No. 22-821

In The
Supreme Court of the United States

CHEVRON CORPORATION, ET AL.,

Petitioners,

v.

CITY OF HOBOKEN, NEW JERSEY, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENT CITY OF HOBOKEN'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Respondent's suit, pleading only state-law claims, may be removed to federal court on the basis of an ordinary preemption defense, notwithstanding the well-pleaded complaint rule.

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BRIEF IN OPPOSITION

"Federal courts are not courts of general jurisdiction." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541-42 (1986). Yet Petitioners seek the Court's intervention to remove this case to the federal courts, so that they can avoid the ordinary fate of appearing in New Jersey state court to answer to exclusively New Jersey state-law claims, arising from a course of conduct spearheaded by a New Jersey corporation, resulting in damages suffered in New Jersey by a New Jersey plaintiff. Petitioners' only proffered basis for removal is the hollow allegation that Respondent's state-law claims—brought under New Jersey tort law and a New Jersey consumer fraud statute—are really "artfully pleaded" federal claims in disguise. Because Petitioners fail to identify a federal statute providing for complete preemption or a substantial federal issue that must be resolved for Respondent to prove the elements of its state-law claims, the petition should be denied.

Petitioners' theory is itself an "artfully pleaded" ordinary preemption defense in disguise. It cannot provide a basis for federal jurisdiction. Ordinary preemption is a *defense* available when incompatible federal and state laws regulate the same actions. A defendant may raise it to attempt to defeat a state-law claim in state court, but not to remove that state-law claim to federal court.

This is because Respondent, the City of Hoboken, is the master of its complaint. *See Caterpillar Inc. v.*

Williams, 482 U.S. 386, 392 (1987). Hoboken has the right to bring New Jersey state-law claims in New Jersey state court, including against a New Jersey company—Exxon Mobil. That right is not extinguished by Petitioners' assertion of an ordinary federal preemption defense. "[S]ince 1887 it has been settled law that a case may not be removed to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 14 (1983).

Petitioners do not articulate any legitimate constitutional or statutory basis for the removal of Respondent's state-law claims. Under the well-pleaded complaint rule, the question of whether a state-law claim is preempted by federal law belongs in state court. "A suit 'arises under' federal law 'only when the plaintiff's statement of his own cause of action shows that it is based upon federal law.'" *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009) (quoting *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908)) (cleaned up).

The complete preemption doctrine establishes the test to determine whether a state-law claim may be treated, for removal purposes, as a federal claim despite the requirements of the well-pleaded complaint rule. *See Caterpillar*, 482 U.S. at 393. Petitioners do not challenge the Third Circuit's holding that Respondent's claims are not completely preempted by a

federal statute, an argument they waived in the lower courts. And they do not even attempt to cite a single federal law that would be so much as implicated by Respondent's state-law claims.

Nor do Petitioners identify a substantial federal question that must be resolved for Respondent to prove the elements of its state-law claims, under the doctrine established by *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). The *Grable* test cannot be satisfied because no issue of federal common law appears in Respondent's *own* "statement" of its claims, as *Grable* and the well-pleaded complaint rule require. *Mottley*, 211 U.S. at 152; *see Grable*, 545 U.S. at 314-15. None of Respondent's state-law claims "rises or falls on [Respondent's] ability to prove the violation of a federal duty." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 383 (2016). And a defense, even one that requires construction of federal law, is not sufficient for *Grable* removal. *See Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1350 n.4 (2020) ("federal jurisdiction" under *Grable* "cannot be predicated on an actual or anticipated defense") (cleaned up).

Left without any basis for removal under the doctrines of complete preemption or *Grable*, Petitioners ask this Court to hold that Respondent's state-law claims are removable on the spurious ground that those claims are "necessarily and exclusively" governed by federal law because they are "interstate and international." This new category of claims is a fiction concocted by Petitioners to pass off ordinary

preemption under another name. Outside of complete preemption and *Grable*, there is no "necessary and exclusively federal" exception to the well-pleaded complaint rule. Petitioners ask the Court to create an entirely new doctrine of original and exclusive federal jurisdiction over all claims asserted against corporations with "interstate or international" operations, even when they engage in conduct actionable only under state law.

Were Petitioners to succeed, whole swaths of laws of all fifty states will be nullified, and state courts will be stripped of their historical co-equal jurisdiction, only because Petitioners do not want to answer in state courts for their state-law violations.

With the law clearly settled against Petitioners, it should not surprise this Court that, contrary to their manufactured claims of a circuit split, Petitioners' argument has been rejected by every court of appeals to consider it. This Court recently denied certiorari in another case seeking review of the same theory. *See Chevron Corp. v. City of Oakland*, No. 20-1089.

Unable to identify any reason for a different result here, Petitioners point out that this Court recently invited the Solicitor General to express the views of the United States in *Suncor Energy (U.S.A.) Inc. v. Bd. of Cnty. Comm'rs of Boulder Cnty.*, No. 21-1550, a case they concede "presents the same issues" as their petition in this case.[1] On March 16, 2023,

[1] On the grounds that both petitions concern "the same issues," Petitioners requested their petition to be held pending the

the Solicitor General filed the United States' brief in *Suncor*, rejecting the same arguments Petitioners make here. The United States expressed its view that the *Suncor* petition should be denied, because, in that case, "[t]he court of appeals . . . correctly declined to recharacterize respondents' state-law claims, and its decision does not conflict with any decision of another court of appeals." That conclusion applies with equal force here.

STATEMENT OF THE CASE

1. Respondent City of Hoboken, a New Jersey municipality, filed this suit, seeking monetary relief for injuries it has sustained as a result of Petitioners' decades-long campaign of deception about the impact of fossil fuels on the climate, in New Jersey state court, asserting exclusively state-law claims. Petitioners have known about and studied the potential harms from fossil fuel usage since the 1950s. Pet. App. 39a; JA. 79-93. Decades later, Petitioners—led by a New Jersey corporation, Exxon—created front groups with neutral names to promote climate science denial and disinformation campaigns, as part of an effort to actively suppress evidence of the effects of fossil fuel emissions. Pet. App. 39a; JA. 93-112.

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disposition of *Suncor*. Curiously, Petitioners state their petition should be granted even if the *Suncor* petition is denied. Petitioners fail to explain why they should have it both ways. If the petition in *Suncor* is denied, this petition should be denied as well.

Despite knowing their products caused substantial harm, Petitioners misled consumers for decades about the risks of continued dependence on their products. Pet. App. 39a; JA. 93-112. While Petitioners were engaged in their disinformation campaign, they were actively making business plans that accounted for rising sea levels and warming temperatures due to climate change. Pet. App. 39a; JA. 112-115.

Petitioners' deception has caused lasting harm to Hoboken. Pet. App. 40a; JA. 132-133. This damage includes an increased frequency of flooding in the city, which requires large-scale and long-term remediation efforts. JA. 133-134. Hoboken has already been forced to expend hundreds of millions of dollars after damage caused by extreme rainfall events, including Hurricane Irene and Superstorm Sandy, but a fully comprehensive solution is beyond its means. *Id.* Petitioners' deceptions are the cause of Respondent's need to invest in its substantial, yet incomplete, remediation plans. *Id.*

Petitioners removed the case to federal court. In a 168-page notice of removal, Petitioners asserted several grounds for removal, including federal question, 28 U.S.C. § 1331; jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1349(b); federal officer removal, 28 U.S.C. § 1442; and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). Pet. 8; Pet. App. 41a. Petitioners argued that the case was removable because the suit, although pleading only state-law claims, fell within the district court's federal

question jurisdiction because it was, in their view, really a federal common law claim. Pet. App. 47a.

The district court held that none of the grounds for removal was valid and remanded the case to state court.

2. The Third Circuit affirmed.

a. The court explained that a case pleading only state-law claims can be removed to federal court only if the Petitioners "show either that these state claims are completely preempted by federal law or that some substantial federal issue must be resolved." Pet. App. 22a-23a (citing *Caterpillar*, 482 U.S. at 393; *Grable*, 545 U.S. at 313–14).

The Third Circuit took note of the rule that "[i]f plaintiffs say their claims are state-law claims, we almost always credit that . . . because plaintiffs are 'the master[s] of the[ir] claim[s].'" Pet. App. 23a (quoting *Caterpillar*, 482 U.S. at 392). A plaintiff can avoid federal jurisdiction by exclusive reliance on state law, because plaintiffs "choose to sue, so they choose why." *Id.*

The Third Circuit noted an exception to this rule under the "complete preemption" doctrine, a rarely-applied principle that has been recognized by this Court only three times. Pet. App. 23a-24a (citing *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6–8, 10–11 (2003)). Complete preemption is "a potent jurisdictional fiction" that "lets courts recast a state-law claim as a federal one" for removal to federal court. *Id.*

A state-law claim is completely preempted "only when there is (1) a federal statute that (2) authorizes federal claims 'vindicating the same interest as the state claim.'" *Id.* (citation omitted). Respondent's claims were not completely preempted, because "[u]nsurprisingly," Petitioners "cannot cite an applicable statute that passes this test." *Id*.

b. Applying these principles, the Third Circuit held that Petitioners' attempt at removal was meritless.

The court rejected Petitioners' argument seeking "a new form of complete preemption, one that relies not on statutes but federal common law." *Id*. In doing so, it noted the "fatal flaw" exposing Petitioners' common-law preemption gambit: their reliance on a *garden-variety* preemption case instead of a complete preemption case they would need to justify removal. *Id.* (citing *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981)). The court found that Petitioners' other authorities were inapposite, including a case concerning "another ordinary preemption defense to a case first filed in federal court" (*City of New York v. Chevron Corp.*, 993 F.3d 81, 90–94 (2d Cir. 2021)); and cases that relabeled state common law claims as federal, but are no longer good law (*Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 924, 926–29 (5th Cir. 1997); *New SD, Inc. v. Rockwell Int'l Corp.*, 79 F.3d 953, 955 (9th Cir. 1996)). Pet. App. 24a-25a. As a result, Petitioners could not overcome "the *only* basis for recharacterizing a state-law claim as a federal claim" for removal—"because the oil companies have no statute, they have no

removal jurisdiction either." *Id.* In other words, the current petition fails to identify a statute that would justify complete preemption.

The court also held that removal was not justified on the grounds of a substantial federal question, since Respondent has not pleaded a state-law claim which requires resolving any substantial federal issue. *Id.* at 26a (citing *Grable*, 545 U.S. at 313–14; *Gunn v. Minton*, 568 U.S. 251, 258 (2013)). Because the only "federal issue that the oil companies identify is whether federal common law governs these claims," the court found that their *Grable* argument was simply a rehash of their common-law preemption argument—"the same wolf in a different sheep's clothing." *Id.* Since ordinary preemption is a *defense*, and "[d]efenses are not the kinds of substantial federal questions that support federal jurisdiction," an ordinary preemption argument could not support *Grable* removal. *Id.* Besides, the court concluded, *Grable* could not be satisfied because it requires that to "prove some element of a state-law claim, the plaintiff had to win on an issue of federal law," and there was no such circumstance here. *Id.*

3. Petitioners sought rehearing *en banc*, which was denied. *Id.* at 109a-111a.

REASONS FOR DENYING THE PETITION

Petitioners insist that Respondent's state-law claims arise under federal law, even though they fail to invoke any federal common law doctrine currently in force, any statute that completely preempts Respondent's state-law claims, or a substantial federal question that Respondent must prevail on to prove the elements of its state-law claims. As Petitioners acknowledge, no circuit has accepted their argument. Every circuit that has considered it has now rejected it.[2] The more than twenty judges who have now passed on Petitioners' theory have been nearly unanimous; only one judge has accepted it, and that district court ruling was unanimously overturned on appeal.[3]

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[2] *See Minnesota v. Am. Petroleum Inst.*, No. 21 Civ. 1752, 2023 WL 2607545 (8th Cir. Mar. 23, 2023); *Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 53-56 (1st Cir. 2022), *reh'g denied*, No. 19-1818 (July 7, 2022); *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733, 746-48 (9th Cir. 2022), *reh'g denied*, Nos. 18-15499, 18-15502, 18-15503, 18-16376 (June 27, 2022); *Mayor & City Council of Balt. v. BP P.L.C.*, 31 F.4th 178, 199-208 (4th Cir. 2022), *reh'g denied*, No. 19-1644 (May 17, 2022); *City of Oakland v. BP PLC*, 969 F.3d 895, 906-07 (9th Cir. 2020), *reh'g denied*, No. 18-16663 (Aug. 12, 2020), *cert. denied*, 141 S. Ct. 2776 (2021).

[3] *See California v. BP P.L.C.*, Nos. C 17-06011, C 17-06012, 2018 WL 1064293 (N.D. Cal. Feb. 27, 2018), *rev'd*, *City of Oakland v. BP PLC*, 969 F.3d 895. For judges rejecting the theory *see supra* n.2; Pet. App. 47a-51a, *City of Hoboken v. Exxon Mobil Corp*., 558 F. Supp. 3d 191, 201-03 (D.N.J. 2021), *aff'd*, *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022); *Delaware ex rel. Jennings v. BP Am. Inc*., 578 F. Supp. 3d 618, 627-34 (D. Del. Jan. 5, 2022), *aff'd*, *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022); *Mayor & City Council of Balt. v. BP P.L.C.*, 388 F. Supp. 3d 538, 553-58 (D. Md. 2019), *aff'd*, 31 F.4th 178; *Rhode Island v. Chevron Corp*., 393 F. Supp. 3d 142, 148-50 (D.R.I. 2019), *aff'd*,

Because Petitioners' question presented defies an area of settled Supreme Court law, and the courts of appeals are unified in rejecting it, this Court should follow its recent decision in *Oakland*, where it was presented with this same theory, and deny the petition. *See Chevron Corp. v. City of Oakland*, No. 20-1089.

I. There Is No Circuit Conflict On the Question of Whether Respondent's Well-Pleaded State-Law Claims Are Removable.

Unable to claim a circuit split on the straightforward question of whether state-law claims over their deceptions are removable, Petitioners attempt to manufacture two subsidiary splits that might justify *certiorari*. Both, however, are a mirage because *no* circuit agrees with Petitioners on the only question that matters for the outcome of their petition—whether Respondent's state-law claims are removable.

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979 F.3d 50 (1st Cir. 2020), *vacated*, *Shell Oil Prods. Co. v. Rhode Island*, 141 S. Ct. 2666 (2021); *County of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934, 937-38 (N.D. Cal. 2018), *aff'd*, 960 F.3d 586 (9th Cir. 2020), *vacated*, 141 S. Ct. 2666 (2021); *Minnesota v. Am. Petroleum Inst.*, No. 20 Civ. 1636, 2021 WL 1215656, at *5-6 (D. Minn. Mar. 31, 2021), *aff'd*, No. 21-1752, 2023 WL 2607545 (8th Cir. Mar. 23, 2023); *Connecticut v. Exxon Mobil Corp.*, No. 3:20 Civ. 1555, 2021 WL 2389739, at *4-7 (D. Conn. June 2, 2021); *Massachusetts v. Exxon Mobil Corp.*, 462 F. Supp. 3d 31, 41-44 (D. Mass. 2020).

A. There Is No Circuit Split Over When a State-Law Claim "Arises Under" Federal Law For Removal Purposes.

Petitioners allege a "widespread conflict of federal law among the courts of appeals" on the recognition of "federal jurisdiction over claims necessarily and exclusively governed by federal law but labeled as arising under state law." Pet. 17. The Petitioners in *Oakland* asked this Court to decide the same "artful pleading" question, asserting the same circuit split. *See Oakland* Pet. 5, 24-25. Petitioners' regurgitation of the very same arguments this Court has already rejected must fail.

1. Armed with no statute by which they can claim complete preemption, Petitioners focus on circumventing the *Grable* doctrine. Petitioners attempt to manufacture an illusory circuit split by casting pre-*Grable* cases applying a "*Grable*-type" analysis as diametrically opposed to the Third Circuit's decision in this case, which—unlike those cases—came *after Grable* in time and had the opportunity to faithfully apply its rule. Comparing cases from before a uniform rule was determined to a case later applying that uniform rule, in an effort to establish a circuit split, is a disingenuous ruse. The rules in the pre-*Grable* cases are not "irreconcilable" with the Third Circuit's view, as Petitioners claim. Pet. 13. They were reconciled by this Court in *Grable* once and for all, into a uniform rule which the Third Circuit then faithfully applied. *See Gunn*, 568 U.S. at 258 (explaining that pre-*Grable*, substantial federal question removal doctrine

resembled a "canvas . . . that Jackson Pollock got to" and that *Grable* was intended to "bring some order to this unruly doctrine"). All Petitioners' brief reveals is that some pre-*Grable* cases may no longer be good law; it does not establish an active circuit split over the rules of preemption.

Crucially, none of the cases Petitioners cite would allow removal here, because they all required a showing that a substantial federal question needed to be resolved to prove the elements of the plaintiff's state-law claims. Since there is no federal question that must be resolved for Hoboken to prevail on its state-law claims, none of the cases Petitioners cite would establish a circuit split on the removal question or justify removal in this case.

2. Petitioners claim that the Fifth Circuit allows removal "over claims artfully pleaded under state law but necessarily governed by federal law." Pet. 12. But they cite only one outdated, pre-*Grable* decision for that proposition, *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922 (5th Cir. 1997). *Id.* The passage in *Majors* that Petitioners rely on cites no authority. *See Majors*, 117 F.3d at 929 (quoted at Pet. 12). No court has ever cited *Majors* as establishing Petitioners' claimed rule in the quarter-century since it was decided. *See* Pet. 12-17 (citing no such examples). Since *Majors*, the Fifth Circuit has consistently applied the law of federal removal without citing *Majors* or justifying the removal of state-law claims on the ground that they were "governed by federal law." *See*, *e.g.*, *Mitchell v. Bailey*, 982 F.3d 937, 940 (5th Cir. 2020); *Venable v. La. Workers'*

Comp. Corp., 740 F.3d 937, 941 (5th Cir. 2013); *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551 (5th Cir. 2008).

Majors also arose under a different set of facts that is inapplicable here. That case concerned "the historical availability of [a pre-existing federal] common law remedy" for lost property claims in interstate shipping, where federal statutes "preserv[ed]" that remedy. 117 F.3d at 929 n.16. The Fifth Circuit did not address the master of the complaint rule and held its own holding was "necessarily limited" to these specific circumstances, *id.*, which are not present here.

Because the common law had already been preserved by a federal statute, describing *Majors* as permitting removal based on federal common law is misleading. The relevant federal common law had developed after Congress "totally preempted state regulation of the liability of common carriers," *id.* at 926, and had then been expressly ratified by statute, *id*. at 926-29. In reaching its decision, the Fifth Circuit stressed that "[b]ecause we rely upon the historical availability of this common law remedy, *and the statutory preservation of the remedy*, our holding today is *necessarily limited*." *Id*. at 929 n.16 (emphasis added). The remedy for the dispute in *Majors* may have had some roots in federal common law, but the key point is that it was statutorily codified long before the dispute. That is why the court described its holding as "necessarily limited."

Majors did not establish a broad new exception to the well-pleaded complaint rule. It upheld removal based on pre-*Grable* removal law—without citing or analyzing any authority—on the ground that the existence of a substantial federal question in the case (such as the explicit preservation of the plaintiff's claims in the Airline Deregulation Act) supported removal of the state-law claims before it. Petitioners themselves suggest as much by citing a pre-*Grable* Fifth Circuit case, *Torres v. Southern Peru Copper Corp.*, 113 F.3d 540 (5th Cir. 1997), as applying the same rule as *Majors*, and describe that rule as "affirming the removal of 'state-law tort claims' against a foreign company" because the case "raise[d] substantial questions of federal common law by implicating important foreign policy concerns." Pet. 13-14 (quoting *Torres*, 113 F.3d at 542-43). In *Torres*, "foreign policy issues" were implicated because the government of Peru had "participated substantially" in the conduct at issue, "vigorous[ly]" "oppos[ed] the action," and "maintain[ed] that the litigation implicate[d] some of its most vital interests and, hence, *will* affect its relations with the United States." 113 F.3d at 542–43 (emphasis added). No such unique facts exist here.

Because a precursor to the *Grable* doctrine provided the rationale for the Fifth Circuit's rulings in *Majors* and *Torres* under very different sets of facts, those decisions have nothing to do with Petitioners' theory of common law removal in this case, which is not premised on a complex interplay between state law and federal statutes, statutorily-preserved common

law, or the vital interests of a foreign state. *Majors* and *Torres* do not conflict with the Third Circuit's decision in this case.

Other courts, including in climate deception cases, have explained that *Majors* does not announce a general exception to the well-pleaded complaint rule. *See*, *e.g.*, *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 650–51 (7th Cir. 2006); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 405 F. Supp. 3d 947, 963 (D. Col. 2019); *Greer v. Fed. Express*, 66 F. Supp. 2d 870, 874 (W.D. Ky. 1999). And *Majors* is no longer considered good law after *Grable*. *See* Pet. App. 85 n.9 (collecting cases criticizing the reasoning of *Majors*).

3. *In re Otter Tail Power Co.*, 116 F.3d 1207 (8th Cir. 1997), also fails to establish a circuit split with the Third Circuit's holding in this case. *Otter Tail* applied the same "substantial federal question" theory this Court adopted and synthesized in *Grable* eight years later.

The plaintiff in *Otter Tail* sued in state court to enforce a prior federal court order delimiting the boundary between tribal and state regulatory authority with respect to electric utilities serving tribal lands. 116 F.3d at 1213. The Eighth Circuit explained that, the case could be removed to federal court if the "well-pleaded complaint establishe[d] either that [1] federal law creates the cause of action or [2] that the plaintiff's right to relief necessarily depends on resolution of a

substantial question of federal law." *Id.* (citation omitted).[4]

The Eighth Circuit held that removal was proper under the second prong because the state-law claim "is specifically premised on th[e] alleged deviation by [the defendant] from the terms of the district court's previous order," which had interpreted the scope of tribal authority under federal treaties and statutes. *Id.* at 1213. In other words, removal in *Otter Tail* was proper not because the complaint raised "important questions of federal law," Pet. 12-13, but because the plaintiff *could not prevail* without finding a violation of the prior district court order and federal treaties. *See also Minnesota*, 2021 WL 1215656, at *6 (holding, in a climate change case, that *Otter Tail* was inapposite because, there, "plaintiffs' precise claims were explicitly connected to or relied upon interpretations of a discrete area of federal law"). Thus, the Eighth Circuit did not hold that federal jurisdiction was present because the plaintiff was bringing claims that were "governed by federal common law." Pet. 13. Instead, the court permitted removal because it found, under its pre-*Grable* standard, that adjudicating the elements of the state-law claims required a "resolution of a substantial question of federal law." *In re Otter Tail*, 116 F.3d at 1213 (citation omitted).

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[4] Although no one contested jurisdiction or removal, the Eighth Circuit considered the question *sua sponte*. *See* 116 F.3d at 1214 & n.6. The court also identified two other likely sources of federal question jurisdiction. *Id.* at 1214 n.6

Otter Tail thus provides no basis for a circuit split with the Third Circuit, since the Third Circuit applied the substantially same legal test here in its *Grable* analysis, and the Eighth Circuit has dutifully applied the same *Grable* test in more recent, post-*Grable* cases. *See Great Lakes Gas Transmission Ltd. P'ship v. Essar Steel Minn. LLC*, 843 F.3d 325, 329, 331 (8th Cir. 2016) (reciting same "substantial question of federal law" standard, then applying the *Grable* test). Moreover, the Eighth Circuit recently rejected Petitioners' jurisdictional arguments, "join[ing]" the other circuits and therefore disavowing any circuit split. *Minnesota*, 2023 WL 2607545, at *1.

4. Finally, two other pre-*Grable* cases cited by Petitioners fail to support removal or the existence of a circuit split, for similar reasons. In *Newton v. Capital Assurance Co., Inc.*, 245 F.3d 1306 (11th Cir. 2001), the plaintiff's state-law claims first required the determination of a discrete federal legal question before they could be resolved—in that case, the question of whether a federally subsidized insurance contract had been breached.[5] Because the particular type of federally subsidized contracts at issue "are interpreted using principles of federal common law rather than state contract law," a complaint alleging a breach of the contract "rais[es] a substantial federal question on its face." *Id.* at 1309. This unique scenario has no analog in Respondent's case.

[5] Neither party challenged the subject-matter jurisdiction of the federal courts over the suit, and the court considered the question *sua sponte*. *Id.* at 1308.

Republic of Philippines v. Marcos, 806 F.2d 344 (2d Cir. 1986), was a case brought by a sovereign state. No foreign state has intervened as a party here, so this case is inapposite. In *Marcos*, proving the elements of plaintiff's claims also required the resolution of a federal question, because those claims "rais[ed], as a necessary *element*, the [federal common law] question whether to honor the request of a foreign government." *Id.* at 354 (emphasis added).

In both of these cases—like *Torres* and *Otter Tail*, and quite unlike *Hoboken*—the elements of plaintiff's prima facie case presented a question of federal law. In any event, each case predates *Grable* and today would be resolved under that uniform standard.

In the end, none of Petitioners' cases support their efforts to expand federal jurisdiction or their quest for a circuit split. Petitioners' arguments could mean, at most, that federal common law ordinarily preempts Hoboken's state-law right to relief, which does not create jurisdiction under the well-pleaded complaint rule. None of Petitioners' cases hold that federal common law creates a free-floating basis for jurisdiction that would justify the removal of Hoboken's state-law claims.

B. There Is No Conflict With *City of New York v. Chevron Corp.*

The second purported circuit conflict Petitioners assert is based on the Second Circuit's decision in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). *See* Pet. 17.

Petitioners do not assert that the Second Circuit reached a conflicting conclusion on the actual removal question at issue *in this case*. The Second Circuit did not hold that federal common law creates federal removal jurisdiction where plaintiffs have pleaded only state-law claims in state court because there was no removal question in *City of New York* at all. The "City filed suit in federal court in the first instance." 993 F.3d at 94. *City of New York*'s holding cannot conflict with any holding concerning the removal of state-law claims.

The portion of the Second Circuit decision Petitioners rely on decided a different question entirely, namely the merits of an ordinary preemption defense in a case filed in federal court. *See id*. The Second Circuit explained that its holding provided no guidance regarding removal, warning that its preemption analysis might not satisfy the "heightened standard unique to the removability inquiry." *Id.* at 93-94. As the Third Circuit observed, *City of New York* "did not even try to check the boxes needed for complete preemption. Nor did it suggest another way to get there." Pet. App. 24a. The Second Circuit expressly clarified that its holding "does not conflict" with the dozen courts to have held there is no removal jurisdiction in similar cases—decisions Petitioners continue to ignore.[6] *City of New York*,

[6] The District of Connecticut, in the Second Circuit, subsequently remanded an analogous case to Hoboken's, distinguishing *City of New York* on exactly these grounds. *Connecticut v. Exxon Mobil Corp.*, No. 20 Civ. 1555 (JCH), 2021 WL 2389739, at *1 (D. Conn. June 2, 2021).

993 F.3d at 94 (noting that "even if this fleet of cases is correct that federal preemption does not give rise to a federal question for purposes of removal, their reasoning does not conflict with our holding" on ordinary preemption).

The Third Circuit never addressed the ordinary preemption question at issue in *City of New York* because it held it lacked subject matter jurisdiction over the entire case, and ordinary preemption is not a basis for removal. Pet. App. 23a (citing *Caterpillar*, 482 U.S. at 392–93). Whether *City of New York* poses a challenge to Hoboken's substantive claims on the basis of ordinary preemption is a matter for New Jersey state courts to decide. *See Empire HealthChoice Assur., Inc. v. McVeigh*, 396 F.3d 136, 142 (2d Cir. 2005), *aff'd*, 547 U.S. 677 (2006) (a court cannot "conflate[ ] the [ordinary] preemption and jurisdiction analyses" as that "giv[es] short shrift to the well-pleaded complaint rule" and ignores state courts' authority to resolve federal common law preemption).[7] The First, Fourth, and Tenth Circuits, reaching the same decision in similar climate deception cases, each took note that the well-pleaded complaint rule was not at issue in *City of New York*, which the plaintiff itself initiated in federal court. *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor*

[7] In *Charles Dowd Box Co., Inc. v. Courtney*, 368 U.S. 502, 507 (1962), the Court rejected the argument that the "task of formulating federal common law in this area of labor management relations must be entrusted exclusively to the federal courts." *See also Tafflin v. Levitt*, 493 U.S. 455, 464-65 (1990) (abstract concerns about incompatible decisions are not sufficient to wrest jurisdiction over interpreting federal law away from state courts).

Energy (U.S.A.) Inc., 25 F.4th 1238, 1262 (10th Cir. 2022); *see also Baltimore*, 31 F.4th at 203; *Rhode Island*, 35 F.4th at 55.

Despite the Second Circuit's clear admonition that its own case does not create a circuit split, Petitioners claim there is a certworthy conflict because of the reasoning the different circuits have employed to reach compatible holdings on entirely separate legal questions. Pet. 21. Specifically, Petitioners assert that the First, Fourth, and Tenth Circuits concluded that climate-change claims are no longer governed by federal common law because of displacement by the Clean Air Act ("CAA"), while the Second Circuit believed that the CAA's displacement of any remedy under federal common law "does not displace the entire *source* of the law altogether." Pet. 19 (citing *City of New York*, 993 F.3d at 95 & n.7).

Even if that dictum were true, it would provide no basis for certiorari. Regardless of the Petitioners' interpretation of the courts' rationales, their holdings are not in conflict on the removal question presented in this petition. Petitioners can prevail only if they can prove not only that some unnamed federal common law doctrine somehow "governs" Respondent's state-law claims, but also that this common law converts those state-law claims *into* removable federal claims, despite the well-pleaded complaint rule. *No* court of appeals has accepted that proposition—one that would defy the well-pleaded complaint rule—and, hence, there is no need for this Court to decide that question either.

Despite Petitioners' protestations, there is no meaningful conflict in the rationales employed by the courts of appeals either. Even though *City of New York* held federal common law *used to* govern claims like Respondent's, *see* 993 F.3d at 90-95, Petitioners insist that there is a conflict over whether "federal law necessarily governs the claims at issue." Pet. 21. This reveals once again that what Petitioners are really seeking from this Court is permission to remove on the basis of an ordinary preemption defense. That is a proposition to which no circuit—including the Second, after *City of New York*—would agree, and would require the Court to: (1) contradict consistent Supreme Court authority that creates only two exceptions to the well-pleaded complaint rule (complete preemption and *Grable*); (2) necessarily overrule its own precedents in *Caterpillar* and *Grable*, among other cases; (3) split with every court to have considered this same question; and (4) throw open federal removal jurisdiction to an unbounded number of state-law-state court cases, stripping the state courts' historical co-equal jurisdiction along the way.

II. The Question Presented Does Not Warrant Review.

This case presents an exceedingly narrow question on a settled area of law: whether defendants can remove state-law claims where they cannot satisfy the requirements for complete preemption or *Grable*, wielding only an ordinary preemption defense.

This question implicates only settled and uncontroversial Supreme Court law regarding the well-pleaded complaint rule. To the extent the courts of appeals employed different approaches to determining when there is a substantial federal question embedded in state law that requires removal before *Grable*, this Court already synthesized those approaches into a uniform standard in *Grable*. Accordingly, there is not—nor is there ever likely to be—a circuit split warranting certiorari.

This case is also a poor vehicle to adjudicate this question, since: (1) it concerns an area of law where a federal statute, the CAA, has already displaced any federal common law that could have applied to Respondent's claims; and (2) there are no substantial federal issues that must be resolved for Respondent to prove any of the elements of its state-law claims anyway.

Petitioners say the specter of state-law litigation concerning "interstate" and "transboundary" emissions warrants review. That is a question this Court already confronted in *Oakland*, another state-law case against fossil fuel companies concerning damages caused by deceptions related to climate change. It denied certiorari then and should do so again here. Since *Oakland*, no split has emerged and Petitioners identify no other reason why the question is more important now than it was just two years ago.

Since the petition was filed in this case, the United States filed a brief at the invitation of this Court in

Suncor, rejecting the "same issues" Petitioners raise here. Relevant to Petitioners' claim that federal law "necessarily and exclusively" governs Respondent's claims, the United States explained that "far from providing the exclusive remedy for claims concerning climate change or greenhouse-gas emissions, any relevant federal common law has been displaced by the Clean Air Act" and "even if the Act preempts particular state-law cause of action in this sphere, such preemption would simply be a federal defense that provides no basis for removal." *Suncor Energy (U.S.A.) Inc., et al., v. Bd. of Cnty. Comm'rs of Boulder Cnty., et al.*, No. 21-1550, at 11; *id.* at 12 ("[T]he Clean Air Act's displacement of any relevant federal common law . . . forecloses petitioners' current theory [] that federal common law 'necessarily and exclusively' govern[s] respondents' claims."). Noting that Petitioners have no claim for complete preemption based on the CAA, the United States went on to conclude: "If the *applicable* federal law in this area does not completely preempt respondents' claims, *superseded* federal law cannot plausibly be thought to have that effect." *Id.* at 16 (emphasis in original).

III. The Decision Below Is Correct.

1. Certiorari is further unwarranted because the uniform conclusion of the courts of appeals is correct. Petitioners argue that removal is proper because Hoboken's claims are "inherently federal in nature" and are thus removable as arising under federal common law, "however they are pleaded." Pet. 14, 22. This turns

the well-pleaded complaint rule on to its head. There is no "federal common law" or "necessarily and exclusively federal" or "inherently federal" exception to the well-pleaded complaint rule, no matter how many banal euphemisms for "ordinary preemption defense" Petitioners can muster. *See*, *e.g.*, *Franchise Tax Bd.*, 463 U.S. at 12. No circuit has recognized such an exception, each circuit to reach the question has ruled that Petitioners' argument fails, and accepting such an exception would swallow the rule itself. Contrary to Petitioners' claims, the Third Circuit correctly decided the removal question in this case, and no circuit disagrees.

"The 'well-pleaded complaint rule' is the basic principle marking the boundaries of the federal question jurisdiction of the federal district courts." *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987). "[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar*, 482 U.S. at 391–92; *see also Home Depot U. S. A., Inc. v. Jackson*, 139 S. Ct. 1743, 1748 (2019) ("[T]he 'civil action of which the district court' must have 'original jurisdiction'" for removal purposes "is the action as defined by the plaintiff's complaint.") (quoting 28 U.S.C § 1441) (cleaned up). This rule makes the plaintiff the master of its complaint and "serves as a 'quick rule of thumb' for resolving jurisdictional conflicts," without having to dive deep into parties' contentions at the removal stage. *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 832 (2002).

This Court has recognized only two exceptions to the well-pleaded complaint rule: (1) *Grable* removal, or when it appears that some substantial, disputed question of federal law is a necessary element of one of the well-pleaded state claims; or (2) complete preemption. *See*, *e.g.*, *Gunn*, 568 U.S. at 257–58. This second category is also sometimes referred to as the "artful pleading" doctrine. *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998).

Petitioners waived their complete preemption removal argument in the district court and have not resurrected it here. Pet. App. 46a n.6. Petitioners also fail to make out a justification for removal under *Grable*. They claim removal under *Grable* is warranted because Hoboken's state-law claims "sound in" federal law. Pet. 27. But again, Petitioners do not identify any such law, and even if they did, that would not be sufficient. *Grable* removal is only available where the state-law claims "rise[ ] or fall[ ] on the [Respondent's] ability to prove the violation of a federal duty" and Petitioners identify none here. *Manning*, 578 U.S. at 383. The spurious and unsupported notion that Hoboken's claims "sound in" federal law does not explain *which* federal law or right Hoboken must vindicate to prevail on each of its claims.[8]

[8] Notably, at least one Petitioner, Exxon, has insisted elsewhere that claims like Respondent's would fall *outside* the scope of the federal common law of transboundary air pollution. *See* Answering Br. for Defendants-Appellees at 56-61, *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012) (No. 09-17490).

Hoboken, as is its right, seeks relief under longstanding New Jersey common law and statutory causes of action. Defendants do not—and cannot—cite to a single federal law Plaintiff is seeking relief under. Removal is thus improper. The well-pleaded complaint rule is incompatible with Petitioners' concept of removing state-law claims solely on the basis of some supposedly "inherently federal" properties.

While it is true federal courts have subject matter jurisdiction over complaints that, *on their face and expressly*, allege violations of federal common law under 28 U.S.C. § 1331, Hoboken did not claim a violation of federal common law in the complaint. Petitioners argue, nevertheless, that Hoboken's claims are "inherently federal" and only "nominally" pleaded under state law because they are related to "interstate and international emissions," even though Petitioners cannot identify which federal law governing "interstate and international emissions" supposedly preempts Hoboken's claims.

The cases Petitioners cite do not support their argument. They cite *National Farmers Union Insurance Cos. v. Crow Tribe of Indians* for the proposition that jurisdiction under 28 U.S.C. § 1331 supports claims "founded upon" federal common law. Pet. 24. Petitioners fail to disclose that in *National Farmers Union*, the Petitioners themselves filed their complaint in federal court, arguing that their claims arose under the federal common law. 471 U.S. 845, 847 (1985). Thus, the *National Farmers* well-pleaded complaint pleaded

federal claims, whereas Hoboken's Complaint does not.

Where the complaint only pleads state-law claims, it is not true that a federal court must sometimes "determine whether the real nature of the claim is federal, regardless of plaintiff's characterization." Pet. at 25 (quoting *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.2 (1981)). The Supreme Court limited that very footnote to the facts of *Moitie* in *Rivet v. Regions Bank of Louisiana*. *See* 522 at 478 ("[W]e . . . clarify today that *Moitie* did not create a preclusion exception to the rule, fundamental under currently governing legislation, that a defendant cannot remove on the basis of a federal defense.").

Every single other case Petitioners cite on the supposed broad scope of federal common law removal is (1) an ordinary preemption or displacement case, and (2) jurisdiction was based either on diversity or because a federal common law claim was pleaded on the face of the complaint. *See Kansas v. Colorado*, 206 U.S. 46 (1907) (inter-state suit regarding water-sharing, brought under original jurisdiction of the Court); *United States v. Pink*, 315 U.S. 203 (1942) (suit by the United States regarding foreign bank; certiorari from opinion of the New York Court of Appeals); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964) (scope of the act of state doctrine presents a question of federal law; diversity case filed in federal court); *Int'l Paper Co. v. Ouellette*, 479 U.S. 481 (1987) (Clean Water Act ordinary preemption of Vermont common law, removed to federal court for diversity); *Illinois v. City of*

Milwaukee, 406 U.S. 91, 100 (1972) ("*Milwaukee I*") (claim by state against city in neighboring state, claiming the Court's original jurisdiction; remanded to district court on general federal question jurisdiction based on federal cause of action); *City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304 (1981) ("*Milwaukee II*") (displacement of federal common law by federal statute; federal common law cause of action pleaded in federal district court); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) (reversing Alabama Supreme Court affirmation of state court punitive damages award on federal due process grounds); *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011) (federal common law displaced by CAA; federal common law cause of action pleaded in federal district court); *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630 (1981) (claimed violation of the Sherman Act, filed in federal court).

This Court has already rejected a similar argument in *Caterpillar Inc. v. Williams*. *See* 482 U.S. at 392. In that case, the defendant removed California state-law employment contract disputes to federal court, arguing the contracts were governed by and could only be interpreted via the federal Labor Relations Act. *Id.* at 390. The Supreme Court ordered remand to state court and explained that the defendant—by arguing no state-law claim survived a federal statutory regime—was claiming ordinary federal preemption, which is an affirmative defense. *Id.* at 393. The Court noted that Congress had amended the removal statute in 1887 to authorize federal courts to only hear cases where the plaintiff affirmatively pleads

a federal cause of action, making the plaintiff the master of its own complaint. *Id.*; *see also Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 807 (1986) ("statutory grant of federal-question jurisdiction" is "more limited" than "the constitutional meaning of 'arising under' "); *Home Depot*, 139 S. Ct. at 1749 ("[T]he limits Congress has imposed on removal show that it did not intend to allow all defendants an unqualified right to remove."). That meant federal defenses could not be grounds for removal. *Caterpillar*, 482 U.S. at 392–93.

The Court rejected Caterpillar's suggestion—the same suggestion made by Petitioners here—that the plaintiffs could have and should have somehow brought a federal claim, and thus removal could be premised on "different facts [plaintiffs] might have alleged that would have constituted a federal claim." *Caterpillar*, 482 U.S. at 397. "If a defendant could [so remove], the plaintiff would be master of nothing." *Id.* at 399. Since Hoboken is the master of its Complaint, and since the Complaint pleaded no federal claim, removal is improper, and the Third Circuit reached the correct decision.

2. The Third Circuit also correctly rejected Petitioners argument for removal on the basis of *Grable* jurisdiction. *Grable* jurisdiction involves a "special and small category of cases in which arising under jurisdiction still lies," *Gunn*, 568 U.S. at 258 (cleaned up), if they "really and substantially involve a dispute or controversy respecting the validity, construction or effect of federal law," *Grable*, 545 U.S. at 313 (cleaned up).

The federal law issue must be: "(1) necessarily raised [by the plaintiff's state-law cause of action], (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258. *Grable* removal is only available where the state-law claims "rise[ ] or fall[ ] on [Respondent's] ability to prove the violation of a federal duty" and Petitioners identify none here. *Manning*, 578 U.S. at 383. A defense, like ordinary preemption, is not grounds for removal under *Grable*. *See Atl. Richfield Co.*, 140 S. Ct. at 1350 n.4 ("federal jurisdiction" under *Grable* "cannot be predicated on an actual or anticipated defense") (cleaned up).

Petitioners' vague and unsupported argument that Hoboken's claims belong in federal court because they supposedly "sound in" federal law, *see* Pet. 27, does not satisfy *Grable*'s requirement for an issue of federal law that must be determined first before to the plaintiff can vindicate each of its state-law claims. Petitioners have the burden of proof to identify such an issue, and they have not bothered to try. *McVeigh*, 547 U.S. at 699. Petitioners have no plausible argument demonstrating an issue of federal law required to adjudicate Hoboken's claims under the New Jersey Consumer Fraud Act, for example, and have not attempted to make one.

By insisting on a right to removal without complete preemption and without naming a federal law upon which Hoboken's state-law claims depend, Petitioners seek a new exception to the well-pleaded

complaint rule. Such an exception would be as powerful as complete preemption, but without that doctrine's requirements and limitations. This argument runs counter to more than a century of this Court's precedents that strictly adhere to the well-pleaded complaint rule,[9] and recognize only narrow, well-defined exceptions to it, *see*, *e.g.*, *McVeigh*, 547 U.S. at 699; *Caterpillar*, 482 U.S. at 393-94, to bring "order" to an "unruly doctrine," *Gunn*, 568 U.S. at 258.

Petitioners' proposed explosion of the confined exceptions to the well-pleaded complaint rule would, at minimum, include every instance in which federal common law preempts state law, based solely on vague allusions to "constitutional structure" and "uniform rules on issues relating to removal." Pet. at 22-23, 29 (citation omitted). But Petitioners' proposed rule would frustrate the very policy concerns they invoke. It would *upend* uniform rules of decision related to removal by reversing settled law that a federal preemption defense is not a basis to remove well-pleaded state-law claims to federal court. "There is nothing inappropriate or exceptional . . . about a state court's entertaining, and applying federal law to, completely preempted claims or counterclaims." *Vaden*, 556 U.S. at 61 n.12.[10] The New Jersey state court can do so in this

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[9] *See*, *e.g.*, *Rivet*, 522 U.S. at 475 (citing *Mottley*, 211 U.S. at 152).

[10] Petitioners' feigned alarm that adhering to the well-pleaded complaint rule would result in scenarios such as one where "Illinois could sue the City of Milwaukee in state court under Illinois law . . . and Milwaukee would be denied a federal forum" borders on the farcical. *See* Pet. 26. Removal based on

case if it concludes that the federal common law preempts Plaintiff's state-law claims.

Petitioners' reliance on this Court's decision in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) ("*AEP*") demonstrates the baselessness of their claim that the "constitutional structure" justifies removal of Hoboken's claims on the grounds that they are "necessarily and exclusively governed by federal law." Pet. at 22-24. The plaintiffs in *AEP* brought federal common law claims in federal court concerning the "curtailment of greenhouse gas emissions." *Id.* at 423. The Court held that the CAA displaced federal common law in this area. *Id.* But *AEP* made perfectly clear that after the Court's "holding that the Clean Air Act displaces federal common law, the availability *vel non* of a state lawsuit depends . . . on the preemptive effect of the federal Act." *Id*. at 429. In other words, Petitioners' argument that federal law "necessarily and exclusively" governs Hoboken's claims is a question of ordinary federal preemption—one that state courts can and do decide all the time. *See Manning*, 578 U.S. at 392 ("[I]t is less troubling for a state court to consider such an issue than to lose all ability to adjudicate a suit raising only state-law causes of action.").

3. Petitioners complain that without a right to remove, defendants may be subject to a "patchwork of conflicting state laws and state lawsuits" that could "undermine" their oil and gas operations. Pet. 29. That

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diversity jurisdiction or other established grounds would almost certainly apply in such a case.

is not reason enough to undermine the jurisdiction of the state courts. *See Tafflin*, 493 U.S. at 464-65 (abstract concerns about incompatible decisions are not sufficient to wrest jurisdiction over interpreting federal law away from state courts); *Manning*, 578 U.S. at 391. It also is not true here as a factual matter. Hoboken sued only for "compensation to help it pay for damage that has already occurred and for remediation efforts to prevent further damage," and does not seek to "regulate the production and sale of oil and gas[.]" Pet. App. 50a. State courts routinely adjudicate cases where a company's deceptive marketing and sales of a dangerous product have caused harm within the state, and award compensation to the injured party. That is what Hoboken seeks here. *See Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 776 (1984) ("A state has a special interest in exercising judicial jurisdiction over those who commit torts within its territory.").

Regardless, the prospect of conflicting lawsuits is an argument in favor of federal preemption, not an argument about which court should decide the preemption question. See *Merrell Dow Pharms.*, 478 U.S. at 816 (1986) ("[T]o the extent that petitioner is arguing that state use and interpretation of [federal law] pose[s] a threat to the order and stability of the [federal] regime, petitioner should be arguing, not that federal courts should be able to review and enforce [such] causes of action as an aspect of federal-question jurisdiction, but that the [federal law] pre-empts state-court jurisdiction over the issue in dispute."). And whether the preemption defenses are litigated in state

or federal court, this Court will retain jurisdiction to ensure that the federal preemption rules are properly applied. *See id.*; *Manning*, 578 U.S at 391 ("[T]his Court's ability to review state court decisions of federal questions [] sufficiently protect[s] federal interests."). If more is needed, Congress stands ready to adjust removal rules as appropriate. *See*, *e.g.*, Class Action Fairness Act of 2005, Pub. L. No. 109-2, § 5, 119 Stat. 4, 12-13 (expanding removal rights in certain mass litigation cases).

4. Petitioners' objection that "[u]nder the Third Circuit's logic, even in a case where federal law necessarily and exclusively governs the issues pleaded on the face of the complaint, a district court is bound by the labels the plaintiff applies to the claims in the complaint" is meritless. Pet. 15. Whether "federal law necessarily and exclusively governs the issues pleaded on the face of the complaint" is decided according to the well-settled exceptions to the well-pleaded complaint rule. Where—as here—none of those exceptions apply, the case must remain in state court, where it belongs.

After all, "trial in state court is not a horrible fate." 15A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3914.11.1 (2d ed. 2021).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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