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., *et al.*, *Defendants-Appellants*,

On Appeal from an Order
of the United States District Court
for the District of Columbia (Civ. No. 20-1932)
(Hon. Timothy J. Kelly)

BRIEF OF THE NATIONAL LEAGUE OF CITIES; THE U.S. CONFERENCE OF MAYORS; AND THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLEE

Sathya S. Gosselin
Richard S. Lewis
HAUSFELD LLP
888 16th Street N.W.
Suite 300
Washington, DC 20006
Phone: (202) 540-7175
Fax: (202) 540-7201
sgosselin@hausfeld.com

Robert S Peck
CENTER FOR CONSTITUTIONAL LITIGATION, P.C.
1901 Connecticut Avenue, N.W.
Suite 1008
Washington, DC 20009
Phone: (202) 944-2874
Fax: (646) 365-3382
robert.peck@cclfirm.com

Counsel for Amici Curiae

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28, *amici curiae* the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association, through their undersigned counsel, certify as follows:

(A) Parties and amici. Except for *amici curiae* the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association, all parties, intervenors, and amici appearing before the district court and in this Court are listed in the Brief for Appellee.

(B) Rulings under review. Appellants appeal the November 12, 2022 order and opinion (ECF Nos. 117, 118) entered by U.S. District Judge Timothy J. Kelly remanding this action to the Superior Court of the District of Columbia.

(C) Related cases. The following cases are related to this appeal within the meaning of Circuit Rule 28(a)(1)(C): none.

Dated: April 7, 2023

<u>/s/ Sathya S. Gosselin</u>

Counsel for Amici Curiae the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici curiae* the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association ("Local Government *Amici*"), by and through their undersigned attorneys, hereby certify that each has no parent corporation and no publicly held corporation owns 10% or more of any of their stock.

Dated: April 7, 2023

<u>/s/ Sathya S. Gosselin</u>

Counsel for Amici Curiae the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association

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INTEREST OF THE AMICI CURIAE[1]

Local Government *Amici* comprise three of the nation's leading local government associations. The National League of Cities (NLC), founded in 1924, is the oldest and largest organization representing U.S. municipal governments. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. In partnership with forty-nine state municipal leagues, NLC serves as a national advocate for more than 19,000 cities, towns, and villages representing more than 218 million Americans. NLC's sustainability and resilience program serves as a resource hub for climate change mitigation and adaptation for cities.

The U.S. Conference of Mayors (USCM) is the official non-partisan organization of U.S. cities with a population of more than 30,000 people (approximately 1,400 cities in total). USCM is home to the Mayors

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[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), Local Government *Amici* state that no party's counsel authored this brief in whole or in part, and no party, party's counsel, or person other than Local Government *Amici* or its members or counsel contributed financial support intended to fund the preparation or submission of this brief.

Climate Protection Center, formed to assist with implementation of the Mayors Climate Protection Agreement.

The International Municipal Lawyers Association (IMLA) is a nonprofit, nonpartisan professional organization consisting of more than 2,500 members. The membership is composed of local government entities, including cities and counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts.

More than 80 percent of Americans now live in urban areas, and a higher percentage of them work there; as a consequence, Local Government *Amici*'s members are responsible for understanding the risks to and planning for the wellbeing of the great majority of Americans. The concentration of people, activity, and infrastructure in cities makes each uniquely valuable in today's economy. That same concentration of people, activity, and infrastructure makes cities

uniquely vulnerable to the adverse impacts of a host of climatic changes, including sea-level rise; increasingly frequent and severe storms that pose immediate threats to human life and critical infrastructure; damaged and disappearing coastlines; degraded ecosystems and reduced ecosystem services function; increases in heat-related deaths; poor air quality and exacerbated health problems; longer droughts that combine with increased temperatures and water evaporation rates to strain water supplies; and heightened wildfire risk. *See* 2 M. Keely *et al.*, *Ch. 11: Built Environment, Urban System, and Cities* in Impacts, Risks, and Adaptation in the United States: The Fourth National Climate Assessment 444-47 (D.R. Reidmiller *et al.* eds., 2018).

Local Government *Amici* have a unique interest in the proper recognition of state-court jurisdiction over state-law claims for injuries arising from climate-change consequences—and any other issue in which state and local governments, as plaintiffs, seek to adjudicate state-law claims. The district court here properly found that it lacked subject-matter jurisdiction over the District of Columbia's local-law claims. Judicial conversion of a variety of well-pleaded state-law claims into vaguely defined federal common-law claims and the exercise of federal

jurisdiction over them that Defendants seek (as well as the other asserted bases for removal) would fundamentally intrude upon municipal governments' authority within our federalist system to rely on state law and state courts to seek redress for localized harms. When misconduct occurs both inside and outside of a municipality and causes highly damaging local effects, there is no barrier to cities seeking state-law remedies for the harm wreaked at the local level.

The district court's decision in this case is consistent with essential federalism principles and recognizes the right of state and local governments to bring state-law claims for climate-change harms in state courts. In fact, courts have spoken with one voice in rejecting the bases for removal asserted by these defendants in the various circuits. Local Government *Amici* respectfully urge this Court to affirm the district court's decision to remand for lack of subject-matter jurisdiction and sustain the viability of the District's claims for adjudication in the court in which it chose to file.

Local Government *Amici* file this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure. All parties to the appeal have consented to the filing of this brief.

SUMMARY OF ARGUMENT

State and local government plaintiffs, no less than other plaintiffs, are the masters of their claims and may plead purely state-law claims to assure that their case is heard in state court. Doing so is not "artful pleading" but rather a straightforward application of the well-pleaded complaint rule.

Cities and counties, like a number of states, have initiated litigation over a wide variety of consumer-protection concerns that affect the health of their residents and the livability of their environs. So long as the cases seek to vindicate state law, as here, there is no basis to turn them into federal lawsuits.

This is particularly true when the alleged basis for removal is the very limited and narrow category of federal common law. Federal courts do not possess the same plenary common-law authority that state courts possess and are instead limited to that which is inherently federal or authorized by Congress. Here, there is no congressional authorization for this Court to declare federal common law or exercise jurisdiction. Moreover, Congress has affirmatively eliminated the former federal common-law aspects of the environmental issues raised here, displacing

them with the Clean Air Act, which does not completely preempt the field and leaves ample room for the state-law claims advanced by the District. In that respect, the Clean Air Act maintains the federal-state balance that is central to our constitutional system. This commitment to federalism recognizes the authority of state courts to decide whether ordinary preemption applies to any of the District's claims. This Court should affirm the district court's remand order, as every sister circuit has in similar cases, and should not create a conflict among the circuits where none exists.

ARGUMENT

I. STATE AND LOCAL GOVERNMENT PLAINTIFFS HAVE THE SAME RIGHTS ENJOYED BY OTHER PLAINTIFFS TO TAILOR THEIR COMPLAINTS TO THE ISSUES THEY SEEK TO LITIGATE.

The "well-pleaded complaint" rule "makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the rule, "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Id.*

Here, the District's complaint inarguably arises from local law. It asserts violations of the District's consumer-protection statute. That the

plaintiff here is a governmental entity does not alter the relevant inquiry. The recognition that plaintiffs are masters of their claim applies with full force to state and local government plaintiffs, as it does to all other plaintiffs. The state-law obligations that are the basis of this lawsuit provide an important means for state and local governments to seek abatement of and damages for localized harms arising from commercial activities.[2] That is equally true when the resulting harms cross jurisdictional boundaries to injure a locality's most vulnerable residents.

The District's consumer-protection laws, like those of every state, prohibit material misrepresentations, as the District alleged in this case, that tend to mislead reasonable consumers. *Pearson v. Chung*, 961 A.2d 1067, 1075 (D.C. 2008). These laws reflect the ideal that "honesty should govern competitive enterprises, and that the rule of caveat emptor should

[2] Although the District of Columbia is somewhat unique as a government unit, it is still "akin to a sovereign State." *Feaster v. Vance*, 832 A.2d 1277, 1287 (D.C. 2003). Its sovereignty is sufficient to enable it to bring suit to enforce the statutory prohibitions its legislature has enacted as a function of its public-policy authority. *D.C. v. ExxonMobil Oil Corp.*, 172 A.3d 412, 421-22 (D.C. 2017). After all, there can be no doubt that the District holds the sovereign power over individuals and entities within its jurisdiction to create and enforce a legal code, both civil and criminal. *Cf. Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982).

not be relied upon to reward fraud and deception." *Fed. Trade Comm'n v. Standard Educ. Soc'y*, 302 U.S. 112, 116 (1937). Moreover, these laws reflect an exercise of States' "police powers to protect the health and safety of their citizens," which "are 'primarily, and historically, . . . matter[s] of local concern.'" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quoting *Hillsborough Cnty. v. Automated Med. Laboratories, Inc.*, 471 U.S. 707, 719 (1985)). After all, "States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985) (internal quotation marks omitted).

Cities' modern use of state-law claims, in both state and federal courts, to address issues of common (but local) concern began more than three decades ago, when cities joined state attorneys general litigating asbestos and tobacco claims. *See* Sarah L. Swan, *Plaintiff Cities*, 71 Vand. L. Rev. 1227, 1233 (2017). As just one example, the tobacco litigation relied heavily on state consumer-protection laws. *See* Robert L. Rabin, *The Tobacco Litigation: A Tentative Assessment*, 51 DePaul L. Rev. 331, 337 (2001). Today, cities are major claimants in opioid litigation and rely

heavily on state consumer-protection laws. *See* Nora Freeman Engstrom & Robert L. Rabin, *Pursuing Public Health Through Litigation: Lessons from Tobacco and Opioids*, 73 Stan. L. Rev. 285, 291, 303 (2021). These cases involve(d) state-law claims, and none saw them judicially converted into a federal common-law claim—much less converted into a federal claim for subject-matter jurisdiction purposes, as Defendants seek to do here.

There is no reason to treat this case differently from the sister circuits that have uniformly rejected the arguments the defendant oil companies propound here. The District has pleaded state-law consumer protection claims based on Defendants' misrepresentations that fossil-fuel products were not hazardous to the planet when they knew better, as well as claims that they overstated their efforts to move toward greener energy. These claims are not federal causes of action and do not implicate federal policies so as to give rise to federal jurisdiction. If the defendant oil companies had not made the alleged misrepresentations, neither their oil-producing conduct nor the consequences of their marketing would be at issue here.

Instead, this case raises textbook claims under state law, seeking to recoup some of the significant costs required to protect local residents from harms inflicted by the defendant oil companies' campaign of deception and misrepresentation of their dangerous products. This is not a case about regulating greenhouse-gas emissions anywhere, controlling federal fossil-fuel leasing programs on public lands, or dictating other governments' climate policies or energy regimes.

Defendants' asserted need for nationwide regulatory uniformity is unsupported and best addressed to Congress. A judicial endorsement of Defendants' proposal would have extraordinary implications for how federal policy is formulated. Separation of powers doctrine prevents reliance on federal common law, even if that body of law were more sensible than the case the oil companies make in this Court, because Congress has abrogated the preexisting federal common law through affirmative legislation, *see City of Milwaukee v. Illinois*, 451 U.S. 304, 315 (1981), as we explain in the next section.

II. THERE IS NO FEDERAL COMMON-LAW BASIS TO REMOVE THIS MATTER TO FEDERAL COURT.

Defendants assert that the central allegations of the District's complaint are matters of federal common law. Defendants are incorrect,

and their arguments would disrupt the federal-state balance that properly guides jurisdictional decisions.

The Supreme Court has instructed that "[j]udicial lawmaking in the form of federal common law plays a necessarily modest role under a Constitution that vests the federal government's 'legislative Powers' in Congress and reserves most other regulatory authority to the States." *Rodriguez v. F.D.I.C.*, 140 S. Ct. 713, 717 (2020). For that reason, the "instances where [federal courts] have created federal common law are few and restricted." *Wheeldin v. Wheeler*, 373 U.S. 647, 651 (1963).

Unlike state courts, federal courts have limited authority to declare the common law, "absent some congressional authorization to formulate substantive rules of decision." *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). That authority generally exists with respect to the "rights and obligations of United States, interstate and international disputes implicating conflicting rights of States or relations with foreign nations, and admiralty cases." *Id.* at 640-41 (footnotes omitted).[3] None of these areas of law is implicated by this lawsuit.

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[3] In cordoning off these disputes where federal common law might apply, the Supreme Court observed that "[m]any of these cases arise from interstate water disputes." *Texas Indus.*, 451 U.S. at 641 n.13.

Critically, the Supreme Court has noted that these limited instances of federal common law respect federalism: there is little risk of intruding upon the "independence of state governments" because those carefully delineated areas of exclusive federal interest necessarily fall outside state authority. *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.,* 535 U.S. 826, 832 (2002). Therefore, "[i]f state law can be applied, there is no need for federal common law; if federal common law exists, it is because state law cannot be used." *City of Milwaukee*, 451 U.S. at 313 n.7. Here, where the sole issue is consumer misrepresentation, federal law provides no bar that would preempt completely the exercise of state-court jurisdiction and thus no basis for removal.

At one time, interstate water pollution was the subject of federal common law. Congress, however, ended any need for federal common law by enacting the Clean Water Act and thereby supplanted that body of judge-made law. *See Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 487-90 (1987) (describing the judicial and legislative history). The Court in *Ouellette* explained that state public-nuisance laws survived the law's enactment as a valid basis for lawsuits seeking to abate cross-border

pollution. *Id.* at 498-99. Consumer-protection laws deserve no lesser respect as a valid basis for exclusive state-court jurisdiction.

The same pattern of prior federal common law being supplanted by federal statute occurred with respect to interstate air pollution. In *Am. Elec. Power, Co. v. Connecticut ("AEP")*, 564 U.S. 410, 424 (2011), the Court explained that "the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement" of emissions. For that reason, "'the need for such an unusual exercise of law-making by federal courts [has] disappear[ed].'" *Id.* at 423 (quoting *City of Milwaukee*, 451 U.S. at 314).

Because federal statutory law displaced federal common law, separate from the question of subject-matter jurisdiction, the only relevant question in the current dispute becomes one of ordinary preemption. *See City of Milwaukee*, 451 U.S. at 327-29; *see also AEP*, 564 U.S. at 429 ("In light of our holding that the Clean Air Act displaces federal common law, the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act."); *Merrick v. Diageo Ams. Supply, Inc.*, 805 F.3d 685, 690 (6th Cir. 2015). But ordinary

preemption provides no basis for removal to federal court. *Caterpillar Inc.*, 482 U.S. at 393.

Nor can there be any doubt about the continued vitality of state law even if the defendant oil companies' misrepresentations concerned environmental pollution. Congress, in passing the Clean Air Act, declared that "air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401(a)(3). It further declared that a "primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention." *Id.* at § 7401(c). That type of cooperative federalism is served by actions like the one brought here by the District. And it is good public policy: state and local governments need not wait for federal action before undertaking their own initiatives to protect their citizens from hazardous pollutants.

This Court should follow the uniform authority handed down from sister circuits that similar state-law claims "do[ ] not arise under federal

law," *see, e.g., City of Oakland v. BP PLC*, 960 F.3d 570, 575 (9th Cir. 2020), *amended & superseded on denial of reh'g,* 969 F.3d 895 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2776 (2021). The Fourth Circuit similarly held, in rejecting the exact arguments Defendants raise here, that

> Defendants believe that removal is proper based on federal common law even when the federal common law claim has been deemed displaced, extinguished, and rendered null by the Supreme Court. *We believe that position defies logic*.

Mayor & City Council of Baltimore v. BP P.L.C., 31 F.4th 178, 206 (4th Cir. 2022) (emphasis added); *see also Rhode Island v. Shell Oil Prods. Co.,* 35 F.4th 44, 55 (1st Cir. 2022) (rejecting the oil companies' argument because "federal common law they bring up does not address the type of acts Rhode Island seeks judicial redress for," noting that Rhode Island did not invoke either the Clean Water Act and the Clean Air Act in making a consumer protection claim); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1257-65 (10th Cir. 2022) (rejecting defendants' invocation of federal common law as a basis for removal); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699, 708 (3d Cir. 2022) (same).

Even the Eighth Circuit's more cautious approach to the issue recognizes that "[e]ven if federal common law still exists in this space and

provides a cause of action to govern transboundary pollution cases, that remedy doesn't occupy the same substantive realm as state-law fraud, negligence, products liability, or consumer protection claims." *Minnesota by Ellison v. Am. Petroleum Inst.*, ___ F.4th ___, 2023 WL 2607545, at *3 (8th Cir. Mar. 23, 2023). It then concluded that "Congress has not acted to displace the state-law claims, and federal common law does not supply a substitute cause of action, [so that] the state-law claims are not completely preempted." *Id.*

Against these detailed analyses, Defendants erroneously rely on a Second Circuit decision that found that federal common law did apply to a local government's *public-nuisance claim* against fossil fuel companies for climate-related harms. But the Second Circuit distinguished the decisions of sister circuits and district courts addressing removal jurisdiction because *New York filed its case in federal court* and the issue before them was not federal removal. *City of New York v. Chevron Corp.*, 993 F.3d 81, 94 (2d Cir. 2021). Based on the city's invocation of federal subject-matter jurisdiction from the outset, the Second Circuit deemed itself "free to consider the Producers' preemption defense on its own terms, not under the heightened standard unique to the removability

inquiry." *Id.* That explanation suggests that the Second Circuit would likewise remand if it were in this Court's shoes.

Tellingly, on the preemption issue, the Second Circuit agreed that New York was not "seeking to impose a standard of care or emission restrictions on the Producers," *id.* at 93, eliminating any argument that express preemption applied. *See* 42 U.S.C. § 7543(a). Nonetheless, the Second Circuit veered off course by construing New York's claims as involving all possible global emissions sources and rendering its decision on that basis. *City of New York*, 993 F.3d at 91-92. But the District has made no similar claim as to global emissions. Instead, the District's claims relate to local misrepresentations directed to local consumers that have yet to be tested on the merits.

Lawsuits regularly name defendants that are not found liable, assert causes of action that do not succeed, and seek relief that may be, in part, denied. Doing so is not a bar to a lawsuit because courts have ample tools to assure that liability and remedies are the product of appropriate evidence and rational factfinders, rather than overreach or speculation. *See Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 264 (1946).

In this case, though, there is no warrant to speculate on liability outside the four corners of what is pleaded. When cabined to the actual pleadings, there can be no preemption of the type the Second Circuit speculated might exist because federal law does not address the type of misrepresentations at issue here. Even if there were a viable preemption defense, the resolution of that issue must be committed to state-court determination, *see Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 7 (1983), as the Second Circuit acknowledged. *See City of New York*, 993 F.3d at 94-95.

III. FEDERALISM PRINCIPLES ADD A HEAVY THUMB ON THE SCALE, SUPPORTING THE DISTRICT COURT'S DECISION.

A bedrock principle at issue in this appeal is "the relationship between the Federal Government and the States under our Constitution." *Bond v. United States*, 572 U.S. 844, 857-58 (2014). The Supreme Court has instructed that "[s]tatutes conferring federal jurisdiction . . . be read with sensitivity to 'federal-state relations.'" *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 423 (2010) (citation omitted). Respecting that relationship, the Court has insisted on the "well-established principle" that Congress be explicit in conveying its intent to

change the "usual constitutional balance of federal and state powers" or "'radically readjust[ ] the balance of state and national authority.'" *Bond*, 572 U.S. at 858 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) and *BFP v. Resol. Trust Corp.*, 511 U.S. 531, 544 (1994)).

For that reason, Congress only intrudes upon the "power reserved to the states under the Constitution to provide for the determination of controversies in their courts" through the most explicit exercise of its authority over federal jurisdiction. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941). The required "'[d]ue regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.'" *Id.* at 109 (quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)). *See also City of Greenwood v. Peacock*, 384 U.S. 808, 831 (1966) ("[T]he provisions of § 1443(1) do not operate to work a wholesale dislocation of the historic relationship between the state and the federal courts in the administration of the . . . law.").

Indeed, "[s]ince the beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger v.*

Harris, 401 U.S. 37, 43 (1971). As separate sovereigns and with "[d]ue regard [to] the rightful independence of state governments," the Court has repeatedly recognized "the power of the States to provide for the determination of controversies in their courts." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 389 (2016) (citations and internal quotation marks omitted). For that reason, the Court has expressed a "deeply felt and traditional reluctance . . . to expand the jurisdiction of federal courts through a broad reading of jurisdictional statutes." *Id.* at 389-90 (citations and internal quotation marks omitted). It is an "interpretive stance [that] serves, among other things, to keep state-law actions . . . in state court, and thus to help maintain the constitutional balance between state and federal judiciaries." *Id.* at 390.

That judicial interpretative stance is no less applicable here, to accomplish the same purpose. Defendants provide no viable basis to overcome the powerful federalism principles that animate removal jurisprudence. Instead, Defendants construct elaborate jurisdictional arguments—premised, *e.g.*, on superseded federal common law, irrelevant commercial agreements with the federal government, and operations on the Outer Continental Shelf that have nothing to do with

the misrepresentations alleged—that are a far cry from the precise limits of any federal statute that explicitly confers federal jurisdiction.

CONCLUSION

For the foregoing reasons, Local Government *Amici* urge this Court to affirm the district court's Order Granting Motions to Remand.

Dated: April 7, 2023

Respectfully submitted,

/s/ Sathya S. Gosselin
Sathya S. Gosselin
Richard S. Lewis
HAUSFELD LLP
888 16th Street N.W.
Suite 300
Washington, DC 20006
Phone: (202) 540-7175
Fax: (202) 540-7201
sgosselin@hausfeld.com

Robert S Peck
CENTER FOR CONSTITUTIONAL LITIGATION, P.C.
1901 Connecticut Avenue, N.W.
Suite 1008
Washington, DC 20009
Phone: (202) 944-2874
Fax: (646) 365-3382
robert.peck@cclfirm.com

Counsel for Amici Curiae the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

Dated: April 7, 2023

/s/ Sathya S. Gosselin

Counsel for Amici Curiae the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4,018 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 365 in Century Schoolbook 14-point font, a proportionally spaced typeface.

Dated: April 7, 2023

/s/ Sathya S. Gosselin

Counsel for Amici Curiae the National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association