroleum Inst.*, No. 20-cv-1636, 2021 WL 1215656, at *13 (D. Minn. Mar. 31, 2021). As those courts have recognized, the actions are "far more modest than the caricature." *Id.*; *see, e.g.*, *City & Cnty. of Honolulu v. Sunoco LP*, Nos. 20-cv-00163-DKW-RT, 20-cv-00470-DKW-KJM, 2021 WL 531237, at *1 (D. Haw. Feb. 12, 2021) (defendants "misconstrue Plaintiffs' claims"). The claims actually "focus on Defendants' alleged misinformation campaign, not their production of oil and gas." *City of Hoboken v. Exxon Mobil Corp.*, 558 F. Supp. 3d 191, 208 (D.N.J. 2021); *see, e.g.*, *Boulder*, 25 F.4th at 1248 (plaintiffs "do not ask the court 'to stop or regulate' fossil-fuel production or emissions 'in Colorado or elsewhere'").

2. Accurately understood, the state enforcement actions that Alabama targets do not intrude on the sovereign prerogatives of Alabama or any other State. Even if each one of those actions succeeds, Alabama

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[8] These complaints are thus unlike the one in *City of New York v. Chevron Corporation*, 993 F.3d 81, 93 (2d Cir. 2021), where "the goal of [the] lawsuit" was "to effectively impose strict liability for the damages caused by fossil fuel emissions," and "[i]f the [oil companies] want[ed] to avoid liability, then their only solution would be to cease global production altogether." *See also* Br. of Appellant 32, *City of New York*, 993 F.3d 81 (2d Cir. 2021) (No. 18-2188) (describing "relief sought" as "compensation for local harms that result from fossil-fuel production").

and other States will remain free to pursue their own energy policy goals.

As the proposed complaint acknowledges, what is actually motivating Alabama is a concern that private "energy companies" could be subject to "liability and coercive remedies" for violations of "state law" if the actions succeed. Compl. ¶ 1; *see id.* ¶¶ 31, 42. But the possibility that those private defendants might be exposed to penalties for their violations of other States' laws is not the kind of sovereign injury that warrants original jurisdiction. *See Kansas v. Colorado*, 533 U.S. 1, 8 (2001) ("'[T]he State must show a direct interest of its own and not merely seek recovery for the benefit of individuals who are the real parties in interest.'"); *supra* pp. 10-11, 18.

Alabama argues that any costs "will not fall on the defendants in those suits alone," suggesting that the corporate defendants will pass them on to "the public as a whole." Br. 6. The same could be said of any civil enforcement action or private lawsuit seeking penalties or damages from a corporation—or any law resulting in increased corporate costs. Yet this Court has repeatedly declined to exercise original jurisdiction in the face of allegations that private economic actors were burdened by another State's laws or actions. *See, e.g.*, *Arizona v. California*, 140 S. Ct. 684 (2020); *Missouri v. California*, 139 S. Ct. 859 (2019); *Arizona v. New Mexico*, 425 U.S. at 795-798; *Alabama*, 291 U.S. at 288-292. Otherwise, States could routinely volunteer to litigate the personal claims of private entities, in the first instance, in the highest court in our land. *But see Pennsylvania*, 426 U.S. at 665.

The cases Alabama cites as examples of this Court exercising original jurisdiction based on asserted economic harm (Br. 22-24) are readily distinguishable. In

Pennsylvania v. West Virginia, the Court considered West Virginia's ban on the export of natural gas to Pennsylvania and Ohio, which threatened to "imperil the health and comfort of thousands" of out-of-state consumers who used natural "gas in their homes and [were] largely dependent thereon." 262 U.S. at 584-585. The ban also would have "curtail[ed] or cut off" the gas supply to "various public institutions and schools," "expos[ing] thousands of dependents and school children to serious discomfort, if not more." *Id.* at 581, 591, 592. Here, the suits do not threaten to deprive anyone of access to fossil-fuel products. And whereas Alabama merely speculates about an indirect effect on energy prices, the tax on natural gas exports in *Maryland v. Louisiana* was "intended to" increase gas prices for "millions of consumers in over 30 States," and had already gone into effect. 451 U.S. at 744; *see also id.* at 737, 743; *supra* p. 16.

The real threat to "principles of state sovereignty and comity" (Compl. ¶ 85 (internal quotation marks omitted)) comes from the proposed complaint itself. Alabama wants to prevent other sovereign States from enforcing their own laws in their own courts to seek redress for harm to their own residents caused by the deceptive practices of private companies operating within their own borders. *See generally Edenfeld v. Fane*, 507 U.S. 761, 769 (1993) (noting States' "substantial . . . interest in ensur[ing] the accuracy of commercial information in the marketplace"); *California*, 490 U.S. at 101 ("regulation to 'prevent the deception of consumers'" is "plain[ly] . . . an area traditionally regulated by the States"). A proper "respect for sovereign dignity" (*South Carolina*, 558 U.S. at 267) counsels against granting Alabama's motion.

B. The Proposed Complaint Would Require the Court to Resolve Difficult Threshold Questions

Alabama's proposed complaint would also force the Court to confront knotty threshold issues regarding abstention, the Anti-Injunction Act, and standing. And its resolution of those issues might prevent it from reaching the merits of Alabama's novel claims.

To start, the Court would need to decide whether Alabama's request for it to "[e]njoin" five ongoing state-court civil enforcement actions (Compl. p. 37) implicates the abstention doctrine announced in *Younger v. Harris*, 401 U.S. 37 (1971). That doctrine "espouse[s] a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). This Court has confirmed that *Younger* abstention is "appropriate" in a "civil enforcement" action brought by a "'State in its sovereign capacity' . . . to sanction" a party "for some wrongful act." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 79-80 (2013). The Defendant States' climate-deception lawsuits are just that kind of action. *See supra* pp. 1-6, 18-20. And while Alabama and the other States who joined its proposed complaint are not parties to those actions, their attempt to invoke this Court's original jurisdiction to terminate the actions—based on constitutional defenses that are already being litigated *in* those actions—would seem to implicate the same "vital consideration[s] of comity" underlying *Younger*. *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 364 (1989); *cf. Kowalski v. Tesmer*, 543 U.S. 125, 133 (2004) (noting "unwillingness to allow the *Younger* principle to be . . . circumvented"

by non-parties to state-court proceedings). At a minimum, this Court would have to address that novel issue.

Similarly, the Anti-Injunction Act provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. Alabama's proposed complaint expressly asks a court of the United States to "[e]njoin" (Compl. p. 37) ongoing state-court proceedings. But Alabama has not pointed to any authority suggesting that one of the Act's "recognized exceptions" would allow this Court to overcome the Act's "ban upon the issuance of a federal injunction against a pending state court proceeding." *Mitchum v. Foster*, 407 U.S. 225, 228-229 (1972).

That is not all. It is unclear whether Alabama (or the other Plaintiff States) can establish standing to pursue the proposed claims. They allege that they "have standing as sovereigns based on their impending loss of tax revenue if the sale of certain energy products in their states is enjoined or otherwise diminished," Compl. ¶ 45; that they "have standing as purchasers of energy," *id.* ¶ 48; and that certain States may lose revenue from "the proceeds from Outer Continental Shelf leasing and production," *id.* ¶ 46. To satisfy Article III, however, those alleged monetary injuries must be "'concrete,'" "particularized," and "actual or imminent, not speculative." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). Similarly, Article III's "causation requirement precludes speculative links—that is, where it is not sufficiently predictable how third parties would react to government action or cause downstream injury to plaintiffs." *Id.*

at 383; *cf. Department of Commerce v. New York*, 588 U.S. 752, 767-768 (2019). Here, the alleged pocketbook injury and the corresponding theory of how the pending climate-deception lawsuits against third parties would cause that injury both rest on unsubstantiated speculation.

And even if Alabama's allegations were viewed as sufficient at the pleading stage, the Court would need to conduct a complex and fact-intensive standing inquiry before it could resolve the merits. *See generally All. for Hippocratic Med.*, 602 U.S. at 384 (standing "inquiry can be heavily fact-dependent"). Because "'standing is not dispensed in gross,'" Alabama and the other Plaintiff States would have to "'demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 144 S. Ct. 1972, 1988 (2024). Then the Court would need to separately evaluate standing for Alabama's three distinct claims and various forms of relief, with respect to each of the five Defendant States, considering the particularities of each of the five lawsuits, which involve different causes of action, prayers for relief, and defendants. *See supra* p. 6 & n.3.[9]

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[9] Alabama also contends that it has *parens patriae* standing to protects its residents from substantial economic injury. Compl. ¶ 47. The *parens patriae* doctrine would require Alabama to show that each of the five targeted actions "affects the general population of [one of the Plaintiff States] in a substantial way," *Maryland*, 451 U.S. at 737, and that the State "is not merely litigating as a volunteer the personal claims of its citizens," *Pennsylvania*, 426 U.S. at 665; *see generally Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 600-608 (1982). Far from simplifying the standing issue, the *parens patraie* theory would present another difficult threshold question for the Court to consider.

Perhaps that unenviable undertaking would be warranted if Alabama had advanced a claim that is sovereign in nature and established the absence of any alternative forum in which that claim could be resolved. But here it has done neither.

C. Alabama's Proposed Claims Lack Merit

Finally, the proposed complaint does not plausibly allege "facts that are clearly sufficient to call for a decree in" Alabama's favor—as this Court demands before it exercises original jurisdiction. *Alabama*, 291 U.S. at 291.

1. Horizontal separation of powers

Alabama first advances a horizontal separation of powers claim, by which it means that the Defendant States have exceeded their constitutional authority by "assert[ing] the power to proscribe wholly extraterritorial conduct." Br. 6; *see* Compl. ¶¶ 85-88.

As discussed above, however, no Defendant State has asserted any such power. *See supra* pp. 18-21. Alabama attempts to prove otherwise by cherry-picking quotations from briefs and orders. It notes that California's complaint alleges conduct "occurring in 'California *and elsewhere*.'" Br. 8. But the complaint is clear that the State seeks relief only for "injuries in California," App. 13a, 18a, 23a, 28a, 34a, 40a, 43a-45a, and "[t]he cases are many in which a person acting outside the State may be held responsible according to the law of the state for injurious consequences within it," *Young v. Masci*, 289 U.S. 253, 258-259 (1933); *see also* Restatement (Third) of Foreign Relations Law § 402 & cmt. K (1987). Alabama also invokes language from a state trial court's ruling on a venue issue. Br. 8-9 (citing Notice of Entry of Order Granting Petition for Coordination, Ex. A to Ex. 1, *California v. Exxon*

Mobil Corp., No. CGC-23-609134 (Cal. Super. Ct. Feb. 7, 2024)). That language supported the court's conclusion that the identities of the parties would not influence the court or jurors in any of the proffered venues. It did not define the scope of the complaint or the relief sought.

Properly understood, the actions Alabama targets do not "diminish[] the police power" (Br. 10) of any other State. *See supra* pp. 18-21. Alabama also fails to substantiate its assertion that the relief sought in those actions is "irreconcilable with" energy policies adopted by Alabama or other States. Br. 12. The only examples it offers are a law setting "the measure of damages for the unauthorized removal of coal in Alabama," Ala. Code §§ 9-1-6(a), and a statutory chapter governing the conservation and regulation of oil and gas, *see id.* §§ 9-17-1 *et seq*. Those laws cannot conceivably be stifled by enforcement actions brought by other States in response to deceptive conduct directed at those States.

As to Alabama's legal theory, the proposed complaint asks the Court to recognize a new and free-standing horizontal separation of powers claim, based on extraterritoriality concerns but untethered from any specific provision of the Constitution. This Court has previously focused on whether "the reach of one State's power" exceeds constitutional limits under specific constitutional provisions, such as the Commerce Clause or the Due Process Clause. *National Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023); *cf. Shelby County v. Holder*, 570 U.S. 529 (2013). Alabama's novel proposal cannot establish the clear entitlement to relief required for an exercise of original jurisdiction.

2. Federal common law preemption

Alabama next argues that the civil enforcement actions are preempted by federal common law. *See* Compl. ¶¶ 89-93; Br. 13-20. That argument fails many times over.

To begin with, "the federal common law" Alabama invokes "does not address the type of acts" for which these actions "seek[] judicial redress." *Rhode Island*, 35 F.4th at 55; *see, e.g.*, *Honolulu*, 537 P.3d. at 1200-1201. Alabama's own authority shows that the federal common law in question (when it was in effect) governed "suits brought by one State to abate pollution emanating from another State." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011) (*AEP*); *see, e.g.*, *Georgia v. Tenn. Copper Co.*, 240 U.S. 650 (1916) (suit to enjoin private companies in Tennessee from discharging noxious gas into Georgia); *Missouri v. Illinois*, 180 U.S. 208 (1901) (suit to enjoin Chicago from dumping waste into river that reached Missouri).

But none of the civil enforcement actions targeted by Alabama seeks to remedy harms caused by interstate pollution in general. They instead seek to impose liability for local harms resulting from the companies' deceptive conduct. *See supra* pp. 1-6, 18-20. And Alabama never contends that federal common law supersedes state claims challenging deceptive practices.[10]

In any event, "the federal common law of nuisance that formerly governed transboundary pollution suits no longer exists due to Congress's displacement of that

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[10] At times, Alabama appears to suggest that federal common law should govern claims concerning *any* "interstate" activities. *See* Br. 13-14. That theory is unsupported and contrary to precedent. *See, e.g.*, *Young*, 289 U.S. at 258-259.

law through the [Clean Air Act]." *Boulder*, 25 F.4th at 1260; *see also, e.g.*, *AEP*, 564 U.S. at 423; *Rhode Island*, 35 F.4th at 53; *Honolulu*, 537 P.3d at 1196. So any question of preemption here turns on the scope of the Clean Air Act—not on a now-obsolete body of federal common law. *See, e.g.*, *AEP*, 564 U.S. at 423, 429.[11]

And Alabama does not attempt to argue that the Clean Air Act preempts any of the state-law claims at issue here. Nor could it: the Clean Air Act does not expressly preempt state tort or consumer protection claims; it does not occupy the field of consumer protection; it does not bar companies from warning consumers and accurately disclosing known risks; and it does not otherwise conflict with state-law claims alleging failure to warn or deceptive conduct. *See generally Boulder*, 25 F.4th at 1263-1265 & n.8; *Honolulu*, 537 P.3d. at 1202-1207.

Alabama instead contends that federal common law continues to "forbid[] the application of state law" in the targeted state actions, despite its statutory displacement. Br. 18-19. But the notion that the same "federal common law is both dead and alive . . . cannot be reconciled with" this Court's decision in *AEP*. *Honolulu*, 537 P.3d at 1198-1199. The complaints in *AEP* alleged that carbon dioxide emissions by electric power companies violated federal common law and state tort law. *See* 564 U.S. at 418-419. "In light of [its] holding that the Clean Air Act displaces federal

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[11] This Court's decision in *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661 (1974), does not establish otherwise. The language Alabama quotes (Br. 18) merely states the basic proposition that a claim "aris[ing] under federal law in the first instance . . . may fail at a later stage for a variety of reasons." 414 U.S. at 675-676.

common law," the Court remanded as to the state-law claims, observing that "the availability *vel non* of a state lawsuit depends . . . on the preemptive effect of the federal Act." *Id.* at 429. The Court did not direct the lower courts to consider whether federal *common law* preempted the state-law claims, as Alabama asks the Court to do here.

Despite the holding in *AEP*, Alabama maintains that federal common law retains its preemptive force in this case because the civil enforcement actions at issue here concern "[u]niquely federal interests" and threaten to subject private companies to "unpredictable and irreconcilable duties." Br. 16. But enacting and enforcing laws to protect consumers from deceptive commercial conduct is a traditional state responsibility. *See Edenfeld*, 507 U.S. at 769; *California*, 490 U.S. at 101; *supra* pp. 1, 22. Accordingly, courts have repeatedly recognized that state-law claims addressing deceptive conduct do not implicate or conflict with any uniquely federal interest. *See, e.g.*, *Rhode Island*, 35 F.4th at 54-55; *Baltimore*, 31 F.4th at 203-204. And there is no risk that the enforcement of those state laws in this context "will create a balkanization of clean air regulations and a confused patchwork of standards," Br. 16-17 (internal quotation marks omitted), because none of the civil enforcement actions seeks any restrictions on energy production or sales, or on emissions, *see supra* pp. 19-21.[12]

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[12] Alabama invokes (Br. 18) *United States v. Standard Oil Company of California*, 332 U.S. 301 (1947). That decision did not address whether federal common law retains preemptive force after Congress has displaced it. It instead concerned the threshold question of whether to create a federal common law claim in the first instance in an area where Congress "has taken no action." 332 U.S. at 310.

Alabama's contrary argument relies heavily on the Second Circuit's decision in *City of New York v. Chevron Corporation*. Br. 17-18. But that decision considered claims that sought to "impose strict liability for the damages caused by fossil fuel emissions," not claims targeting deceptive practices. *City of New York*, 993 F.3d at 93; *see supra* n. 8. In any event, the preemption analysis in *City of New York* is cursory, falling short of "the careful analysis that the Supreme Court requires during a significant-conflict analysis." *Baltimore*, 31 F.4th at 203.

At bottom, Alabama's argument amounts to a zombie theory of preemption, under which federal common law continues to preempt state law even after it has been displaced by a federal statute. That theory ignores the principle that "[j]udicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's 'legislative Powers' in Congress and reserves most other regulatory authority to the States." *Rodriguez v. FDIC*, 589 U.S. 132 (2020). This Court's "'commitment to the separation of powers is too fundamental' to continue to rely on federal common law 'by judicially decreeing what accords with common sense and the public weal' when Congress has addressed the problem." *City of Milwaukee v. Illinois*, 451 U.S. 304, 315 (1981).

3. Dormant Commerce Clause

Nor has Alabama plausibly alleged a violation of the dormant Commerce Clause. *See* Compl. ¶¶ 94-98; Br. 20-22. At the "'very core'" of the dormant Commerce Clause is an "antidiscrimination principle," which "prohibit[s] the enforcement of state laws 'driven by economic protectionism—that is, regulatory

measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" *National Pork*, 598 U.S. at 369. Alabama's attempt to invoke that principle rests on a distortion of the targeted actions.

Alabama alleges that the Defendant States discriminate against "energy sources favored and promoted by Plaintiff States," while "promot[ing] the use and development of alternative energy sources within their States." Compl. ¶ 97. But the targeted actions seek to enforce facially neutral consumer protection and tort laws, and the proposed complaint never plausibly alleges that the enforcement of those laws is calculated "to advantage in-state firms or disadvantage out-of-state rivals." *National Pork*, 598 U.S. at 370. To the contrary, most of the corporate defendants have substantial operations in the Defendant States, *see* App. 11a-41a (California); *id.* at 216a-219a (Connecticut); *id.* at 266a-277a (Minnesota); *id.* at 392a-418a (New Jersey); *id.* at 622a-641a (Rhode Island), and those States routinely bring enforcement actions against in-state corporations that engage in similarly deceptive conduct, *see, e.g.*, *People v. Ashford Univ., LLC*, 100 Cal. App 5th 485 (2024).

This Court's decision in *Healy v. Beer Institute*, 491 U.S. 324, 336 (1989), does not help Alabama. *See* Br. 20; Compl. ¶ 94. The rule in *Healy* addresses only "'price control or price affirmation statutes' that tie[] 'the price of in-state products to out-of-state prices,'" a form of economic protectionism that implicates "the familiar concern with preventing purposeful discrimination against out-of-state economic interests." *National Pork*, 598 U.S. at 371, 374. And this Court has acknowledged that although neutral state "'tort laws'"

can "have the 'practical effect of controlling' extraterritorial behavior," *id.* at 374, they are nonetheless "valid exercises of the States' constitutionally reserved powers," *id.* at 375.

Finally, Alabama cannot plausibly allege that the civil enforcement actions seek to "*directly* regulate[] out-of-state transactions by those with *no* connection to the State" that filed suit. *National Pork*, 598 U.S. at 376 n.1 (discussing *Edgar v. MITE Corp.*, 457 U.S. 624 (1982)); *see* Compl. ¶ 96. Each state-court complaint at issue here seeks to impose liability on corporations doing business in the relevant Defendant State, on the ground that they engaged in deceptive conduct that reached that State and was intended to and did cause increased consumption of fossil fuel products, thereby inflicting local harms on that State. *See supra* pp. 5-6, 18-19, 32. Neither precedent nor common sense supports characterizing that conduct as "wholly extraterritorial." Br. 20; *compare Edgar*, 457 U.S. at 642 (plurality op.) (describing unconstitutional Illinois securities law that directly regulated tender offers made by out-of-state buyers to "those living in other States and having no connection with Illinois"). The Defendant States' civil enforcement actions do not violate the dormant Commerce Clause—or any other constitutional doctrine—and they do not warrant an exercise of this Court's extraordinary original jurisdiction.

CONCLUSION

The motion for leave to file a bill of complaint should be denied.

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