No. 25-170

In the Supreme Court of the United States

SUNCOR ENERGY (U.S.A.), INC. ET AL.,

Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, ET AL.,

Respondents.

On Writ of Certiorari to the Supreme Court of Colorado

BRIEF OF SENATOR SHELDON WHITEHOUSE, REPRESENTATIVE PRAMILA JAYAPAL, AND 88 ADDITIONAL MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are 90 Members of Congress elected by voters to represent their States and to enact federal law where appropriate. Many *amici* sit on committees with jurisdiction over the environment, energy, natural resources, and the judiciary. *Amici* share an interest in maintaining an appropriate constitutional balance of power between the federal government and the States. *Amici* write to ensure that federal statutes and federal authority are not improperly used as cudgels to preempt States' police powers to protect their citizens.

Amici have an interest in protecting Congress's power to prescribe the preemptive scope of federal law. When Congress wants to preempt state power, Congress knows how to do so. In the Clean Air Act, Congress did not preempt state tort suits that, like respondents', are based on production and deceptive marketing and sales of fossil fuels known to cause harm. A conclusion that respondents' claims are preempted would replace explicit congressional intent against preemption with an unprecedented presumption *in favor of* preemption that would eliminate a wide range of traditional state authorities.

The following is a full list of *amici*:

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief.

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Sheldon Whitehouse

Senator
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SUMMARY OF ARGUMENT

The County Commissioners of Boulder County and the City of Boulder brought a state common law tort action for damages against fossil fuel companies to protect Boulder's property and to care for residents' safety. If the Court finds jurisdiction, the question that should guide the Court's merits analysis is whether Congress preempted these state tort claims. The answer to that question is plainly no, as evidenced by the Clean Air Act's text, structure, and purpose.

In the Clean Air Act, Congress created a comprehensive and detailed system for reducing air pollution. It did not address deceptive marketing or sales of fossil fuels at all. In an acknowledgment that Congress was entering into a space historically occupied by States, the Act embodies cooperative federalism, assigning primacy to States in many clean air programs. Congress expressly empowered state regulations beyond the federal standards and preserved state authority to seek "any" relief under "any statute or common law." The few exceptions, where Congress crafted explicit, narrow preemption clauses relating to state regulation of pollution from vehicles, airplanes, and fuel additives, prove the rule.

Petitioners seek to eliminate the powerful state role that Congress retained in the Clean Air Act. To do so, petitioners mischaracterize respondents' state law claims as "inherently federal" and argue for preemption based on vague constitutional theories. Petitioners subvert bedrock constitutional principles of federalism that preserve state power and ignore Congress's core role in dictating the scope of federal legislation. Their argument would turn any regulatory regime for a national industry into a default liability shield for deceptive practices or other misconduct. That is not how Congress legislates—in the Clean Air Act or otherwise. Nor has Congress endorsed any international policy that could remotely be read to preempt respondents' claims, which sound in traditional state authority. A ruling allowing respondents to proceed with their claims in state court would respect Congress's prerogative to determine when and how to preempt state actions and would preserve long-settled expectations of citizens, legislators, and courts.

ARGUMENT

I. The Clean Air Act's Text, Structure, And Purpose Preserve Respondents' State Common Law Tort Claims.

The Constitution gives Congress—and only Congress—the power to enact federal laws. U.S. Const. Art I., § 1. Where appropriate, Congress preempts state law. U.S. Const. Art. VI, Cl. 2; *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 778 (2019) (opinion of Gorsuch, J.). "[I]n any pre-emption analysis, the purpose of Congress is the ultimate touchstone." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 747 (1985) (cleaned up). The Clean Air Act's text, structure, and purpose show that Congress has not preempted respondents' state tort claims. The Act is intended to improve air quality primarily through emission reductions and thus does not reach respondents' claims that petitioners engaged in the tortious conduct of deceptive marketing and sales of their knowingly harmful products. But, even if respondents' claims—or any as-yet-undetermined remedies—could incidentally reduce air pollution or be construed to directly regulate emissions from covered sources, the Clean Air Act still plainly permits them.

A. The Clean Air Act Does Not Preempt Respondents' Claims, Which Target Entirely Different Conduct Than The Act.

Respondents seek to hold petitioners accountable for the harm that their residents and property have suffered due to petitioners' tortious conduct. The Clean Air Act does not regulate or address petitioners' harmful upstream actions, including deceptive marketing and sales of fossil fuels. Petitioners' argument ignores the mismatch between the conduct at issue in respondents' claims and the conduct that Congress sought to regulate in the Act. This fatal flaw should end the Court's inquiry.

In the Clean Air Act, Congress sought "air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source." 42 U.S.C. § 7401(a)(3). The statutory architecture predominantly targets *emissions* of air pollution *at the source*, ranging from standards for stationary sources, 42 U.S.C. §§ 7411, 7412, and mobile sources, 42 U.S.C. §§ 7521, 7547, 7571, to measures addressing ambient air quality, 42 U.S.C. § 7410, among others. *See also* 42 U.S.C. § 7602(k) (defining "emission limitation" as "any requirement related to the operation or maintenance of a source").

By contrast, respondents' claims seek redress for decades of production, marketing, and sales of a product known to be harmful (fossil fuel) that ultimately injured—and continues to injure—respondents' residents and property. J.A. 3 (Am. Compl. ¶ 5), J.A. 115 (Am. Compl. ¶ 452). Each claim is premised on petitioners' negligent, reckless, or intentional conduct in misleading consumers. *See* Pet. App. 1a-3a (listing claims for public and private nuisance, unjust enrichment, trespass, and civil conspiracy, as well as underlying theories). Respondents "**do not** seek to enjoin any oil and gas operations or sales in the State of Colorado, or elsewhere, or to enforce emissions controls of any kind." J.A. 139 (Am. Compl. ¶ 542) (emphasis in original).

The Clean Air Act does not speak to tort claims like respondents' regarding production or deceptive marketing and sales, and therefore does not preempt them. *See Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 69 (Iowa 2014) (explaining that the Clean Air Act "deal[s] with general emissions standards to prospectively protect the public, while common law actions retrospectively focus on individual tort remedies . . . for actual harm"), *cert. denied*, 574 U.S. 1026 (2014). Lower courts have recognized as much. *See Fenner v. General Motors, LLC*, 113 F.4th 585, 590, 596, 600-602 (6th Cir. 2024) (holding that state consumer protection claims based on automobile manufacturers' misrepresentations to consumers regarding emissions were not preempted by the Clean Air Act); *Counts v. General Motors LLC*, 139 F.4th 576, 582 (6th Cir. 2025) (applying *Fenner* for the principle that the plaintiffs' claims involving consumers' expectations and the manufacturer's advertising about vehicle emissions were not preempted unless remand showed that they "implicate[d] or challenge[d]" federal regulatory actions (citation omitted)); *In re Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, & Prods. Liab. Litig.*, 295 F. Supp. 3d 927, 1003 (N.D. Cal. 2018) (concluding that the Clean Air Act does not preempt claims based on deceptive marketing). Indeed, "[n]o federal court—not one—has ever preempted a state law deceptive marketing or consumer protection claim under the Clean Air Act." *Mayor of Baltimore v. B.P. P.L.C.*, 353 A.3d 1142, 1219 (Md. 2026) (Killough, J., concurring in part and dissenting in part).

Nor does the Act regulate, much less address, unjust enrichment from knowingly misleading the public about the foreseeable harms of fossil fuels. The Second Circuit illustrated this principle when it rejected preemption of state tort claims with a much closer nexus to the Clean Air Act's purview. *See In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, 725 F.3d 65 (2d Cir. 2013), *cert. denied sub nom. Exxon Mobil Corp. v. City of New York*, 572 U.S. 1080 (2014). There, the Second Circuit permitted state law claims challenging the tortious use of a chemical fuel additive known as MTBE even though Congress had identified MTBE as one potential method of compliance with the Act's reformulated gasoline requirements for motor vehicles. *Id.* at 78, 95-96. In rejecting defendant Exxon's conflict preemption arguments, the Second Circuit relied on the jury's determination "not only that the company used MTBE" to comply with the Act, but also "that Exxon knew of the dangers of MTBE and failed to take actions to mitigate MTBE contamination." *Id.* at

96, 103-104, 121-123 & n.43. In other words, Clean Air Act compliance could not shield tortious conduct from state common law that lies beyond the Act's requirements, even when the conduct was taken in part to comply with the Act.

This Court declined to preempt Virginia's ban on uranium mining under analogous logic in *Virginia Uranium*. As the Court explained, Virginia's ban targets conduct removed in place, time, and regulatory focus from the federal statute's purview over the milling, transfer, use, and disposal of uranium, as well as the construction and operation of nuclear power plants. *See* 587 U.S. at 768 (opinion of Gorsuch, J.) ("[T]he statute speaks very differently, expressly stating that the [Nuclear Regulatory Commission]'s regulatory powers arise only after uranium's removal from its place of deposit in nature." (cleaned up)). Similarly, the Clean Air Act's regulatory powers primarily arise after fossil fuels are burned and emit pollutants into the air—well after the actions targeted by respondents' lawsuit. Petitioners' upstream tortious conduct—the production and deceptive marketing and sales of fossil fuels that they knew would subsequently cause harm—falls outside of the Act's purview of regulating the amount of air pollution that a source may emit.

No matter how broadly one might define the reach of the Clean Air Act's emissions regulation, the absence of any statutory language addressing deceptive marketing and sales of fossil fuels mandates the conclusion that respondents' claims are not statutorily preempted. *See, e.g.*, *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 85 (1994) ("Nor would we adopt a court-made rule to supplement federal statutory regulation that is comprehensive and detailed; matters left unaddressed in such a scheme are presumably left subject to the disposition provided by state law."); *De Canas v. Bica*, 424 U.S. 351, 358-359 (1976) (concluding that, despite the Immigration and Nationality Act's "comprehensive[] . . . scheme for regulation of immigration and naturalization," the absence of any language in the Act regarding employment eligibility dictated that the federal statute did not preempt a state law prohibiting the employment of persons not entitled to lawful residence in the United States). Holding otherwise would conjure legislative intent out of thin air.

Likely for this reason, some members of Congress have effectively acknowledged that the Clean Air Act does not preempt respondents' claims. They have introduced bills that would prohibit any state or federal suit "brought against any person engaged in the energy business . . . for alleged past or future harm resulting directly or indirectly from climate change, including because of marketing, alleged misrepresentation, alleged failure to warn, or any other speech." Stop Climate Shakedowns Act of 2026, S. 4340, 119th Cong. § 3 (2026); Stop Climate Shakedowns Act of 2026, H.R. 8330, 119th Cong. § 3 (2026). Put simply, the bills would immunize deep-pocketed and politically powerful coal, oil, and gas interests from accountability for harms their actions have caused to Americans, including under the very same state tort theories that respondents raise.[2] "The fact that the

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[2] The proposed bill and many of the *amicus* briefs filed in this case are part of an industry-driven project to evade

proposal was made suggests that its proponents thought it was necessary." *Cook v. Gralike*, 531 U.S. 510, 521 (2001).

B. Even If Respondents' Claims Could Be Interpreted As Affecting Emissions, The Clean Air Act Expressly Preserves State Authority To Do So.

"The best evidence of [congressional] purpose is the statutory text adopted by both Houses of Congress and submitted to the President." *West Virginia Univ. Hospitals v. Casey*, 499 U.S. 83, 98 (1991). Even if petitioners were correct that respondents' claims could incidentally reduce or even directly regulate emissions (which they do not), the Clean Air Act's text, structure, and purpose permit that.

In the Act, Congress preserved state authority through two broad saving clauses. The saving clauses ensure that the Act sets a federal floor to prevent a "race to the bottom" but otherwise largely leaves state power intact, recognizing the enduring role of States in pollution regulation. First, in the citizen-suit provision, Congress preserved the "right which any person (or class of persons) may have under any statute

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accountability for all conduct related to their businesses. At least 17 *amici* in support of petitioners have received financial support from fossil fuel-linked donors. These *amicus* briefs present as an outpouring of support for a legal position, but publicly available information shows them to be funded by a small and powerful phalanx of self-interested entities. These industry front groups and their funders are part of a tightly connected web of organizations dedicated to protecting fossil fuel interests in Congress, at executive agencies, and in the courts. We document some of the common financial supporters of these *amici* in Appendix A.

or common law to seek enforcement of *any* emission standard or limitation *or to seek any other relief*." 42 U.S.C. § 7604(e) (emphasis added). Second, the Act provides that "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." 42 U.S.C. § 7416. Through the saving clauses, Congress expressly sanctioned more stringent state enforcement (indirect *and* direct) of the same pollution from the same sources regulated by the Clean Air Act.

Applying those saving clauses, courts have recognized that the Clean Air Act preserves state law nuisance claims addressing harmful air pollutant emissions, even when those emissions complied with Act's emissions limits. For example, in *Merrick v. Diageo Americas Supply, Inc.*, the Sixth Circuit concluded that "[t]he states' rights savings clause of the Clean Air Act expressly preserve[d]" the plaintiffs' "state common law" suits for trespass and nuisance caused by ethanol emissions—notwithstanding the Act's regulation of such emissions. 805 F.3d 685, 687, 689-690 (2015). The Third Circuit similarly concluded that the Act's saving clauses preserved state nuisance, negligence or recklessness, and trespass claims for harms caused by regulated emissions from a coal-fired power plant. *Bell v. Cheswick Generating Station*, 734 F.3d 188, 192, 195-197 (2013), *cert. denied* *sub nom. GenOn Power Midwest, L.P. v. Bell*, 572 U.S. 1149 (2014).[3]

Moreover, the Clean Air Act's cooperative federalism structure maintains a substantial state role in addressing air pollution. *See Oklahoma v. EPA*, 605 U.S. 609, 615 (2025) ("The [Clean Air Act] makes the [state plan] process one of federal-state collaboration."); *Union Electric Co. v. EPA*, 427 U.S. 246, 256-257 (1976) ("The [Clean Air Act] place[s] the primary responsibility for formulating pollution control strategies on the States[.]"). Congress empowered States, primarily, to devise plans to help meet air quality standards—including by controlling pollution that travels across state boundaries—and to achieve emissions benchmarks for existing sources. 42 U.S.C. §§ 7410(a)(2)(D)(i), 7411(d). Congress even narrowly tailored preemption of state emissions standards for aircraft and new motor vehicles, with carveouts for California to set its own motor-vehicle emissions standards and for other States to adopt California's standards. 42 U.S.C. §§ 7543(b), 7507, 7573; *see also* 42 U.S.C. § 7545(c)(4)(A) (narrowly limiting state regulation of fuel additives). "Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992) (plurality opinion).

The interstate nature of air pollution does not alter the state role that Congress prescribed. *Contra*

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[3] As respondents explain (Br. 43), the Second Circuit's outlier holding in *City of New York v. Chevron*, 993 F.3d 81 (2d Cir. 2021), that New York's state law was preempted is inconsistent with the Constitution and this Court's precedents.

Petrs. Br. 33-34. In *Int'l Paper Co. v. Ouellette*, this Court recognized that the analogous Clean Water Act allows downstream States to use source state common law to address harms from pollution originating in a different State, relying on that Act's similar saving clauses. 479 U.S. 481, 497 (1987). Applying ordinary preemption principles, the Court explained that "because the Act specifically allows source States to impose stricter standards," such common law claims "do[] not disrupt the [federal-State] regulatory partnership established by the permit system." *Id.* at 491-492, 499. Unlike the at-issue claims in *Ouellette*, where the affected State's law to may have disrupted the source State's established effluent limitation, tort liability here would neither upset emissions standards carefully calibrated to meet statutory goals—whether by EPA or the source State—nor cause confusion as to permitted sources' obligations under the Clean Air Act. *Contra id.* at 494-497. Regardless of the outcome of respondents' claims, Congress's requirements for emissions standards in the Clean Air Act will remain in place, and regulated parties must meet only federal and source State requirements to ensure compliance with the Act's emissions limits.

The text, purpose, and structure of the Clean Air Act are supported by legislative history demonstrating Congress's intention to preserve state power to address harms from air pollution. Discussing the Act's citizen-suit provision, the Report of the Senate Committee on Public Works recognized the continued availability of state tort suits: "Compliance with standards under this Act would not be a defense to a common law action for pollution damages." S. Rep. No. 91-1196, at 38 (1970); *see also* S. Rep. No. 101-

228, at 196, 249 (1989) ("To assure that such a[n unintended] preemption of State or local law, whether statutory or common, does not occur, environmental legislation enacted by the Congress has consistently evidenced great care to preserve State and local authority and the consequent remedies available to citizens injured by the release of harmful substances into the environment.").

Tellingly, petitioners do not argue that the Clean Air Act expressly preempts respondents' claims. Their silence reflects the lack of a colorable argument on these grounds, because the Act contains no express preemption of tort claims addressing production, sales, marketing, deception, or a company's duty to communicate honestly about the consequences of its products, much less preemption of state tort law generally. *See Wyeth v. Levine*, 555 U.S. 555, 574 (2009) ("If Congress thought state-law suits posed an obstacle to its objectives, it surely would have enacted an express pre-emption provision at some point during the [statute's] 70-year history.").

Lacking statutory support, petitioners' implied preemption arguments "rest[] on judicial guesswork," which this Court disfavors. *Kansas v. Garcia*, 589 U.S. 191, 214 (2020) (Thomas, J., concurring) (quoting *Wyeth*, 555 U.S. at 587); *see also Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 459 (2005) (Thomas, J., concurring in part and dissenting in part) (noting "this Court's increasing reluctance to expand federal statutes beyond their terms through doctrines of implied pre-emption"); *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 617 (1997) (Thomas, J., dissenting) ("[O]ur recent cases have frequently rejected field pre-emption in the absence of statutory language expressly requiring it."); *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625, 640-641 (2012) (Sotomayor, J., concurring in part and dissenting in part) (quoting Justice Thomas's language from *Camps Newfound/Owatonna*).

In sum, the Clean Air Act provides no reasonable basis to conclude that Congress sought to occupy the field of air pollutant emissions "so pervasive[ly] as to make reasonable the inference that Congress left no room for States to supplement it," or that the "federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *English v. General Electric Co.*, 496 U.S. 72, 79 (1990) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Nor do respondents' claims present "an impermissible 'obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Virginia Uranium*, 587 U.S. at 777 (opinion of Gorsuch, J.) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The Act shows the opposite.

II. Petitioners' Arguments Undermine Congress's Authority To Decide When And To What Extent To Preempt State Tort Law.

Petitioners hardly disguise their intent to upend decades of this Court's jurisprudence respecting Congress's legislative choices and state sovereignty in our federal system. This Court has long viewed overly expansive preemption as "a serious intrusion into state sovereignty," *Medtronic, Inc., v. Lohr*, 518 U.S. 470, 488 (1996) (plurality opinion), that risks disturbing the traditional "federal-state balance" of authority, *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 717 (1985). Accordingly, "the historic police powers of the States [are] not to be superseded . . . unless that was the clear and manifest purpose of Congress." *Wyeth*, 555 U.S. at 565 (quoting *Medtronic, Inc.*, 518 U.S. at 485). "Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to 'a constitutional text or federal statute' that does the displacing or conflicts with state law." *Virginia Uranium*, 587 U.S. at 767 (opinion of Gorsuch., J.) (quoting *Puerto Rico Dep't of Consumer Affairs v. ISLA Petroleum Corp.*, 485 U.S. 495, 503 (1988)). Just last term, the Court rejected an argument that "the Constitution's structure implicitly preempts" state law claims when the defendant could cite "[n]o provision of the Constitution and no federal statute" justifying preemption. *Hencely v. Fluor Corp.,* 146 S. Ct. 1086, 1097, 1099 (2026).[4]

Ignoring this jurisprudence and Congress's explicit legislative choices in the Clean Air Act, petitioners argue (Br. 30, 39) that respondents' claims implicate "inherent federal authority" and are thus constitutionally preempted. Their vague theory flies in the face of this Court's preservation of similar claims regarding "States' traditional authority to provide tort remedies to their citizens." *Silkwood v. Kerr-McGee Corp.,* 464 U.S. 238, 248 (1984). Through the imposition of tort liability, States exercise their "historic

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[4] What's more, *Hencely* involved activities by federal contractors at a foreign U.S. military base, 146 S. Ct. at 1091-1092—surely an "inherent federal" context if there ever was one.

powers to protect the health, safety, and property rights of [their] citizens," *In re Methyl Tertiary Butyl Ether ("MTBE")*, 725 F.3d at 96, including "the protection of their people against fraud and deception," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 144 (1963) (cleaned up). *See also Edenfield v. Fane*, 507 U.S. 761, 769 (1993) ("[A state's] interest in ensuring the accuracy of commercial information in the market-place is substantial.").

Far from being inherently federal, respondents' state tort claims fall within an area of traditional state authority that predates the Clean Air Act and that Congress has declined to occupy. *See Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122, 142 (2d Cir. 2023) (explaining that consumer protection claims "have absolutely nothing to do with the federal common law of transboundary pollution" (cleaned up)). Unlike the cases petitioners cite (Br. 30), respondents' claims neither "exist solely by virtue" of federal statute, *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341, 348, 353 (2001), nor implicate a field that the federal government alone has long regulated, *United States v. Locke*, 529 U.S. 89, 108 (2000); *Parker Drilling Management Services, Ltd. v. Newton*, 587 U.S. 601, 609 (2019). Their argument has no application here.

Writ large, petitioners' argument would "swallow most of the police power of the States over" tort law. *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325, 328 (1973). It would result in *any* federal permitting or licensing regime for a national industry (like the Clean Air Act) immunizing that industry from *all* state tort liability by default, even for deceptive practices or other knowing and willful tortious conduct. This is not how Congress legislates: Congress does not implicitly create liability shields for tortious conduct whenever it regulates within a field. *See Silkwood*, 464 U.S. at 263 (observing that "it is inconceivable that Congress intended to leave victims with no remedy at all"); *Cook v. Rockwell Int'l Corp.*, 790 F.3d 1088, 1098 (10th Cir. 2015) (Gorsuch, J.) ("Often Congress entrusts before-the-fact regulation to a federal agency while leaving at least some room for after-the-fact state law tort suits.").

Instead, even where Congress does preempt traditional state authority, it often carves out consumer protection claims, recognizing the importance of States' ability to protect citizens from fraud-based harm. *See, e.g.,* 15 U.S.C. §§ 7902, 7903(5)(A) (barring civil actions against firearm manufacturers, sellers, or trade associations for damages from the unlawful misuse of firearms, while permitting suits where the manufacturer or seller themselves knowingly violated applicable sales and marketing laws and such violation proximately caused the harm alleged); *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 286 (2025) (quoting 15 U.S.C. § 7903(5)(A)(iii)).

Petitioners' reliance on the Clean Air Act's displacement of *some* federal common law falls well short of justifying their extravagant, limitless preemption theory. "[E]ven where a federal statute does displace State authority, it rarely occupies a legal field completely, totally excluding all participation by the legal systems of the states[.]" *Southland Corp. v. Keating*, 465 U.S. 1, 18 (1984) (Stevens, J., concurring in part and dissenting in part) (quotation marks omitted). For example, Congress's inclusion of a preemption clause and a saving clause in the Consumer Product Safety Act ("CPSA"), 15 U.S.C. §§ 2074(a), 2075, has resulted in courts concluding that state tort claims are preserved unless they clearly conflict with CPSA compliance, relying on this Court's analogous determination in *Geier v. American Honda Motor Co.*, 529 U.S. 861, 870 (2000). *See, e.g.*, *Colon v. BIC USA, Inc.*, 136 F. Supp. 2d 196, 205 (S.D.N.Y. 2000) ("The analysis set forth in *Geier* makes clear that the presence of the saving clause in the CPSA eliminates a broad reading of the preemption provision to include common law claims."); *but see Moe v. MTD Prods.*, 73 F.3d 179, 182 (8th Cir. 1995) (decided before *Geier*). And under the Federal Trade Commission Act state law is preempted only if it conflicts with federal act compliance. *See, e.g.*, *Clark v. Citizens of Humanity, LLC*, 97 F. Supp. 3d 1199, 1205-1206 (S.D. Cal. 2015). Here, petitioners fail to identify any specific conflict that might arise between the Clean Air Act and respondents' requested relief. *See American Electric Power Co. v. Connecticut*, 564 U.S. 410, 429 (2011) ("In light of our holding that the Clean Air Act displaces federal common law, the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act."). Their displacement theory is wrong on all counts.

Likewise, where Congress creates a comprehensive federal regime to regulate the marketing and labeling of products, this Court has consistently preserved state consumer protection claims unless expressly preempted. *See, e.g.*, *Wyeth*, 555 U.S. at 574 (rejecting argument that the Federal Food, Drug, and Cosmetic Act preempts failure-to-warn claims for prescription drugs, pointing to an express preemption provision for medical devices as evidence of congressional intent); *Bates*, 544 U.S. at 444, 446-447 (concluding that many state law actions are not preempted by the Federal Insecticide, Fungicide, and Rodenticide Act, including those outside of "labeling or packaging" or that are similar to the federal statute's requirements); *Cipollone*, 505 U.S. at 528 (plurality opinion) (preserving state law claims deemed unrelated to the advertising or promotion of cigarettes, such as fraudulent misrepresentation claims based on "a state-law duty to disclose such facts through channels of communication other than advertising or promotion"). Pollution is inherently harmful, which is why it is regulated by Congress under the Clean Air Act; lying about the harm, or illegally misleading the public, is completely separate conduct from that inflicted by the regulated emissions.

Accordingly, absent clear congressional intent to the contrary, courts around the country have allowed state tort claims like respondents' for injuries caused by (often knowing and willful) production and promotion of regulated products in the stream of interstate commerce—including opioids, gasoline, lead paint, asbestos, chemicals, guns, and cigarettes.[5]

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[5] *See generally* Findings of Fact and Conclusions of Law and Order Denying Defendants' Motion for Summary Judgment Re: "Factual Issue #2," *In re Opioid Litigation*, No. 21-C-9000 (W. Va. Kanawha Cnty. Cir. Ct. July 1, 2022) (summarizing case law permitting nuisance suits against opioid manufacturers), https://tinyurl.com/5csw289w; *City & Cnty. of San Francisco v. Purdue Pharma L.P.,* 491 F. Supp. 3d 610 (N.D. Cal. 2020) (opioids); *In re Methyl Tertiary Butyl Ether ("MTBE")*, 725 F.3d 65 (gasoline); *People v. ConAgra Grocery Prods. Co.*, 227 Cal. Rptr.

Like these actions, respondents' claims present no threat to any concrete federal interest or viable extraterritorial concern. Respondents seek damages for only in-State harms that petitioners caused, and, regardless, state courts are more than capable of weighing well-established choice of law principles. Resps. Br. 4, 25. Similarly, state courts can determine the sufficiency of the causal chain between the alleged injuries and deceptive marketing acts. But whether respondents can prove causation is not a preemption question, *cf.* Petrs. Br. 34-36; it is a question for summary judgment or trial.

Moreover, petitioners' attempt to overwrite Congress's legislative choices under a novel presumption *in favor of* preemption (Br. 30-31, 44) would undermine longstanding congressional practice and constitutional principles. Congress and industry alike rely on preemption guidelines preserving state law unless in clear conflict with a federal statute. Against this stable backdrop, Congress can reliably dictate, and citizens can reliably predict, the preemptive scope of federal laws. A presumption *in favor of* preemption not only cuts against those reliance and certainty interests, but also undermines the bedrock constitutional principle reserving power to the States. U.S. Const. Amend. X. Petitioners' rule would diminish Congress's primary role dictating the scope of its own legislation.

3d 499 (Cal. Ct. App. 2017) (lead paint); *Northridge Co. v. W.R. Grace & Co.*, 556 N.W.2d 345 (Wis. App. 1996) (asbestos); *Johnson v. 3M*, 563 F. Supp. 3d 1253 (N.D. Ga. 2021) (chemicals); *City of Gary v. Smith & Wesson*, 801 N.E.2d 1222 (Ind. 2003) (guns); *Cipollone*, 505 U.S. 504 (cigarettes).

The Court should reject petitioners' arguments and honor "not only what Congress wrote but, as importantly, what it didn't write." *Virginia Uranium*, 587 U.S. at 765 (opinion of Gorsuch, J.). After all, "it is Congress rather than the courts that preempt law." *Chamber of Commerce of United States of America v. Whiting*, 563 U.S. 582, 607 (2011) (principal opinion) (cautioning against "freewheeling judicial inquiry into whether a state statute is in tension with federal objectives" (cleaned up)); *see also Cisco Sys., Inc. v. Doe I*, 146 S. Ct. 1882, ____, 225 L. Ed. 2d 460, 472 (2026) ("Congress is better positioned than courts to evaluate the policy tradeoffs of creating liability."). The Court should preserve Congress's legislative powers. Claims that are "historically within the reach of the police power of the States," should not be "silently taken away from the States by the [Clean Air Act], which does not purport to supply the exclusive remedy." *Askew*, 411 U.S. at 343; *see also Oklahoma v. Castro-Huerta*, 597 U.S. 629, 653 (2022) ("States do not need a permission slip from Congress to exercise their sovereign authority.").

III. No Congressionally Approved Foreign Policy Preempts Respondents' Claims.

Petitioners assert (Br. 42) that adjudication of respondents' tort claims would "interfere with the United States' foreign policy on climate and energy issues." But they fail to identify any foreign policy in tension with respondents' claims, much less the clear and substantial conflict with federal foreign policy typically required to preempt state laws operating in a traditional area of state authority. *See American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 419-421 & n.11 (2003); *see also Medellin v. Texas*, 552 U.S. 491, 498-

499, 523-532 (2008) (concluding that a presidential memorandum seeking to discharge the United States' international obligations was not a "directly enforceable federal law" sufficient to preempt state habeas rules).

Petitioners' attempt to gin up a conflict between federal foreign policy and respondents' tort claims falls short. They invoke (Br. 41) the Global Climate Protection Act of 1987, which sets goals of developing a research agenda and entering multilateral agreements on climate science and emissions reduction technologies. Title XI of Pub. L. No. 100-204, §§ 1103, 1104, 101 Stat. 1331, 1407-1409 (1987), note following 15 U.S.C. § 2901. This largely hortatory act is not in any tension with the availability of state tort lawsuits.

Petitioners also invoke (Br. 41) two treaties irrelevant to preemption analysis. The 1992 United Nations Framework Convention on Climate Change ("UNFCCC") merely creates aspirational goals for international efforts to reduce climate pollution through the sharing of national emissions inventories, scientific and technological knowledge, and information about measures to reduce climate pollution. S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107, art. 4. The 2016 Kigali Amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer commits signatories to the phaseout of hydrofluorocarbon refrigerants (not fossil fuels), which are not at issue in this case. S. Treaty Doc. No. 117-1, C.N. 730.2017. The statute carrying out efforts to comply with the Kigali Amendment also does not address fossil fuels, *see* 42 U.S.C. § 7675, as is evident from petitioners' failure to mention it in their statutory preemption arguments.

Neither treaty concerns deceptive or otherwise tortious production, promotion, refining, marketing, or sales of fossil fuels; nor do the treaties establish an appropriate level of greenhouse gas air pollution that might preclude further state action to reduce emissions. There is no reasonable basis to conclude that these treaties preempt any of respondents' claims. Indeed, the Congresses that ratified these treaties would be shocked to learn that, in doing so, they had preempted state tort claims for deceptive marketing and sales of fossil fuels.

Similarly, the Clean Air Act's mechanism to address state impacts on international air pollution, 42 U.S.C. § 7415, has no bearing on liability for tortious conduct based on deception and knowing infliction of harm. Petitioners' argument would fail even if respondents sought to regulate greenhouse gas emissions (which they do not). Far from preempting state action to reduce air pollution, the provision *requires* States to reduce air pollution once EPA finds that cross-border pollution is endangering public health or welfare in a foreign country. 42 U.S.C. § 7415(b). Petitioners thus have "not identified any provision of law expressly preempting [respondents'] suit." *Hencely*, 146 S. Ct. at 1093.

The United States' opposition to vague "liability and compensation schemes," U.S. Br. 27 (citation omitted); Petrs. Br. 41 (citation omitted), concerns country-to-country reparations for injuries from greenhouse gas emissions, not damages owed by private companies to Boulder citizens or even American consumers harmed by their fossil fuel products. And "new frictions" in climate negotiations that tort claims against fossil fuel companies could purportedly cause, U.S. Br. 27 (citation omitted), are highly speculative and unlikely to materialize in the near future. The Administration's withdrawal from the Paris Agreement (under the UNFCCC), Exec. Order No. 14162, 90 Fed. Reg. 8455, 8455 (Jan. 30, 2025), and its absence at the recent Conference of the Parties to the UNFCCC ("COP30") merely reflect withdrawal from the field of international climate negotiations—and certainly not an established foreign policy against liability for tortiously marketing and selling fossil fuels.

The Administration's broader economic policy goals also cannot preempt respondents' claims. *Contra* Petrs. Br. 41-42. To begin with, they are not enforceable federal law and lack sufficiently binding effect to satisfy the stringent requirements necessary to preempt state law. *Medellin*, 552 U.S. at 498; *see also Lipschultz v. Charter Advanced Servs. (MN), LLC*, 589 U.S. 1038, 1039-1040 (2019) (Thomas, J., joined by Gorsuch, J., concurring in the denial of cert.) (expressing doubt that an executive agency's policy could serve as the basis for preemption of state law). Further, many of the attenuated economic concerns that petitioners invoke fall within Congress's constitutional prerogatives and cannot serve to preempt state law without a congressionally approved policy. *See Barclays Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298, 324, 330 (1994) (requiring "specific indications of congressional intent" to determine whether a state law touching on foreign commerce was preempted and rejecting "merely precatory" Executive Branch statements as unable to "render unconstitutional [an] otherwise valid, congressionally condoned" state action). "[W]hether the realm is foreign or domestic, it is still the Legislative Branch, not the Executive Branch, that makes the law." *Zivotofsky v. Kerry*, 576 U.S. 1, 21 (2015). Respondents' claims are not preempted by passing fancies of executive policymaking. Those are not law.

CONCLUSION

For the foregoing reasons, if this petition is not dismissed for lack of jurisdiction, this Court should affirm the judgment below.

Respectfully submitted,

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August 3, 2026

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APPENDIX A

Amici For Petitioners Receiving Funding From Fossil Fuel-Linked Donors[1]

	Donors Trust / Donors Capital Fund[2]	Leonard Leo Network[3]	Koch Foundation / Koch Industries[4]	Bradley Foundation[5]	Oil Majors (Chevron, ExxonMobil, Shell, bp)
Advancing American Freedom	X	X			
American Petroleum Institute					X
American Tort Reform Association			X		X
Atlantic Legal Foundation					X

Center for Individual Rights	X	X			
Chamber of Commerce					X
Consumers' Research	X	X			
Independence Institute	X			X	
Manhattan Institute	X	X	X	X	X
National Association of Manufacturers			X		X
Pacific Legal Foundation	X		X		

Save Our States (project of People for Opportunity)		X		X	
The Breakthrough Institute			X		
The Buckeye Institute	X		X	X	
The Center for Environmental Accountability					X
The Pelican Institute for Public Policy	X		X	X	
Washington Legal Foundation	X				X

1 Charts created by the Democratic staff of the Senate Environment and Public Works Committee.

2 Donors Trust and Donors Capital Fund are affiliated donor-advised funds that allow donors to make grants to nonprofit organizations without publicly disclosing their identities. Donors Trust and Donors Capital Fund contributed $181,493,387 to organizations identified as promoting climate disinformation from 2020 to 2022, the third-highest total among donor-advised fund sponsors. Chuck Collins, Bella DeVaan & Helen Flannery, *Inside the World of Fossil Fuel Philanthropy*, Inst. for Pol'y Stud. (Oct. 2, 2024), https://perma.cc/ZYP4-8FJ7.

3 The "Leonard Leo Network" refers to a group of affiliated nonprofits, including the 85 Fund and the Concord Fund, that fund conservative legal and political advocacy. The network is among the largest funders of climate disinformation in the country and has coordinated a national effort to pass state legislation shielding fossil fuel companies from climate-related lawsuits. Abrahm Lustgarten, *"Economic Civil War": States Push Laws to Shield Oil and Gas Companies From Accountability*, ProPublica (Apr. 7, 2026), https://perma.cc/2W5U-TPP9.

4 Koch Industries is a privately held company with substantial interests in oil refining, pipelines, and chemical manufacturing. Charitable and advocacy entities funded by the company and the Koch family, including the Charles Koch Foundation and Stand Together, have funded organizations opposing climate and environmental regulation for decades. Robert J. Brulle, et al., *Obstruction Action: Foundation Funding and US Climate Change Counter-Movement Organizations*, 166 Climatic Change 18 (2021).

5 The Lynde and Harry Bradley Foundation is a private foundation that funds conservative policy research and advocacy organizations nationally. From 2020 to 2022, the Bradley Foundation contributed $21,811,200 to organizations promoting climate disinformation—the third-highest total among private foundations during that period. Collins, DeVaan & Flannery, *Inside the World of Fossil Fuel Philanthropy.*

Amicus Name	Sampling of Funders
Advancing American Freedom	- Concord Fund (Leonard Leo)[6] - Donors Trust[7]
American Petroleum Institute	- Oil-major trade association—Shell, ExxonMobil, Chevron, bp, and ConocoPhillips are members[8]
American Tort Reform Association	- Koch Industries[9] - ExxonMobil[10]
Atlantic Legal Foundation	- Chevron[11] - ExxonMobil[12]
Center for Individual Rights	- 85 Fund (Leonard Leo)[13] - Donors Trust / Donors Capital Fund[14]
Chamber of Commerce	- ExxonMobil[15]
Consumers' Research	- Donors Trust[16] - Concord Fund (Leonard Leo)[17]
Independence Institute	- Donors Trust[18] - Bradley Foundation[19]

Manhattan Institute	- Donors Trust[20] - 85 Fund (Leonard Leo)[21] - Charles Koch Foundation / Stand Together (Koch)[22] - ExxonMobil[23] - Bradley Foundation[24]
National Association of Manufacturers	- Oil-major trade association members with board seats currently held by Shell, ExxonMobil, bp, Conoco Phillips, and Koch Government Affairs[25]
Pacific Legal Foundation	- Donors Trust[26] - Stand Together (Koch)[27]
Save Our States (project of People for Opportunity)	- Concord Fund (Leonard Leo)[28] - Bradley Foundation[29]
The Breakthrough Institute	- Stand Together (Koch)[30]
The Buckeye Institute	- Donors Trust[31] - Charles Koch Foundation[32] - Bradley Foundation[33]
The Center for Environmental Accountability	- Institute for Energy Research[34]
The Pelican Institute for Public Policy	- Donors Trust[35] - Stand Together (Koch)[36] - Bradley Foundation[37]

Washington Legal Foundation	- ExxonMobil[38] - Donors Capital Fund[39]

6 The Concord Fund listed grants to Advancing American Freedom on its tax filings for 2020-2023. The Concord Fund, IRS Form 990, at Sched. I, Part II, Line 3 (2020), https://tinyurl.com/48wa562t (all links last visited July 28, 2026); *id.* at Line 12 (2021), https://tinyurl.com/28v3vdjc; *id.* at Line 18 (2022), https://tinyurl.com/4we9x7jh; *id.* at Line 9 (2023), https://tinyurl.com/7w9rvysf. Total contributions during that period amounted to $3.25 million. *Ibid.* A $1.25 million donation in tax year 2023 comprised 14% of the organization's annual revenue. *See Advancing American Freedom Inc,* ProPublica Nonprofit Explorer, https://perma.cc/GYU5-W22S (listing $8.97 million of total revenue for tax year 2023).

7 Donors Trust listed a grant to Advancing American Freedom Foundation on its 2024 tax filing. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 575 (2024), https://tinyurl.com/yd3xpv9b. Advancing American Freedom and Advancing American Freedom Foundation are related tax-exempt organizations. Advancing American Freedom, Inc., IRS Form 990, at Sched. R, Part II (2024), https://tinyurl.com/2sv3p6ny. 2024 tax filings are the most recent publicly available tax filings.

8 *Members*, Am. Petroleum Inst., https://perma.cc/D3UU-3EP2 (organization's membership directory).

9 Though American Tort Reform Association no longer publicly publishes a member list, Koch Industries was a member for many years. *See, e.g., 50 Representative Members*, Am. Tort Reform Ass'n (captured on Aug. 5, 2004), https://tinyurl.com/3tunfxe8; *Sample List of ATRA Members,* Am. Tort Reform Ass'n (captured on Feb. 4, 2012), https://tinyurl.com/mpm9624r.

10 ExxonMobil listed lobbying expenditures for the American Tort Reform Association from 2021-2023. ExxonMobil Corp., *2021 Lobbying Report* 26 (2021), https://perma.cc/LN2P-5UNL; ExxonMobil Corp., *2022 Lobbying Report* 18 (2022),

https://perma.cc/A42Y-SCWN; ExxonMobil Corp., *2023 Advocacy Report* 48 (2023), https://perma.cc/3SYM-7LXN. The 2023 Advocacy Report is the most recent publicly available report on Exxon's lobbying expenditures. *See* ExxonMobil. Political Activity Reports, ExxonMobil, https://perma.cc/NJ7T-EFH6.

11 The Atlantic Legal Foundation ("ALF") listed Chevron as a corporate supporter and as a platinum sponsor of its annual dinner host committee in 2025. ALF, *2025 Annual Report* 25, 40 (2025), https://perma.cc/38H6-4YU8.

12 ALF listed ExxonMobil as a corporate supporter and as a platinum sponsor of its annual dinner host committee in 2025. ALF, *2025 Annual Report* 25, 40. In 2025, ALF also honored ExxonMobil's CEO as its annual awardee, *id.* at 23, elected ExxonMobil's Vice-President, General Counsel & Secretary to its Board of Directors, *id.* at 34, and appointed Exxon's Executive Counsel, Legal Policy & Administration to its Advisory Council, *ibid*.

13 The 85 Fund listed a grant to the Center for Individual Rights for $350,000 on its 2024 tax filing. The 85 Fund, IRS Form 990, at Sched. I, Part II, Line 13 (2024), https://tinyurl.com/yc6uhz83. That donation accounted for 12% of the organization's annual revenue. *See Center for Individual Rights*, ProPublica Nonprofit Explorer, https://perma.cc/KYK6-WGFR (listing $2.84 million of total revenue for tax year 2024 (fiscal year ending Mar. 2025)).

14 Donors Capital Fund listed a grant to the Center for Individual Rights on its 2020 tax filing. Donors Capital Fund, Inc., IRS Form 990, at Sched. I, Part II, Line 10 (2020), https://tinyurl.com/2j7pcxua. Donors Trust listed grants to the Center for Individual Rights on its tax filings for 2021-2024. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 116 (2021), https://tinyurl.com/yjxkf4pb; *id.* at Line 128-129 (2022), https://tinyurl.com/49bntzm2; *id.* at Line 396 (2023), https://tinyurl.com/54xsuren; *id.* at Line 148 (2024), https://tinyurl.com/yd3xpv9b.

15 ExxonMobil listed lobbying expenditures for the U.S. Chamber of Commerce in 2021-2023, including expenditures greater than $1 million in 2021 and 2022 ExxonMobil Corp., *2021 Lobbying Report* 24; ExxonMobil Corp., *2022 Lobbying Report* 17; ExxonMobil Corp., *2023 Advocacy Report* 47.

16 Donors Trust listed grants totaling $28.3 million to Consumers' Research on its tax filings for 2020-2024. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 190 (2020), https://tinyurl.com/vkw9p277; *id.* at Line 167-168 (2021); *id.* at Line 177 (2022); *id.* at Line 110 (2023); *id.* at Line 306-307 (2024). Total contributions during that period comprised 77% of the organization's revenue. *See Consumers Research Inc*, ProPublica Nonprofit Explorer, https://perma.cc/2ANN-S4WD (listing $36.8 million of total revenue for tax years 2020-2024); *see also* Lustgarten, *"Economic Civil War": States Push Laws to Shield Oil and Gas Companies From Accountability,* (discussing Donors Trust contributions to Consumers' Research).

17 The Concord Fund listed grants totaling $940,000 to Consumers' Defense, the lobbying arm of Consumers' Research, on its tax filings for 2022-2023. The Concord Fund, IRS Form 990, at Sched. I, Part II, Line 25 (2022); *id.* at Line 19 (2023); *see* Consumers' Def., https://perma.cc/2BE4-ZDJB (identifying Consumers' Defense as the lobbying arm of Consumers' Research). Contributions from the Concord Fund accounted for all of Consumers' Defense's revenue during that period. *See Consumers Defense,* ProPublica Nonprofit Explorer, https://perma.cc/H8RP-3PT2 (listing $940,153 of total revenue for tax years 2022-2024).

18 Donors Trust listed grants to Independence Institiute on its tax filings for 2020-2024. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 31 (2020); *id.* at Line 317 (2021); *id.* at Line 349 (2022); *id.* at Line 621 (2023); *id.* at Line 72 (2024).

19 The Bradley Foundation listed grants to Independence Institute on its tax filings for 2019-2024. The Lynde & Harry Bradley Found., Inc., IRS Form 990-PF, at Part XV, Line 3a (2019), https://tinyurl.com/5fj4sz7m; *id.* (2020),

https://tinyurl.com/muuunz5y; *id.* (2021), https://tinyurl.com/4ubtj3bm; *id.* (2022), https://tinyurl.com/4ajp9jtb; *id.* (2023), https://tinyurl.com/3bn57x3x; *id.* (2024), https://tinyurl.com/5n6ws8cz.

20 Donors Trust listed grants to the Manhattan Institute on its tax filings for 2020-2024. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 45, 438-442 (2020); *id.* at Line 393-394 (2021); *id.* at Line 417-420 (2022); *id.* at Line 33-36 (2023); *id.* at Line 102-103 (2024).

21 The 85 Fund listed grants to the Manhattan Institute on its tax filings for 2022-2023. The 85 Fund, IRS Form 990, at Sched. I, Part II, Line 8 (2022), https://tinyurl.com/2s44n9ay; *id.* at Line 16 (2023), https://tinyurl.com/4fbfh6p7.

22 The Charles Koch Foundation listed a grant to the Manhattan Institute on its 2019 tax filing. Charles Koch Found., IRS Form 990-PF, at Part XV, Line 3a (2019), https://tinyurl.com/5b9m8a8p. The Stand Together Fellowship listed a grant to the Manhattan Institute on its 2020 tax filing. Charles Koch Inst., IRS Form 990, at Schedule I, Part II, Line 42 (2020), https://tinyurl.com/3acc4zft.

23 From 1998-2019, ExxonMobil gave over $1.4 million to the Manhattan Institute. Elliot Negin, *ExxonMobil Claims Shift on Climate But Continues to Fund Climate Science Deniers*, The Equation Blog, Union of Concerned Scientists (Oct. 22, 2020), https://perma.cc/8VGA-CE59. This is the most recent data as ExxonMobil no longer itemizes contributions under $100,000. *See* Elliot Negin, *Despite Cutbacks, ExxonMobil Continues to Fund Climate Science Denial*, The Equation Blog, Union of Concerned Scientists (Oct. 26, 2021), https://perma.cc/APS6-J6DS.

24 The Bradley Foundation listed grants to the Manhattan Institute on its tax filings for 2022-2024. The Lynde & Harry Bradley Found., Inc., IRS Form 990-PF, at Part XV Line 3a (2022); *id.* (2023); *id.* (2024).

25 *NAM Board of Directors,* Nat'l Ass'n of Mfrs., https://perma.cc/KUB5-6YWQ (organization's Board includes

officers from ExxonMobil, bp America, Shell plc, ConocoPhillips, and Koch Government Affairs, LLC).

26 Donors Trust listed grants to the Pacific Legal Foundation (PLF) on its tax filings for 2020-2024. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 60, 463 (2020); *id.* at Line 464 (2021); *id.* at Line 499-500 (2022); *id.* at Line 734-35 (2023); *id.* at Line 125 (2024). In tax years 2023 and 2024, Donors Trust donated a total of $5.7 million. *Id.* at Line 734-35 (2023); *id.* at Line 125 (2024). Those contributions comprised 7% of PLF's revenue during that period. *See Pacific Legal Foundation,* ProPublica Nonprofit Explorer, https://perma.cc/GF2S-YXGZ (listing $79.5 million of total revenue for tax years 2023-2024 (fiscal years ending June 2024 and June 2025)).

27 Stand Together Fellowship listed grants totaling $2 million to PLF on its tax filings for 2020-2021. Charles Koch Inst., IRS Form 990, at Sched. I, Part II, Line 75 (2020); *id.* at Line 37 (2021), https://tinyurl.com/43fukrty.

28 The Concord Fund listed grants totaling $1.2 million to People for Opportunity on its tax filings for 2022-24. The Concord Fund, IRS Form 990, at Sched. I, Part II, Line 24 (2022); *id.* at Line 20 (2023); *id.* at Line 19 (2024), https://tinyurl.com/3xuanhrk. In tax years 2022 and 2023, the Concord Fund donated $1 million. *Id.* at Line 20 (2023); *id.* at Line 19 (2024). Those contributions comprised 33% of the organization's revenue during that period. *See People for Opportunity Inc,* ProPublica Nonprofit Explorer, https://perma.cc/N8HF-2XZM (listing $3.1 million of total revenue for tax years 2022-2023).

29 The Bradley Foundation listed a $200,000 grant to the Judicial Education Project (now the 85 Fund) on its 2023 tax filing with the purpose of "support[ing] the Save our States initiative." The Lynde & Harry Bradley Found., Inc., IRS Form 990-PF, at Part XV, Line 3a (2023). That donation accounted for nearly 20% of the organization's revenue in tax year 2023. *See People for Opportunity Inc,* ProPublica Nonprofit Explorer (listing $1.1 million of total revenue for tax year 2023).

30 *Funders*, The Breakthrough Inst., https://tinyurl.com/3rxde5dk.

31 Donors Trust listed grants to The Buckeye Institute on its tax filings for 2022-2024. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 94 (2022); *id.* at Line 218 (2023); *id.* at Line 28 (2024).

32 The Charles Koch Foundation listed grants to The Buckeye Institute on its tax filings from 2018-2019. The Charles Koch Found., IRS Form 990-PF, at Part XV, Line 3a (2018), https://tinyurl.com/3zzywh5e; *id.* (2019).

33 The Bradley Foundation listed grants totaling $1.5 million to The Buckeye Institute on its tax filings from 2020-2024. The Lynde & Harry Bradley Found., Inc., IRS Form 990-PF, at Part XV, Line 3a (2020); *id.* (2021); *id.* (2022); *id.* (2023); *id.* (2024). Those contributions comprised 9% of the organization's revenue during that time period. See The Buckeye Institute, ProPublica Nonprofit Explorer, https://perma.cc/7SMS-DCAJ (listing $17.3 million of total revenue for tax years 2020-2024).

34 The Institute for Energy Research (IER) is an advocacy group that supports the expanded use of fossil fuels. IER's President was formerly a lobbyist for Koch Industries. Robin Bravender, *Trump's Energy Team Overhauled,* E&E News, Politico (Nov. 21, 2016), https://perma.cc/6C2T-66B2. IER listed a $175,000 grant to Center for Environmental Accountability on its 2023 tax filing. Inst. for Energy Rsch., IRS Form 990, at Sched. I, Part II, Line 1 (2023), https://tinyurl.com/bdcm4ccw. The grant was the only funding IER provided to any organization that year and comprised nearly 20% of Center for Environmental Accountability's revenue. *Ibid.; see Center for Environmental Accountability*, ProPublica Nonprofit Explorer, https://perma.cc/KFF2-5VLF (listing $909,333 of total revenue in tax year 2023).

35 Donors Trust listed grants to The Pelican Institute on its tax filings for 2020-2024. Donors Trust, Inc., IRS Form 990, at Sched. I, Part II, Line 143 (2020); *id.* at Line 475 (2021); *id.* at Line 517 (2022); *id.* at Line 174 (2023); *id.* at Line 248 (2024).

36 Stand Together Fellowship listed grants to The Pelican Institute on its tax filings for 2020-2021. Charles Koch Inst., IRS Form 990, at Sched. I, Part II, Line 71 (2020); *id.* at Line 8 (2021).

37 The Bradley Foundation listed grants to The Pelican Institute on its tax filings from 2023-2024. The Lynde & Harry Bradley Found., Inc., IRS Form 990-PF, at Part XV, Line 3a (2023); *id.* (2024).

38 In 2019, ExxonMobil listed a $40,000 donation to the Washington Legal Foundation. ExxonMobil Corp., *2019 Worldwide Contributions and Community Investments* 25 (captured on Oct. 23, 2020). From 1998-2019, ExxonMobil gave $655,000 to the Washington Legal Foundation. Negin, *ExxonMobil Claims Shift on Climate But Continues to Fund Climate Science Deniers*, (linking to data embedded below "overview of ExxonMobil's grants from 1998 through 2019").

39 Donors Capital Fund listed a grant to Washington Legal Foundation on its 2020 tax filing. Donors Capital Fund, Inc. IRS Form 990, at Sched. I, Part II, Line 24 (2020).