No. 23-1141

In the
Supreme Court of the United States

SMITH & WESSON BRANDS, INC., ET AL.,
Petitioners,

v.

ESTADOS UNIDOS MEXICANOS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF AMERICAN FREE ENTERPRISE CHAMBER OF COMMERCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Formed in 2022, the American Free Enterprise Chamber of Commerce ("AmFree") is a 501(c)(6) organization that represents hard-working entrepreneurs and businesses across the U.S. economy. AmFree's members are vitally interested in U.S energy security and the continued viability of our commercial republic. Shortly after its founding, AmFree launched the Center for Legal Action ("CLA") to represent these interests in court. CLA is spearheaded by two-time former U.S. Attorney General Bill Barr.

AmFree submits this brief because the decision below is not just wrong, but would also have a crippling effect on American industry and would dilute the constitutional requirement that "No person shall … be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

SUMMARY OF ARGUMENT

Can the flutter of a butterfly's wing result in a natural disaster on another continent? Edward N. Lorenz, *The Essence of Chaos* 179 (1993). Or if the butterfly dies, does its demise change the development of the English language? Or the outcome of a presidential election? *Cf.* Ray Bradbury, *A Sound of Thunder* (1952). These are interesting questions for philosophers, science fiction writers, and poets to ponder. And while we may then wonderlike

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution intended to fund its preparation or submission.

Prufrock—"Do I dare / Disturb the universe? …. Do I dare to eat a peach?" T.S. Eliot, *The Love Song of J. Alfred Prufrock* (1915)—no one actually lives that way. And, until recently, no one would expect to find such "butterfly effect" theories invading the forensic inquiries of judges and juries: "'for want of a nail, a kingdom was lost' is a commentary on fate, not the statement of a major cause of action against a blacksmith." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 287 (1992) (Scalia, J., concurring in the judgment).

Mexico begs to differ. It fears its kingdom will be lost—not for want of a nail—but for want of draconian gun laws in its neighbor to the north. And so it comes before this Court, asking it to all but erase the traditional causation requirements of tort law. The result would be chaos. That this Court must resolve whether gun sales in the United States—in whatever form—are the proximate cause of cartel violence in Mexico is alarming evidence that such litigation is out of control.

Amicus writes to underscore three points. First, overextending proximate cause is incompatible with due process. This Court has repeatedly reiterated the close causal nexus necessary for liability and should reaffirm that now.

Second, foreseeability is an unbounded and unwieldy standard that hangs the sword of unlimited liability over the head of all American businesses (except for judgment-proof fly-by-night enterprises). Entire industries that supply the necessities of everyday life and sustain the economy could easily fall victim to the same proximate-cause analysis.

Third, each additional step in a causal chain allows foreign sovereigns to reach further beyond their borders and act as *de facto* policymakers in the United States. Nuisance litigation based on attenuated causation has already frayed the relationship between the several States of the union, and adding foreign sovereigns to the mix will only make matters worse.

* * *

Francis Bacon was right: *In jure non remota causa, sed proxima spectator*. Lord Francis Bacon, *The Maxims of the Law*, Regula I, *in* 14 *The Works of Francis Bacon* 189 (James Spedding et al. eds., 1900).

ARGUMENT

I. OVEREXTENDING PROXIMATE CAUSE RAISES DUE PROCESS CONCERNS

Overextending proximate cause to all "foreseeable" consequences of the sale of lawful goods would raise significant constitutional concerns under the Due Process Clause. One of the "elementary notions of fairness enshrined in our constitutional jurisprudence" is "that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996); *see also N.C. Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Tr.*, 588 U.S. 262, 268 (2019). This Court has explained that "[c]onditioning liability on foreseeability … is hardly a condition at all" because a "broad enough view" guarantees that anything "may be foreseen." *Consol. Rail Corp. v. Gottshall*, 512 U.S.

532, 552–53 (1994). Extending liability to all possible downstream effects is thus antithetical to that core due-process protection. *See also Sinram v. Penn. R. Co.*, 61 F.2d 767, 771 (2d Cir. 1932) ("[F]or we are not bound to take thought for all that the morrow may bring, even when we should foresee it.").

That each petitioner is "a large corporation rather than an impecunious individual does not diminish its entitlement to fair notice" of potential liability. *BMW of N. Am., Inc.*, 517 U.S. at 585; *cf. State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 427 (2003) ("The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award."). Weakening causation requirements creates a risk of liability not for "the conduct that harmed the plaintiff," but rather for "being an unsavory individual or business." *State Farm*, 538 U.S. at 423. The Constitution tolerates no such thing.

This Court has made similar observations in the context of personal jurisdiction, which "represents a restriction on judicial power … as a matter of individual liberty." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 807 (1985) (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982)). This Court explained that "'foreseeability' alone" has "never been a sufficient benchmark" to satisfy the requirements of due process. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980). This Court's observations about personal jurisdiction are particularly relevant here because multiple courts, including the First Circuit, view proximate cause as a material consideration when weighing the minimum contacts necessary for

personal jurisdiction under *International Shoe Co. v. State of Washington, Office of Unemployment Compensation & Placement*, 326 U.S. 310 (1945). *See Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 713–16 (1st Cir. 1996); *see also Cambridge Literary Props., Ltd. v. W. Goebel Porzellanfabrik G.m.b.H. & Co. Kg.*, 295 F.3d 59, 65 (1st Cir. 2002).

This Court has repeatedly articulated a cabined and common-sense understanding of proximate cause, which is consistent with these due process concerns. In 1918, this Court observed that "[t]he general tendency of the law, in regard to damages at least, is not to go beyond the first step." *S. Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 533 (1918). The Court has reiterated that standard as applicable to the Interstate Commerce Act,[2] the Clayton Act,[3] the Racketeer Influenced and Corrupt Organizations Act, [4] and the Fair Housing Act. [5] The Court has further emphasized that proximate cause requires a "direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268. Subsequent harms that are "purely contingent" on an intervening step are "too remote." *Id.* at 271; *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 12 (2010). In other words, "other, independent, factors" break the causal chain. *Holmes*, 503 U.S. at 269; *see also*

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[2] *S. Pac. Co.*, 245 U.S. at 533.

[3] *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 521, 535-37 (1983).

[4] *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 458–61 (2006); *Holmes*, 503 U.S. at 267–68.

[5] *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 202–03 (2017).

Hemi Grp., 559 U.S. at 11 ("separate actions carried out by separate *parties*"); *Anza*, 547 U.S. at 458 ("distinct" actions by the same party).

The decision below analogized to *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), where this Court considered a false advertising claim under the Lanham Act. Pet.App.317a. This Court first reaffirmed that an alleged harm is "'too remote'" if it "is purely derivative of 'misfortunes visited upon a third person by the defendant's acts.'" *Lexmark*, 572 U.S. at 133 (quoting *Holmes*, 503 U.S. at 268–69). Then, this Court observed both that Congress had specifically provided for recovery by commercial entities for the deception of their consumers and "that under common-law principles, a plaintiff can be directly injured by a misrepresentation even where a third party … relied on it." *Id.* at 133 (cleaned up). This Court thus held plaintiffs "ordinarily must show economic or reputational injury flowing directly from the deception wrought by the defendant's advertising," which "occurs when deception of consumers *causes* them to withhold trade from the plaintiff." *Id.* (emphasis added).

Mexico comes nowhere close to that standard here, making no allegation (let alone a plausible allegation) that petitioners manipulated or deceived the multiple intervening actors between gun sales in the United States and cartel violence in Mexico.

"[T]here must be a terminus somewhere, short of eternity, at which the second party becomes responsible in lieu of the first." *Petition of Kinsman Transit Co.*, 338 F.2d 708, 722 (2d Cir. 1964) (Friendly, J.) (cleaned up). The unwavering theme of

these cases is that proximate cause requires a "direct" injury—i.e., "the first step" from the allegedly harmful conduct.

II. FORESEEABILITY IS A LIMITLESS STANDARD THAT WILL CRIPPLE INDUSTRY IN THE UNITED STATES

The implications of overextending proximate cause cannot be understated. Every industry would be susceptible to claims for catastrophic damages no matter how far removed the allegedly harmful conduct.

State and local governments have already sued the fossil fuel industry for damages based on an attenuated theory of increased harms from climate change. *See, e.g.*, *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1184 (Haw. 2023), *petition for cert. pending*, Nos. 23-947, 23-952 (U.S.). Climate litigation has become a cottage industry, with an ever-increasing number of state and local governments joining the fray. *See, e.g.*, *In re Fuel Indus. Climate Cases*, No. CJC-24-005310 (Cal. Super. Ct. Oct. 08, 2024); *Estado Libre Asociado de Puerto Rico v. Exxon Mobil Corp.*, No. SJ2024CV06512 (P.R. TPI filed July 15, 2024); *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 24-C-18-4219, 2024 WL 3678699 (Md. Cir. Ct. July 10, 2024); *Bucks Cnty. v. BP P.L.C.*, No. 2024-01836-0000 (Pa. Ct. Com. Pl. filed Mar. 25, 2024); *Shoalwater Bay Indian Tribe v. Exxon Mobil Corp.*, No. 23-2-25215-2 (Wash. Super. Ct. filed Dec. 20, 2023); *Makah Indian Tribe v. Exxon Mobil Corp.*, No. 23-2-25216-1 (Wash. Super. Ct. filed Dec. 20, 2023); *City of Chicago v. BP p.l.c.*, No. 2024CH01024 (Ill. Cir. Ct. filed Feb. 20, 2024); *Mun. of San Juan v. Exxon*

Mobil Corp., No. 3:23-cv-1608 (D.P.R. filed Dec. 13, 2023); *California v. Exxon Mobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. filed Sept. 15, 2023); *Cnty. of Multnomah v. Exxon Mobil Corp.*, No. 23-cv-25164 (Or. Cir. Ct. filed June 22, 2023); *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct. filed Oct. 18, 2022); *City of Annapolis v. B.P. P.L.C.*, No. C-02-CV-21-000250 (Md. Cir. Ct. filed Apr. 26, 2021); *City of New York v. Exxon Mobil Corp.*, No. 451071/2021 (N.Y. Sup. Ct. filed Apr. 22, 2021); *Anne Arundel Cnty. v. BP P.L.C.*, No. C-02-CV-21-000565 (Md. Cir. Ct. filed Feb. 16, 2021); *Connecticut v. Exxon Mobil Corp.*, No. HHD-CV-20-6132568-S (Conn. Super. Ct. filed Sept. 14, 2020); *Delaware ex rel. Jennings v. B.P. Am. Inc.*, No. N20C-09-097 (Del. Super. Ct. filed Sept. 10, 2020); *City of Charleston v. Brabham Oil Co.*, No. 2020CP1003975 (S.C. Ct. Com. Pl. filed Sept. 9, 2020); *City of Hoboken v. Exxon Mobil Corp.*, No. HUD-L-3179-20 (N.J. Super. Ct. filed Sept. 2, 2020); *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct. filed June 24, 2020); *Massachusetts v. Exxon Mobil Corp.*, No. 1984CV03333 (Mass. Super. Ct. filed Oct. 24, 2019); *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. filed July 2, 2018); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.), Inc.*, No. 2018CV030349 (Colo. Dist. Ct. filed Apr. 17, 2018); *City of Oakland v. BP P.L.C.*, CGC-17-561370 (Cal. Super. Ct. filed Sept. 19, 2017); *Cnty. of San Mateo v. Chevron Corp.*, No. 17CIV03222 (Cal. Super. Ct. filed July 17, 2017); *Native Vill. of Kivalina v. Exxon Mobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009), *dismissal aff'd*, 696 F.3d 849 (9th Cir. 2012); *People of State of California v Gen. Motors Corp.*, No. C06-05755, 2007 WL 2726871 (N.D. Cal. Sept. 17,

200717, 2007). To the extent these cases claim damages for alleged climate harms, they rest on highly speculative and tenuous causal chains. *See, e.g.*, Roger Pielke Jr., *Weather Attribution Alchemy*, Am. Enter. Inst. (Oct. 8, 2024), https://perma.cc/WVL2-YPQF.

Similar lawsuits have also been filed against companies that manufacture or sell plastic products, seeking damages and injunctive relief for pollution by third parties. *See, e.g.*, *New York v. PepsiCo, Inc.*, No. 814682/2023 (N.Y. Sup. Ct. dismissed Oct. 31, 2024), Doc. No. 36. In a recent decision dismissing claims by New York, the court was emphatic:

> While I can think of no reasonable person who does not believe in the imperatives of recycling and being better stewards of our environment, this does not give rise to phantom assertions of liability that do nothing to solve the problem that exists. This is a purely legislative or executive function to ameliorate and the judicial system should not be burdened with predatory lawsuits that seek to impose punishment while searching for a crime. Plaintiff's proposed use of the judicial system to punish select purported offenders for what she believes to be a righteous cause risks transforming the judiciary into an arm of the legislature, or at the very least a passive partner in expanding duties that strain the bedrock of well-established law for policy purposes.

Id., Doc. No. 36, at 18–19. But the lawsuits keep coming. *See, e.g.*, *Ford Cnty. v. Exxon Mobil Corp.*, No. 2:24-cv-2547 (D. Kan. filed Nov. 27, 2024); *California*

v. PepsiCo, Inc., No. 24stcv28450 (Cal. Super. Ct. filed Oct. 29, 2024); *California v. Exxon Mobil Corp.*, No. CGC24618323 (Cal. Super. Ct. filed Sept. 23, 2024); *Mayor & City Council of Baltimore v. PepsiCo, Inc.*, No. C-24-CV-24001003 (Md. Cir. Ct. filed June 20, 2024). Even non-governmental organizations have joined the litigation. *See, e.g.*, *Sierra Club, Inc. v. Exxon Mobil Corp.*, No. CGC24618321 (Cal. Super. Ct. filed Sept. 23, 2024); *Earth Island Inst. v. Crystal Geyser Water Co.*, No. 20CIV01213 (Cal. Super. Ct. filed Feb. 26, 2020)..

Who's next? According to the U.S. Department of Transportation, there were 5,930,496 motor vehicle crashes in the United States in 2022. *Motor Vehicle Safety Data*, Bureau of Transp. Statistics, U.S. Dep't of Transp., https://www.bts.gov/content/motor-vehicle-safety-data (last accessed Dec. 2, 2024) (Table 2-17). It is thus entirely foreseeable that non-defective vehicles will be involved in accidents, including as a result of driver error, recklessness, and the influence of drugs or alcohol. It is also entirely foreseeable that some cars will be used in shootings and robberies. The decision below would designate the entire automobile industry as a proximate cause of these harms.

According to the Federal Bureau of Investigation ("FBI"), "blunt object[s]" like baseball bats, clubs, and hammers are the seventh-most common weapons in violent offenses in the United States. *Crime Data Explorer*, FBI, https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend (last accessed Dec. 2, 2024) (tbl. "All Violent Offenses Offense Characteristics: Type of Weapon Involved By Offense"). With nearly a quarter-million violent crimes committed with blunt objects over the last 5

years, *id.*, it would be hard to argue that Louisville Slugger—which puts 1.8 million baseball bats into interstate commerce every year, *Frequently Asked Questions*, Louisville Slugger Museum & Factory, https://perma.cc/4MRX-XFUM (last accessed Dec. 2, 2024)—does not know that at least *some* of their bats will be used for violent purposes. By the same token, Home Depot sells $12.1 billion worth of tools every year. The Home Depot, Inc., Annual Report (Form 10-K), at 51 (Mar. 13, 2024), https://perma.cc/S4CK-UBB3. This extensive revenue, representing a full 8% of the company's net sales, *id.*, includes commerce in hand tools like hammers, wrenches, flashlights, and crowbars.

The FBI also reports that men commit nearly 70% of violent crimes. *Crime Data Explorer*, FBI, *supra* (Table "All Violent Offenses Offender vs. Victim Demographics: Sex"). Despite this publicly available information—from an official source—Louisville Slugger and Home Depot take no precautions to ensure their dangerous weapons aren't sold, distributed, or gifted to these disproportionately dangerous users. Even worse, Louisville Slugger and Home Depot actively market their goods to that demographic. *See, e.g.*, *Louisville Slugger Museum & Factory Continues Father's Day Tradition of Free Admission for Dads*, WDRB (June 14, 2019), https://perma.cc/YP7L-PV9F; Jeff Segura, *Father's Day Gift Gude*, Home Depot, https://perma.cc/5DP2-MMAD (last accessed Dec. 2, 2024). Louisville Slugger and Home Depot can't escape the decision below, either.

According to the U.S. Department of State, cybercrime has created annual domestic damages of

as much as $4 billion. *Cybercrime*, U.S. Dep't of State, https://perma.cc/9X8B-B6ZW (last accessed Dec. 2, 2024). The top 6 computer manufacturers—Lenovo, HP, Dell, Apple, Asus, and Acer—combine to capture 85.9% of the global market in personal computers. Gartner, Press Release, *Gartner Says Worldwide PC Shipments Increased 0.3% in Fourth Quarter of 2023 But Declined 14.8% for the Year* 2–3 tbl. 3 (Jan. 10, 2024), https://perma.cc/T5JV-6FYU. At least some of those machines would foreseeably be used in the hundreds of thousands, if not millions, of cybercrimes committed every year in the United States. FBI, *2023 Internet Crime Report* (2024), https://perma.cc/E5UY-S36B. Yet, despite that severity of this issue, these companies appear to be making no serious effort to prevent their products from reaching the hands of potential criminals.

The list goes on and on. There is no principle to the decision below that would limit liability to guns. With an unbounded conception of "proximate cause," plaintiffs could make allegations similar to Mexico's that each respective defendant should have created a system to "supervise" downstream sales (¶ 264), enforce background checks on (primary and) secondary sales (¶¶ 245, 369b), and create "anti-theft measures" to mitigate the harms from stolen goods (¶ 269). Pet.App.83a–84a, 89a–90a, 132a.

This Court has before it similar questions about foreseeability and proximate causation that for decades have bedeviled federal actions subject to environmental review under the National Environmental Policy Act ("NEPA"). *See Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, No. 23-975 (U.S. 2024). In the NEPA context, lower courts have

wrestled with how to apply this Court's holding that agencies need only to consider environmental effects when the agency is the "legally relevant 'cause' of the effect." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004). Given the tendency of many lower courts to, instead, apply "a particularly unyielding variation of 'but for' causation," *id.* at 767, plaintiffs—limited only by their imaginations—have used NEPA to transform every federal agency into an "environmental-policy czar," *Ctr. for Biological Diversity v. U.S. Army Corps of Eng'rs*, 941 F.3d 1288, 1299 (11th Cir. 2019); *see also* Brief of U.S. Senators John Barrasso et al. as *Amici Curiae* in Support of Petitioners at 2, 18–22, *Eagle Cnty.*, No. 23-975 (U.S. Sept. 4, 2024).

The result is the far-too-typical D.C. Circuit opinion under review that faults a federal agency for failing to consider the effect of a rail line in Utah on environmental justice communities in Louisiana. *Eagle Cnty. v. Surface Transp. Bd.*, 82 F.4th 1152, 1177–80 (D.C. Cir. 2023). The continuous application of such an unbounded view of what constitutes a "legally relevant 'cause,'" *Pub. Citizen*, 541 U.S. at 770, imposes immeasurable uncertainty on any project subject to any sort of federal approval, which must survive the gauntlet of NEPA and subsequent judicial review. Extensive NEPA reviews—and the uncertainty of litigation—have delayed projects for years (if not indefinitely), led to hundreds of millions of dollars in increased costs for individual projects, and caused investors to avoid interstate ventures altogether. Brief of the Interstate Natural Gas Ass'n of America et al. as *Amici Curiae* in Support of Petitioners at 11–13, *Eagle Cnty.*, No. 23-975 (U.S. Sept. 4, 2024).

Mexico is attempting to use litigation in the United States to resolve its own domestic issues or otherwise circumvent negotiation with the President over a matter of foreign affairs. *Cf. United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936) ("The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."). If Mexico succeeds (or if States and local governments similarly prevail) in expanding proximate cause, it will take little time for other plaintiffs to come knocking, with no end in sight. The result of overextending proximate cause would be devastating.

III. Each Additional Step in a Causal Chain Allows Sovereigns to Reach Further Beyond Their Borders

In our federal system, no State "can legislate for, or impose its own policy upon the other." *Kansas v. Colorado*, 206 U.S. 46, 95 (1907); *see also State Farm*, 538 U.S. at 422 ("[E]ach State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders."); *BMW of N. Am., Inc.*, 517 U.S. at 571–73 ("[I]t is clear that no single State could … impose its own policy choice on neighboring States."); *cf. World-Wide Volkswagen Corp.*, 444 U.S. at 294 (explaining "the Due Process Clause" can be "an instrument of interstate federalism").

Nevertheless, each additional step allowed in a causal chain increases the ability of a State to use litigation to reach across its borders and impose its preferences on its neighbors. *Cf. Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) ("[T]he

obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959))); *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 719 (8th Cir. 2023) (Stras, J., concurring) ("[T]he state's attempt to set national energy policy through its own consumer-protection laws would 'effectively override … the policy choices made by' the federal government and other states." (quoting *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 495 (1987))). That's the point. Suits like this one, claims by state and local governments against energy companies and plastic manufacturers, and many others aim to use tort law to obtain policy change beyond what can be achieved through the political process. *See* David A. Dana, *Public Nuisance Law When Politics Fails*, 83 Ohio St. L.J. 61 (2022). Attenuated causation also requires broader relief to remedy—such as public nuisance claims that demand damages based on global conduct and require equitable relief of an international scope to abate—only makes matters worse.

It is thus unsurprising that overextending proximate cause is fraying the relationship between the States. Indeed, States have increasingly used nuisance litigation to try and force their policy preferences on their neighbors or otherwise try and obtain what they cannot achieve through Congress.

Recently, nineteen States filed a motion for leave to bring an original action in this Court against California, Connecticut, Minnesota, New Jersey, and Rhode Island. *Alabama v. California*, No. 22O158 (U.S. 2024). The defendant States there have sued major energy companies for damages and injunctive

relief related to harms allegedly attributable to climate change caused by emissions from use of their products. The motion claimed those efforts, which seek damages for global conduct and corresponding equitable remedies, violate horizontal federalism. Maine recently joined the defendant States in suing major energy companies for alleged climate harms, further deepening the divide. *See Maine v. BP P.L.C.*, No. ___, (Me. Super. Ct. filed Nov. 26, 2024), https://perma.cc/9NGM-9N23; *see also* Stephen Singer, *Maine Sues Energy Companies, Saying They Failed to Warn About Climate Change*, Portland Press Herald (Nov. 26, 2024), https://perma.cc/VG9C-JNUH.

The decision below adds foreign sovereigns to the mix. Mexico is seeking to impose joint and several liability on each petitioner for cartel violence in Mexico, and to ban *all* sales of disfavored guns, as necessary to remedy its alleged harms. That would inevitably extend Mexico's preferred gun policy into the United States. Worse still, Mexico is seeking to draw *billions* of dollars from the U.S. economy—enough to entirely bankrupt firearm manufactures—to fund its own domestic, governmental operations like paying for a police force, all without showing direct causation to specific sales. Petitioners will presumably be liable based on their alleged market share, then jointly liable for any remaining balance. That's an attempt to tax on American companies and consumers to fund the Mexican government, *see generally* George L. Priest, *The Deep Contradiction Between Product Liability and Market Share Liability*, Yale L. & Econ. Rsch. Paper (drft. Sept. 18, 2024), *available at* https://ssrn.com/abstract=4960609; George L. Priest, *Market Share Liability in*

Personal Injury and Public Nuisance Litigation: An Economic Analysis, 18 Sup. Ct. Econ. Rev. 109 (2010), something Mexico would otherwise have no jurisdiction to pursue.

To accomplish these goals, Mexico sought out a favorable forum with favorable state law. It is no wonder that twenty-six other states and the Arizona Legislature filed an amicus brief asking this Court to reverse the decision below, decrying the expansion of proximate cause and Mexico's attempt to export its policy to the United States. *See* Brief for the State of Montana, 25 Other States, and the Arizona Legislature as *Amicus Curiae* in Support of Petitioner and Reversal, No. 23-1141 (U.S. May 21, 2024).

* * *

It doesn't have to be this way. All of these problems can be avoided by applying the standard for proximate cause that has worked for the last century, if not longer.

CONCLUSION

This Court should reverse.

Respectfully submitted,

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