No. 22-7163

In the United States Court of Appeals for the District of Columbia Circuit

DISTRICT OF COLUMBIA,
PLAINTIFF-APPELLEE

v.

EXXON MOBIL CORP.; EXXONMOBIL OIL CORPORATION;
BP P.L.C.; BP AMERICA INC.; CHEVRON CORPORATION;
CHEVRON U.S.A. INC., SHELL PLC, F/K/A ROYAL DUTCH SHELL PLC;
SHELL USA, INC., F/K/A SHELL OIL COMPANY;
DEFENDANTS-APPELLANTS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (CIV. NO. 20-1932) (THE HONORABLE TIMOTHY J. KELLY, J.)

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I, Kannon K. Shanmugam, counsel for appellants Exxon Mobil Corporation and ExxonMobil Oil Corporation and a member of the Bar of this Court, certify as follows:

(A) Parties and amici. The parties, intervenors, and amici that appeared before the district court and are participating in this appeal are the District of Columbia; BP p.l.c.; BP America Inc.; Chevron Corporation; Chevron U.S.A. Inc.; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Shell plc (formerly known as Royal Dutch Shell plc); and Shell USA, Inc. (formerly known as Shell Oil Company).

(B) Rulings under review. The ruling under review is the district court's order and memorandum opinion of November 12, 2022, remanding the case to the Superior Court of the District of Columbia. The opinion is not yet reported but is available at 2022 WL 16901988 and is reproduced at pages 455-475 of the joint appendix.

(C) Related cases. The following cases are related to this appeal within the meaning of Circuit Rule 28(a)(1)(C):

Connecticut v. *Exxon Mobil Corp.*, No. 21-1446 (2d Cir.)

Anne Arundel County v. *BP p.l.c., et al.*, No. 22-2082 (4th Cir.)

City of Annapolis v. *BP p.l.c., et al.*, No. 22-2101 (4th Cir.)

Minnesota v. *American Petroleum Institute, et al.*, No. 21-1752 (8th Cir.)

City of Oakland, et al. v. *BP p.l.c., et al.*, No. 22-16810 (9th Cir.)

City & County of San Francisco, et al. v. *BP p.l.c., et al.*, No. 22-16812 (9th Cir.)

The following related cases are pending at the United States Supreme Court:

Suncor Energy (U.S.A.) Inc., et al. v. *Board of County Commissioners of Boulder County, et al.*, No. 21-1550

B.P. p.l.c., et al. v. *Mayor & City Council of Baltimore*, No. 22-361

Chevron Corp., et al. v. *San Mateo County, et al.*, No. 22-495

Sunoco, LP, et al. v. *City & County of Honolulu*, No. 22-523

Shell Oil Products Co., L.L.C., et al. v. *Rhode Island*, No. 22-524

City of Hoboken v. *Exxon Mobil Corp., et al.*, No. 22A528

/s/ Kannon K. Shanmugam
KANNON K. SHANMUGAM

MARCH 1, 2023

CORPORATE DISCLOSURE STATEMENT

Appellant BP p.l.c. has no parent corporation, and no publicly held company owns 10% or more of its stock.

Appellant BP America Inc. is a wholly owned indirect subsidiary of appellant BP p.l.c.

Appellant Chevron Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

Appellant Chevron U.S.A. Inc. is a wholly owned subsidiary of appellant Chevron Corporation.

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

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

Appellant Shell plc has no parent corporation, and no publicly held company owns 10% or more of its stock.

Appellant Shell USA, Inc., is a wholly owned indirect subsidiary of appellant Shell plc.

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INTRODUCTION

A group of state and local governments have filed more than two dozen lawsuits in various jurisdictions against energy companies for injuries allegedly caused by global climate change. This is one of those cases. Here, the District of Columbia claims that defendants are liable for such harms because they purportedly misled the public about climate change. The District seeks redress for consumer-based injuries and climate-change-related harms such as flooding, harm to infrastructure, and personal injuries.

Because the District seeks relief for harms allegedly caused by emissions associated with the use of fossil fuels by billions of consumers around the world, the district court has jurisdiction over this lawsuit on a number of grounds. As a matter of constitutional structure, the District's claims arise under federal law because they seek redress for harms allegedly caused by interstate emissions. In a case involving similar claims against some of the same defendants, the Second Circuit relied on longstanding Supreme Court precedent applying "federal law to disputes involving interstate air or water pollution" to hold that claims seeking redress for injuries allegedly caused by interstate emissions "must be brought under federal common law." *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 91, 95 (2021). In addition, the District's claims necessarily raise substantial federal issues; encompass conduct taken at the direction of federal officers; and implicate defendants' production

of fossil-fuel products on the Outer Continental Shelf. Based on those grounds and others, defendants properly removed this case to federal court.

The district court rejected defendants' grounds for removal only by accepting at face value the District's characterization of its lawsuit. There is no dispute that the District has pleaded its claims as premised on consumer deception. But the District cannot defeat federal jurisdiction by concealing federal claims in the garb of District law. As the Second Circuit explained, a plaintiff cannot use "[a]rtful pleading" to disguise claims seeking redress for global climate change as "anything other than a suit over global greenhouse gas emissions" that federal law must govern. *City of New York*, 993 F.3d at 91. The same reasoning applies here. The district court erred by holding that it lacked jurisdiction over this lawsuit, and its remand order should therefore be vacated.

STATEMENT OF JURISDICTION

On July 17, 2020, defendants removed this action from the Superior Court of the District of Columbia to the United States District Court for the District of Columbia. *See* J.A. 13-75. On November 12, 2022, the district court entered an order granting the plaintiff's motion to remand this case to the Superior Court. *See* J.A. 454. Defendants filed a timely notice of appeal on November 28, 2022. *See* J.A. 475-477. This Court has jurisdiction under 28 U.S.C. §§ 1291 and 1447(d), and that jurisdiction extends to all of the

independent grounds for removal encompassed in the district court's remand order. *See BP p.l.c.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1537, 1543 (2021). In defendants' view, the district court had jurisdiction under 28 U.S.C. §§ 1331, 1332, 1367, 1441, 1442, 1453, and 43 U.S.C. § 1349.

STATEMENT OF THE ISSUE

Whether the district court had subject-matter jurisdiction over the District of Columbia's claims alleging harm from global climate change, permitting defendants to remove the case to federal court.

PERTINENT STATUTORY PROVISIONS

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.

Section 1442(a)(1) of Title 28 of the United States Code provides:

> A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color

> of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

Section 1349(b)(1) of Title 43 of the United States Code provides:

> Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

STATEMENT OF THE CASE

1. In 2017, a number of state and local governments began filing lawsuits in state courts across the country against various energy companies, alleging that the companies' worldwide production, sale, and promotion of fossil fuels caused injury by increasing the amount of greenhouse gases in the atmosphere and thereby contributing to global climate change. Some of the lawsuits assert that the energy companies' alleged conduct constitutes a public nuisance and gives rise to product liability under state common law. Other lawsuits purport to proceed under state consumer-protection statutes, alleging that defendants misled the public regarding the likelihood and risks of harm from climate change. Regardless of the nominal cause of action, the state

and local governments seek relief related to alleged harms purportedly caused by climate change.

The defendants in these cases have consistently removed them to federal court. The defendants have asserted multiple bases for federal jurisdiction, including that plaintiffs' climate-change claims necessarily arise under federal common law, *cf. American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 420-423 (2011); *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 103 (1972); that federal-question jurisdiction is otherwise present under *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308 (2005); that the allegations in the complaints pertain to actions defendants took at the direction of federal officers, *see* 28 U.S.C. § 1442; and that removal is appropriate on other grounds.

The question whether removal is appropriate in these cases is pending before the Supreme Court in several cases. *See Suncor Energy (U.S.A.) Inc.* v. *Board of County Commissioners of Boulder County*, No. 21-1550; *B.P. p.l.c.* v. *Mayor & City Council of Baltimore*, No. 22-361; *Chevron Corp.* v. *San Mateo County*, No. 22-495; *Sunoco, LP* v. *City & County of Honolulu*, No. 22-523; *Shell Oil Products Co., L.L.C.* v. *Rhode Island*, No. 22-524; *City of Hoboken* v. *Exxon Mobil Corp., et al.*, No. 22A528. Related appeals also remain pending in other circuits. *See Minnesota* v. *American Petroleum Institute*, No. 21-1752 (8th Cir.) (argued Mar. 15, 2022); *Connecticut* v. *Exxon Mobil*

Corp., No. 21-1446 (2d Cir.) (argued Sept. 23, 2022); *Anne Arundel County* v. *BP p.l.c.*, No. 22-2082 (4th Cir.) (consolidated with No. 22-2101); *City of Oakland, et al.* v. *BP p.l.c., et al.*, No. 22-16810 (9th Cir.) (consolidated with No. 22-16812).

2. Plaintiff-appellee is the District of Columbia; defendants-appellants are BP p.l.c.; BP America Inc.; Chevron Corporation; Chevron U.S.A. Inc.; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Shell plc (formerly known as Royal Dutch Shell plc); and Shell USA, Inc. (formerly known as Shell Oil Company). J.A. 76-77.

In June 2020, the District filed a complaint against defendants in D.C. Superior Court, claiming violations of the D.C. Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.* J.A. 146-157. The complaint alleges that defendants misled the public about climate change, resulting in consumer deception, and that defendants' production, sale, and promotion of fossil fuels have contributed to climate change. J.A. 80-83, 121-123. The District also alleges climate-related harms, including heatwaves, rising sea levels, and flooding. *Id.* at 43-44. The District seeks injunctive relief, damages, restitution, civil penalties, and other equitable relief. J.A. 156-157; *see* D.C. Code § 28-3909(a)-(b).

3. Defendants removed this action to federal court. *See* J.A. 13-75; 28 U.S.C. §§ 1441(a), 1451. Among other grounds, defendants asserted that

the district court had federal-question jurisdiction because federal common law necessarily governs the District's claims. J.A. 33-39; 28 U.S.C. § 1331. Defendants explained that the claims implicate several uniquely federal interests that require the application of federal common law, including transboundary pollution and international affairs. J.A. 33. While the District styled the complaint as alleging only claims under District law, defendants contended that the District could not plead around its own complaint's focus on climate-change-related harms. J.A. 37. Defendants further argued that, even if the claims do not directly arise under federal law, they necessarily raise disputed federal issues and thus are removable under *Grable*. J.A. 24.

Defendants also argued that removal is appropriate under the federal-officer removal statute, 28 U.S.C. § 1442, citing several examples of activities taken at the direction of federal officers. J.A. 42-60. Defendants noted that they had entered into supply agreements with the armed forces to produce special fuels, including high-octane aviation fuel. J.A. 44-48. In addition, defendants have long produced oil and gas belonging to the federal government on the Outer Continental Shelf pursuant to governmental leases; those leases gave the government control over various aspects of defendants' operations, including approval of exploration and production plans and regulation of extraction rates. J.A. 50-56. Some defendants also acted under federal officers

in producing oil and operating infrastructure for the Strategic Petroleum Reserve. J.A. 56-59. Defendants separately asserted that removal is permissible under the Outer Continental Shelf Lands Act, federal-enclave jurisdiction, diversity jurisdiction, and the Class Action Fairness Act. J.A. 39-42, 60-73.

4. The District moved to remand the case to D.C. Superior Court, and the district court granted the motion. J.A. 454-474.

With respect to removal on the ground that the District's claims are governed by federal common law: the court acknowledged defendants' "[f]air" assertion that "the District's claims 'implicate' three uniquely federal interests: interstate pollution, the navigable waters of the United States, and foreign affairs." J.A. 459. The court also noted that "the Supreme Court has recognized 'few and restricted' areas of federal common law to protect 'uniquely federal interests.'" J.A. 458. The court nevertheless held that federal common law does not apply to this case because defendants did not identify a significant conflict between the District's claims and federal interests. *See* J.A. 460-461. As a secondary matter, the court found removal based on federal common law improper in light of the well-pleaded complaint rule, which provides that federal-question jurisdiction does not lie unless "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) (brackets omitted); *see* 28 U.S.C. § 1331; J.A. 461. In the district court's view, the District's decision

to label its claims as arising under District law was dispositive, even if those claims were necessarily and exclusively governed by federal law. *See* J.A. 461-463.

The district court also rejected defendants' arguments for removal under the federal-officer removal statute. The court accepted that "the injuries the District[] alleges—in short, climate change—eventually trace back to fossil fuel usage." J.A. 470-471. But the court nevertheless declined to grant removal on federal-officer grounds because it did not find "a sufficient nexus between any action [d]efendants may have taken under federal direction and the alleged false advertising that gave rise to the District's claims." J.A. 471. The district court rejected defendants' other grounds for removal as well.

5. On December 20, 2022, the district court denied defendants' motion to stay execution of the remand order pending appeal, but stayed the remand order through January 3, 2023, to allow defendants to seek relief from this Court. *See* D. Ct. Dkt. 126. On December 23, this Court entered an administrative stay to allow the parties to brief whether a further stay was warranted. *See* Per Curiam Order 1 (Doc. #1979094). On January 30, 2023, this Court denied the stay motion but expedited this appeal. *See* Per Curiam Order 1 (Doc. #1983821).

SUMMARY OF ARGUMENT

In this case, the District seeks to hold defendants liable for the alleged impacts of climate change. The District's alleged injuries purportedly result from greenhouse-gas emissions associated with the use of fossil fuels by billions of consumers worldwide—including the District itself. Despite the District's efforts artfully to plead its claims as arising under District law, federal jurisdiction exists over its claims on multiple independent grounds.

A. First and foremost, the district court had federal-question jurisdiction because federal law exclusively governs the District's claims. Federal common law governs claims that concern the regulation of air and water in their ambient or interstate aspects; as courts have recognized, that includes claims alleging that energy companies caused injury by contributing to global climate change. And that makes good sense. If state (or District) law were to govern claims such as these, energy companies and emissions sources would be subjected to a patchwork of conflicting standards, and States (and the District) would be empowered to extend their laws beyond their borders.

The district court disagreed, concluding both that federal law did not govern the District's claims and that claims necessarily governed by federal common law are not removable to federal court as long as they are not labeled as federal claims. Both conclusions are erroneous. The district court reasoned

that defendants failed to demonstrate a significant conflict between any federal interest and the operation of state (or District) law, but a century-long line of precedent from the Supreme Court holds that federal common law applies to claims seeking redress for interstate pollution. As those cases make clear, the application of state (or District) law to such claims would conflict with the federalist structure of the Constitution by allowing one State (or the District) to extend its law beyond its borders. The district court also incorrectly held that federal common law cannot permit the removal of a putative District-law claim; indeed, the Supreme Court has already recognized that federal common law can entirely displace state law and thereby give rise to federal jurisdiction.

B. The District's claims also necessarily raise substantial and disputed issues of federal law, permitting the exercise of federal-question jurisdiction under *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308, 312-313 (2005). The fact that federal common law supplies the rule of decision for the District's claims, standing alone, permits removal on that basis. The District's claims also seek collaterally to attack cost-benefit analyses in the energy and environmental context that are committed to, and already have been conducted by, the federal government. Those issues are substantial, disputed, and only federal courts can resolve

them without disrupting the federal-state balance. Removal was therefore permissible under *Grable*.

C. The federal-officer removal statute also supports removal here. Acting at the federal government's direction and subject to its extensive control, defendants have contributed significantly to the United States military by providing fossil fuels that support the national defense and other strategic objectives. Defendants have also acted under the federal government's direction pursuant to federal policies promoting energy security and reducing reliance on foreign oil. And because the District's theory of liability sweeps so broadly, the District's claims have a sufficient nexus with the conduct that defendants took at the direction of federal officers. It is also undisputed that defendants have colorable federal defenses against the claims asserted here, permitting removal on federal-officer grounds.

D. Removal was further permissible under the Outer Continental Shelf Lands Act because the District's claims arise out of defendants' substantial operations on the Outer Continental Shelf. By alleging injuries from the contribution of fossil fuels to greenhouse-gas emissions and global climate change, the District's claims necessarily encompass defendants' exploration, extraction, and production of fossil fuels on the Outer Continental Shelf.

ARGUMENT

Under 28 U.S.C. §§ 1441 and 1451, a defendant in a civil action filed in the D.C. Superior Court may remove the case to federal court if the action "could have been brought originally in federal court." *Home Depot U.S.A., Inc.* v. *Jackson*, 139 S. Ct. 1743, 1748 (2019). Removal is permitted as long as at least one claim falls within the original jurisdiction of the federal court. *See City of Chicago* v. *International College of Surgeons*, 522 U.S. 156, 164-166 (1997); *Araya* v. *JPMorgan Chase Bank, N.A.*, 775 F.3d 409, 413 (D.C. Cir. 2014); 28 U.S.C. § 1367(a). The district court below had original jurisdiction over this action on multiple grounds, including under the federal-question statute (28 U.S.C. § 1331); the federal-officer removal statute (28 U.S.C. § 1442); and the Outer Continental Shelf Lands Act (43 U.S.C. § 1349(b)). Under de novo review, *see Capitol Hill Group* v. *Pillsbury, Winthrop, Shaw, Pittman, LLC*, 569 F.3d 485, 489 (D.C. Cir. 2009), the district court erred by remanding this case to Superior Court. The remand order should therefore be vacated.

A. Removal Was Proper Because The District's Claims Arise Under Federal Common Law

In this lawsuit, the District alleges both injuries related to consumer deception and injuries from climate change in the form of "more frequent and extreme precipitation events and associated flooding," as well as future "flooding, extreme weather, and heat waves," J.A. 123. In addition to other forms

of relief, the District seeks "restitution" and "damages." J.A. 156. The Supreme Court has long made clear that, as a matter of constitutional structure, claims seeking redress for interstate pollution are governed exclusively by federal law. Such claims necessarily arise under federal law for purposes of federal-question jurisdiction and are thus removable to federal court.

1. Federal Law Governs Claims Alleging Harm From Global Climate Change

The District alleges that greenhouse-gas emissions from the combustion of fossil fuels have contributed to global climate change, and it seeks redress from defendants for, among other injuries, harms allegedly caused by climate change, including rising sea levels, extreme weather, damage to infrastructure, and personal injuries. *See* J.A. 121-123. A long line of Supreme Court decisions, as well as lower-court decisions applying them, demonstrates that claims seeking redress for climate-change-induced harms arise under federal common law.

a. In *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938), the Supreme Court announced the familiar principle that "[t]here is no federal general common law." *Id.* at 78. But even after *Erie*, 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). At bottom, whenever there is "an overriding federal interest in the need for a uniform rule of decision," *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 105 n.6 (1972), "state law cannot be used," *City of Milwaukee* v. *Illinois* (*Milwaukee II*), 451 U.S. 304, 313 n.7 (1981), and any claims necessarily arise under federal law.

For more than a century, the Supreme Court has applied uniform federal rules of decision to common-law claims seeking redress for interstate pollution. *See, e.g.*, *Milwaukee I*, 406 U.S. at 103, 107 n.9; *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 237 (1907); *see also City of New York* v. *Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting additional cases). The most recent such decision is *American Electric Power* v. *Connecticut*, 564 U.S. 410 (2011). There, the plaintiffs sued several electric utilities, contending that the utilities' greenhouse-gas emissions contributed to global climate change and created a "substantial and unreasonable interference with public rights, in violation of the federal common law of interstate nuisance, or, in the alternative, of state tort law." *Id.* at 418 (internal quotation marks and citation omitted).

In assessing whether the plaintiffs had properly stated a claim for relief, the Supreme Court reaffirmed that federal common law governs claims involving "air and water in their ambient or interstate aspects." *Id.* at 421 (internal quotation marks and citation omitted). The Court rejected the notion that state law could govern public-nuisance claims related to global climate change, stating that "borrowing the law of a particular State would be inappropriate." *Id.* at 422.

The need to apply federal law, and not state law, to claims seeking redress for interstate pollution arises from the constitutional structure itself. The States are "coequal sovereigns," *PPL Montana, LLC* v. *Montana*, 565 U.S. 576, 591 (2012), and the Constitution "implicitly forbids" them from applying their own laws to resolve "disputes implicating their conflicting rights," *Franchise Tax Board* v. *Hyatt*, 139 S. Ct. 1485, 1498 (2019) (alteration and citations omitted). In similar fashion, although each State may make law within its own borders, no State may "impos[e] its regulatory policies on the entire Nation." *BMW of North America, Inc.* v. *Gore*, 517 U.S. 559, 585 (1996); *see Healy* v. *Beer Institute, Inc.*, 491 U.S. 324, 336 (1989). Allowing state law to govern disputes regarding interstate pollution would violate the "cardinal" principle that "[e]ach state stands on the same level with all the rest," by permitting one State to impose its law on other States and their citizens. *Kansas* v. *Colorado*, 206 U.S. 46, 97 (1907).

The United States made precisely that point in an amicus brief before the Supreme Court in the context of a lawsuit seeking similar redress for injuries allegedly caused by global climate change. "[C]ross-boundary tort claims associated with air and water pollution," the United States acknowledged, "involve a subject that 'is meet for federal law governance.'" U.S. Br. at 26-27, *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021) (No. 19-1189) (quoting *American Electric Power*, 564 U.S. at 422). According to the United States, claims "that seek to apply the law of an affected State to conduct in *another* State" necessarily "arise under federal, not state, law for jurisdictional purposes, given their inherently federal nature." *Id.* at 27 (internal quotation marks and citation omitted). At oral argument, the United States confirmed its view that claims seeking redress for injuries allegedly caused by global climate change are "inherently federal in nature." Tr. of Oral Arg. at 31, *Baltimore*, *supra*. Although the plaintiff in that case had "tried to plead around th[e] Court's decision in [*American Electric Power*], its case still depend[ed] on alleged injuries to [the plaintiff] caused by emissions from all over the world, and those emissions just can't be subjected to potentially conflicting regulations by every state and city." *Id.*

Because federal common law precludes resort to state law in the context of cases involving interstate emissions, the same is true *a fortiori* with respect

to District law. The District is a "municipal corporation" established by Congress, not a State that enjoys "sovereign power." *Metropolitan Railroad Co.* v. *District of Columbia*, 132 U.S. 1, 9 (1889); *see Hepburn* v. *Ellzey*, 6 U.S. (2 Cranch) 445, 452 (1805); *Maryland & District of Columbia Rifle & Pistol Association, Inc.* v. *Washington*, 442 F.2d 123, 129 (D.C. Cir. 1971). And the District of Columbia Home Rule Act limits the District's legislative authority to matters "within the District." Pub. L. No. 93-198, § 302, 87 Stat. 784 (1973); *see also American Security & Trust Co.* v. *Rudolph*, 38 App. D.C. 32, 45 (1912) (stating that the District's laws are "expressly limited to the boundaries of the District" and exist "for the regulation of persons and property in the District of Columbia exclusively"). That comports with "[t]he basic purpose of Congress in delegating certain legislative powers to the District of Columbia Government": namely, "to relieve Congress of the burden of legislating on matters essentially local in nature." *District of Columbia* v. *Owens-Corning Fiberglas Corp.*, 604 F. Supp. 1459, 1462 (D.D.C. 1985). The District thus cannot project its local law beyond its borders to govern conduct in the 50 States or disputes involving the competing rights of a sovereign State. Accordingly, where federal common law entirely displaces state law, it has the same effect on District law. *Cf. CSX Transportation, Inc.* v. *Williams*, 406 F.3d 667, 673 (D.C. Cir. 2005) (per curiam) (holding that federal law can preempt District law).

b. Applying the Supreme Court's precedent on claims seeking redress for interstate pollution, the Second Circuit held in *City of New York*, *supra*, that claims seeking redress for global climate change—as the District's claims do here—are governed by federal common law. *See* 993 F.3d at 91. In *City of New York*, the municipal government of New York City alleged that the defendant energy companies (including defendants here) "have known for decades that their fossil fuel products pose a severe risk to the planet's climate" but nevertheless "downplayed the risks and continued to sell massive quantities of fossil fuels, which has caused and will continue to cause significant changes to the City's climate and landscape." *Id.* at 86-87.

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. In deciding that issue, the Second Circuit faced the question whether federal common law or state law governed the City's claims. The City argued that federal common law did not apply because the case did not concern the "regulation of emissions"; instead, the City argued, emissions were "only a link in the causal chain of [its] damages." *Id.* at 91 (internal quotation marks and citation omitted). The Second Circuit rejected that argument, explaining that the City could not use "[a]rtful pleading" to disguise its complaint as "anything other than a suit

over global greenhouse gas emissions." *Id.* The court noted that it was "precisely *because* fossil fuels emit greenhouse gases," and thereby exacerbate climate change, that the City was seeking relief. *Id.* The City could not "disavow[] any intent to address emissions" while "identifying such emissions" as the source of its harm. *Id.*

The Second Circuit proceeded to hold that federal common law necessarily governs claims seeking redress for global climate change. 993 F.3d at 91. The court reasoned that the case presented "the quintessential example of when federal common law is most needed." *Id.* at 92. The Second Circuit observed that a "mostly unbroken string of cases" from the Supreme Court over the last century has applied federal law to disputes involving "interstate air or water pollution." *Id.* at 91. The Supreme Court did so, the Second Circuit explained, because those disputes "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." *Id.* at 91-92 (internal quotation marks and citation omitted).

In the Second Circuit's view, because the City was 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," the City's lawsuit was far too "sprawling" for state law to govern. 993 F.3d at

92. The court first reasoned that "a substantial damages award like the one requested by the City would effectively regulate the [energy companies'] behavior far beyond New York's borders." *Id.* The court further 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 court thus concluded that federal common law necessarily governed the City's claims—and that "those federal claims" were not viable. *Id.* at 95.

c. In *Native Village of Kivalina* v. *ExxonMobil Corp.*, 696 F.3d 849 (2012), the Ninth Circuit likewise held that federal common law necessarily governed climate-change claims similar to those alleged here. In *Kivalina*, a municipality and a native village asserted public-nuisance claims for harms to their property allegedly resulting from the defendant energy companies' "emissions of large quantities of greenhouse gases." *Id.* at 853-854. The plaintiffs contended that their claims arose under federal and (alternatively) state common law. *Native Village of Kivalina* v. *ExxonMobil Corp.*, 663 F. Supp. 2d 863, 869 (N.D. Cal. 2009). The district court dismissed the federal claim and declined to exercise supplemental jurisdiction over any related state-law claims. *Id.* at 882-883. On appeal, the Ninth Circuit held that federal common

law governed the plaintiffs' nuisance claims. *Kivalina*, 696 F.3d at 855. Citing *American Electric Power* and *Milwaukee I*, the Ninth Circuit began from the premise that "federal common law includes the general subject of environmental law and specifically includes ambient or interstate air and water pollution." *Id.* Given the interstate and transnational character of claims asserting harm from global greenhouse-gas emissions, the court concluded that the suit fell within that rule. *Id.*

2. The District's Claims Are Necessarily Governed By Federal Common Law

Applying the foregoing precedents here leads to a straightforward result: the District's claims are necessarily governed by federal common law.

The District alleges that defendants are liable under District law on the theory that defendants misled the public about climate change. *See* J.A. 80. But the claims are ultimately premised on transboundary pollution. The District alleges that defendants have "deceptively worked to influence consumer demand for [their] fossil fuel products" through "climate change denialism," which has allegedly "deter[red] consumers from adopting cleaner, safer alternatives" to those products. J.A. 147-153. And the remedies the District is seeking are not limited to compensation for alleged economic harm to consumers who would have purchased fewer fossil-fuel products in the absence of the alleged deception (as would be true in the typical consumer-protection case). Instead, the District also alleges that it has suffered injuries caused by global

climate change *itself*: for example, flooding, harm to ecosystems and infrastructure, and personal injuries. *See* J.A. 121-123. While the District has argued that those injuries are not "the target" of its requested relief, D. Ct. Dkt. 46, at 15, it has not disavowed an intent to seek damages for physical injuries and property damage linked to the alleged effect of defendants' marketing and sale on the global climate. By seeking to hold defendants liable for those alleged injuries, the District has brought a "suit over global greenhouse gas emissions," which federal common law must govern. *City of New York*, 993 F.3d at 91.

In that sense, this case is substantially similar to *City of New York*. There, the City claimed that the defendants "ha[d] known for decades that their fossil fuel products pose a severe risk to the planet's climate," yet "downplayed the risks and continued to sell massive quantities of fossil fuels, which has caused and will continue to cause significant changes to the City's climate." 993 F.3d at 86-87. Here, the District likewise alleges that defendants knew that the combustion of their products "caused greenhouse-gas pollution, which causes climate change," and yet continued to market their products to consumers, thereby allegedly worsening the "significant detrimental impacts of [defendants'] fossil fuel products." J.A. 81, 83.

Similarly, like the plaintiff in *City of New York*, the District seeks "substantial" relief that functionally would "regulate [defendants'] behavior far beyond" the District of Columbia. 993 F.3d at 92. The District cannot isolate the effect of any conduct inside the District on those injuries, because "[g]reenhouse gases once emitted 'become well mixed in the atmosphere.'" *Id.* at 92-93 (citation omitted). By seeking damages for injuries allegedly caused by climate change, therefore, the District is functionally seeking to regulate defendants' production and sale of fossil-fuel products everywhere.

To be sure, this action addresses an even "earlier moment" in the causal chain than defendants' production and sale of fossil fuels, *City of New York*, 993 F.3d at 97—namely, statements in defendants' marketing materials that purportedly increased the demand for defendants' products in the first instance, *see*, *e.g.*, J.A. 106, 113. But this action still "hinges on the link between the release of greenhouse gases and the effect those emissions have on the environment generally." *City of New York*, 993 F.3d at 97. The District's focus on the "earlier moment" of defendants' advertising "is merely artful pleading and does not change the substance of its claims." *Id.* Federal common law therefore necessarily governs.

Any contrary approach would not only contravene precedent but also permit suits alleging injuries pertaining to climate change to proceed under the laws of all fifty States and the District—a recipe for chaos. As the federal

government explained in its brief in *American Electric Power*, "virtually every person, organization, company, or government across the globe . . . emits greenhouse gases, and virtually everyone will also sustain climate-change-related injuries," giving rise to claims from "almost unimaginably broad categories of both potential plaintiffs and potential defendants." TVA Br. at 11, 15-16, *American Electric Power*, *supra* (No. 10-174). Out-of-state actors (including defendants) would quickly find themselves subject to a "variety" of "vague" and "indeterminate" state-law standards, and States (and the District) would be empowered to "do indirectly what they could not do directly—regulate the conduct of out-of-state sources." *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 495-496 (1987). That could lead to "widely divergent results" if a patchwork of 51 different legal regimes applied. TVA Br. at 37. That outcome is far from hypothetical: over two dozen other lawsuits have already been filed in state courts across the country by state and local governments seeking redress for alleged climate-change-related injuries.

The District's claims also implicate the foreign affairs of the United States, further justifying the application of federal common law. *See City of New York*, 993 F.3d at 91-92; *see also Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 425, 426 (1964); *Republic of Philippines* v. *Marcos*, 806 F.2d 344, 353 (2d Cir. 1986). The Supreme Court has long held that "[p]ower over external affairs" is "vested in the national government exclusively." *United*

States v. *Pink*, 315 U.S. 203, 233 (1942); *see Hines* v. *Davidowitz*, 312 U.S. 52, 63 (1941). As the federal government stated in a similar climate-change case, "federal law and policy has long declared that fossil fuels are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." U.S. En Banc Br. at 10, *City of Oakland* v. *BP p.l.c.*, 960 F.3d 570 (9th Cir. 2020) (No. 18-16663) (citation and internal quotation marks omitted). Because "[g]lobal warming presents a uniquely international problem of national concern," it is "not well-suited to the application of" either state law or District law. *City of New York*, 993 F.3d at 85-86.

In sum, the District's climate-change claims squarely implicate the strong federal interest in uniformly addressing suits involving transboundary pollution and in foreign affairs. Federal common law therefore controls.

3. Claims Necessarily Governed By Federal Common Law Are Removable To Federal Court

Under 28 U.S.C. § 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 100, and the case is removable to federal court, *see* 28 U.S.C. § 1441(a).

Consistent with those principles, courts have long recognized that federal jurisdiction exists if federal common law supplies the rule of decision, even if the plaintiff purports to assert only non-federal claims. *See, e.g.*, *North Carolina Department of Administration* v. *Alcoa Power Generating, Inc.*, 853 F.3d 140, 147, 149 (4th Cir. 2017); *Sam L. Majors Jewelers* v. *ABX, Inc.*, 117 F.3d 922, 926-927, 929 (5th Cir. 1997); *In re Otter Tail Power Co.*, 116 F.3d 1207, 1214 (8th Cir. 1997). Under those cases, claims necessarily governed by federal common law are removable to federal court, even if the plaintiff labels its claims as arising under state or local law. Because federal common law necessarily governs the District's claims seeking redress for injuries allegedly caused by global greenhouse-gas emissions, defendants properly removed this case to federal court.

4. The District Court Erred By Holding That The District's Claims Were Not Removable Based On Federal Common Law

The district court rejected federal common law as a basis for removal, holding both that federal common law does not govern the District's claims and that the well-pleaded complaint rule precluded removal based on federal common law. *See* J.A. 457-463. Both of those holdings were erroneous.

1. a. The district court "assume[d], without deciding," that the District's claims implicate "uniquely federal interests" that could support the application of federal common law. J.A. 459 n.2. But the court concluded that defendants failed to show a "significant conflict" between the District's claims and those uniquely federal interests. The Supreme Court, however, has applied the "significant conflict" test only when a party seeks to *expand* federal common law into a new area. Defendants never asked the district court to expand federal common law; rather, they asked the court to apply Supreme Court precedent recognizing that federal law alone necessarily governs interstate pollution. *See* pp. 16-22, *supra*. The district court thus erred by applying the test for determining whether to extend federal common law to a new context.

In any event, the long line of precedent applying federal rules of decision to claims seeking redress for interstate pollution demonstrates the significant conflict between federal interests and state and District law in this area. As defendants explained above, *see* pp. 17-18, as a matter of constitutional structure, neither a State nor the District may project its law beyond its borders to control conduct in other jurisdictions. But controversies over interstate pollution necessarily concern conduct outside any single jurisdiction and thus "touch[] basic interests of federalism" and implicate the "overriding [f]ederal interest in the need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at

105 n.6. While the district court saw no significant conflict between those federal interests and "the District's false advertising claims," J.A. 459, that reasoning overlooks critical aspects of the District's complaint. As already explained, *see* p. 14, the District seeks "restitution" and "damages" and alleges injuries in the form of physical harms allegedly caused by climate change. By seeking to recover damages allegedly caused by a global phenomenon arising from interstate (and international) emissions, the District is attempting to extend its law far beyond its borders—thus implicating the "basic interests of federalism" and the "overriding [f]ederal interest in the need for a uniform rule of decision" that have long required the application of federal common law to claims seeking redress for interstate pollution. *Milwaukee I*, 406 U.S. at 105 n.6.

b. The district court also opined that it is "unclear how the District's claims could arise under federal common law," because the Supreme Court has held that the Clean Air Act displaces any remedy available under federal common law for injuries allegedly caused by interstate pollution. J.A. 460 n.3. That reasoning impermissibly "conflate[s]" "jurisdiction" and "merits-related determination[s]." *Arbaugh* v. *Y&H Corp.*, 546 U.S. 501, 511 (2006) (citation omitted). 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 also 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).

More fundamentally, the district court misunderstood the relationship between state or local 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 or local law at all. *Texas Industries*, 451 U.S. at 641. In other words, where federal common law applies, state or local law "cannot be used." *Milwaukee II*, 451 U.S. at 313 n.7.

Accordingly, there is no District law for the Clean Air Act (or any other federal statute) to resurrect: District law did not govern interstate emissions before Congress enacted the Clean Air Act, and the application of District 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. As the United States explained in its amicus brief in *BP*, *supra*, "[a]lthough the enactment of the Clean Air Act displace[d] federal common law" in the area of interstate emissions, "that alone

does not mean the door was opened for tort claims based on common law of an affected State" (or the District) "targeting conduct in another State." U.S. Br. at 27 (No. 19-1189) (internal quotation marks and citation omitted). In the words of the Second Circuit, it is "too strange to seriously contemplate" that Congress's decision to address an issue by statute so directly as to displace federal common-law remedies would result in state or local remedies suddenly becoming viable where they were not before. *City of New York*, 993 F.3d at 98-99.

3. The district court finally held that, even if federal common law governed the District's claims, the well-pleaded complaint rule would preclude removal of this lawsuit. *See* J.A. 461-462. That is incorrect.

The well-pleaded complaint rule "provides that federal 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). But an "independent corollary" of the 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). 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). That explains why courts have long held that, even if they

are not pleaded as federal claims, claims necessarily arising under federal common law are removable to federal court. *See* pp. 27-28, *supra*.

Defendants' invocation of federal common law here is not an exercise in ordinary preemption. Rather, where federal common law supplies the substantive law governing the plaintiff's claim, that claim can proceed (if at all) only under principles of federal law. And here, federal law alone provides the substantive rules of decision governing the elements of a claim seeking redress for injuries allegedly caused by interstate emissions (and their concomitant effect on the global climate). *See* p. 16, *supra*. The District's attempt to cloak its claims in the garb of District law does not change that fact.

The district court rejected defendants' argument because it would allow federal common law to have an effect similar to the doctrine of complete preemption. *See* J.A. 462-463. The doctrine of complete preemption allows the removal of a state-law claim where the pre-emptive force of federal law is so great that it converts a state-law claim into a federal claim. *See Caterpillar*, 482 U.S. at 393; *see also Cefarrati* v. *JBG Properties, Inc.*, 75 F. Supp. 3d 58, 65 (D.D.C. 2014) (applying the doctrine of complete preemption to a claim under District common law). The district court reasoned that complete preemption is unavailable for federal-common-law claims because "the Supreme Court has only recognized complete preemption in the context of federal statutes." J.A. 462.

That was erroneous. The Supreme Court has already recognized that federal common law can function in the same way as a completely preemptive statute 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; *see Oneida Indian Nation*, 414 U.S. at 675. The same is true for putative state-law or local-law claims seeking redress for injuries allegedly caused by interstate emissions. Nor would it make sense to conclude that, although Congress can completely preempt state law, the structure of the Constitution itself is unable to transform state-law claims into federal ones. As leading commentators have observed, 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).

In addition, drawing a line between statutory claims and claims necessarily and exclusively governed by federal common law would lead to bizarre results, and the Supreme Court has never made that distinction. Under the District's approach, because claims necessarily and exclusively governed by federal common law would proceed in state or District court, local judges would be tasked with developing the substantive content of federal common law in the first instance, subject only to ultimate review by the Supreme Court.

Through artful pleading and venue selection, plaintiffs could prevent the federal judiciary from developing the federal common law in areas implicating "uniquely federal interests," including "interstate and international disputes implicating the conflicting rights of States." *Texas Industries*, 451 U.S. at 640, 641.

This Court need only apply familiar jurisdictional principles to this context in order to conclude that the district court had jurisdiction over this action. The district court erred by concluding otherwise, and its remand order should be vacated.

B. Removal Was Proper Because The District's Claims Raise Disputed And Substantial Issues Of Federal Law

Federal jurisdiction is also present because the District's claims raise disputed and substantial federal issues. It is "common[] sense" that "a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues." *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308, 312 (2005). That form of federal-question jurisdiction, often referred to as *Grable* jurisdiction, will lie "if 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 ap-

proved by Congress." *Gunn* v. *Minton*, 568 U.S. 251, 258 (2013). The District's claims necessarily raise several disputed and substantial federal issues that justify federal jurisdiction, thereby meriting removal.

1. The District's Claims Necessarily Raise Federal Issues

The first *Grable* prong is satisfied because the District's claims necessarily raise several issues governed by federal law.

a. As a preliminary matter, if the Court concludes that federal common law governs the District's claims but does not provide an independent basis for removal under the well-pleaded-complaint rule, this action is still removable under *Grable*. Several courts of appeals have held that, where "federal common law *alone* governs" a claim, "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Battle* v. *Seibels Bruce Insurance Co.*, 288 F.3d 596, 607 (4th Cir. 2002); *accord Marcos*, 806 F.2d at 354; *Newton* v. *Capital Assurance Co.*, 245 F.3d 1306, 1308 (11th Cir. 2001); *Torres* v. *Southern Peru Copper Corp.*, 113 F.3d 540, 542-543 (5th Cir. 1997). As explained above, *see* pp. 31-32, this case implicates the federal common law of transboundary pollution and foreign affairs. Even under the district court's limited view of the artful-pleading doctrine, then, federal jurisdiction is appropriate.

b. *Grable* also permits federal courts to exercise jurisdiction over claims that "directly implicate[] actions taken by [federal agencies] in approving the creation of [federal programs] and the rules governing [them]." *Pet Quarters, Inc.* v. *Depository Trust & Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009); *accord Board of Commissioners* v. *Tennessee Gas Pipeline Co.*, 850 F.3d 714, 724-25 (5th Cir. 2017); *McKay* v. *City & County of San Francisco*, Civ. No. 16-3561, 2016 WL 7425927, at *4-*5 (N.D. Cal. Dec. 23, 2016); *West Virginia ex rel. McGraw* v. *Eli Lilly & Co.*, 476 F. Supp. 2d 230, 234 (E.D.N.Y. 2007). As the Second Circuit explained, "greenhouse gas emissions are the subject of numerous federal statutory regimes." *City of New York*, 993 F.3d at 86. The District's theory of liability, however, is that defendants' alleged misstatements or omissions were false and material because they led consumers to use more fossil fuels compared to renewables. *See, e.g.*, J.A. 147-148. That makes plain that the District seeks to have a court make exactly the sort of complex and value-laden policy judgments reserved for federal authorities in deciding the appropriate balance "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 86. The District's attempt to "sidestep[]" the federal government's "carefully crafted frameworks," *id.*, necessarily implicates federal issues.

The District's novel claims also expressly seek to impose liability for representations made to federal policymakers. *See* J.A. 110-111. Such claims of fraud on the federal government arise under federal law. *See Buckman Co.* v. *Plaintiffs' Legal Committee*, 531 U.S. 341, 347 (2001); *Pet Quarters*, 559 F.3d at 779; *Kemp* v. *Medtronic, Inc.*, 231 F.3d 216, 235 (6th Cir. 2000).

c. In rejecting removal based on *Grable* jurisdiction, the district court addressed only whether the District's claims necessarily raise a federal issue. *See* J.A. 464, 465 n.5. The court held that the answer was no because, in its view, the District's claims do not raise a "nearly pure question of federal law." J.A. 464. That misses the point. Whether defendants' promotion and sale of fossil fuels violate the District's public policy inevitably sets up a potential conflict with federal decisionmaking about the reasonableness and desirability of those activities. In effect, the District aims to achieve through its consumer-protection law what has not been achieved in the federal legislative and regulatory process: namely, a determination that defendants' activities are unreasonable. As the Second Circuit recognized, such a balancing exercise by the District poses a "real risk" of "undermin[ing] important federal policy choices." *City of New York*, 993 F.3d at 93. Such collateral attacks on federal legislative and regulatory determinations implicate federal issues for purposes of federal-question jurisdiction.

2. The Federal Interests Implicated Are Substantial

This case sits at the intersection of federal energy and environmental regulation and necessarily implicates interstate emissions, foreign policy, and national security. Any of those federal interests qualifies as "substantial." *See In re NSA Telecommunications Records Litigation*, 483 F. Supp. 2d 934, 943 (N.D. Ca. 2007); *Grynberg Production Corp.* v. *British Gas, p.l.c.*, 817 F. Supp. 1338, 1356 (E.D. Tex. 1993). In addition, when a claim "directly implicates actions taken by [federal agencies] in approving the creation of [federal programs] and the rules governing [them]," the federal question raised is substantial. *Pet Quarters*, 559 F.3d at 779. The district court did not disagree with that conclusion; it held only that the District's claims did not necessarily raise any federal questions. *See* J.A. 465 n.5. For the reasons discussed above, that analysis was flawed.

3. The Federal Interests Are Disputed And Properly Adjudicated In Federal Court

The district court also declined to reach the final two *Grable* requirements, *see* J.A. 465 n.5, but those requirements are clearly satisfied.

First, the federal issues presented here are disputed. The District's claims are governed by federal common law and place squarely at issue the question whether regulators should have struck a different balance between the benefits and harms of defendants' alleged conduct. Defendants contend

that the District cannot recover under federal common law and that the District's claims amount to an impermissible collateral attack on federal policies that expressly encourage the precise conduct on which the District bases its requested relief.

Second, the District's claims would be properly adjudicated in federal court, as the exercise of federal jurisdiction over this action is fully consistent with federalism principles. Such a "sprawling case" seeking to regulate global emissions "is simply beyond the limits of state laws," or the District's. *City of New York*, 993 F.3d at 92. Federal courts are the traditional forum for adjudicating the issues presented by this case, including environmental regulation and regulation of vital natural resources. And the District's courts have no governmental interest in developing federal common law. Because the District's claims also necessarily implicate substantial and disputed federal questions, the district court had jurisdiction over this action under *Grable*.

C. Removal Was Proper Under The Federal-Officer Removal Statute

The federal-officer removal statute allows removal of an action against "any officer (or any person acting under that officer) of the United States or of any agency thereof . . . for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). The right of removal is "made absolute whenever a suit in a state court is for any act 'under color' of federal office, regardless of whether the suit could originally have been brought in federal court."

Willingham v. *Morgan*, 395 U.S. 402, 406 (1969). The basic purpose of the federal-officer removal statute is to "protect the [f]ederal [g]overnment" from "interference with its operations." *Watson* v. *Philip Morris Cos.*, 551 U.S. 142, 150 (2007) (internal quotation marks and citation omitted). To protect federal interests from state or local interference, the Supreme Court has given the statute a "liberal construction." *Id.* at 147.

A private actor may remove a case under Section 1442 if it can show that it is a "person" within the meaning of the statute; that it acted under the direction of a federal officer; that there was some relation or connection between the charged conduct and the asserted official authority; and that it has a colorable federal defense to the plaintiff's claims. *See* 28 U.S.C. § 1442(a)(1); *K&D LLC* v. *Trump Old Post Office LLC*, 951 F.3d 503, 506 (D.C. Cir. 2020); *In re Subpoena in Collins*, 524 F.3d 249, 251 (D.C. Cir. 2008). In analyzing each jurisdictional element, a court must "credit the [defendant's] theory of the case." *Jefferson County* v. *Acker*, 527 U.S. 423, 432 (1999).

Below, the District did not contest that defendants are "persons" under the statute and have colorable federal defenses to its claims. *See* J.A. 469-470 & n.8. The district court also "expresse[d] no view" on whether defendants acted under the direction of the federal government. J.A. 470 n.9. Instead, the district court concluded only that defendants failed to demonstrate the

requisite connection between their activities taken under the direction of federal officers and the District's claims. J.A. 470-471. The district court erred by reaching that conclusion.

1. Defendants Acted Under The Direction Of Federal Officers

Because the nexus requirement depends upon the actions defendants took under the direction of federal officers, we begin with the federal-direction requirement. Whether a private party acted under the direction of a federal officer typically focuses on whether the party was subject to the officer's "subjection, guidance, or control" when endeavoring to "assist, or to help carry out, the [officer's] duties or tasks." *Watson*, 551 U.S. at 151-152 (emphasis omitted). That test is satisfied when a party "fulfill[s] the terms of a contractual agreement" with the government and "perform[s] a job that, in the absence of a contract with a private firm, the [g]overnment itself would have had to perform." *Id.* at 153-154. That standard is satisfied here.

1. To begin with, the federal government exercised comprehensive control over the entire oil-and-gas industry in World War II by enlisting and fundamentally reshaping the industry to produce necessary war products. *See* J.A. 44-47. For example, "[b]ecause [aviation fuel] was critical to the war effort" in World War II, "the United States government exercised significant control over the means of its production." *United States* v. *Shell Oil Co.*, 294 F.3d 1045, 1049 (9th Cir. 2002). The "federal government directed the owners

and operators of the [N]ation's crude oil refineries"—including predecessor companies of defendants—"to convert their operations" in order to produce aviation gas and other products that "the military desperately needed." *Exxon Mobil Corp.* v. *United States*, Civ. No. 10-2386, 2020 WL 5573048, at *30 (S.D. Tex. Sept. 16, 2020).*

In so doing, the federal government "insist[ed] that each company utilize[] all of its facilities to make 100 octane aviation gasoline to the extent of its ability to so do, and there [wa]s not in fact any freedom to make a choice between contracting and not contracting." *Exxon Mobil*, 2020 WL 5573048, at *12 (citation omitted). The Petroleum Administration for War—a federal agency established during World War II to regulate fossil-fuel usage in support of the war effort—"told the refiners what to make, how much of it to make, and what quality." *Shell Oil Co.* v. *United States*, 751 F.3d 1282, 1286 (Fed. Cir. 2014) (citation omitted). The Petroleum Administration also issued directives to refineries to "run their production operations on a continuous basis and to minimize downtime for maintenance and repair" in order "[t]o ensure maximum production." *Exxon Mobil*, 2020 WL 5573048, at *12. Those

* The complaint improperly conflates the activities of defendants with the activities of their separately organized predecessors, subsidiaries, or affiliates. For purposes of this appeal, however, defendants describe the conduct of certain of their predecessors, subsidiaries, or affiliates to show that the complaint, as pleaded, was properly removed.

"extraordinary modes of operation" were "often uneconomical and unanticipated at the time of the refiners' entry into their [aviation-gas] contracts." *Shell Oil*, 751 F.3d at 1287 (citation omitted).

When directing the production of aviation gas and other essential military products, the Petroleum Administration coordinated the activities of all energy companies as if the companies were "units of one enterprise and directed their operations so as to produce the maximum quantities of aviation gasoline at the earliest possible time." *Exxon Mobil*, 2020 WL 5573048, at *12 (citation omitted). The Administration would "quit allocating crude oil to those that [did not] devote themselves to what [it] called the war effort." *Id.* Companies that were not "making essential war materials" were simply unable to run their refineries. *Id.* (citation omitted).

Absent defendants' production of specialized military fuels, "the [g]overnment would have had to" produce them. *Watson*, 551 U.S. at 154. As two former Chairmen of the Joint Chiefs of Staff have explained: "The U.S. military has not, and does not, have the knowledge or experience to produce these specialized products on its own. It relies on the private companies, many of which are Defendants in these lawsuits, to manufacture these fuels. Given the vital importance of these fuels, the military has, and continues to, closely direct and supervise these private parties and demands that the fuels meet the exact specifications required for military operations." Br. of Amici General

Myers & Admiral Mullen at 21-22, *City & County of Honolulu* v. *Sunoco LP*, 39 F.4th 1101 (9th Cir. 2022) (No. 21-15313).

Defendants further acted under the federal government as its agents in building and operating pipelines to transport oil during World War II. "To insure adequate supplies of petroleum through the east during" the war, the government "caused to be constructed, between [certain] Texas oilfields and the Atlantic seaboard, two large pipelines." *Schmitt* v. *War Emergency Pipelines, Inc.*, 175 F.2d 335, 335 (8th Cir. 1949). An entity that included predecessors or affiliates of defendants constructed and operated the two lines "under contracts" and "as agent" for the federal government "without fee or profit." *Id.* at 335-336; *see* J.A. 108, 192-193. The government had the power to "direct such affirmative action as may be necessary to accomplish the purposes" of the two lines—namely, "relieving shortages" and "augmenting supplies for offshore shipments." 8 Fed. Reg. 13,343. Through certain federal directives, the government controlled all oil that moved through the pipelines on the government's behalf. *See* 8 Fed. Reg. 1,068-1,069, 13,343.

2. The federal government has continued its control of defendants' contributions to military efforts. At the start of the Korean War in 1950, President Truman established the Petroleum Administration for Defense, which issued production orders to defendants and other energy companies, including to ensure adequate quantities of aviation gas for military use. *See* H.R. Rep.

No. 1, 84th Cong., 1st Sess. 122 (1955) (available at D. Ct. Dkt. 51-12); *Exxon Mobil*, 2020 WL 5573048, at *15.

After the 1973 oil embargo, the government relied on the Petroleum Administration for Defense to address "immediate and critical" military petroleum shortages. S. Rep. No. 1, pt. 1, 94th Cong., 1st Sess. 442 (1975) (available at D. Ct. Dkt. 51-13). The government ultimately "issued directives to 22 companies"—including defendants—"to supply a total of 19.7 million barrels of petroleum during the two-month period from November 1, 1973, through December 31, 1973, for use by the [Department of Defense]." J.A. 285; *see* J.A. 325-328; S. Rep. No. 94-1, at 443; 38 Fed. Reg. 30,572.

During the Cold War, defendant Shell Oil Company developed and produced specialized jet fuel for the federal government to meet the unique performance requirements of the U-2 spy plane and later the OXCART and SR-71 Blackbird programs. *See* J.A. 330-331, 336-344, 345-346. It also constructed "special fuel facilities" for handling and storage for the OXCART program, including a hangar, pipelines, and storage tanks, at air force bases at home and abroad. Shell Oil Company "agreed to do this work without profit" under special security restrictions per detailed government contracts. D. Ct. Dkt. 51-20, at 1; *see* D. Ct. Dkt. 51-20 to 51-26 (relevant contracts).

3. Defendants have also played an integral role in promoting energy security and reducing reliance on oil imported from hostile powers. *See* J.A.

50-59. Over the last 70 years, the federal government has directed defendants to explore, develop, and produce oil and gas on the Outer Continental Shelf pursuant to leases issued by the federal government under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-1356c. *See* J.A. 50-56. In so doing, the federal government has imposed myriad requirements on defendants, including to "develop[] . . . the leased area" by carrying out exploration, development, and production activities for the express purpose of "maximiz[ing] the ultimate recovery of hydrocarbons from the leased area." J.A. 350; *see* J.A. 347-355, 366-377. Federal regulations also control the means of oil and gas production on the Outer Continental Shelf, including the use of enhanced oil-and-gas recovery operations, well tests, and flaring and venting gas. *See* 30 C.F.R. §§ 250.1151, 250.1152, 250.1160 to 250.1165.

In addition, certain defendants have engaged in the exploration and production of fossil fuels pursuant to agreements with federal agencies. *See* J.A. 48-50. For example, the Elk Hills Naval Petroleum Reserve in California "was originally established in 1912 to provide a source of liquid fuels for the armed forces during national emergencies." Government Accountability Office, RCED-87-75FS, *Naval Petroleum Reserves: Oil Sales Procedures and Prices at Elk Hills, April Through December 1986*, at 3 (1987) <tinyurl.com/gaoelkhills1>. When it was created, the Navy and Standard Oil owned intermingled parts of Elk Hills, and Standard Oil eventually agreed not

to produce oil without notice to the federal government. *See United States* v. *Standard Oil Co.*, 545 F.2d 624, 626-627 (9th Cir. 1976). As a result of World War II, Standard Oil entered into a Unit Plan Contract with the United States Navy "to govern the joint operation and production of the oil and gas deposits" of the Reserve in order to serve the national interest. *Chevron U.S.A., Inc.* v. *United States*, 116 Fed. Cl. 202, 205-206 (2014).

The Unit Plan Contract provided the government with the absolute right to establish the time and rate of production and the exclusive right to carry out the actual operations at the site. Indeed, the Navy was "afforded" a "means of acquiring complete control over the development of the entire Reserve and the production of oil therefrom." J.A. 383. As operator of Elk Hills, the Navy chose to operate the reserve through a contractor; "Standard Oil Company of California bid for the operator's contract in 1944, was awarded the contract, and continued to operate the reserve for the next 31 years." Government Accountability Office, RCED-88-198, *Naval Petroleum Reserve No. 1: Efforts to Sell the Reserve* 15 (1988) <tinyurl.com/gaoelkhills2> (GAO Report). The Navy used a private contractor to operate Elk Hills in order to maximize production as quickly as possible. *See* J.A. 397.

"Shortly after the unit plan contract was signed, the Congress, according to [the Department of Energy], authorized the production [at the Elk Hills Reserve] at a level of 65,000 [barrels per day] to address fuel shortages on the

West Coast and World War II military needs." GAO Report 15. Standard Oil's production and operation of Elk Hills for the Navy were subject to substantial supervision and inspections by Navy officers. The Operating Agreement between the Navy and Standard Oil provided that Standard Oil was "in the employ of the Navy Department and [was] responsible to the Secretary thereof through the Officer in Charge and Director, Naval Petroleum and Oil Shale Reserves." J.A. 403.

4. Finally, defendants have supported the strategic energy stockpile for the United States, a crucial element of national energy security and treaty obligations. *See* J.A. 56-59. Specifically, affiliates of defendants Shell Oil Company and Exxon Mobil Corporation have acted as operators and lessees of the Strategic Petroleum Reserve infrastructure, subject to the federal government's supervision and control in the event of the President's call for an emergency drawdown. *See id.*; 42 U.S.C. § 6241(d)(1); Department of Energy, *Strategic Petroleum Reserve Annual Report to Congress for Calendar Year 2018*, at 15, 31-33 (2020) (listing leases). For those reasons and the others discussed above, defendants were subject to the federal government's "subjection, guidance, or control" when endeavoring to "assist" the federal government with the production and transportation of fossil fuels. *Watson*, 551 U.S. at 151-152 (emphasis omitted).

2. The District's Action Has A Sufficient Connection To Defendants' Federally Directed Activities

The hurdle presented by the connection requirement of the federal-officer removal statute is not onerous. Although the statute initially conditioned removal on a defendant being "sued in an official or individual capacity *for* any act under color of such office," 28 U.S.C. § 1442(a)(1) (2006) (emphasis added), Congress amended the statutory text in 2011 to permit removal of lawsuits "for *or relating to*" a federally directed action. Removal Clarification Act of 2011, Pub. L. No. 112-51, § 2(b)(1)(A), 125 Stat. 545 (emphasis added). The effect of that amendment was to "broaden[] federal officer removal to actions, not just *causally* connected, but alternatively *connected* or *associated*, with acts under color of federal office." *Latiolais* v. *Huntington Ingalls, Inc.*, 951 F.3d 286, 292 (5th Cir. 2020) (en banc); *see also*, *e.g.*, *Baker* v. *Atlantic Richfield Co.*, 962 F.3d 937, 943-944 (7th Cir. 2020); *Sawyer* v. *Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017); *In re Commonwealth's Motion to Appoint Counsel*, 790 F.3d 457, 471 (3d Cir. 2015).

Defendants have more than cleared that hurdle. According to the District, defendants' worldwide supply of fossil fuels—which necessarily encompasses the activities taken at federal direction discussed above—allegedly caused physical injuries to the District and its residents. *See* J.A. 81-82, 121-123. While defendants dispute the District's allegation, a defendant need not

admit causation in order to permit removal. *See*, *e.g.*, *Maryland* v. *Soper*, 270 U.S. 9, 32-33 (1926).

The district court nevertheless held that defendants were not entitled to remove this case on federal-officer grounds because they "have failed to show a nexus or causal connection between the charged conduct and the asserted official authority." J.A. 470 (internal quotation marks omitted). In particular, the court reasoned that "the agreements between [d]efendants and the federal government do not require the alleged false advertising and misleading representations that gave rise to the District's claims." *Id.*

The court's analysis was erroneous. The court should have focused not on the plaintiff's theory of liability but instead on the acts that allegedly caused the "injuries" and on the "harm" that allegedly gave rise to the "damages" that the plaintiff seeks to recover. *County Board of Arlington County* v. *Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 251-252, 257 (4th Cir. 2021). Accordingly, a court must examine how and when the plaintiff's alleged "injury occurred." *Ruppel* v. *CBS Corp.*, 701 F.3d 1176, 1181 (7th Cir. 2012).

That is the same analysis courts apply to a wide range of jurisdictional inquiries. For example, the Supreme Court has explained that, when assessing the nature of a plaintiff's claims, courts must "zero[] in on the core of the[] suit," especially the "acts that actually injured" the plaintiff. *OBB Personenverkehr AG* v. *Sachs*, 577 U.S. 27, 35 (2015); *see*, *e.g.*, *Devengoechea* v.

Bolivarian Republic of Venezuela, 889 F.3d 1213, 1222 (11th Cir. 2018). That focus is essential because "any other approach would allow plaintiffs to evade" jurisdictional requirements "through artful pleading." *OBB Personenverkehr*, 577 U.S. at 36; *see Fry* v. *Napoleon Community Schools*, 137 S. Ct. 743, 755 (2017).

Here, the District premises its alleged injuries from climate change on the production, sale, and use of oil and gas. The District seeks damages for, among other injuries, harms allegedly caused in part by emissions released by the combustion of all of defendants' fossil-fuel products. *See* J.A. 121-123. And defendants have produced fossil fuels at the direction of the federal government and under federal control for decades. *See* pp. 42-49, *supra*. As a result, the District's suit is necessarily related to defendants' production of fossil-fuel products (including the substantial portion produced under federal direction), because that production is an essential element of the District's alleged chain of causation.

To be sure, the District also focuses its claims on defendants' alleged misstatements. But that "does not change the substance of its claims." *City of New York*, 993 F.3d at 97. Nor does it matter whether defendants' alleged misrepresentations—which were not undertaken at the direction of federal officers—indirectly contributed to global climate change and thus to Plaintiffs' alleged injuries. As the Seventh Circuit held in *Baker*, *supra*, for purposes of

federal-officer removal, all that is required is that "a small, yet significant, portion of [defendants'] relevant conduct" be for or related to federal authority. *Baker*, 962 F.3d at 945. In similar fashion, the Fourth Circuit held in *Express Scripts*, *supra*, that removal was proper even though only a fraction of the opioids supplied by the defendants that allegedly caused a public nuisance were supplied under federal direction or control. 996 F.3d at 257. The same result was warranted here, even if the District has artfully pleaded its claims as based solely on alleged misrepresentations.

3. Defendants Have Colorable Defenses To The District's Claims

The final requirement for removal under the federal-officer removal statute is that there be a "colorable" federal defense to the plaintiff's claims. The defendant is not required "virtually to win his case" in order to satisfy that requirement; a defense that is merely "colorable" will suffice. *K&D*, 951 F.3d at 506 (citation omitted).

The District has not contested that defendants satisfy the federal-defense requirement, and for good reason. Defendants have multiple meritorious (and certainly colorable) federal defenses, including preemption by federal common law and the Clean Air Act, *see American Electric Power*, 564 U.S. at 424, and the foreign-affairs doctrine, *see American Insurance Association* v. *Garamendi*, 539 U.S. 396, 420 (2003). *See* J.A. 59-60. The district court did

not conclude otherwise, and it erred by declining to permit removal under the federal-officer removal statute.

D. Removal Was Proper Because The District's Claims Arise Out Of Defendants' Operations On The Outer Continental Shelf

Removal was additionally proper because the District's claims arise out of defendants' operations under OCSLA. The district court erred by reaching a contrary conclusion.

1. Congress enacted OCSLA to achieve "the efficient exploitation of the minerals" owned by the government on the Outer Continental Shelf by establishing a program to explore and to lease the Shelf's oil-and-gas resources. *Amoco Production Co.* v. *Sea Robin Pipeline Co.*, 844 F.2d 1202, 1210 (5th Cir. 1988); *see also* 43 U.S.C. § 1332; *California* v. *Watt*, 668 F.2d 1290, 1316 (D.C. Cir. 1981). OCSLA supplies a body of federal law applicable to the Outer Continental Shelf, *see Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U.S. 352, 355-356 (1969), and grants federal courts jurisdiction over actions "arising out of, or in connection with . . . any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf." 43 U.S.C. § 1349(b)(1).

The scope of OCSLA's jurisdictional provision is "very broad." *Tennessee Gas Pipeline* v. *Houston Casualty Insurance Co.*, 87 F.3d 150, 154 (5th Cir. 1996). In enacting that provision, Congress "intended for the judicial

power of the United States to be extended to the entire range of legal disputes that it knew would arise relating to resource development" on the Outer Continental Shelf. *Laredo Offshore Constructors, Inc.* v. *Hunt Oil Co.*, 754 F.2d 1223, 1228 (5th Cir. 1985). "Exploration," "development," and "production" have been construed to "encompass the full range of oil and gas activity from locating mineral resources through the construction, operation, servicing and maintenance of facilities to produce those resources." *EP Operating Limited Partnership* v. *Placid Oil Co.*, 26 F.3d 563, 568 (5th Cir. 1994). A plaintiff's claims have the requisite connection with those operations if the operations form part of the causal chain that allegedly resulted in the alleged injuries. *See In re Deepwater Horizon*, 745 F.3d 157, 163 (5th Cir. 2014).

2. The district court had jurisdiction under OCSLA. As a preliminary matter, defendants engage in significant "operation[s]" on the Outer Continental Shelf. Defendants and their affiliates have explored and recovered oil and gas on the Outer Continental Shelf and operate a large share of the more than 5,000 active oil and gas leases on the nearly 27 million acres that the Department of the Interior administers under OCSLA. J.A. 62; *see also* J.A. 421-453 (listing several defendants as among the largest operators, measured by oil volume, on the Outer Continental Shelf in the Gulf of Mexico). In 2016 alone, defendant Chevron U.S.A. Inc. produced over 49 million barrels of

crude oil and 50 million barrels of natural gas from the Outer Continental Shelf in the Gulf of Mexico. J.A. 62.

By their own terms, moreover, the District's claims arise in part from defendants' operations on the Outer Continental Shelf. The District's complaint targets defendants' advertising of their products, many of which were extracted and produced from Defendants' operations on the Outer Continental Shelf. *See* J.A. 63-64. In addition, and as explained above, *see* pp. 23-25, the District's claims are not limited to traditional consumer-protection relief; the District is also seeking relief for the alleged physical effects of global climate change, which the District alleges that defendants' products exacerbated. The District's allegations thus directly implicate defendants' production on the Outer Continental Shelf and therefore fall under OCSLA's "very broad" jurisdictional scope. *Tennessee Gas Pipeline*, 87 F.3d at 154.

The exercise of federal jurisdiction here would also further OCSLA's purposes. Congress "intended" that "any dispute that alters the progress of production activities" on the Outer Continental Shelf, and thus "threatens to impair the total recovery of the federally[] owned minerals from the reservoir or reservoirs underlying" the Shelf, be within OCSLA's "grant of federal jurisdiction." *Amoco*, 844 F.2d at 1210. That is precisely the case here. The District seeks vast sums in restitution, damages, and civil penalties from defendants in this action. *See* J.A. 156. An award of that magnitude would, at a

minimum, substantially discourage production on the Outer Continental Shelf and jeopardize the future viability of the federal leasing program there.

3. The district court held that OCSLA did not permit removal of the District's claims for two reasons. *See* J.A. 467-469. Both lack merit.

First, the district court determined that defendants' "alleged false advertising and misleading information campaigns are not 'operation[s]' under OCSLA." J.A. 468. But while defendants' advertisements may not themselves constitute "operations" on the Outer Continental Shelf, defendants' production of fossil-fuel products on the Shelf indisputably does. *See EP Operating*, 26 F.3d at 567. And here, the District is seeking damages for injuries allegedly caused by emissions resulting from the combustion of fossil-fuel products, which necessarily sweeps in products that come from the Outer Continental Shelf. *See* J.A. 81-82, 121-123. It is *those* "operations" on which defendants rely to support their removal of this case under OCSLA.

Second, the district court deemed the connection between the District's claims and defendants' operations insufficiently strong to support jurisdiction under OCSLA. *See* J.A. 469-470. As a preliminary matter, that conclusion appears to be premised on the erroneous conclusion that the relevant "operations" are defendants' promotion of fossil fuels. With respect to defendants' *production* activities, the District's own pleadings belie the conclusion that the requisite connection is lacking. Accepting the District's allegations as true

"for purposes of this appeal," *EP Operating*, 26 F.3d at 566, "fossil fuels are a leading cause of climate change," and "current levels of fossil fuel use—even purportedly 'cleaner' or more efficient products—represent a direct threat to District residents and the environment." J.A. 139. The District's contention that the use of defendants' products represents a threat to the District demonstrates that, under its theory, the production of fossil-fuel products, including those produced on the Outer Continental Shelf, is an alleged "but for" cause of at least some of the injuries alleged in the complaint.

The district court rejected that conclusion in part because it believed that "[a]dopting [d]efendants' approach would allow essentially any lawsuit related to fossil fuels to be removed under OCSLA." J.A. 469. It would not. The District is alleging here that the combined use of fossil fuels around the world—billions of units of which were developed from the Outer Continental Shelf—caused physical harms within District borders. This case is thus a far cry from one in which a party is injured by a particular gallon of fuel, which by chance happened to be produced in part on the Outer Continental Shelf. The alleged mechanism of injury—global climate change—is so broad that it necessarily encompasses all fossil-fuel operations on the Outer Continental Shelf. For that reason, federal jurisdiction lies under OCSLA, in addition to the other

bases for jurisdiction discussed above. Defendants therefore properly removed this case to federal court, and the district court erred by granting the District's motion to remand.

CONCLUSION

The remand order of the district court should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS

I, Kannon K. Shanmugam, counsel for appellants Exxon Mobil Corporation and ExxonMobil Oil Corporation and a member of the Bar of this Court, certify, pursuant to Federal Rule of Appellate Procedure 32(g), that the foregoing Brief of Appellants is proportionately spaced, has a typeface of 14 points or more, and contains 12,973 words. I further certify that the other signatories to this brief consented to my use of their electronic signature.

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MARCH 1, 2023