No. 22-1435

IN THE

Supreme Court of the United States

ENERGON, U.S.A.,
Petitioner,

v.

AMES COUNTY BOARD OF COMMISSIONERS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE AMES CIRCUIT

BRIEF FOR PETITIONER

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NOVEMBER 10, 2022, 7:30PM
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Oral Argument

QUESTIONS PRESENTED

1. Whether federal common law exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse gas emissions.
2. Whether a federal district court has jurisdiction under 28 U.S.C. § 1331 over claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse gas emissions even if they are pleaded under state law.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—continued:

Cases—continued:

Cases—continued:

Cases—continued:

Statutes:

Statutes—continued:

Other Authorities:

Treatises:

Regulations:

INTRODUCTION

An interstate problem requires an interstate solution. For decades, that principle has been reaffirmed by this Court's precedents: in areas where the interstate or international nature of the problem makes it inappropriate for state law to control, federal common law exclusively applies. Nor could it be otherwise. No one state may impose its own regulatory agenda on the entire country. Indeed, this Court's bar on extraterritorial regulation exists because "the basic scheme of the Constitution so demands." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011). Ames County's suit undermines that principle.

Ames County seeks to hold Energon, U.S.A., the seventh-largest petroleum producer in the world, liable for its alleged contributions to the climate crisis. Asserting a public nuisance cause of action under state tort law, the County seeks relief for injuries resulting from Energon's *worldwide* emissions. The County does not challenge emissions from any particular source in Ames. Rather, the County alleges harm arising out of Energon's collective interstate and international emissions—creating a dispute that, at its heart, is about "combatting the effects of climate change." J.A. 20–21. To be sure, states have some discretion to craft in-state standards and implementation policies. But the question presented here is whether *one* state can regulate emissions from *every* state.

In the County's telling, countless contributors to the climate crisis should be subject to damages and abatement orders under a patchwork of fifty different common law regimes. The production of petroleum—a "strategically important domestic resource" deemed vital to our national security at the federal level, 42 U.S.C. § 15927(b)(1)—would become a public nuisance at the state level. The County's theory would also permit challengers to evade federal court review of claims that necessarily arise under federal common law simply by alleging that those claims arise under state law.

Climate change is a pressing international problem with international causes. For that reason, it would be inappropriate to apply one state's law to redress injuries caused by interstate greenhouse gas emissions. This Court should reverse the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ames Circuit is reproduced at page 3 of the Joint Appendix. The order by the United States District Court for the District of Ames granting the County's motion to remand is reproduced at page 16 of the Joint Appendix.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Ames Circuit issued its decision on March 22, 2022. J.A. 3. The petition for writ of certiorari

was granted on August 29, 2022. J.A. 2. This Court has appellate jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

This case involves 28 U.S.C. § 1331; 28 U.S.C. § 1441(a); 42 U.S.C. § 7401(b)(1); 42 U.S.C. § 7411(b)(1), (c)(1); 42 U.S.C. § 7416; 42 U.S.C. § 7604(a), (e). These provisions are reproduced in the Appendix below.

STATEMENT OF THE CASE

The Clean Air Act

In 1970, Congress enacted the Clean Air Act. The statute is a "detailed, technical, complex, and comprehensive" response to the pressing problem of air pollution in the United States. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 848 (1984). It implements a framework designed to set national air quality standards that promote the "public health and welfare" and the nation's "productive capacity." 42 U.S.C. § 7401(b)(1). In furtherance of these goals, the Act entrusts the complex balancing inherent in such issues to an expert agency. *See id.* § 7411. Section 111 of the Act empowers the Environmental Protection Agency (EPA) to regulate sources that "caus[e], or contribut[e] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." *Id.* § 7411(b)(1)(A).

The Act also provides enforcement and remedial mechanisms for any individual, state, or organization seeking relief related to national emissions standards. These mechanisms are both regulatory and judicial. They include commenting on proposed rulemaking, *id.* § 7607(d)(5); petitioning EPA to undertake new rulemaking, *id.* § 7607(b)(1); commenting on the issuance of permits, *id.* § 7475(a)(2); and bringing suit to compel agency action, *id.* § 7604(a).

Energon's Operations

Energon is a multinational corporation headquartered in Ames. J.A. 22. As one of the largest producers of petroleum products in the world, Energon supplies critical energy resources throughout the country and the globe. J.A. 23. Within the state of Ames, Energon operates only one refinery, which processes crude oil acquired from wells in eastern Ames. *Id.* That refinery is responsible for a small fraction of Energon's petroleum production—around 120,000 barrels each day.[1] *Id.* Energon has numerous other business operations throughout the rest of the country and the world. *Id.*

Proceedings Below

On January 17, 2021, Ames County, a subdivision of the state of

[1] Marathon, the next-largest oil company, produces 3.1 million barrels of oil daily. *See* MARATHON PETROLEUM CORP., MARATHON PETROLEUM CORP. REPORTS SECOND-QUARTER 2022 RESULTS, at 2 (Aug. 2, 2022), *available at* https://perma.cc/B49W-GFAW; *see also* J.A. 23 (citing J.L. Bearly, *10 Biggest Oil Companies*, INVESTOPEDIA (Sept. 2, 2020)).

Ames, commenced an action for public nuisance against Energon in the Ames County Court of Common Pleas. J.A. 20. The County alleged that Energon—a "major player in the oil business" with "many holdings around the world and throughout the country"—was "a major cause of climate change and a source of significant damages to Ames County and its residents." J.A. 23. The harms felt by the County include "unusually severe forest fires and significant spring flooding," effects that are "commonly recognized as the result of man-made climate change." J.A. 20. The County claims Energon is responsible for the "significant greenhouse gas emissions" produced by the "use of its fossil fuel products," which it "supplies . . . all over the world." *Id.* at 23. By way of remedies, the County demanded "[r]emediation and abatement of the hazards discussed above"—that is, Energon's production and sale of petroleum—as well as monetary damages to "mitigate the impact of climate change" and compensate the County for "past and future damages." J.A. 25.

On February 1, 2021, Energon removed the action to the United States District Court for the District of Ames. J.A. 19. The district court granted the County's motion to remand on June 3, 2021. J.A. 17–18. The United States Court of Appeals for the Ames Circuit affirmed on March 22, 2022, holding that the Clean Air Act displaced federal common law and, in so doing, "allow[ed] states to enter a once

exclusively federal domain." J.A. 3, 11, 15. The Ames Circuit also held that the well-pleaded complaint rule barred removal. J.A. 11–15. This Court granted certiorari on August 29, 2022. J.A. 2.

SUMMARY OF ARGUMENT

I. As this Court has recognized, claims concerning interstate pollution demand the application of federal common law. And for good reason: federal common law governs claims that implicate uniquely federal interests and require a uniform rule of decision. Both elements are met here, where the harm sought to be redressed arises out of Energon's contribution to greenhouse gas emissions "around the world and throughout the country," which constitutes "a major cause of climate change and a source of significant damages to Ames County and its residents." J.A. 23. Remediation of an injury caused by climate change implicates national and international concerns and demands a federal rule of decision. Permitting state public nuisance law to govern out-of-state conduct would allow a single state judge to impose liability for conduct beyond its borders, a result squarely foreclosed by this Court's precedents. It would also threaten the federal government's prerogative to control international climate policy and regulate domestic production of a vital strategic resource. Such interstate and international concerns demand a uniform rule of decision rather than a non-uniform patchwork of elastic public nuisance standards.

This conclusion is undisturbed by the Clean Air Act's displacement of federal common law. By definition, federal common law applies where state law cannot. Therefore, the fact that federal common law was statutorily displaced does not alter the inherent constitutional vesting of the subject matter in federal law. The question whether the claim is *governed* by federal common law is distinct from the question whether a party can obtain a remedy *on the merits*. Moreover, statutory displacement doesn't open the door to state common law claims where none existed before. The Act did not grant any new authority to the states—it merely preserved what was already there. Because state common law cannot govern claims seeking redress for injuries caused by interstate greenhouse gas emissions, federal common law exclusively governs.

II. Federal courts have original jurisdiction over claims seeking redress for injuries allegedly caused by interstate greenhouse gas emissions—even if those claims are pleaded under state law. Because such claims necessarily arise under federal law, plaintiffs cannot avoid removal to federal court by purporting to plead a cause of action under state law. For one, claims alleging injury from interstate greenhouse gas emissions are necessarily and exclusively governed by federal common law. And as this Court has long recognized, where federal common law governs, state law cannot. It would be illogical to allow

plaintiffs to avoid the federal common law's exclusive reach simply by choosing to plead their claims under state law.

For another, the Clean Air Act completely preempts state law claims alleging injury from interstate greenhouse gas emissions. The doctrine of complete preemption applies where a federal statute wholly replaces the cause of action of an otherwise applicable state law claim. Complete preemption is not merely a federal defense to a state law claim; instead, complete preemption converts a state law cause of action into a federal claim. Here, the Clean Air Act completely preempts any state law claims alleging injury from interstate greenhouse gas emissions because it sets out the exclusive mechanism for challenging nationwide standards regulating such emissions. The statute leaves no room for state law claims that threaten to disrupt the careful regulatory scheme Congress has established.

Finally, because the County's claim is governed by federal common law, it necessarily raises a substantial and disputed question of federal law. Even if federal common law did not govern, the County effectively challenges the federal regulatory regime established by EPA under the Clean Air Act. Such a collateral attack on agency decisionmaking is grounds for federal jurisdiction. Federal court is the traditional forum for claims—like the one at issue in this case—that are inherently federal in nature.

ARGUMENT

I. FEDERAL COMMON LAW EXCLUSIVELY GOVERNS CLAIMS BASED ON INTERSTATE GREENHOUSE GAS EMISSIONS.

Federal common law supplies the exclusive rule of decision for injuries caused by interstate greenhouse gas emissions. Although there "is no federal general common law," *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938), there is a "specialized" federal common law, *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011), which "remain[s] unimpaired for dealing independently, wherever necessary or appropriate, with essentially federal matters," *United States v. Standard Oil Co.*, 332 U.S. 301, 307 (1947). These specialized areas implicate "uniquely federal interests" that are "committed by the Constitution and laws of the United States to federal control," *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988), and require a uniform "federal rule of decision," *Am. Elec.*, 564 U.S. at 422.

"When we deal with air and water in their ambient or interstate aspects, there is a federal common law." *Id.* at 421. Indeed, this Court has repeatedly applied federal common law to disputes involving interstate pollution.[2] And where federal common law exists, it "replace[s]" state law. *Boyle,* 487 U.S. at 504. "[I]f federal common law

[2] *See, e.g.*, *Illinois v. City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 102–03 (1972); *New Jersey v. City of New York*, 283 U.S. 473, 477, 481–83 (1931); *North Dakota v. Minnesota*, 263 U.S. 365, 373 (1923); *New York v. New Jersey*, 256 U.S. 296, 301–02 (1921); *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907); *Missouri v. Illinois*, 200 U.S. 496, 520 (1906).

exists, it is because state law cannot be used." *City of Milwaukee v. Illinois* (*Milwaukee II*), 451 U.S. 304, 313 n.7 (1981); *see also Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 488 (1987) (noting that where federal common law governs, the "implicit corollary" is that there is no state law to apply). Because disputes over interstate pollution are governed by federal common law, state common law cannot be used.

Federal common law exclusively governs the County's claims. The County does not seek relief for injuries based on in-state conduct. Instead, the County seeks to hold Energon liable for its conduct "around the world and throughout the country." J.A. 23. It is this collective conduct, the County contends, that "produce[s] significant greenhouse gas emissions, which are a major cause of climate change and a source of significant damages to Ames County and its residents." *Id.* By seeking to hold Energon liable for harms arising out of interstate—and indeed, international—conduct, this lawsuit implicates "uniquely federal interests" and requires a uniform "federal rule of decision." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981). Further, the Clean Air Act's displacement of a federal common law remedy does not open the door to state law claims for interstate conduct where none existed before. Federal common law—not state tort law—governs.

A. The regulation of interstate greenhouse gas emissions implicates uniquely federal interests.

Federal common law supplies the rule of decision in cases where the substance of a plaintiff's claim implicates "uniquely federal interests." *Tex. Indus.*, 451 U.S. at 640. Such interests arise where the "interstate or international nature of the controversy makes it inappropriate for state law to control." *Id.* at 641. The County claims that "[t]he impacts of climate change caused by Energon" result from "[e]missions from Energon's business activities" not just in Ames, but around the world. J.A. 23–24. The interstate and international nature of the County's claim creates an "overriding federal interest" such that the application of state law is inappropriate. *Illinois v. City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 105 n.6 (1972).

1. The interstate nature of the controversy makes it inappropriate for state law to control.

State common law cannot govern claims that are interstate in character. In *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011), plaintiffs sued several electric companies for injuries caused by climate change under the federal common law of interstate nuisance or, in the alternative, state tort law. *See id.* at 418. This Court held that, "[a]s with other questions of national or international policy," *id.* at 427, "borrowing the law of a particular State would be inappropriate," *id.* at 422. And although the Court ultimately held that the Clean Air Act displaced federal common law, the question whether the subject matter

of the claim is inherently governed by federal law is different from the question whether a party can obtain a remedy on the merits. *See infra* section I.C.

Like the plaintiffs in *American Electric*, Ames County seeks recovery for Energon's collective contributions to the climate crisis. Recognizing that Energon is "the seventh largest producer of petroleum products in the world," the County seeks damages and abatement for "[e]missions from Energon's business activities . . . [which] produce significant greenhouse gas emissions, which are a major cause of climate change and a source of significant damages to Ames County and its residents." J.A. 23. While Energon owns and operates a refinery in Ames, the mere existence of an Ames refinery does not demand the application of state common law. The harms for which the County seeks relief are not based solely on Energon's conduct in Ames. Rather, the relief sought is based on "[t]he impacts of climate change" to which Energon's collective holdings "all over the world" have contributed. J.A. 23–24. Because the County seeks relief not based on conduct in Ames—but based on *interstate* and *international* conduct—state common law cannot govern. *See Am. Elec.*, 564 U.S. at 422.

It is a foundational principle that a state cannot regulate beyond its borders. That principle exists because "the basic scheme of the Constitution so demands." *Id.* at 421. Because states are "coequal

sovereigns," *PPL Mont., LLC v. Montana*, 565 U.S. 576, 591 (2012), the Constitution "implicitly forbids" them from applying their own laws to resolve "disputes implicating their conflicting rights." *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019) (quoting *Tex. Indus.*, 451 U.S. at 640). Although a state may regulate conduct that occurs within its own borders, no state may "impos[e] its regulatory policies on the entire Nation," *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 585 (1996), or "control activities wholly beyond its boundaries," *Watson v. Emp'rs Liab. Assurance Corp.*, 348 U.S. 66, 70 (1954).

Because the County seeks abatement of the hazards resulting from Energon's "suppl[ying] a substantial portion of the world's fossil fuels," J.A. 24, an abatement order would impose Ames state law on out-of-state sources. Damages, too, would serve to regulate Energon's conduct beyond Ames' borders. As this Court has explained, "a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." *Gore*, 517 U.S. at 572. Environmental tort damages compel a defendant to "change its methods of doing business . . . to avoid the threat of ongoing liability." *Ouellette*, 479 U.S. at 495; *see also San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959) ("The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy."). Allowing Ames state law to

govern such claims would violate the "cardinal" constitutional principle that "[e]ach state stands on the same level with all the rest," since doing so would permit one state to impose its law on other states and their citizens.[3] *Kansas v. Colorado*, 206 U.S. 46, 97 (1907).

Even if the County had limited its complaint to greenhouse gases emitted in Ames—which it has not—the interest in applying federal common law remains. After all, there is no such thing as *intra*state climate change. Because the air pollutants that contribute to climate change are "mixed globally in the atmosphere," Endangerment Finding, 74 Fed. Reg. 66,496, 66,499 (Dec. 15, 2009), "emissions in China" may contribute more to flooding in Ames than "emissions in New Jersey," *Am. Elec.*, 564 U.S. at 422. Any climate change–related injury thus turns on the effects of centuries of greenhouse gas accumulation to which countless actors across the world have contributed. To validate such a theory would open the door to limitless liability for any entity

[3] It is therefore immaterial that Ames County—rather than the state of Ames—brought suit, as the County seeks relief under state law, through state courts. *Cf. Twining v. New Jersey*, 211 U.S. 78, 90–91 (1908) (noting that "[t]he judicial act" of a state's courts is "the act of the state"). Indeed, when Justice Brandeis first invoked federal common law in *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92 (1938), he did so in an transboundary environmental dispute that was not between states. *See id.* at 95. And rightly so: "[N]o State can undermine the federal interest in equitably apportioned interstate waters even if it deals with private parties." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 (1964) (citing *Hinderlider*, 304 U.S. at 110).

whose activity causally contributes to climate change—from companies whose delivery trucks emit carbon dioxide to farmers whose livestock produce methane. Mitigating the effects of climate change is a task best left to federal policymakers, not state judges.

2. The international nature of the controversy makes it inappropriate for state law to control.

The County's claim conflicts with national policy governing international affairs. As this Court has long recognized, environmental nuisance disputes raise questions "of international importance." *Missouri v. Illinois*, 200 U.S. 496, 518 (1906). Efforts to combat climate change require an "informed assessment of competing interests," *Am. Elec.*, 564 U.S. at 427, a balance that necessarily requires "national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other," *City of New York v. Chevron Corp.*, 993 F.3d 81, 93 (2d Cir. 2021). By vesting the power to conduct foreign affairs solely in the federal government, the Constitution guarantees "uniformity in this country's dealings with foreign nations" and ensures that "matters of international significance" fall within "the jurisdiction of federal institutions." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 n.25 (1964). In such an area, "state courts [are] not left free to develop their own doctrines." *Id.* at 426.

Under federal law, fossil fuels are "strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. § 15927(b)(1); *see also id.* § 6201 (describing the purpose of the Energy Policy and Conservation Act as "reducing the impact of severe energy supply interruptions" through the creation of federal programs focused on "the regulation of certain energy uses"). Congress has set an overarching regulatory goal of "achiev[ing] national economic and energy policy goals, assur[ing] national security, reduc[ing] dependence on foreign sources, and maintain[ing] a favorable balance of payments in world trade." 43 U.S.C. § 1802(1).

The application of Ames state law to the regulation of interstate gas emissions would directly conflict with the federal government's prerogative to regulate energy production, conduct foreign policy, and ensure national security. In June 2022, President Biden called on domestic oil producers to "take immediate actions to increase the supply of gasoline, diesel, and other refined product" in light of a pandemic-induced global shortage, exacerbated by Russia's "war of aggression, and the bipartisan and global effort to counter it." Letter from Joe Biden, Pres. of the U.S., to Darren Woods, Chairman of ExxonMobil Corp. (June 14, 2022). "[T]he shortage of refining capacity

is a global challenge and a global concern," the President wrote, particularly now—"[a]t a time of war."[4] *Id.*

Under the County's theory, any role Energon plays in advancing the President's foreign policy goals would leave it open to tort liability. By issuing an abatement order requiring Energon to cease operations, compliance with the judicial order would conflict with federal policy, "compromis[ing] the very capacity of the President to speak for the Nation with one voice in dealing with other governments." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 381 (2000). "The political branches, not the Judiciary, have the responsibility and institutional capacity to weigh foreign-policy concerns," and must do so unfettered by judicial intervention. *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1403 (2018). And in issuing damages, public nuisance liability "would attach even though the source had fully complied with its state and federal permit obligations." *Ouellette*, 479 U.S. at 495. Such an outcome evades logic, threatens basic federalism principles, and jeopardizes national security interests.

[4] The international implications of domestic oil and gas production has long been recognized as an important national security interest. In 1975, for example, President Ford created a comprehensive energy plan to "make [this] country independent of foreign sources of energy," as it had "become increasingly at the mercy of others for the fuel on which [the] entire economy runs." President Gerald Ford, *Address to the Nation on Energy Programs* (May 27, 1975).

But the State of Ames is not without recompense. Congress recently enacted a $1 trillion bipartisan infrastructure bill that includes historic funding to help affected communities prepare for and recover from extreme weather driven by climate change. *See* Infrastructure, Investment, and Jobs Act, Pub. L. No. 117-58, 135 Stat. 430 (2021). The law provides subsidies to communities that are recovering from or vulnerable to climate change–related harms and increases funding for Federal Emergency Management Agency and Army Corps of Engineers programs that help reduce flood risk and damage. The National Oceanic and Atmospheric Administration also received additional funding for wildfire modeling and forecasting. Combating climate change requires a balance of rapidly evolving economic, social, geographic, and political factors. These judgments are best left to Congress, not state judges.

The County's claim therefore implicates uniquely federal interests. Because the County seeks to hold Ames liable for its worldwide contributions to the climate crisis, the interstate nature of the controversy makes it inappropriate for state common law to control. The County's claim also interferes with national security interests and international policy. If the County were to succeed in this lawsuit, imposing liability for Energon's global operations would jeopardize federal authority to regulate the production of a strategically important

domestic resource. The uniquely federal interest at stake requires the application of federal common law.

B. The County's claim requires a uniform federal rule of decision.

The national and international concerns implicated by the regulation of interstate greenhouse gas emissions create an "overriding federal interest in the need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at 105 n.6. Indeed, there are few problems more suited for an integrated, coordinated response than climate change. This Court has established that a uniform federal rule of decision is required where subjecting a federal interest to conflicting state standards "would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of the several states." *Clearfield Tr. Co. v. United States*, 318 U.S. 363, 367 (1943). Permitting state tort law to govern such claims would leave pressing problems of national and international significance to "vague and indeterminate nuisance concepts," *Milwaukee II*, 451 U.S. at 317, and subject defendants to conflicting obligations for the same conduct under a patchwork of fifty different state regimes. Indeed, the County's position threatens the uniform and comprehensive solution this Court recognized as necessary for dealing with interstate pollution in *Illinois v. City of Milwaukee* (*Milwaukee I*), 406 U.S. 91 (1972). *See also id.* at 107 n.9 ("Federal common law and not the varying common law of the individual States

is, we think, entitled and necessary to be recognized as a basis for dealing in uniform standard with the environmental rights of a State against improper impairment by sources outside its domain.")

Yet in the County's telling, any energy company—indeed, any individual or organization—whose air pollutants contribute to climate change would be subject to the Ames common law of public nuisance for its operations *worldwide*, so long as it has *some* operations in Ames. Such a decision would "scuttle the nation's carefully created system for accommodating the need for energy production and the need for clean air," *North Carolina ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 296 (4th Cir. 2010), leaving "whole states and industries at sea and potentially expos[ing] them to a welter of conflicting court orders across the country," *id.* at 301. Resolving such transboundary disputes under state law would result in "chaotic confrontation" between the various public policies of "sovereign states." *Ouellette*, 479 U.S. at 496 (quoting *Illinois v. City of Milwaukee* (*Milwaukee III*), 731 F.2d 403, 414 (7th Cir. 1984)). In such instances, the "desirability of a uniform rule is plain." *Clearfield*, 318 U.S. at 367.

The need for uniformity is all the more apparent considering the "impenetrable jungle" that is nuisance law. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 86 (5th ed. 1984). A public nuisance is "an unreasonable interference with a right common to the

general public." RESTATEMENT (SECOND) OF TORTS § 821B (Am. L. Inst. 1979). This inquiry generally requires "weighing . . . the gravity of the harm against the utility of the conduct." *Id.* cmt. e. This flexible test has rendered the concept of nuisance "incapable of any exact or comprehensive definition." KEETON ET AL., *supra*, § 86. Such elastic standards are ill-suited for interstate disputes over greenhouse gas emissions, subjecting entities to a patchwork of fifty different "vague and indeterminate" state common law regimes. *Milwaukee II*, 451 U.S. at 317.

Further, state judges, like federal judges, lack the "scientific, economic, and technological resources" to make subjective value judgments of this magnitude. *Am. Elec.*, 564 U.S. at 428. To permit such claims to proceed under state tort law would arrogate from federal authority the power to determine what level of greenhouse gas emissions are "unreasonable," leaving to state judges the complex determination of when the benefits of economically productive activity outweigh environmental costs. Moreover, interstate emissions are already subject to comprehensive federal regulations. As this Court observed, the "appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be prescribed in a vacuum: As with other questions of national or international policy, informed assessment of competing interests is required." *Id.* at 427. State

common law is ill-suited to govern such claims. Because an overriding federal interest exists for a uniform rule of decision, federal common law exclusively governs.

C. The Clean Air Act does not open the door to state common law claims for interstate conduct.

The Clean Air Act's displacement of federal common law does not alter the conclusion that federal common law supplies the exclusive rule of decision. *Id.* at 422. By enacting the Clean Air Act, Congress confirmed that interstate pollution presents uniquely federal issues—and reasserted its own authority to set the rules over such claims. The Act is "a lengthy, detailed, technical, complex, and comprehensive response" to the issue of emissions reduction. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 848 (1984). It entrusts the "complex balancing" inherent in such issues—"the environmental benefit potentially achievable, our Nation's energy needs and the possibility of economic disruption"—to an "expert agency" in the first instance, subject to review by the federal courts. *Am. Elec.*, 564 U.S. at 427–28. And its vision of cooperative federalism "permit[s] each State to take the first cut at determining how best to achieve . . . emissions standards *within its domain*," while ensuring that EPA retains its authority as the "primary regulator" of nationwide pollution. *Id.* at 428 (emphasis added).

That Congress has replaced the rules supplied by this Court does not diminish the primacy of federal law. By displacing the federal common law system of remedies for interstate pollution, the Clean Air Act did not change the inherently federal nature of such claims. To hold otherwise would be to confuse the choice-of-law question (whose law governs?) with the merits question (is the claim viable?). Indeed, the Act itself does not purport to grant any new authority to the states—and a state cannot retain what it never had. So while a state may apply its *own* laws to its *own* polluters, it cannot use its law to regulate the world at large.

1. When a federal statute displaces a federal common law remedy, only federal law remains.

Statutory displacement of the federal common law remedy does not change the inherently federal subject matter of the underlying claim. "[T]he basic scheme of the Constitution" requires that only federal law operate in this area. *Id.* at 421. Where "federal common law exists, it is because state law cannot be used." *Milwaukee II*, 451 U.S. at 313 n.7. And federal common law exists here only as a recognition that no state may apply its own law to resolve a "dispute implicating the[] conflicting rights" of another state. *Hyatt*, 139 S. Ct. at 1498. When the states "by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done." *Georgia v. Tenn. Copper Co.*, 206 U.S. 230,

237 (1907). In exchange for the powers those states "surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy." *Missouri v. Illinois*, 180 U.S. 208 (1901). Simply put, in such "interstate and international disputes," our federal system—and the principle of equal sovereignty that lies at its heart—"does not permit the controversy to be resolved" under any other law. *Tex. Indus.*, 451 U.S. at 641.

When Congress changes these rules, it does not reduce the scope of federal law, nor does it open up space for state law to operate in areas reserved for federal action. Indeed, this Court has repeatedly held that whether a party can *obtain a remedy* under federal common law on the merits is a distinct question from whether the *subject matter* of the claims asserted is governed exclusively by federal common law. In *United States v. Standard Oil Co.*, 332 U.S. 301 (1947), the United States sought to recoup its medical expenses after a Standard Oil semi-trailer injured an enlisted soldier. *Id.* at 302. On the choice-of-law question, this Court concluded "that the creation or negation of such a liability" could not be "determined by state law," *id.* at 305, given that the issue "so vitally affect[s] [federal] interests, powers, and relations . . . as to require uniform national disposition rather than diversified state rulings," *id.* at 307. But on the merits question, this Court demurred. If federal common law applies, "[t]he only question"

remaining "is which organ of the [federal government] is to make the determination that liability exists." *Id.* at 316. "Whatever the merits" of such a policy may be, *id*. at 314, this Court declined to create such liability, declaring that question a matter "for the Congress, not for the courts," *id.* at 317.

Because the choice-of-law inquiry differs from the merits inquiry, a claim asserted in an area traditionally governed by federal common law remains governed by federal common law, even if it may "fail at a later stage for a variety of reasons." *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 675 (1974); *see also, e.g.*, *Hernández v. Mesa* (*Hernández II*), 140 S. Ct. 735, 750 (2020) (assuming jurisdiction over the plaintiff's federal common law claim under *Bivens* even though the claim failed on the merits). "[D]isplacement of a federal common law right of action," then, must "mean[] displacement of remedies," not the transfer of federal responsibility. *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 857 (9th Cir. 2012), *cert. denied*, 569 U.S. 1000 (2013). It cannot be that Congress, by asserting federal authority in statute, undermined it in practice. "Such an outcome is too strange to seriously contemplate." *City of New York*, 993 F.3d at 98–99. In areas of federal common law, then, liability must lie within federal law—or not at all.

2. Even if Congress could delegate its regulatory authority over interstate conduct to Ames, it has not done so here.

Congress has not delegated its regulatory authority over interstate conduct to Ames. As this Court has held time and again, "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." *United States v. Bass*, 404 U.S. 336, 349 (1971). Federal common law, by definition, exists only in areas which the states have not "traditionally occupied." *Boyle*, 487 U.S. at 507. As such, the core "assumption" of this Court's standard preemption analysis—that Congress does not "exercise lightly" its "extraordinary power" to legislate in "areas traditionally regulated by the States"—is inapplicable. *Arizona v. Inter-Tribal Council of Ariz., Inc.*, 570 U.S. 1, 13 (2013) (citation and internal quotation marks omitted).

There is no clear statement in the Clean Air Act allowing the states to regulate out-of-state greenhouse gas emissions. The Act ensures that the states retain what is theirs, while preserving federal authority over interstate pollution. As relevant here, the Act establishes a comprehensive scheme for federal regulation of interstate air pollution, which contemplates only a limited role for state and private action. Section 101 directs EPA to set limits on emissions that promote both the "public health and welfare" and the nation's "productive capacity." 42 U.S.C. § 7401(b)(1). Section 116 contains a savings clause

that preserves "the right of any State . . . to adopt or enforce . . . any standard or limitation respecting emissions of air pollutants" or set "any requirement respecting control or abatement of air pollution." *Id.* § 7416.

Section 116 is a narrow provision; it does not authorize Ames to regulate the world at large. Indeed, its title is instructive: the section ensures the "[r]etention of State authority," not the wholesale transfer of federal responsibility. *Id.*; *see also* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 221 (2012) (noting that the "title and headings" of a statute "are permissible indicators of meaning"). Congress does not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). And it does not abdicate its responsibility in a clause that only purports to allow each state to retain its own.

The Clean Air Act's citizen-suit provision works to the same effect. Section 304 permits civil actions to enforce the Act in federal court. 42 U.S.C. § 7604(a). That provision has its own section-specific savings clause. *Id.* § 7604(e). But that clause merely clarifies that the Act's authorization of citizen suits should not be interpreted to have any preemptive effect on its own; the clause does not purport to give new authority to the states to regulate in areas they could not regulate

before. *See Ouellette*, 479 U.S. at 493 (interpreting an identical provision in the Clean Water Act).

Viewed in historical context, the Clean Air Act leaves in place the background rule that each state may regulate its own intrastate point-source polluters. In *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987), this Court confirmed that the Clean Water Act displaced the federal common law of interstate water pollution—and did so with "nearly identical savings clauses" to those at issue here. *City of New York*, 993 F.3d at 99; *see Ouellette*, 479 U.S. at 488–89. But this Court had no qualms about the application of New York law to a New York polluter. *Ouellette*, 479 U.S. at 497–99. That conclusion makes sense, as a source state has *always* been able to apply *its own law* to *its own polluters*. *See, e.g.*, *Mannville Co. v. City of Worcester*, 138 Mass. 89, 90–91 (1884) (Holmes, J.) (holding that a Rhode Island plaintiff may maintain a cause of action in Massachusetts state court, under Massachusetts law, against a Massachusetts defendant for diverting a river's tributary in Massachusetts). The distinction is between source and effect. Each provides a regulatory hook. While state common law may regulate based on the direct effects of an in-state source (even for effects felt out-of-state, as in *Ouellette*), only federal common law may regulate based on interstate effects (as in *Milwaukee I*).

But there is no "source state" for climate change. As explained above, *see supra* section I.A.1, emissions in Ames "may contribute no more to flooding" and other climate change–related impacts felt in Ames "than emissions in China," *Am. Elec.*, 564 U.S. at 422. Any such harms are the "result of a vast multitude of emitters worldwide whose emissions mix quickly" and "stay in the atmosphere for centuries." *Kivalina*, 696 F.3d at 868. Unlike *Ouellette*, then, there is no one discrete pollution source (or even group of sources) alleged to cause a discrete harm—nor could there be. Even if the County had not sued Energon for "suppl[ying] oil all over the world," J.A. 23, any suit to recover damages for climate change would still implicate polluters across the globe. "Such a sprawling case is simply beyond the limits of state law"—and *Ouellette*. *City of New York*, 993 F.3d at 92.

Statutory context confirms this conclusion. To allow the County's suit would be to "undermine this carefully drawn statute through a general savings clause," *Ouellette*, 479 U.S. at 494, and "serious[ly] interfere[] with the achievement of the full purposes and objectives of Congress," *id.* at 493 (internal quotation marks omitted). This Court has "long rejected interpretations of sweeping saving clauses that prove absolutely inconsistent with the provisions of the act in which they are found." *Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1355 (2020) (citation and internal quotation marks omitted); *see also Geier v. Am.*

Honda Motor Co., 529 U.S. 861, 870 (2000) (explaining that this Court has "repeatedly decline[d] to give broad effect to saving clauses where doing so would upset the careful regulatory scheme established by federal law" (citation omitted)).

Such a sweeping suit for climate change–related injuries would frustrate the framework of the Clean Air Act. "It would be extraordinary for Congress, after devising an elaborate permit system that sets clear standards, to tolerate common-law suits that have the potential to undermine this regulatory structure." *Ouellette*, 479 U.S. at 497. Indeed, *Ouellette* held that the savings clause at issue in the Clean Water Act permits only state lawsuits brought under "the law of the [pollution's] source [s]tate" for precisely this reason: to hold otherwise would be to allow states to "do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *Id.* at 495. Likewise, interpreting the Clean Air Act to protect the County's lawsuit would "erase the clear mandate" of federal regulation and "allow the Act 'to destroy itself.'" *Atl. Richfield Co.*, 140 S. Ct. at 1355 (citation omitted).

The Clean Air Act's displacement of this Court's system of federal common law remedies cannot and does not open the door to state law claims. The inherent constitutional vesting of the subject matter in federal common law remains unchanged. The Act preserves only state

authority over the direct effects of *in-state* sources. A state cannot preserve what it never had—the authority to regulate interstate conduct. Therefore, federal common law exclusively governs claims seeking redress for injuries caused by interstate greenhouse gas emissions.

II. THE DISTRICT COURT HAS ORIGINAL JURISDICTION OVER THE COUNTY'S CLAIM, EVEN THOUGH IT IS PLEADED UNDER STATE LAW.

Energon properly removed the County's complaint because the District Court for the District of Ames has original jurisdiction over the County's claim. Under the federal removal statute, defendants can remove "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). Congress has granted the district courts of the United States original jurisdiction over all cases "arising under" the laws of the United States. *Id.* § 1331. That grant of jurisdiction therefore authorizes defendants to remove actions brought in state court that "aris[e] under" federal law. *Id.*

Here, the County's claim necessarily arises under federal law, even though it is pleaded under state law. Under the "well-pleaded complaint rule," a case ordinarily arises under federal law "only when a federal question is presented on the face of the plaintiff's *properly pleaded* complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (emphasis added). A mere "federal defense" cannot form the basis

for removal, even if it is "anticipated in the plaintiff's complaint." *Id.* at 393. Even so, sometimes the resolution of a plaintiff's claim will necessarily turn on the application of federal law—regardless of how the plaintiff characterizes that claim. In those cases, a plaintiff cannot defeat removal, even by invoking the well-pleaded complaint rule. *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 22 (1983).

This Court has recognized at least three circumstances where a plaintiff's claim necessarily arises under federal law, even if it is pleaded under state law: First, where federal common law applies to a particular dispute, "our federal system does not permit the controversy to be resolved under state law." *Tex. Indus.*, 451 U.S. at 641. Second, where a federal statute completely preempts a state law cause of action, it "converts" that cause of action into "a federal claim for purposes of the well-pleaded complaint rule." *Caterpillar*, 482 U.S. 386, 393 (quoting *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987)). Third, where a plaintiff's cause of action turns on "substantial questions" of federal law, that claim necessarily arises under federal law. *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). Because all three apply here, the County's claim is removable regardless of how it is pleaded.

A. Claims governed by federal common law are removable.

Because the County's claim is governed by federal common law, the County cannot avoid removal by choosing to plead under state law. This Court has long held that federal courts have jurisdiction over claims governed by federal common law. *See Milwaukee I,* 406 U.S. at 100. And where federal common law governs, it "replace[s]" state law. *Boyle*, 487 U.S. at 504. It follows that when a plaintiff's claim is governed by federal common law, the plaintiff cannot avoid federal jurisdiction by pleading under state law.

Moreover, as this Court's unanimous decision in *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974), demonstrates, the well-pleaded complaint rule does not bar federal jurisdiction over claims governed by federal common law. In *Oneida*, the Oneida Nations of New York and Wisconsin filed a complaint in federal court challenging the legality of a series of cessations of Oneida land to the state of New York. *Id.* at 664–65. The district court dismissed the complaint for lack of federal jurisdiction, and the court of appeals affirmed. *Id.* at 665. The court of appeals concluded that because the Oneida Nations' claim amounted to a state cause of action in ejectment, the well-pleaded complaint rule barred federal jurisdiction. *Id.* at 665–66.

This Court reversed, holding that the Oneida Nations' claim was governed "wholly" by federal common law, regardless of how it was

pleaded. *Id.* at 666; *see also id.* at 674 (explaining that "federal law . . . fashioned by the federal court in the mode of the common law" governs disputes over tribal property). Though *Oneida* did not involve a removal action, this Court still analyzed the jurisdictional question at issue under the same framework of the well-pleaded complaint rule. *Id.* at 666. In fact, this Court explicitly concluded that the exercise of federal jurisdiction would not "disturb the well-pleaded complaint rule," *id.* at 676, since "the assertion of a federal controversy" rested on the claim that federal common law protects "possessory rights to tribal lands, wholly apart from the application of state law principles" that would "normally" govern, *id.* at 677; *see also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 n.4 (2003) (noting that, per *Oneida*, the federal courts may hear "possessory land claims" brought by "Indian tribes"—even those claims pleaded "under state law"—given the "uniquely federal . . . source" of such property rights).

Consistent with *Oneida*, courts of appeals have exercised removal jurisdiction over claims governed by federal common law, even when those claims are pleaded under state law. In *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922 (5th Cir. 1997), for instance, the Fifth Circuit upheld the removal of claims pleaded under state common law. *Id.* at 929. The court recognized that, ordinarily, "[f]ederal jurisdiction exists" only when "a federal question is presented on the face of a plaintiff's

properly pleaded complaint." *Id.* at 924. Nonetheless, the court concluded that removal was proper because federal common law "control[led]" the action. *Id.* at 923.

Similarly, in *In re Otter Tail Power Co.*, 116 F.3d 1207 (8th Cir. 1997), the Eighth Circuit also upheld the removal of claims pleaded under state common law after finding that those claims were exclusively governed under federal common law. *Id.* at 1214. Like the Fifth Circuit, the Eighth Circuit acknowledged that the well-pleaded complaint rule usually requires that a federal cause of action "be stated on the face of the complaint before the defendant may remove the action." *Id.* at 1213 (citation omitted). But the court also noted that "[a] plaintiff's characterization of a claim as based solely on state law is not dispositive." *Id.* (alteration in original) (citation omitted). Applying those principles, the court upheld the removal of a claim governed by federal common law. *See id.* at 1214.

Given this Court's decision in *Oneida*, the lower court erred in holding that the well-pleaded complaint rule barred removal. *See* J.A. 14. Like the Tribes' claim in *Oneida*, the County's claim is exclusively governed by federal common law. *See supra* section I.A–I.B. As a result, federal common law replaces whatever state law rule of decision would normally apply. For that reason, the well-pleaded

complaint rule does not allow the County to avoid federal jurisdiction by pleading a state law claim.

The principle that the well-pleaded complaint rule cannot bar removal of claims governed by federal common law is supported not only by precedent but also by the very nature of federal common law. By definition, federal common law "replace[s]" state law in areas involving "uniquely federal interests" that are "committed by the Constitution and the laws of the United States to federal control." *Boyle*, 487 U.S. at 504 (citation omitted). Given the unique federal interests involved, it would defy logic to permit plaintiffs to override federal common law simply by choosing to plead under state law. That is especially so here, where federal courts have a duty to protect the "conflicting rights of States," *Tex. Indus.*, 451 U.S. at 641, and to ensure the development of a "uniform standard" for national environmental policy, *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted).

Despite the lower court's conclusion to the contrary, it makes no difference whether federal common law or a federal statute prevents the County from properly pleading a claim under state law. In holding that federal common law "cannot 'completely' preempt state law because the doctrine is focused on *congressional*, rather than *judicial*, intent," J.A. 14, the lower court erroneously conflated removal under federal common law with complete preemption. To be sure, this Court has recognized

that the doctrine of complete preemption applies where "Congress has clearly manifested an intent" to displace state law. *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987). But complete preemption is not the only circumstance in which a plaintiff cannot avoid federal jurisdiction by pleading under state law. *See, e.g.*, *Oneida*, 414 U.S. at 675–76 (explaining that federal courts have jurisdiction over claims governed by federal common law, regardless of whether the plaintiff pleaded those claims under state law); *Franchise Tax Bd.*, 463 U.S. at 13 (explaining that a state law claim that necessarily raises a "substantial, disputed question of federal law" arises under federal law). Regardless, Congress *has* manifested a clear intent under the Clean Air Act to completely preempt state law. *See infra* section II.B.

Even so, recognizing complete preemption as the only possible exception to the well-pleaded complaint rule would be nonsensical. Plaintiffs would be able avoid federal jurisdiction simply by choosing to plead a claim under state law rather than federal common law—even if federal common law exclusively governs the cause of action. That result is plainly inconsistent with this Court's instruction that where federal common law governs, "our federal system does not permit the controversy to be resolved under state law." *Tex. Indus.*, 451 U.S. at 641.

B. The Clean Air Act completely preempts state law claims alleging injury from interstate greenhouse gas emissions.

The Clean Air Act completely preempts any otherwise applicable state law claims alleging injury from interstate greenhouse gas emissions. Complete preemption occurs when a federal statute "wholly displaces" any otherwise applicable state law cause of action. *Beneficial Nat'l Bank*, 539 U.S. at 8. When a federal statute completely preempts state law, any claim that "comes within the scope" of that statute, "even if pleaded in terms of state law, is in reality based on federal law." *Id.* Unlike ordinary preemption, complete preemption is not a mere "federal defense" to a state law claim. *See Caterpillar Inc.*, 482 U.S. at 392–93. For that reason, the complete preemption doctrine is a well-recognized exception to the well-pleaded complaint rule. *See Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). In other words, plaintiffs cannot avoid the completely preemptive effect of certain federal statutes simply by choosing to bring their claims under state law.

To be completely preemptive, a statute must "provide the exclusive cause of action for the claim asserted." *Beneficial Nat'l Bank*, 539 U.S. at 9. The Clean Air Act does exactly that when it comes to claims alleging injury from interstate greenhouse gas emissions. And despite the lower court's conclusion to the contrary, the savings clauses do not undermine the statute's completely preemptive effect. As a

result, the County's claim is removable, even though it is pleaded under state law.

1. The Clean Air Act provides the exclusive cause of action for claims alleging injury from interstate greenhouse gas emissions.

The exclusive cause of action for claims alleging injury from interstate greenhouse gas emissions is supplied by the Clean Air Act. In determining that a federal statute provides an exclusive cause of action, this Court has looked to whether the statute as a whole establishes a uniform regulatory scheme. In *Beneficial National Bank v. Anderson*, 539 U.S. 1 (2003), for instance, this Court found that two separate provisions of the National Bank Act worked in tandem to completely preempt state usury claims. *See id.* at 11. The first provision, Section 85, set "substantive limits" on interest rates. *Id.* at 9. Specifically, Section 85 prohibited national banks from charging interest in excess of the maximum rate "allowed by the laws of the State" or the Federal Reserve, "whichever may be greater." 12 U.S.C. § 85. The second provision, Section 86, established a procedure for seeking relief related to violations of the statute. It authorized anyone charged an interest rate in excess of the allowable limit to bring a claim for "twice the amount of the interest thus paid." 12 U.S.C. § 86.

Reading those two provisions in conjunction, this Court determined that the National Bank Act establishes the exclusive cause of action for usury claims against national banks. *Beneficial Nat'l Bank*,

539 U.S. at 11. To be clear, the National Bank Act did not contain a specific usury provision. But together, Sections 85 and 86 established "[u]niform rules limiting the liability of national banks"' and protected those rules from "unfriendly State legislation." *Id.* at 10 (quoting *Tiffany v. Nat'l Bank of Mo.*, 85 U.S. (18 Wall.) 409, 412 (1874)). The provisions left no room for state usury actions, since such actions would have the effect of allowing states to regulate interest rates in a manner not authorized under Section 85. *See id.* ("[T]he definition of usury and the penalties affixed thereto must be determined by the National Banking Act and not by the law of the State." (quoting *Haseltine v. Cent. Bank of Springfield*, 183 U.S. 132, 134 (1901)). This Court therefore concluded that any usury claim against a national bank could "only arise[] under federal law." *Id.* at 11.

Like Sections 85 and 86 of the National Bank Act, several provisions of the Clean Air Act work in tandem to establish uniform rules regulating interstate greenhouse gas emissions. To start, several provisions authorize EPA to set substantive limits on emissions that both protect the "public health and welfare" and promote the nation's "productive capacity." 42 U.S.C. § 7401(b)(1). Section 111, for instance, directs EPA to establish "standards of performance" for emissions from stationary sources. *Id.* § 7411(b)(1). Section 111 further authorizes EPA to delegate to the states authority to implement and enforce those

standards. *Id.* § 7411(c)(1). Other parts of the statute establish a similar scheme for regulation of motor vehicle emissions. *See id.* § 7521(a) (directing EPA to establish standards for new motor vehicles); *id.* § 7543(b) (allowing states to apply for EPA authorization to establish their own standards for new motor vehicles).

Additionally, several provisions establish procedures for seeking relief related to national emissions standards. Section 304 permits "any person," including state and local governments, to bring civil enforcement actions for violations of "emission standard[s] or limitation[s]" promulgated under the Act. *Id.* § 7604(a)(1); *see also id.* § 7602(e) (defining "person" to include a "State" or "municipality"). State and local governments can also submit written comments and provide oral testimony on proposed regulations, *id.* § 7607(d)(5), and permits, *id.* § 7475(a)(2). Finally, parties can petition EPA to undertake a new rulemaking, EPA's response to which is subject to judicial review, *id.* § 7607(b)(1), or bring a suit seeking to compel "agency action unreasonably delayed," *id.* § 7604(a)(3).

Read together, the various provisions of the Clean Air Act establish the exclusive cause of action for claims seeking to regulate interstate greenhouse gas emissions. The provisions instruct EPA to set forth uniform rules for promulgating national emissions standards that will strike a balance between protecting the environment and promoting

the nation's productive capacity. *See id.* § 7401(b)(1). The Act "entrusts" EPA, as the "primary regulator" of emissions, to undertake "such complex balancing . . . in the first instance." *Am. Elec.*, 564 U.S. at 427–28. Of course, states can always choose to adopt regulations that are stricter than the national standards, but they cannot force those standards upon other states. *See* 42 U.S.C. §§ 7411(c)(1), 7543(b). Instead, states have only "an advisory role in regulating pollution that originates beyond [their] borders." *Ouellette*, 479 U.S. at 490 (interpreting the Clean Water Act, whose regulatory scheme is nearly identical to the Clean Air Act). And that role can have a meaningful impact on the regulation of emissions nationwide. *See Massachusetts v. EPA*, 549 U.S. 497, 534 (2007) (holding EPA's refusal to regulate greenhouse gas emissions arbitrary and capricious as a result of a lawsuit brought by several states).

As a result, the Clean Air Act completely preempts the County's claim. The County alleges injuries from "significant greenhouse gas emissions," J.A. 23, and it claims that Energon contributed to those injuries by "suppl[ying] a substantial portion of the world's fossil fuels," J.A. 24. The relief the County seeks is thus meant to redress alleged injuries that trace back to greenhouse gas emissions from around the globe. But holding Energon liable under state law for worldwide greenhouse gas emissions would upset the careful regulatory scheme

that the Clean Air Act establishes. Such a liability finding would limit Energon's ability to supply petroleum nationwide, restricting greenhouse gas emissions in other states—regardless of whether those states are in compliance with EPA's nationwide standards of performance. The Clean Air Act forbids that result.

Instead, any state or municipality that seeks stricter nationwide limitations on greenhouse gas emissions must follow the exclusive procedures for relief outlined in the Clean Air Act. That those procedures do not provide the exact form of relief the County seeks is irrelevant for the purposes of complete preemption. As this Court has already explained, when it comes to complete preemption, "the breadth or narrowness of the relief which may be granted under federal law . . . is a distinct question from whether the court has jurisdiction." *Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557, 561 (1968). Following that principle, this Court has found that a federal statute completely preempts state law claims, even where the statute in question prohibits forms of equitable relief otherwise available under state law. *Id.* The Clean Air Act provides the exclusive cause of action for the County's claims.

2. The Clean Air Act's savings clauses do not undermine the statute's completely preemptive effect.

The Clean Air Act's savings clauses do not prevent the complete preemption of the County's claim. To start, neither clause "saves" the

type of claim the County seeks to bring, as such a claim was unavailable prior to the passage of the Clean Air Act. *See supra* section II.C.1. In other words, state law claims that have the effect of regulating emissions from out-of-state sources are and have always been unavailable to plaintiffs. The County cannot suddenly revive those claims as a means of defeating complete preemption. That conclusion is bolstered by this Court's instruction that a federal statute's "comprehensive remedial scheme can demonstrate an 'overpowering federal policy' that determines the interpretation of a statutory provision designed to save state law." *Aetna*, 542 U.S. at 217 (quoting *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 375 (2002)).

Indeed, in *Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004), this Court concluded that a savings clause within the Employee Retirement Income Security Act (ERISA) was not sufficient to prevent the complete preemption of a plaintiff's state law claim. *Id.* at 217. The plaintiffs, participants in an ERISA-regulated employee benefit plan, brought a claim against the plan's administrator under a Texas insurance statute, alleging that the administrator's refusal to cover certain requested healthcare services "proximately caused" their injuries. *Id.* at 205. The Court upheld removal of the claim to federal court under the complete preemption doctrine, even though an ERISA provision explicitly preserved state laws regulating insurance. *Id.* at 216 & n.5 (quoting 29

U.S.C. § 1144(b)(2)(A)). The Court explained that the savings clause must be interpreted in light of ERISA's "comprehensive remedial scheme," which left no room for state insurance laws to "provide a separate vehicle to assert a claim for benefits." *Id.* at 217–18.

Like ERISA, the Clean Air Act establishes a comprehensive scheme for seeking relief related to interstate greenhouse gas emissions. Like ERISA, the Clean Air Act's "general" savings clauses must be interpreted in light of that comprehensive, "carefully drawn" scheme. *Ouellette*, 479 U.S. at 494. And like ERISA, the mere fact that the Clean Air Act preserves a small reservoir of state-law claims does not prevent it from completely preempting those claims that would "pose an obstacle to the purposes and objectives of Congress." *Aetna*, 542 U.S. at 217. As a result, the Clean Air Act completely preempts the County's claims.

C. The County's claim turns on a substantial and disputed question of federal law.

The County's public nuisance claim raises substantial and disputed questions of federal law, including the effect of federal common law and whether EPA has struck the appropriate balance between regulating emissions and protecting our nation's productive capacity. Under the substantial federal question doctrine—also known as *Grable* jurisdiction—federal courts have jurisdiction over a state-law claim where "a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without

disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citing *Grable*, 545 U.S. at 314). All four factors are met here.

First, where "federal common law *alone* governs" a claim, that claim necessarily poses a federal question. *Battle v. Seibels Bruce Ins. Co.*, 288 F.3d 596, 607 (4th Cir. 2002); *accord Torres v. S. Peru Copper Corp.*, 113 F.3d 540, 543 (5th Cir. 1997); *Republic of Philippines v. Marcos*, 806 F.2d 344, 354 (2d Cir. 1986). For purposes of *Grable* jurisdiction, this circumstance is akin to establishing that federal issues control all of the "essential element[s]" of the claim. *Grable*, 545 U.S. at 315. As previously discussed, *see supra* section I.A–I.B., claims based on climate change–related injuries resulting from interstate greenhouse gas emissions are a matter of federal common law. The face of the County's complaint therefore presents a federal issue that satisfies the first prong of the *Grable* framework.

Yet even if federal common law did not govern, the County's claim presents a "collateral attack on a federal agency's action," which raises a qualifying *Grable* issue. *Bennett v. Sw. Airlines Co.*, 484 F.3d 907, 909 (7th Cir. 2007); *see also, e.g.*, *Old Dominion Elec. Coop. v. PJM Interconnection, LLC*, 24 F.4th 271, 288 (4th Cir. 2022) (finding substantial federal question jurisdiction where plaintiff "effectively challenge[d]" a federal regulatory tariff); *Pet Quarters, Inc. v. Depository*

Tr. & Clearing Corp., 559 F.3d 772, 779 (8th Cir. 2009) (finding substantial federal question jurisdiction where claim "directly implicate[d]" agency action). The County's public nuisance claim asks state judges to weigh "the gravity of the harm" caused by interstate greenhouse gas emissions against "the utility of the actor's conduct." RESTATEMENT (SECOND) OF TORTS, *supra*, § 821B cmt. e; *see also id.* § 826 cmt. a. But this very balancing of the harm and utility of greenhouse gas emissions is already being conducted by EPA. *See Am. Elec.*, 564 U.S. at 427–28; 42 U.S.C. § 7401(b)(1) (indicating that the Clean Air Act is intended to "protect . . . the Nation's air resources" as well as "promote . . . the productive capacity of its population"). By asking state courts to second-guess the reasonableness of EPA's regulatory framework, the County effectively challenges the federal scheme.

Second, these federal issues are both disputed and substantial. A dispute on the merits between the parties is "just the sort of dispute respecting the effect of federal law that *Grable* envisioned," and the federal issue will be substantial where it is important "to the federal system as a whole." *Gunn*, 568 U.S. at 259–60 (internal quotation marks and alterations omitted). For example, substantiality exists where a suit could settle the federal question so that it would thereafter "govern numerous [similar] cases." *Empire Healthchoice Assurance, Inc. v.*

McVeigh, 547 U.S. 677, 700 (2006). Today, climate change–related public nuisance lawsuits are proceeding in parallel in courts across the country, so a resolution of the federal common law issue would settle the question and control in a number of other cases.[5]

Substantiality also exists where the federal government would benefit from "the availability of a federal forum to vindicate its own administrative action." *Gunn*, 568 U.S. at 260–61 (quoting *Grable*, 545 U.S. at 315). In *Grable* itself, the Court found that the relevant issue was substantial enough to merit federal jurisdiction because its resolution might restrict the IRS's ability to carry out its programs. *Grable*, 545 U.S. at 315. Similarly, if the County were to prevail in this case, EPA's regulatory decisionmaking could be undermined by state court judges adjusting the scheme based on their individual judgments about its reasonableness.

Finally, exercising federal jurisdiction would not disrupt the "balance of federal and state judicial responsibilities." *Id.* at 314. To resolve this factor, courts look to "Congress's intended division of labor between state and federal courts" as well as whether exercising jurisdiction over the type of case at issue would "materially affect . . . the

[5] *See, e.g.*, *Mayor & City Council of Balt. v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022); *Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44 (1st Cir. 2022); *County of San Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022).

normal currents of litigation." *Id.* at 319. Exercising *Grable* jurisdiction here would implicate only the narrow category of cases that challenge interstate greenhouse gas emissions—which are inherently federal in nature. *See Milwaukee I*, 406 U.S. at 103. Far from encouraging a "horde" of filings that federal courts would not otherwise see, *Grable*, 545 U.S. at 318, removal here "could best be said to . . . right[]" the federal-state division of labor, *Old Dominion Elec. Coop.*, 24 F.4th at 288. That is because it would foil the County's attempt to evade federal jurisdiction by dressing up the embedded federal issue in state-law garb.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Ames Circuit should be reversed.

Respectfully submitted,

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APPENDIX

28 U.S.C. § 1331 | Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1441| Removal of Civil Actions

(a) GENERALLY. — Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

42 U.S.C. § 7401 | Congressional Findings and Declaration of Purpose

(b) DECLARATION. The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

42 U.S.C. § 7411 | Standards of Performance for New Stationary Sources

(b) LIST OF CATEGORIES OF STATIONARY SOURCES; STANDARDS OF PERFORMANCE; INFORMATION ON POLLUTION CONTROL TECHNIQUES; SOURCES OWNED OR OPERATED BY UNITED STATES; PARTICULAR SYSTEMS; REVISED STANDARDS.

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list

if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

* * *

(c) STATE IMPLEMENTATION AND ENFORCEMENT OF STANDARDS OF PERFORMANCE.

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

42 U.S.C. § 7416 | Retention of State Authority

Except as otherwise provided in sections 1857c-10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

42 U.S.C. § 7604 | Citizen Suits

(a) AUTHORITY TO BRING CIVIL ACTION; JURISDICTION. Except as provided in subsection (b), any person may commence a civil action on his own behalf—

(1) against any person . . . who is alleged to have violated . . . or to be in violation of

(A) an emission standard or limitation under this chapter or

(B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

> (3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit . . . or who is alleged to have violated . . . or to be in violation of any condition of such permit.
>
> The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties . . . . The district courts of the United States shall have jurisdiction to compel . . . agency action unreasonably delayed . . . .
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> (e) NONRESTRICTION OF OTHER RIGHTS. Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).