No.

In the Supreme Court of the United States

AMERICAN PETROLEUM INSTITUTE, ET AL.,
PETITIONERS

v.

STATE OF MINNESOTA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

WILLIAM A. BURCK
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street, N.W., Suite 900
Washington, DC 20005

BRIAN D. SCHMALZBACH
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219

KANNON K. SHANMUGAM
Counsel of Record
WILLIAM T. MARKS
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

THEODORE V. WELLS, JR.
DANIEL J. TOAL
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

(additional counsel on signature page)

QUESTION PRESENTED

Whether a federal district court has removal jurisdiction under 28 U.S.C. 1331 and 1441 over putative state-law claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are American Petroleum Institute; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Koch Industries; Flint Hills Resources LP; and Flint Hills Resources Pine Bend LLC.

Petitioner American Petroleum Institute has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Exxon Mobil Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner ExxonMobil Oil Corporation is a wholly owned indirect subsidiary of Exxon Mobil Corporation.

Petitioner Koch Industries has no parent corporation, and no publicly held company owns 10% or more of its stock.

Petitioner Flint Hills Resources LP is a wholly owned subsidiary of Koch Industries.

Petitioner Flint Hills Resources Pine Bend LLC is a wholly owned indirect subsidiary of Koch Industries.

Respondent is the State of Minnesota.

RELATED PROCEEDINGS

United States District Court (D. Minn.):

Minnesota v. *American Petroleum Institute, et al.*, Civ. No. 20-1636 (Mar. 31, 2021) (remand order)

United States Court of Appeals (8th Cir.):

Minnesota v. *American Petroleum Institute, et al.*, No. 21-1752 (Mar. 23, 2023)

American Petroleum Institute, et al. v. *Minnesota*, No. 21-8005 (Mar. 23, 2023)

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Miscellaneous:

Richard H. Fallon, Jr., et al., *Hart & Wechsler's Federal Courts and the Federal System* (7th ed. 2015) 29

Charles Alan Wright et al., *Federal Practice and Procedure* (4th ed. 2018) 28

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PETITION FOR A WRIT OF CERTIORARI

American Petroleum Institute; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Koch Industries; Flint Hills Resources LP; and Flint Hills Resources Pine Bend LLC respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-27a) is reported at 63 F.4th 703. The opinion of the district court (App., *infra*, 28a-61a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 23, 2023. On June 13, 2023, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari until August 20, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1331 of Title 28 of the United States Code provides:

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

Section 1441(a) of Title 28 of the United States Code provides:

> 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.

STATEMENT

This case presents an important and recurring question of federal jurisdiction that implicates two conflicts among the courts of appeals. Under this Court's precedents, federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by interstate emissions. And federal courts have subject-matter jurisdiction over claims that arise under federal common law under 28 U.S.C. 1331, rendering such claims removable from state court to federal court under 28 U.S.C. 1441(a). The question presented is whether a

district court has removal jurisdiction over putative state-law claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate.

Petitioners include energy companies and their affiliates that produce or sell fossil fuels and an industry organization; respondent is the State of Minnesota. Like a number of other state and local governments in similar cases across the country, respondent filed this action against petitioners in local state court, asserting claims purportedly arising under state law to recover for harms that respondent alleges it has sustained and will sustain from petitioners' operations because of global climate change.

Petitioners removed this case to federal district court, asserting federal subject-matter jurisdiction on multiple grounds. Among other grounds, petitioners contended that respondent's claims necessarily and exclusively arise under federal common law. The district court "reluctan[tly]" remanded the case to state court, App., *infra*, 57a, and petitioners appealed.

The court of appeals affirmed. As is relevant here, the court held that removal on the basis of federal common law was impermissible because respondent's complaint did not expressly invoke federal common law as the basis for any of its claims. The court concluded that the well-pleaded complaint rule allows a plaintiff to avoid federal jurisdiction by affixing state-law labels to claims necessarily and exclusively governed by federal common law.

Judge Stras concurred. In his view, respondent's complaint was an "obvious" example of "artful pleading," because respondent "purport[ed] to bring state-law consumer protection claims against a group of energy companies" but was in fact "seek[ing] a global remedy for [the] global issue" of climate change. App., *infra*, 20a, 21a.

"The problem, of course, is that [respondent'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." *Id.* at 24a (internal quotation marks, citation, and alteration omitted). Judge Stras opined that, "for a uniquely federal interest like interstate pollution," perhaps removal "*should*" be allowed. *Id.* at 25a (internal quotation marks, citation, and alteration omitted). Judge Stras ultimately concluded, however, that "only Congress or the Supreme Court gets to make that call." *Id.* at 26a.

The court of appeals' decision was incorrect, and it implicates two circuit conflicts on important and recurring issues of federal law. The decision below deepens the existing conflict on the question whether the well-pleaded complaint rule precludes removal jurisdiction under 28 U.S.C. 1331 and 1441 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. The decision also implicates the related question of whether federal law necessarily and exclusively governs claims seeking redress for the alleged effect of interstate greenhouse-gas emissions on the global climate.

Although the Court recently declined review of those jurisdictional issues in related climate-change cases, the need for the Court's intervention has only become more pressing. Dozens of state and local governments have filed similar claims in state courts across the country. And as Judge Stras observed, the plaintiffs' "end game" in these lawsuits is "clear": "[to] change the companies' behavior on a global scale" in order to affect the national-security, economic, and energy policy of the United States. App., *infra*, 24a. Absent review, similar cases will continue to proliferate, and similar claims could be brought against members of any number of industries

that plaintiffs believe have contributed to climate change. Cases presenting the same jurisdictional issues are also currently pending in two other courts of appeals. Because this case is an ideal vehicle for resolving multiple conflicts on important and recurring issues of federal jurisdiction, the petition for a writ of certiorari should be granted.

A. Background

As the Court has long explained, "federal courts are courts of limited jurisdiction." *Home Depot U.S.A., Inc.* v. *Jackson*, 139 S. Ct. 1743, 1746 (2019) (citation and alteration omitted). Article III, Section 2, of the Constitution sets forth the categories of cases "over which federal judicial authority may extend." *Ibid.* (citation omitted). And the jurisdiction of lower federal courts is "further limited to those subjects encompassed within a statutory grant of jurisdiction." *Ibid.* (citation omitted). A federal district court thus "may not exercise jurisdiction absent a statutory basis" for doing so. *Ibid.* (citation omitted).

In addition to creating jurisdiction over certain actions originally filed in federal court, Congress also authorized the removal to federal court of certain cases initially filed in state court. Of particular relevance here, the general removal statute, 28 U.S.C. 1441(a), authorizes the removal of "any civil action brought in a [s]tate court of which the district courts of the United States have original jurisdiction." A defendant may thus remove a case to federal court if the plaintiff "could have filed its operative complaint in federal court" in the first instance. *Home Depot*, 139 S. Ct. at 1748.

One of the most familiar statutes conferring original jurisdiction on the district courts is the federal-question statute, 28 U.S.C. 1331. It provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the

United States." Although the Constitution similarly authorizes federal jurisdiction over all cases "arising under this Constitution, the laws of the United States, and treaties made," Art. III, § 2, cl. 1, this Court has interpreted the jurisdictional grant in Section 1331 to stop short of constitutional limits. Instead, under the well-pleaded complaint rule, an action arises under federal law for purposes of Section 1331 "only when the plaintiff's statement of his own cause of action shows that it is based upon federal law." *Vaden* v. *Discover Bank*, 556 U.S. 49, 60 (2009) (citation and alteration omitted).

An "actual or anticipated defense" under federal law does not give rise to jurisdiction under Section 1331. *Vaden*, 556 U.S. at 60. At the same time, an "independent corollary" to the well-pleaded complaint rule is that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 22 (1983). The well-pleaded complaint rule thus sometimes requires a federal court to "determine whether the real nature of the claim is federal, regardless of [the] plaintiff's characterization." *Federated Department Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 n.2 (1981) (citation omitted).

The grant of jurisdiction in Section 1331 covers not only constitutional or statutory claims, but also those "founded upon federal common law." *National Farmers Union Insurance Cos.* v. *Crow Tribe of Indians*, 471 U.S. 845, 850 (1985). Despite this Court's familiar pronouncement in *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, 78 (1938), that "[t]here is no federal general common law," the "federal judicial power to deal with common law problems" remains "unimpaired for dealing independently, wherever necessary or appropriate, with essentially federal matters, even though Congress has not acted affirmatively about the specific question." *United States* v.

Standard Oil Co., 332 U.S. 301, 307 (1947). Of particular relevance here, federal law necessarily supplies the rule of decision for certain narrow categories of claims that implicate "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640-641 (1981) (citation omitted).

One established category of claims governed by federal common law is claims seeking redress for injuries allegedly caused by interstate pollution. Indeed, "[f]or over a century, a mostly unbroken string of cases has applied federal law to disputes involving" such claims. *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases); see, *e.g.*, *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 420-423 (2011); *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 103 (1972). As the Court has explained, federal common law must govern such controversies because they "touch[] basic interests of federalism" and implicate the "overriding federal interest in the need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at 105 n.6. The "basic scheme of the Constitution" requires the application of a federal rule of decision, because "borrowing the law of a particular State would be inappropriate" to resolve such interstate disputes. *American Electric Power*, 564 U.S. at 421, 422.

B. Facts And Procedural History

1. This case is one of dozens brought by state and local governments against various energy companies, alleging that the companies' worldwide production, sale, and promotion of fossil fuels led to the emission of greenhouse gases and thereby contributed to global climate change. Petitioners are five energy companies and affiliates that

produce or sell fossil fuels around the world and an industry association.

On June 24, 2020, respondent filed a complaint against petitioners in Minnesota state court, claiming violations of state consumer-protection statutes, common-law fraud, and common-law strict and negligent failure to warn. The complaint alleged that petitioners' production, sale, and promotion of fossil fuels have increased greenhouse-gas emissions and contributed to climate change, purportedly causing wide-ranging harm to Minnesota, its citizens, and fossil-fuel consumers. The complaint seeks restitution, disgorgement, civil penalties, and injunctive relief. App., *infra*, 2a-3a, 32a-33a.

Petitioners removed this action to the United States District Court for the District of Minnesota on several grounds. As is relevant here, petitioners asserted that the district court had federal-question jurisdiction under 28 U.S.C. 1331 because federal common law necessarily governed respondent's claims, in part because respondent seeks redress for injuries allegedly caused by interstate and international emissions. While respondent styled its complaint as alleging only state-law claims, petitioners contended that artful pleading could not obscure the fact that the complaint is predicated on harms allegedly caused by climate change. Petitioners additionally argued that the State's claims necessarily raised disputed federal issues and thus were removable under *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). App., *infra*, 33a.

The district court remanded the case to state court based on a lack of subject-matter jurisdiction. App., *infra*, 28a-61a. With respect to federal common law as a basis for removal, the district court concluded that the well-pleaded complaint rule precluded removal because the complaint did not label the claims as arising under federal

law. The district court also rejected removal under *Grable*, holding that respondent's claims did not necessarily raise any federal issues. *Id.* at 36a-46a. The court nevertheless expressed "some reluctance in remanding such significant litigation to state court," noting that "[t]he complex environmental impacts of climate change, and its far-reaching consequences for health, economy, and social wellbeing of all people cannot be understated." *Id.* at 57a.

2. The court of appeals affirmed. App., *infra*, 1a-27a.

a. At the outset, the court of appeals acknowledged that respondent's claims sought redress for "wide-ranging" harms allegedly caused by "more fossil fuel being sold, accelerating climate change." App., *infra*, 2a. Applying the well-pleaded complaint rule, however, the court determined that federal-question jurisdiction was not present because no "federal question [was] presented on the face of [respondent's] properly pleaded complaint." *Id.* at 4a (citation omitted). Instead, respondent purported to bring only state-law claims. *Id.* at 5a.

The court recognized that the well-pleaded complaint rule is subject to certain "exceptions." App., *infra*, 5a. But it concluded that only two such exceptions exist: complete preemption and the substantial-federal-question doctrine. *Ibid.* Complete preemption, the court explained, applies when "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Ibid.* (citation omitted). The substantial-federal-question doctrine, the court noted, permits removal of state-law claims 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." *Id.* at 8a (citation omitted).

The court concluded that neither exception applied to respondent's claims. With respect to complete preemption: the court reasoned that a "strong presumption against complete preemption" applied because "[t]here is no substitute federal cause of action for the state-law claims [respondent] brings." App., *infra*, 7a. The court added that, because federal common law is "not statutory" in nature, it cannot express the necessary "[c]ongressional intent * * * to completely displace any particular state-law claim." *Ibid.* In concluding that complete preemption did not apply, the court reasoned that the artful-pleading principle—which applies "when a plaintiff disguises federal claims as state ones"—does not constitute a "separate exception to the well-pleaded complaint rule." *Id.* at 5a n.4. Instead, it treated the artful-pleading principle as coextensive with complete preemption. *Ibid.*

With respect to the substantial-federal-question doctrine: the court acknowledged petitioners' argument that respondent's claims "necessarily raise issues governed by federal common law." App., *infra*, 9a. But it faulted petitioners for "fail[ing] to identify which specific elements of [respondent's] claims require the court" to "interpret and apply federal common law." *Ibid.*

b. Judge Stras wrote a separate concurring opinion. App., *infra*, 20a-27a. "Artful pleading comes in many forms," he began, and "this is one of them." *Id.* at 20a. Judge Stras noted that, while respondent "purport[ed] to bring state-law consumer-protection claims against a group of energy companies," the substance of respondent's lawsuit "takes aim at the production and sale of fossil fuels worldwide." *Ibid.* Judge Stras found respondent's "end game" to be "clear": "[to] change [petitioners'] behavior on a global scale." *Id.* at 24a. Judge Stras concluded that granting such relief would "override the policy choices made by the federal government and other

[S]tates" and is thus "beyond the limits of state law." *Ibid.* (citations and alterations omitted).

Judge Stras nevertheless agreed with the majority that removal was impermissible under existing law. App., *infra*, 24a-27a. In reaching that conclusion, Judge Stras expressed the view that, "[m]ost of the time, the well-pleaded complaint rule works well," because "[t]he complaint usually does not say whether a federal defense is available and, if so, whether anyone will raise it." *Id.* at 25a. But "[n]one of those mysteries exist here," Judge Stras observed, because "[t]he complaint itself all but dares [petitioners] to raise a federal-preemption defense," and "no one doubts that [petitioners] will or that it will be the focal point of the litigation." *Ibid.*

In Judge Stras's view, "[t]here is no reason for the removal rules to operate in such a confounding way." App., *infra*, 25a. Judge Stras reasoned that, "[p]erhaps for a uniquely federal interest like interstate pollution," removal of a putative state-law claim "*should*" be permissible. *Ibid.* He also expressed the view that the artful-pleading doctrine is not "limited to complete preemption" and "is best understood as an umbrella term that applies whenever the complaint obscures the suit's federal nature." *Id.* at 26a-27a n.14 (internal quotation marks omitted). Still, he ultimately concluded that "only Congress or the Supreme Court gets to make th[e] call" whether cases similar to this one are removable. *Id.* at 26a.

REASONS FOR GRANTING THE PETITION

This case presents the question whether a federal district court has jurisdiction under 28 U.S.C. 1331 and 1441 over putative state-law claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate. The court of appeals'

decision on that question implicates two independent circuit conflicts. The court of appeals reached the incorrect conclusion on the question presented, and this case is an ideal vehicle in which to address it. Although the Court recently declined to review the jurisdictional question at issue in related climate-change cases, the Court's review remains urgently needed. Absent review, climate-change cases will continue to proliferate in state courts, resulting in the application of the laws of fifty states to climate-change-related disputes, in conflict with the national-security, economic, and energy policies of the United States. The importance of the jurisdictional question raised by this petition cannot be overstated. The petition should therefore be granted.

A. The Decision Below Implicates Two Conflicts Among The Courts Of Appeals

The decision below deepens a circuit conflict on the issue of whether the well-pleaded complaint rule precludes removal jurisdiction under 28 U.S.C. 1331 and 1441 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. The decision also implicates a conflict on the issue of whether federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate.

1. The Courts Of Appeals Are Divided Over The Removal Of Claims Governed By Federal Common Law But Labeled As Arising Under State Law

The court of appeals held that the well-pleaded complaint rule precludes federal jurisdiction under 28 U.S.C. 1331 and 1441 over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. See App., *infra*, 4a-10a. That holding deepens

an existing circuit conflict among the courts of appeals and warrants the Court's review.

a. In *Sam L. Majors Jewelers* v. *ABX, Inc.*, 117 F.3d 922 (1997), the Fifth Circuit upheld the removal of putative state-law claims on the ground that they were governed by federal common law. There, the plaintiff filed claims in state court for breach of contract, negligence, and violations of a state statute, seeking damages from an airline that allegedly lost some of the plaintiff's goods. See *id.* at 924. The defendant removed the case to federal court.

In assessing whether removal was proper, the Fifth Circuit recognized that jurisdiction under Section 1331 exists only "when a federal question is presented on the face of a plaintiff's properly pleaded complaint." 117 F.3d at 924. The court further noted that, under Section 1441(a), "only actions that originally could have been filed in federal court can be removed to federal court." *Ibid.* The court then reasoned that there are "three theories that might support federal question jurisdiction" in the case: where "the complaint raises an express or implied cause of action that exists under a federal statute"; where the relevant "area of law is completely preempted by the federal regulatory regime"; and where "the cause of action arises under federal common law principles." *Ibid.* The court concluded that removal was proper under the third theory, because an action against a common air carrier for lost or damaged goods "arises under federal common law." *Id.* at 929.

In addition to the decision in *Sam L. Majors*, several courts of appeals have upheld the removal of claims governed by federal common law because those claims necessarily raised substantial questions of federal law. See *Newton* v. *Capital Assurance Co.*, 245 F.3d 1306, 1309 (11th Cir. 2001) (involving a federally subsidized contract

that courts interpret using principles of federal common law); *Torres* v. *Southern Peru Copper Corp.*, 113 F.3d 540, 542-543 (5th Cir. 1997) (raising substantial questions of federal common law by implicating foreign policy concerns); *Republic of Philippines* v. *Marcos*, 806 F.2d 344, 352-354 (2d Cir. 1986) (similar).

b. In the decision below, the court of appeals held that removal was impermissible even if federal common law necessarily and exclusively governed respondent's claims. See App., *infra*, 6a-7a. In the court's view, there are only two limited exceptions to the well-pleaded complaint rule—namely, complete preemption and the substantial-federal-question doctrine—and claims entirely governed by federal common law do not fall within either exception. See *id.* at 5a-10a.

With respect to complete preemption, the court concluded that federal common law cannot provide the evidence of congressional intent necessary to invoke the doctrine, because federal common law involves no action from Congress. See App., *infra*, 7a. And with respect to the substantial-federal-question doctrine, the court concluded that federal common law did not provide a basis for removal unless the defendant can "identify which specific elements" of a state-law claim "require the court" to "interpret and apply federal common law." *Id.* at 9a.

The court separately concluded that the artful-pleading doctrine, "which occurs when a plaintiff disguises federal claims as state ones," is not a "standalone exception" to the well-pleaded complaint rule. App., *infra*, 5a n.4. Judge Stras, however, rejected the notion that the artful-pleading doctrine is "limited to complete preemption"; in his view, the doctrine "is best understood as an umbrella term that applies whenever the complaint obscures the suit's federal nature." *Id.* at 26a-27a n.14 (internal quotation marks omitted). Judge Stras explained that "[a]rtful

pleading comes in many forms," and this case—in which respondent "purports to bring state-law" claims and in actuality "takes aim at the production and sale of fossil fuels worldwide"—is "one of them." *Id.* at 20a.

The court of appeals' reasoning cannot be reconciled with the Fifth Circuit's decision in *Sam L. Majors* or the cases permitting the removal of claims governed entirely by federal common law under the substantial-federal-question doctrine. Under the court of appeals' logic, a district court is bound by the labels the plaintiff applies to the claims in the complaint, even where federal common law necessarily and exclusively governs the issues pleaded on the face of the complaint. The court of appeals' reasoning also leads to the bizarre result that a state-law claim may be removable under the substantial-federal-question doctrine when federal common law governs a *specific* element of the claim, but not when it governs *every* element of the claim. That result is inconsistent with the courts of appeals that applied the substantial-federal-question doctrine to claims governed entirely by federal common law. See pp. 13-14, *supra*.

c. In addition to the court of appeals in the decision below, four other courts of appeals have held—in the particular context of climate-change litigation—that Sections 1331 and 1441 do not permit the removal of claims necessarily governed by federal common law but labeled as arising under state law.

i. In *City of Oakland* v. *BP p.l.c.*, 969 F.3d 895 (2020), cert. denied, 141 S. Ct. 2776 (2021), the Ninth Circuit declined to permit the removal of similar climate-change claims on the basis of federal common law. It started from the premise that, under the well-pleaded complaint rule, "a civil action arises under federal law for purposes of [Section] 1331 when a federal question appears on the face

of the complaint." *Id.* at 903. The court saw only two "exceptions" to that rule: the substantial-federal-question doctrine and complete preemption. See *id.* at 904-906. The Ninth Circuit addressed removal on the basis of federal common law as part of the substantial-federal-question inquiry and concluded that no such federal question was present because the plaintiffs' claims, labeled as arising under state law, neither "require[d] an interpretation of a federal statute nor challenge[d] a federal statute's constitutionality." *Ibid.* (citations omitted); see *County of San Mateo* v. *Chevron Corp.*, 32 F.4th 733, 747-748 (9th Cir. 2022) (following *City of Oakland* in similar climate-change cases).

ii. In *Mayor & City Council of Baltimore* v. *BP p.l.c.*, 31 F.4th 178 (2022), cert. denied, 143 S. Ct. 1795 (2023), the Fourth Circuit, on remand from this Court, similarly rejected the premise that federal common law provides a basis for removal of claims artfully pleaded under state law. Before considering whether federal common law governed the climate-change claims at issue, the Fourth Circuit explained that the complaint "never alleges an existing federal common law claim" and "only brings claims originating under [state] law." *Id.* at 200. The court concluded that "subject-matter jurisdiction via federal common law" does not exist where the complaint did not "clearly seek recovery under federal law." *Ibid.* (citation omitted).

iii. In *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (2022), cert. denied, 143 S. Ct. 1795 (2023), the Tenth Circuit, on remand from this Court, rejected federal common law as a basis for removal of claims artfully pleaded under state law. The Tenth Circuit acknowledged the principle that a plaintiff cannot defeat removal by omitting necessary federal questions from the complaint. See *id.* at 1261.

But the court concluded that the so-called "artful pleading" doctrine is coextensive with the doctrine of complete preemption. See *ibid.* The court proceeded to hold that federal common law cannot have complete preemptive effect. See *id.* at 1262.

iv. The Third Circuit reached the same conclusion in *City of Hoboken* v. *Chevron Corp.*, 45 F.4th 699 (2022), cert. denied, 143 S. Ct. 2483 (2023). Like the Tenth Circuit, it held that a federal court can "recharacterize a state law claim as a federal claim removable to federal court * * * only when some federal statute completely preempts state law." *Id.* at 707 (internal quotation marks, citations, and alterations omitted). The court further concluded that federal common law cannot provide a basis for removal of claims artfully pleaded under state law, because federal common law provides only a "garden-variety preemption" defense in that circumstance. *Id.* at 708. In so concluding, the Third Circuit expressly departed from the Fifth Circuit's decision in *Sam L. Majors*. See *ibid.*

2. The Courts Of Appeals Are Divided Over Whether Federal Law Necessarily And Exclusively Governs Climate-Change Claims

Because the court of appeals resolved the question presented under the well-pleaded complaint rule, it did not proceed to decide the related question of whether federal law necessarily and exclusively governs claims seeking redress for the effect of interstate greenhouse-gas emissions on the global climate. See App., *infra*, 7a n.5. The decision below implicates that question, however, which has divided the federal courts of appeals. Review is warranted to resolve that conflict as well.

a. In *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), the municipal government of New York

City filed suit in federal court based on diversity jurisdiction, alleging that the defendant energy companies (including some of the petitioners here) were liable for injuries allegedly caused by the contribution of interstate greenhouse-gas emissions to global climate change. The plaintiff asserted claims for public nuisance, private nuisance, and trespass under state law. See *id.* at 88.

The question before the Second Circuit was "whether municipalities may utilize state tort law to hold multinational oil companies liable for the damages caused by global greenhouse gas emissions." 993 F.3d at 85. The Second Circuit unanimously held that "the answer is 'no'" and that claims seeking redress for global climate change presented "the quintessential example of when federal common law is most needed." *Id.* at 85, 92.

Relying on this Court's precedents, the Second Circuit began its analysis by noting that, "[f]or over a century, a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." 993 F.3d at 91. The Second Circuit explained that "such quarrels often implicate two federal interests that are incompatible with the application of state law": the "overriding need for a uniform rule of decision" on matters influencing national energy and environmental policy, and "basic interests of federalism." *Ibid.* (internal quotation marks and alterations omitted) (quoting *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972)).

In the Second Circuit's view, claims seeking to hold the defendants liable for injuries arising from "the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet" are far too "sprawling" for state law to govern. 993 F.3d at 92. The court explained that application of state law to the city's claims would "risk upsetting the careful balance that has been struck between the prevention of global warming, a

project 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." *Id.* at 93.

The Second Circuit rejected the plaintiff's argument that displacement by the Clean Air Act of any remedy under federal common law allows state law to "snap back into action." 993 F.3d at 98. "[That] position is difficult to square with the fact that federal common law governed this issue in the first place," the court reasoned, because "where 'federal common law exists, it is because state law cannot be used.'" *Ibid.* (quoting *City of Milwaukee* v. *Illinois*, 451 U.S. 304, 313 n.7 (1981)). In the court's view, "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *Ibid.* Such an outcome, the Second Circuit concluded, is "too strange to seriously contemplate." *Id.* at 98-99.

b. Three other courts of appeals have rejected the Second Circuit's approach in virtually identical climate-change suits.

i. In *Baltimore*, *supra*, the Fourth Circuit expressly declined to "follow *City of New York*," reasoning that the Second Circuit's decision "fails to explain a significant conflict between the state-law claims before it and the federal interests at stake." 31 F.4th at 203. In the Fourth Circuit's view, the defendants needed to make such a showing and could not rely solely on this Court's longstanding precedent applying federal rules of decision to common-law claims relating to interstate pollution. See *id.* at 201-202. The Fourth Circuit further departed from the Second Circuit by holding that federal common law did not govern similar climate-change claims because the

Clean Air Act displaced any federal-common-law remedy. See *id.* at 206-207.

The Fourth Circuit attempted to distinguish *City of New York* on the ground that the Second Circuit did not need to apply the well-pleaded complaint rule because "New York City initially filed suit in federal court." 31 F.4th at 203. But again, that distinction does not elide the conflict: the Fourth Circuit saw "no reason to fashion any federal common law for [d]efendants," *id.* at 202, whereas the Second Circuit held that similar climate-change claims "must be brought under federal common law," *City of New York*, 993 F.3d at 92, 95.

ii. Using similar reasoning, the First Circuit held that the district court lacked jurisdiction on the basis of federal common law in *Rhode Island* v. *Shell Oil Products Co.*, 35 F.4th 44 (2022), cert. denied, 143 S. Ct. 1796 (2023). Like the Fourth Circuit, the First Circuit faulted the defendants for relying on this Court's precedents rather than describing "any significant conflict" between the "federal interests" at issue and the plaintiff's "state-law claims." *Id.* at 54 (citation omitted). The First Circuit also concluded that, even if such a conflict were present, removal on the basis of federal common law was impermissible because the displacement of federal common law by the Clean Air Act meant that no "federal common law controls [the plaintiff's] claims." *Id.* at 55.

In reaching those conclusions, the First Circuit expressly declined to rely on the Second Circuit's reasoning and held that *City of New York* was "distinguishable" because the complaint there was filed "in federal court in the first instance." *Rhode Island*, 35 F.4th at 55 (citation and emphasis omitted). But like the Fourth Circuit, the First Circuit did not explain how the fact that the lawsuit was

first filed in federal court altered the answer to the distinct question whether federal common law governs the claims.

iii. The Tenth Circuit in *Boulder*, *supra*, held that federal common law did not permit the removal of similar climate-change claims because, after statutory displacement by the Clean Air Act, the otherwise-applicable federal common law "no longer exists." 25 F.4th at 1260 (emphasis omitted). Like the First and Fourth Circuits, the Tenth Circuit attempted to distinguish *City of New York* because it was first filed in federal court and not subject to the well-pleaded complaint rule. See *id.* at 1262. But again, that distinction does not avoid the conflict: the Tenth Circuit held that the relevant federal common law "no longer exists," *id.* at 1260 (emphasis omitted), whereas the Second Circuit held that similar climate-change claims "must be brought under federal common law," *City of New York*, 993 F.3d at 95.

3. The Federal Government Has Taken Conflicting Positions On The Question Presented

The question presented has also divided two consecutive presidential administrations.

Two years ago, the federal government argued before this Court that claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions are removable because they are inherently federal in nature. See U.S. Br. at 26-27, *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021) (No. 19-1189); Oral Arg. Tr. at 31, *BP*, *supra*. It maintained that, although the Clean Air Act displaced the federal common law in this area, that "d[id] not mean the door was opened for tort claims based on the common law of an affected State targeting conduct in another State." U.S. Br. at 27, *BP*, *supra*. Instead, "[a]ny putative tort claims that seek

to apply the law of an affected State to conduct in another State * * * continue to arise under federal, not state, law for jurisdictional purposes, given their inherently federal nature." *Ibid.* (internal quotation marks, citation, and emphasis omitted). The government did not see the well-pleaded complaint rule as an obstacle to removal. See *id.* at 28.

The government also insisted in the lower courts that claims like respondent's "must be governed by federal common law." U.S. En Banc Br. at 11, *Oakland*, *supra* (No. 18-16663). Such claims, the government argued, are "irreconcilable with the constitutional commitment of such matters to the national government and the relative rights and obligations of the national government and States under the structure of the Constitution." *Id.* at 12.

The government took the opposite position, however, when this Court called for its views on the recent petition for certiorari in *Suncor Energy (U.S.A.) Inc.* v. *Board of County Commissioners of Boulder County*, 143 S. Ct. 1795 (2023). Citing a change in administration, the government suddenly took the position that the well-pleaded complaint rule precludes removal of similar climate-change claims and that, in the wake of the Clean Air Act, federal law no longer exclusively governs claims alleging injury from interstate emissions. See U.S. Br. at 7-16 (No. 21-1550).

The current administration has now suggested that, under the well-pleaded complaint rule, federal jurisdiction turns on a plaintiff's express invocation of federal law in its complaint, either as creating the cause of action asserted or governing the issue. See U.S. Br. at 9-10, *Suncor*, *supra*. Confusingly, it simultaneously acknowledged that a "federal court may uphold removal even though no federal question appears on the face of the plaintiff's complaint if the court concludes that the plaintiff has artfully

pleaded claims by omitting to plead necessary federal questions." *Id.* at 11 (internal quotation marks and citation omitted). The government maintained that there was no such defect with the complaint in *Suncor* because federal common law has been "displaced" by the Clean Air Act and thus could not govern the plaintiffs' claims. See *id.* at 11-15. In its view, any arguments that the Clean Air Act also displaced state-law claims should be asserted as an ordinary preemption defense. See *ibid.*

Setting aside the motives behind such an about-face, the fact that two consecutive presidential administrations have taken such diverging positions on the question presented further confirms that the question involves significant, consequential issues that require resolution. As Judge Stras urged in his concurring opinion below, there are strong reasons to believe that claims such as respondent's should proceed in federal court. See App., *infra*, 25a-26a. This Court should definitively resolve the issue.

* * * * *

In sum, the decision below implicates two circuit conflicts on issues of federal law that have also divided two consecutive presidential administrations. As matters currently stand, the Fifth Circuit has held that 28 U.S.C. 1331 and 1441 provide a basis for jurisdiction over claims necessarily and exclusively governed by federal common law but labeled as arising under state law. Five courts of appeals, including the Eighth Circuit in the decision below, have reached the opposite conclusion. Separately, one court of appeals has held that federal common law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effect of interstate greenhouse-gas emissions on the global climate; three other courts of appeals have rejected that conclusion. Those conflicts are developed and entrenched.

To be sure, the Court recently declined to resolve those conflicts after calling for the views of the Solicitor General. See pp. 22-23, *supra*. But the Court's intervention remains urgently needed. The same question of jurisdiction is currently pending in two courts of appeals that have not yet addressed the issue. See *Connecticut* v. *Exxon Mobil Corp.*, No. 21-1446 (2d Cir. argued Sept. 23, 2022); *District of Columbia* v. *Exxon Mobil Corp.*, No. 22-7163 (D.C. Cir. argued May 8, 2023). And new climate-change lawsuits continue to be filed in state court. See *County of Multnomah* v. *Exxon Mobil Corp.*, No. 23-CV25164 (Or. Cir. Ct. filed June 22, 2023) (seeking $51.55 billion in damages on behalf of a single county).

The dozens of climate-change cases filed by state and local governments to date are intended "effectively [to] override" the national-security, economic, and energy policy of the United States, by "chang[ing] [petitioners'] behavior on a global scale." App., *infra*, 24a. That collateral attack on federal climate-change policy through the courts, rather than Congress, will not end with this case. Absent clarity from this Court, the question of jurisdiction over these lawsuits will only continue to arise.

B. The Decision Below Is Incorrect

The Eighth Circuit's decision is incorrect. Respondent's claims are necessarily and exclusively governed by federal common law and thus removable to federal court.

1. Federal common law supplies the rule of decision for certain narrow categories of claims that implicate "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640-641 (1981) (citation omitted). For over a century, this Court has applied uniform federal common-law rules of decision

to claims seeking redress for interstate pollution. See *City of New York*, 993 F.3d at 91 (collecting cases). For example, in *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91 (1972), the Court reasoned that "[f]ederal common law," and not the "varying common law of the individual States," is "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." *Id.* at 108 n.9 (citation omitted). In *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), the Court unambiguously reaffirmed that "the regulation of interstate water pollution is a matter of federal, not state, law." *Id.* at 488 (citation omitted); see *id.* at 492. And in *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410 (2011)—a case involving similar claims alleging injury from the contribution of greenhouse-gas emissions to global climate change—the Court reiterated that federal common law "undoubtedly" governs claims involving "air and water in their ambient or interstate aspects." *Id.* at 421 (citation omitted).

As those precedents explain, the Constitution dictates that federal law must govern controversies over interstate pollution, because those controversies "touch[] basic interests of federalism" and implicate the "overriding federal interest in the need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at 103 n.6. The Constitution prohibits States from "regulat[ing] the conduct of out-of-state sources" of pollution. *Ouellette*, 479 U.S. at 495. Because "borrowing the law of a particular State would be inappropriate" to resolve such interstate disputes, "the basic scheme of the Constitution" requires the application of a federal rule of decision. *American Electric Power*, 564 U.S. at 421, 422.

Applying the foregoing precedents here leads to a straightforward result: respondent's climate-change

claims necessarily arise under federal, not state, law. Through those claims, respondent is seeking restitution based on the interstate—and indeed international—emissions of greenhouse gases over many decades, allegedly resulting in part from the use of fossil-fuel products produced or sold by petitioners and consumed throughout the world. See App., *infra*, 2a, 21a, 32a-33a. Those claims fall squarely within the long line of cases holding that federal common law governs claims seeking redress for interstate air and water pollution.

Judge Stras recognized as much in his concurring opinion below. He explained that, while "[respondent] has strong views about how to deal with the issue," "[o]ther [S]tates do too," as "[t]hey do not believe that one or two individual [S]tates like [respondent] should be able to dictate environmental policy for other sovereign States." App., *infra*, 21a (internal quotation marks omitted). Judge Stras thus concluded that "[t]his is, in effect, an interstate dispute." *Ibid.* Judge Stras further reasoned that "[t]he rule of decision in these cases has always been * * * the federal common law," and "[s]tate law is no substitute." *Id.* at 22a. Where, as here, respondent's lawsuit is not "limited to the effects of local emissions," and instead targets "the consumption of fossil fuels both in and outside of Minnesota," it must be governed by federal common law. *Id.* at 23a-24a (internal quotation marks, citations, and emphasis omitted).

That remains true whether the plaintiff claims that the defendant emitted greenhouse gases directly or instead claims that the defendant contributed to greenhouse-gas emissions by producing and promoting fossil-fuel products. Whatever the allegedly tortious conduct, the alleged

injury is the result of greenhouse-gas emissions and their effect on the global climate.

2. Under Section 1331, federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." That includes claims "founded upon federal common law as well as those of a statutory origin." *National Farmers Union Insurance Cos.* v. *Crow Tribe of Indians*, 471 U.S. 845, 850 (1985) (citation omitted). As a result, if the "dispositive issues stated in the complaint require the application" of a uniform rule of federal law, the action "arises under" federal law for purposes of Section 1331, *Milwaukee I*, 406 U.S. at 103 (citation omitted), and the case is removable to federal court, see 28 U.S.C. 1441(a). Because respondent's claims are necessarily and exclusively governed by federal common law, petitioner properly removed them to federal court.

The court of appeals nevertheless held that the well-pleaded complaint rule prohibited removal on the basis of federal common law. App., *infra*, 4a-10a. The well-pleaded complaint rule provides that federal-question jurisdiction exists 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). According to the court of appeals, the well-pleaded complaint rule prevented removal of respondent's claims because respondent did not expressly plead any claims under federal common law. See App., *infra*, 4a-5a. The court thus concluded that petitioners were invoking federal common law merely as the basis for an ordinary preemption defense. See *id.* at 6a.

That reasoning misunderstands the well-pleaded complaint rule as well as petitioners' arguments on federal common law. As this Court has long explained, an "independent corollary" of the well-pleaded complaint rule is

that "a plaintiff may not defeat removal by omitting to plead necessary federal questions" in the complaint. *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 22 (1983). Put another way, a plaintiff cannot "block removal" by artfully pleading its claims in an effort to "disguise [an] inherently federal cause of action." 14C Charles Alan Wright et al., *Federal Practice and Procedure* § 3722.1, at 131-132 (4th ed. 2018).

The artful-pleading principle allows the removal of respondent's claims. Petitioners' invocation of federal common law is not merely a defense to respondent's claims alleging injury from interstate and international air pollution. As just explained, respondent's claims do not just implicate federal-law issues; they inherently *are* federal claims, arising under federal law. No state law exists in this area for respondent to invoke. The artful-pleading principle prohibits a plaintiff from avoiding federal jurisdiction over such claims by dressing them in state-law garb.

The court of appeals rejected petitioners' invocation of the artful-pleading principle on the ground that it is not a "standalone exception" to the well-pleaded complaint rule. App., *infra*, 5a n.4. Instead, the court treated the artful-pleading principle as synonymous with complete preemption, such that even a constitutional requirement that federal common law necessarily and exclusively govern a claim cannot permit removal in the face of a plaintiff's artful pleading. See *ibid.* But this Court has already recognized that federal common law can function in the same way as completely preemptive statutes in the context of "a state-law complaint that alleges a present right to possession of Indian tribal lands." *Caterpillar*, 482 U.S. at 393 n.8. Accordingly, as Judge Stras explained, the artful-pleading principle is "best understood as an umbrella

term that applies whenever the complaint obscures the suit's federal nature." App., *infra*, 26a-27a n.14.

Nor would it make sense that only Congress, and not the structure of the Constitution, can transform a state-law claim into a federal one. There is "[n]o plausible reason" why "the appropriateness of and need for a federal forum should turn on whether the claim arose under a federal statute or under federal common law." Richard H. Fallon, Jr., et al., *Hart & Wechsler's Federal Courts and the Federal System* 819 (7th ed. 2015). Whether one views a putative state-law claim governed by federal common law as a disguised federal claim or as a state-law claim the elements of which each raise substantial federal questions, see *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308, 314 (2005), such a claim is properly understood to arise under federal law.

3. Although the court of appeals did not reach the question of whether federal common law governs claims seeking redress for injuries allegedly caused by climate change, other courts of appeals have held that federal common law does not govern such claims. See pp. 19-21, *supra*. Those decisions suffer from two common errors.

First, some courts have required defendants to satisfy the test for fashioning a *new* rule of common law by identifying "a significant conflict between the state-law claims before it and the federal interests at stake." *Baltimore*, 31 F.4th at 203; see *Rhode Island*, 35 F.4th at 54. But the defendants in those cases never asked the courts of appeals to *expand* federal common law; instead, they relied on a long line of precedent in which this Court has already recognized that federal law alone necessarily governs interstate pollution.

Second, some courts have reasoned that, because the Clean Air Act has displaced the remedy for federal-common-law claims involving interstate emissions, federal common law "no longer exists" in this context, and state law can fill the void. *Boulder*, 25 F.4th at 1260 (emphasis omitted); see *Rhode Island*, 35 F.4th at 55; *Baltimore*, 31 F.4th at 206. But whether a party can obtain a remedy under federal common law is a distinct question from whether federal common law applies in the first instance. Indeed, a claim governed by federal common law arises under federal law for "jurisdictional purposes" even if that claim "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 *United States* v. *Standard Oil Co.*, 332 U.S. 301, 307, 313, 316 (1947) (deciding first whether federal common law governed and only then whether a remedy under federal common law exists).

In failing to recognize as much, those courts have also fundamentally misunderstood the relationship between state law and federal common law. In cases that involve "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations," only federal law can apply, because "our federal system does not permit the controversy to be resolved under state law" at all. *Texas Industries*, 451 U.S. at 641. In other words, where federal common law applies, "state law cannot be used." *City of Milwaukee* v. *Illinois*, 451 U.S. 304, 313 n.7 (1981).

As a result, there is no state law for the Clean Air Act (or any other federal statute) to resurrect: state law did not govern interstate emissions before Congress acted, and the application of state law to interstate-pollution claims remains inconsistent with our constitutional structure after the statutory displacement, even if federal law provides no remedy for the particular claim alleged. Were

it otherwise, Congress's decision to address an inherently federal issue by statute so directly as to displace *federal* common-law remedies would result in *state* common-law remedies suddenly becoming viable. As the Second Circuit put it, that result is "too strange to seriously contemplate." *City of New York*, 993 F.3d at 98-99.

Accordingly, respondent's claims are necessarily and exclusively governed by federal common law, even when styled as state-law claims, and district courts have federal-question jurisdiction under Section 1331, and thus removal jurisdiction under Section 1441(a).

C. The Question Presented Is Important And Warrants The Court's Review In This Case

The question presented in this case is recurring and has substantial legal and practical importance. It has now divided the courts of appeals, as well as two consecutive administrations. And the answer to it will dictate whether this and future climate-change lawsuits—lawsuits that "seek[] a global remedy for a global issue," App., *infra*, 21a—should proceed in federal or state court. This case, which cleanly presents the question of removal jurisdiction, is an ideal vehicle for the Court's review.

The question presented squarely implicates the longstanding principle that federal law alone necessarily governs disputes related to interstate pollution. As the Second Circuit recognized, a "mostly unbroken string of cases" spanning a century has applied federal law to such disputes. *City of New York*, 993 F.3d at 91. Now, given the consequential question presented and the enormous stakes as it relates to the national-security, economic, and energy policy of the United States, the Court's guidance is urgently needed. Indeed, as Judge Stras wrote, "only * * * the Supreme Court gets to make th[e] call" as to

whether these lawsuits will ultimately proceed in state or federal court. App., *infra*, 26a.

More broadly, whether a putative state-law claim is removable because it is necessarily and exclusively governed by federal common law is a significant jurisdictional question that arises in several contexts of unique federal importance, from interstate pollution to foreign affairs to tribal relations. The Court has long recognized the "great importance" of maintaining clear and uniform rules on issues relating to removal more generally. *Tennessee* v. *Davis*, 100 U.S. 257, 260 (1879).

The decision below creates particularly problematic results in light of those precedents. Under the court of appeals' understanding of the operation of federal common law and federal-question jurisdiction, an artfully pleaded claim for interstate pollution could never be removed to federal court absent complete diversity between the parties (which able plaintiffs' lawyers will readily avoid). Such outcomes cannot be squared with this Court's decisions holding that claims seeking redress for interstate air and water pollution arise under federal law alone and thus are properly heard in federal court.

Resolution of the question presented is especially important in the context of the nationwide climate-change litigation brought by state and local governments against energy companies. The decision below leaves open the door to countless state-court lawsuits applying state law to claims seeking redress for the global phenomenon of climate change. The potentially conflicting results of such lawsuits could "upset[] the careful balance that has been struck between the prevention of global warming," on the one hand, and "energy production, economic growth, foreign policy, and national security," on the other. *City of New York*, 993 F.3d at 93. In light of this Court's refusal to intervene to date, numerous climate-change lawsuits

are marching forward in state courts across the country. Absent the Court's intervention, our national energy policy may be decided by juries in state courts applying varying standards of state law.

This case is also an ideal vehicle for resolution of the question presented. That question was pressed below, fully briefed by the parties, and passed on by the court of appeals.

The petition for a writ of certiorari provides the Court with an opportunity to consider and resolve the question presented. That question is important; it has divided the courts of appeals; and the decision of the court of appeals was erroneous. The Court should grant certiorari here and provide clarity as to whether the climate-change cases should proceed in federal or state court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

WILLIAM A. BURCK
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street, N.W., Suite 900
Washington, DC 20005

MICHELLE SCHMIT
QUINN EMANUEL URQUHART & SULLIVAN, LLP
191 North Wacker Drive, Suite 2700
Chicago, IL 60606

Counsel for Petitioners Koch Industries; Flint Hills Resources LP; and Flint Hills Resources Pine Bend LLC

BRIAN D. SCHMALZBACH
MCGUIRE WOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219

Counsel for Petitioner American Petroleum Institute

KANNON K. SHANMUGAM
WILLIAM T. MARKS
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, N.W.
Washington, DC 20006
(202) 223-7300
kshanmugam@paulweiss.com

THEODORE V. WELLS, JR.
DANIEL J. TOAL
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019

Counsel for Petitioners Exxon Mobil Corporation and ExxonMobil Oil Corporation

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