No. 22O158

Supreme Court of the United States

STATE OF ALABAMA, STATE OF ALASKA,
STATE OF FLORIDA, STATE OF GEORGIA,
STATE OF IDAHO, STATE OF IOWA, STATE OF KANSAS,
STATE OF MISSISSIPPI, STATE OF MISSOURI,
STATE OF MONTANA, STATE OF NEBRASKA,
STATE OF NEW HAMPSHIRE, STATE OF NORTH DAKOTA,
STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA,
STATE OF SOUTH DAKOTA, STATE OF UTAH,
STATE OF WEST VIRGINIA, AND STATE OF WYOMING
Plaintiffs,

v.

STATE OF CALIFORNIA, STATE OF CONNECTICUT,
STATE OF MINNESOTA, STATE OF NEW JERSEY,
STATE OF RHODE ISLAND

SUPPLEMENTAL BRIEF FOR PLAINTIFFS

Steve Marshall
Attorney General
STATE OF ALABAMA
Office of the Att'y Gen.
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
Edmund.LaCour@
AlabamaAG.gov

Edmund G. LaCour Jr.
Solicitor General
Counsel of Record
Robert M. Overing
Deputy Solicitor General
Dylan Mauldin
Ass't Solicitor General

Counsel for Plaintiff State of Alabama
(*additional counsel listed below*)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Materials

SUPPLEMENTAL BRIEF

I.A. The United States agrees: "a State may not impose economic sanctions on violators of its laws with the intent of changing … lawful conduct in other States." U.S. Br. 12-13, *Sunoco LP v. Honolulu*, No. 23-947 (Dec. 10, 2024) (quoting *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572, 573 n.20 (1996)). The United States also agrees that this "principle of state sovereignty and comity" bars climate tort claims that "rely on conduct occurring outside" the plaintiff State. *Id.* Accordingly, the United States seems to expect the energy companies facing these claims to "succeed, in substantial part," on their constitutional defenses grounded in the "Commerce Clauses, the Due Process Clause, and federal constitutional structure." *Id.* at 8, 12; *see also id.* at 7; U.S. Br. 3, *Alabama v. California*, No. 158, Orig. (Dec. 10, 2024) ("U.S. Br.").

But what the United States views as a vice of the *Sunoco* and *Shell* petitions—because the companies may win anyway—is a virtue of Alabama's complaint. The best constitutional arguments, according to the United States, are directly "addressed [and] properly presented" here. *Compare Sunoco* U.S. Br. 12-13 *with* Compl. ¶¶85-88, 94-98. And who better to vindicate the guaranties of "state sovereignty and comity" than 19 States who vitally depend on them? And who better to resolve a dispute among 24 State sovereigns than the Supreme Court? If the United States is right that the flaw of these climate torts is their "reach … into the territory of another state," then they present an interstate conflict that cannot "be settled by treaty or by force" and "must be settled by decision of this court." *Kansas v. Colorado*, 206 U.S. 46, 97-98 (1907)

(*Kansas II*); *see also Georgia v. Penn. R.R.*, 324 U.S. 439, 448-49 (1945); *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237-38 (1907); *Kansas v. Colorado*, 185 U.S. 125, 140-44 (1902) (*Kansas I*); *Missouri v. Illinois*, 180 U.S. 208, 236, 240-41 (1901); *Rhode Island v. Massachusetts*, 37 U.S. 737-38, 743-44 (1838).

And the United States is right. California does not deny that it seeks to penalize "conduct occurring in California *and elsewhere*." BIO.26 (cleaned up). Its theory of harm and its damages (*e.g.*, App.182a) flow from conduct all over the world. Its proposed remedies, such as an order "to abate the nuisance" (App.187a), must coerce acts well beyond California's borders. The complaint has so little to do with California that its injuries would be precisely the same if nothing tortious happened in California at all. While applying the law of the site of the injury is a fine rule for a car accident, BIO.26 (citing *Young v. Masci*, 289 U.S. 253, 258 (1933)), it cannot apply to interstate gas emissions. If it did, the reach of state tort law would be limitless. *Cf.* TVA Reply Br. 11-13, *AEP v. Connecticut*, No. 10-174 (Apr. 11, 2011).

By arrogating unlimited powers, Defendant States inflicted an injury to the dignity and sovereignty of the 19 Plaintiff States and to the comity and harmony among States. That injury is present and ongoing. If one State claimed dominion over a shared river, there would be no question of standing, and the United States would not dismiss the *casus belli* as a "mere litigating position[]." U.S. Br. 8. Indeed, when Colorado "in her argument here" raised "claims to the water of a river [that] exceed[ed] the [river's] supply," its "demands [could] not be disregarded." *Nebraska v. Wyoming*, 325 U.S. 589, 609-10 (1945). Even though

Colorado's "proposed projects [were] not planned for the immediate future," they still "constitute[d] a threat" and thus a "clash of interests" of the "character and dignity which makes the controversy a justiciable one." *Id.* at 610.

Likewise here, there is one global atmosphere. Five Defendant States propose and demand to regulate its composition as they see fit. When assessing State standing to challenge such demands, the Court may consider "not only … the[ir] consequences" "but also … how the challenged [acts] may interact with the legitimate regulatory regimes of the other States and what effect would arise if not one, but many or every, State adopted similar legislation." *Wyoming v. Oklahoma*, 502 U.S. 437, 453-54 (1992) (quoting *Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989)). Because every State cannot regulate the shared environment at once, no one State has the right to do so by force. *Accord Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987); *North Carolina ex rel. Cooper v. TVA*, 615 F.3d 291, 296 (4th Cir. 2010); U.S. Br. 26-28, *BP v. Mayor of Baltimore*, No. 19-1189 (Nov. 20, 2023) (describing interstate emissions claims as "inherently and necessarily federal"); TVA Resp. Br. 25-33, 37-39, *AEP v. Connecticut*, No. 10-174 (Jan. 31, 2011).

To say Defendant States have "only asserted claims in court" (U.S. Br. 8) ignores the attack on every other State's "well-founded desire to preserve its sovereign territory." *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007). That's an injury. "Massachusetts cannot invade Rhode Island to force reductions in greenhouse gas emissions" (*id.* at 519) by firing a shot or by filing a lawsuit. *Cf. Yurok Tribe v. U.S. Bureau of Reclamation*, 593 F. Supp. 3d 916, 927 (N.D. Cal.

2022) (accepting that "[w]hen one sovereign asserts authority over another, that affront to sovereignty is an injury giving rise to standing") (citing *Bowen v. Pub. Agencies Opposed To Soc. Sec. Entrapment*, 477 U.S. 41, 50 n.17 (1986)); *see also Maryland v. Louisiana*, 451 U.S. 725, 731 (1981) (citing "quasi-sovereign interests"); *Nebraska*, 325 U.S. at 607-10; *Kansas II*, 206 U.S. at 99; *Tenn. Copper Co.*, 206 U.S. at 237.

B. These suits cannot be reimagined as targeting only "deceptive marketing" *within* the plaintiff States U.S. Br. 16. While many governments bringing climate torts have enjoyed ambiguity about the reach of their theories, they cannot "paper over the chain of causation that [they] pled." U.S. Br. in Support of Mot. to Dismiss at 12, *Rhode Island v. Chevron*, No. PC-2018-4716 (R.I. Super. Ct. May 5, 2020). Because they impose liability and seek remedies based on global emissions, they simply cannot be viewed as local consumer-protection torts. This idea has always been "mere smoke and mirrors." *Id.*

Lately, the smoke has started to clear. In a similar suit brought by the State of Delaware (represented by the same counsel as New Jersey and Rhode Island), the trial court rightly dismissed claims based on *interstate* gas emissions. In a revealing filing, the State moved for partial judgment to perfect its appeal immediately. Pl.'s Mot. for Entry of Partial Judgment, *Delaware v. BP Am.*, No. N20C-09-097 (Del. Super. Ct. Oct. 21, 2024). "[F]ar from relying solely on in-state emissions," Delaware explained, it had "expressly" and "repeatedly" alleged "cross-border conduct" causing emissions "in *and* outside Delaware." *Id.* at 2, 12. Indeed, the State "has no interest in prosecuting" solely *intra*state claims "because the recovery would

[be] only a fraction" of the demand. *Id.* at 12-13; *accord* Pl.'s Letter Br. 1, *City of Charleston v. Brabham Oil Co.*, No. 2020-CP-1003975 (S.C. Ct. Com. Pl. Dec. 16, 2024) ("[T]he City has never disguised or downplayed that it seeks relief for … in-state *and* out-of-state misconduct").

Although Delaware and Charleston are not parties here, the Court may find their remarks probative as to whether "deceptive marketing" claims in fact "implicate the plaintiff States' concerns about extraterritorial regulation." U.S. Br. 16. The answer is *yes*, and this Court will not be daunted by the task of "parsing the allegations in all five complaints." *Id.* Scrutinizing complaints is well within the Court's ken, *see, e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and as the United States acknowledges, the Court may end up conducting the same review after final judgment. U.S. Br. 7, 15, 17. The benefits of doing so now include the tremendous costs of litigating "radically different" claims from those that might survive appellate review. Mot. 3, *Delaware*, *supra*. True, there is the *possibility* that every state court protects "state sovereignty and comity" to the same degree that this Court would. *Sunoco* U.S. Br. 12. But in the meantime, 19 States endure incursions into their autonomy and face the risks of revolutionary injunctive relief and draconian taxes on the national energy industry. There is no good reason to wait and many weighty reasons to resolve these issues now.

II. Not only is the assertion of extraterritorial power an extant injury to State sovereignty; it poses a real threat of nationwide economic disaster. Neither the United States nor Defendant States dispute the magnitude of the claims. California seeks damages for

spending "*tens of billions of dollars* to adapt to climate change" and the "need to spend *multiples* of that figure in the years to come." App.182a (emphasis added). The other Defendants demand enormous sums too. App.248a, 264a, 564a, 736a-741a. Plus disgorgement of profits. App.203a, 258a, 368a, 606a, 780a. Plus sweeping equitable remedies like abatement and restitution. App.201a, 258a, 368a, 605a, 780a.

Is it "too speculative and too attenuated" to think that some of these costs would be felt by consumers? U.S. Br. 7. No, it's "common sense and basic economics." *City of New York v. Chevron*, 993 F.3d 81, 93 (2d Cir. 2021). Sure, the causal story can be described rather pedantically in eight steps. *See* U.S. Br. 6. Or just one: If Defendant States enforce their laws as promised, some of the costs will fall on energy consumers, including Plaintiff States and their citizens.

Article III does not require the 19 Plaintiff States to gamble with such risks. Defendants brought suits based on legal authorities already "in effect" in each State. U.S. Br. 9. Their suits are progressing. Their courts are hearing that there's a "narrow window" to stop "irreversible" catastrophe. App.615a; *see also* App.244a (describing "irreparable harm" from "expanding exploration of potential new oil and gas reserves"). Plaintiff States do not need to show that Defendant States will succeed in returning America to "the dawn of the Industrial Revolution." *Cf.* App.762a. All they need is a "substantial likelihood that the judicial relief requested will … reduce [a real] risk." *Massachusetts*, 549 U.S. at 521 (cleaned up). Even a "small probability" suffices when the injury is "drastic." *Id.* at 525 n.23.

Massachusetts v. EPA strongly supports standing here. In that case, States had standing because agency rulemaking on tailpipe emissions could be "a small incremental step" to "*slow* or *reduce*" global warming. *Id.* at 524, 526. In this case, standing is not premised on the lawsuits affecting *any* change in the global climate, nor on the effect of global warming on States. Much simpler: Plaintiff States allege only that the climate lawsuits will effect their direct and immediate aims by taxing the traditional energy industry. What follows from a large tax—reduced output, rising prices for consumers, and higher costs in those sectors for which energy is a crucial input, Compl. ¶¶12-28, 46-50—is an entirely "predictable chain of events," *FDA v. All. Hippocratic Med.*, 602 U.S. 367, 385 (2024); *accord* Am. Free Enter. Chamber of Com. Amicus Br. 9-13; Consumers' Rsch. Amicus Br. 9-15; Nat'l Ass'n Mfrs. Amicus Br. 16-18.

The Court has found standing in original actions with much lower stakes. The Court did not dismiss the risk of losing $500,000 annually as *de minimis* in *Wyoming v. Oklahoma*, 502 U.S. at 452 & n.11. (And Plaintiff States alleged the same "loss of tax revenue" as Wyoming—an independent ground for standing. Compl. ¶45.) Nor did the Court scoff when States complained about paying another "seven cents per thousand cubic feet of natural gas" in *Maryland v. Louisiana*, 451 U.S. at 731. In both cases, the Court ordered injunctive relief; at this stage, all that Plaintiff States ask is that their complaint be heard.

The United States has two counterarguments. *First*, its brief emphasizes that Plaintiffs challenge "mere litigation positions" that may not succeed. U.S. Br. 8. But the Court heard *Pennsylvania v. West*

Virginia over a very similar objection. West Virginia's statute had "gone into effect," U.S. Br. 9, but its effect was not automatic. Namely, no reduction in gas exports would occur until "resort ha[d] been had to the Public Service Commission and the application to it [for inadequate service] ha[d] been acted upon, either by granting or by denying relief." *Pennsylvania v. West Virginia*, 262 U.S. 553, 612 (2023) (Brandeis, J., dissenting). And an order could issue only "[a]fter notice to and hearing of the corporation." *Id.* In other words, the economic harms depended on the outcome of administrative proceedings just as the economic harms here depend on the outcome of litigation. In some ways, the Pennsylvania suit was less direct because injury depended on a customer complaint, an agency order, and a company's response. *See id.* ("[M]any things would have to happen and much time must elapse before any of the exporting corporations would … actually be prevented from exporting gas.").

Similarly, in *Maryland v. Louisiana*, it made no difference that Louisiana may well have lost ongoing state lawsuits challenging the constitutionality of its gas tax. 451 U.S. at 740. What mattered was that the "anticipated" tax it was "attempting" to levy "implicate[d] serious and important concerns of federalism fully in accord with the purposes and reach of [the Court's] original jurisdiction." *Id.* at 744; *see also Nebraska*, 325 U.S. at 609-10; *Penn. R.R.*, 324 U.S. at 447 (other "prosecutions or suits" did not undermine original jurisdiction to remedy injury to state economy).

Second, the United States argues that the interests at stake are just those of private energy companies. U.S. Br. 11-14. This too the Court has firmly rejected in other original actions. In *Maryland*

v. Louisiana, the challenged tax was first "imposed on [private] companies" and then "passed on … to their customers." 451 U.S. at 736-37. And in *Wyoming v. Oklahoma*, it was the coal producers who lost sales, and the State suffered thereafter by missing out on potential tax revenue. 502 U.S. at 448-50. Both were direct injuries sufficient to confer standing, and both types of injuries are plausibly pleaded here. *See* Compl. ¶¶ 45-47; *see also, e.g.*, Compl. ¶51 (describing production of coal, oil, and natural gas in Alabama). Plaintiffs have also alleged "standing as purchasers of energy," a theory supported by *Pennsylvania v. West Virginia* and *Maryland v. Louisiana*. Compl. ¶¶48-50.

III. The United States next contends that the on-going state proceedings are better forums than this one. U.S. Br. 14-18. But this collision of State sovereigns is the "model case" for original jurisdiction. *Texas v. New Mexico,* 462 U.S. 554, 571 n.18 (1983). The 19 Plaintiff States do not consent to the contemplated abatement of "nuisances" within their borders, nor to the reach of foreign tort law to reduce lawful emissions within their borders, nor to any State's attempt to dictate policy within their borders. Consequently, Defendant States have created an interstate conflict. While one side of the conflict can press its own claims in its courts, the other side is left to hope that *private parties* will vindicate its constitutional rights, the wellbeing of its citizens, our "federal constitutional structure," and the basic "principles of state sovereignty and comity." *Sunoco* U.S. Br. 12-13. No. Alabama is the most interested and the most natural party to assert Alabama's sovereignty. There is no other forum and no State's law that

will do. *See Maryland*, 451 U.S. at 728; *Milwaukee v. Illinois*, 406 U.S. 49, 103 & n.5, 104 n.6 (1972).

The energy companies targeted by Defendants may raise similar issues in state court, U.S. Br. 17, but Plaintiff States are not "actually being represented by one of the named parties" in any of those cases. *Maryland*, 451 U.S. at 728. And even if the companies raise "identical constitutional issues," the Plaintiff States still would not be "directly represented" in those proceedings. *Id.* at 740, 743.

The United States trusts that the state courts will be "fair" in exercising their "solemn responsibility … to enforce the Constitution." U.S. Br. 17. But the founders were more "suspicio[us]." *Texas v. California*, 141 S. Ct. 1469, 1472 (2021) (Alito, J., dissenting from denial of motion for leave to file bill of complaint) (citing The Federalist No. 80 (Hamilton); *Chisolm v. Georgia*, 2 U.S. 419, 474 (1793)). They did not leave States to hope and trust; they gave States "the right to have their disputes with other States adjudicated by the Nation's highest court." *Id.* at 1474; *see also California v. Arizona*, 440 U.S. 59, 66 (1979).

IV. There are no obstacles to the Court's exercise of original jurisdiction. The United States does not raise "serious doubts"—only two "questions about the possibility of … procedural obstacles." U.S. Br. 18. Both questions—application of *Younger* abstention and the Anti-Injunction Act, 28 U.S.C. §2283—are easily answered. Animating both is a federal respect for state courts. But if States wield their courts to wage wrongful interstate conflict, such respect is lost. After all, a plaintiff State could receive injunctive relief only if had clearly shown a grave harm *and* the

absence of an alternative forum. The Court would then have a choice to leave a sovereign State injured without a remedy or to "interfere" with the very proceedings that threaten the injury. It is hard to see how abstention would be more respectful of States.

In *Georgia v. Tennessee Copper Company*, the Court found the State "more certainly entitled to specific relief than a private party might be." 206 U.S. at 237. Because States should "not lightly to be required to give up quasi-sovereign rights for pay …, they should not be left to an action at law." *Id.* at 237-38. Here, abstention would require the 19 Plaintiff States to give up their sovereign rights for *nothing* and just "submit to whatever might be done." *Id.*

Instead, the Court should "construe 28 U.S.C. §1251(a)(1) [and] Art. III, §2, cl. 2, to honor [its] original jurisdiction" and hear the Bill of Complaint. *Milwaukee*, 406 U.S. at 93.

CONCLUSION

The Court should grant the motion.

Respectfully submitted,

STEVE MARSHALL
Attorney General

EDMUND G. LACOUR JR.
Solicitor General
Counsel of Record

ROBERT M. OVERING
Deputy Solicitor General

DYLAN MAULDIN
Ass't Solicitor General

STATE OF ALABAMA
Office of the Att'y Gen.
501 Washington Ave.
Montgomery, AL 36130
(334) 242-7300
Edmund.LaCour@
AlabamaAG.gov

Counsel for Plaintiff State of Alabama
(*additional counsel listed below*)

ADDITIONAL COUNSEL

TREG TAYLOR
Attorney General
JESSICA M. ALLOWAY
Solicitor General
STATE OF ALASKA
Dep't of Law
1031 W. 4th Avenue #200
Anchorage, AK 99501
(907) 269-6612
jessie.alloway@alaska.gov

ASHLEY MOODY
Attorney General
HENRY C. WHITAKER
Solicitor General
STATE OF FLORIDA
Office of the Att'y Gen
The Capitol, Pl-01
Tallahassee, FL 32399
(850) 414-3300
henry.whitaker@
myfloridalegal.com

CHRISTOPHER M. CARR
Attorney General
STATE OF GEORGIA
Office of the Att'y Gen
40 Capitol Square, SW
Atlanta, GA
(404) 458-3213
ccarr@law.ga.gov

RAÚL R. LABRADOR
Attorney General
ALAN M. HURST
Solicitor General
STATE OF IDAHO
Office of the Att'y Gen
P.O. Box 83720
Boise, ID 83720
(208) 334-2400
alan.hurst@ag.idaho.gov

BRENNA BIRD
Attorney General
ERIC H. WESSAN
Solicitor General
STATE OF IOWA
1305 E. Walnut Street
Des Moines, IA 50319
(515) 823-9117
eric.wessan@ag.iowa.gov

KRIS W. KOBACH
Attorney General
ANTHONY J. POWELL
Solicitor General
STATE OF KANSAS
Office of the Att'y Gen
120 SW 10th Ave.
Topeka, KS 66612
(785) 368-8539
anthony.powell@ag.ks.gov

LYNN FITCH
Attorney General
JUSTIN L. MATHENY
Deputy Solicitor General
STATE OF MISSISSIPPI
Office of the Att'y Gen
P.O. Box 220
Jackson, MS 39205-0220
(601) 359-3680
justin.matheny@ago.ms.gov

MICHAEL T. HILGERS
Attorney General
ERIC J. HAMILTON
Solicitor General
STATE OF NEBRASKA
Nebraska Dep't of Justice
2115 State Capitol
Lincoln, NE 68509
(402) 471-2683
eric.hamilton@nebraska.gov

ANDREW BAILEY
Attorney General
SAMUEL C. FREEDLUND
Deputy Solicitor General
STATE OF MISSOURI
Office of the Att'y Gen
815 Olive St., Suite 200
St. Louis, MO 63101
(314) 340-4869
samuel.freedlund@
ago.mo.gov

JOHN M. FORMELLA
Attorney General
ANTHONY J. GALDIERI
Solicitor General
STATE OF NEW HAMPSHIRE
Department of Justice
1 Granite Place South
Concord, NH 03301
(603) 271-1214
anthony.j.galdieri@
doj.nh.gov

AUSTIN KNUDSEN
Attorney General
CHRISTIAN B. CORRIGAN
Solicitor General
PETER M. TORSTENSEN, JR.
Deputy Solicitor General
STATE OF MONTANA
Montana Dep't of Justice
215 N. Sanders St.
Helena, MT 59601
christian.corrigan@mt.gov
peter.torstensen@mt.gov

DREW H. WRIGLEY
Attorney General
PHILIP AXT
Solicitor General
STATE OF NORTH DAKOTA
Office of the Att'y Gen
600 E Boulevard Ave.,
Dept. 125
Bismarck, ND 58505
(701) 328-2210
pjaxt@nd.gov

GENTNER F. DRUMMOND
Attorney General
GARRY M. GASKINS II
Solicitor General
STATE OF OKLAHOMA
Office of the Att'y Gen.
313 NE Twenty-First St.
Oklahoma City, OK 73105
(405) 521-3921
Garry.Gaskins@oag.ok.gov

ALAN WILSON
Attorney General
J. EMORY SMITH, JR.
Deputy Solicitor General
STATE OF SOUTH CAROLINA
Office of the Att'y Gen.
1000 Assembly Street
Columbia, SC 29201
(803) 734-3642
esmith@scag.gov

MARTY J. JACKLEY
Attorney General
PAUL S. SWEDLUND
Solicitor General
STATE OF SOUTH DAKOTA
Office of the Att'y Gen
1300 E. Highway 14, Ste. 1
Pierre, SD 57501
(605) 773-3215
paul.swedlund@state.sd.us

SEAN REYES
Attorney General
STANFORD PURSER
Solicitor General
STATE OF UTAH
Office of the Att'y Gen
160 East 300 South, Fifth Fl.
Salt Lake City, UT 84111
(385) 366-4334
spurser@agutah.gov

PATRICK MORRISEY
Attorney General
MICHAEL R. WILLIAMS
Solicitor General
STATE OF WEST VIRGINIA
Office of the Att'y General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
(304) 558-2021
michael.r.williams@
wvago.gov

BRIDGET HILL
Attorney General
RYAN SCHELHAAS
Chief Deputy Attorney
Attorney General
STATE OF WYOMING
Office of the Att'y General
109 State Capitol
Cheyenne, WY 82002
(307) 777-7841
bridget.hill@wyo.gov