Nos. 23-947, 23-952

In the Supreme Court of the United States

SUNOCO LP, ET AL.,
Petitioners,

v.

CITY AND COUNTY OF HONOLULU, HAWAII, ET AL.
Respondents.

SHELL PLC (fka ROYAL DUTCH SHELL PLC),
SHELL USA, INC. (fka SHELL OIL COMPANY),
AND SHELL OIL PRODUCTS COMPANY LLC,
Petitioners,

v.

CITY AND COUNTY OF HONOLULU, HAWAII, ET AL.
Respondents.

BRIEF OF *AMICI CURIAE* GENERAL (RETIRED) RICHARD B. MYERS and ADMIRAL (RETIRED) MICHAEL G. MULLEN, IN SUPPORT OF PETITIONERS

On Petition for a Writ of Certiorari
to the Supreme Court of Hawaii

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INTEREST OF *AMICI CURIAE*[1]

United States Air Force General (Retired) Richard B. Myers was appointed Vice Chairman of the Joint Chiefs of Staff by President Clinton in 2000 and was appointed by President George W. Bush in 2001 to become the 15th Chairman of the Joint Chiefs of Staff. In that capacity, he served as the principal military advisor to the United States President, Secretary of Defense, and the National Security Council. He served in that role until 2005. General Myers joined the Air Force in 1965 through the ROTC program at Kansas State University. He served in the Vietnam War and had over 600 combat flying hours in Vietnam. He has held numerous commands and served in significant staff positions in the Air Force. General Myers has received numerous awards and decorations for his service, including the Legion of Merit, the French Legion of Honor, and the Presidential Medal of Freedom. He received his fourth-star in 1997 and retired from active duty in 2005, after more than forty years of active service. General Myers began serving as the Interim President of Kansas State University in late April 2016, and was announced as the permanent President on November 15, 2016. General Myers served as the 14th President of Kansas State University until his retirement on February 11, 2022.

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* certify that no counsel for a party authored this brief in whole or in part, and no party or party's counsel contributed money that was intended to fund preparing or submitting the brief. *Amici curiae* have accepted no payment for submission of this brief. All parties were timely notified of the *amici's* interest in filing this brief.

United States Navy Admiral (Retired) Michael G. Mullen, served as the 17th Chairman of the Joint Chiefs of Staff from 2007-2011 under both President George W. Bush and President Obama. A graduate of the United States Naval Academy in 1968, Admiral Mullen served in the Vietnam War and commanded his first ship, the USS Noxubee, from 1973-1975. He earned a Master's Degree in Operations Research in 1985 and, later that year, took command of the guided-missile destroyer USS Goldsborough. In 1991, Admiral Mullen participated in Harvard University's Advanced Executive Management graduate program. He was promoted to Rear Admiral in 1997 and, in 1998, was named Director of Surface Warfare in the office of the Chief of Naval Operations (CNO). Admiral Mullen is one of only four naval officers who has the distinction of receiving four, 4-Star assignments. In 2003, Admiral Mullen was named Vice Chief of Naval Operations and was tapped to head the United States Naval Forces in Europe and NATO's Joint Force Command in Naples. He then was appointed Chief of Naval Operations in 2005, and, in 2007, he was nominated by George W. Bush to be the 17th Chairman of the Joint Chiefs of Staff. Admiral Mullen retired from this position in 2011 after serving for four years under both a Republican and a Democratic president.

The focus of this brief is not on the underlying merits of the litigation. *Amici* express no view, and take no position, on climate change policy. They strongly believe these important national and international policy issues should be addressed to Congress and the Executive Branch, not adjudicated piecemeal across the country in a multitude of state courts. Instead, this brief provides a history of the

Federal Government's role in the production and sale of gasoline and diesel to ensure that the military is "deployment-ready." For more than a century, petroleum products have been, and currently are, essential for fueling the United States military around the world. In *amici's* view, the use of fossil fuels was crucial to the success of the armed forces when *amici* served as Chairmen of the Joint Chiefs of Staff, and it remains crucial today.

In light of that concern, *amici* believe this extensive history and their practical experience demonstrate that these cases do not involve localized, intra-state interests. Rather, the causation and damages theories in these cases inextricably involve worldwide impacts and core federal interests. *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) (Plaintiffs seek to hold petitioners liable "for the effects of emissions made around the globe over the past several hundred years."); App.100a, 134a (¶¶ 1, 35) (The Honolulu Plaintiffs similarly allege that the "production and use of [the energy companies'] fossil fuel products create greenhouse gas pollution that warms the planet and changes our climate" and that "global warming" is "caused by [such] emissions," for which they seek significant damages and abatement awards).

To be clear, it is not as though we believe anything having to do with climate change presents a national security concern. There are thousands of lawsuits filed that may relate in some way to greenhouse gases, and we do not feel the need to weigh in on the vast majority of those lawsuits. But these climate change cases are different. This subset of cases causes us concern because of both its sheer scope and its

transparent attempt to substitute parochial judgments for those of the national, elected and appointed actors, to whom the Constitution commits domestic and international policy-making for this complex, multi-faceted world-wide issue. Therefore, to assist the Court in understanding the importance of granting review and why these cases cause significant national security concerns, this brief first discusses the Federal Government's—particularly the military's—historical control and direction of Petitioners' production and sale of petroleum products.

The brief concludes with our perspective on the practical realities presented by these cases and the reasons we believe the writs of certiorari should be granted. As former Chairmen of the Joint Chiefs of Staff serving under both Democratic and Republican administrations and with over 80 years of combined service in the military, we can personally attest that petroleum products produced by companies like Petitioners have been critical to national security, military preparedness, and combat missions. We are not alone in this belief. Military commanders, like General David Petraeus, universally emphasize that "[e]nergy is the lifeblood of our warfighting capabilities."[2] To ensure the military has a dependable, abundant supply of the energy indispensable to our Nation's warfighting capacity, this brief explains why, in our view, the climate

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[2] Quoted in Department of Energy, "Energy for the Warfighter: The Department of Defense Operational Energy Strategy," June 14, 2011, https://www.energy.gov/articles/energy-war-fighter-department-defense-operational-energy-strategy.

change issues at the heart of these civil damages suits is a matter for Federal law, not state law.

While it is important to continue to look for "greener" ways to fuel the military, the reality is the U.S. military must always take into account its enemies' own fossil-fuel uses and potential superior deployment abilities because of those uses. The United States could go it alone and unilaterally strip itself of higher-performing fossil fuels, but that risks putting the Nation at a significant disadvantage. It would weaken our armed forces while relatively strengthening those of our adversaries. Stated differently, achieving energy security is a prerequisite for national security. As a result, reduction in fossil-fuel use can be accomplished only through comprehensive international, multi-lateral negotiations and treaties led by the Legislative and Executive branches. This is how reduction of nuclear weapons was achieved during and following the Cold War.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case centers on the global sale and consumption of oil and gas products that are used by virtually every person on the planet every single day. Respondent seeks to impose ruinous liability on Petitioners' production and sale of these essential products through claims brought under state law around the country. Due to the extensive Federal Government involvement in the development and growth of the domestic oil and gas industry, Respondent's claims implicate uniquely federal interests that are necessarily governed by federal law.

Oil and gas products are critical to national security, economic stability and military preparedness. For more than 100 years, the Federal Government has actively encouraged – indeed it has compelled – domestic exploration, production and sale of oil and gas. As federal courts have recognized, petroleum products have been "*crucial* to the national defense," including but by no means limited to "fuel and diesel oil used in the Navy's ships; and lubricating oils used for various military machines." *Exxon Mobil Corp. v. United States*, 2020 WL 5573048, at *31 (S.D. Tex. Sept. 16, 2020) (emphasis added); *see also id.* at *47 (noting the "value of [the] petroleum industry's contribution to the nation's military success"). The Federal Government has incentivized and contracted with Petitioners to obtain oil and gas products to ensure a dependable, abundant supply of oil and gas for the nation's economic and military security.

In contrast to the Hawaii Supreme Court, the United States Second Circuit Court of Appeals recognized that "[i]t [wa]s precisely *because* fossil fuels emit greenhouse gases – which collectively 'exacerbate global warming' – that the "plaintiff[] [wa]s seeking damages." *Id.* at 91, 97. "Consequently, though the City's lawsuit would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless." *Id.* at 93. Therefore, the court concluded that the city's "sprawling" claims, which – like plaintiffs' claims here – sought "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet" – were "simply beyond the limits of state law." *Id.* at 92.

We share the Second Circuit's concerns. The specter of huge and inconsistent damages awards across the country is likely to trigger cascading effects, gravely imperiling our military preparedness. *Id.* at 93-94 (citing *Am. Elec. Power Co. v. Conn.*, 564 U.S. 410 (2011) at 427) (explaining that "[t]o permit this suit to proceed under state law would further 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." (emphasis added)). Because "states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the [energy companies'] global operations to a welter of different states' laws could undermine important federal policy choices." *Id.* The court concluded that "[t]o hold the [energy company defendants] accountable … would ... bypass the various diplomatic channels that the United States uses to address this issue." *Id.* at 103.

In contrast, the state supreme court did not address at all the "foreign policy concerns" that the Second Circuit determined "foreclose" claims "targeting emissions emanating from beyond our national borders." *Id.* at 101. It did not address those foreign affairs concerns because that court concluded plaintiffs "d[id] not ask th[e] court to limit, cap, or enjoin the production and sale of fossil fuels." App.40a. But from our perspective, this conclusion blinks reality. As the Second Circuit explained "regulation can be effectively exerted through an award of damages." Although "the City's lawsuit

would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless." *Id.* at 92-93.

It is precisely this "indirect and roundabout" *de facto* regulation of available fuel sources that concerns us. State tort damages and abatement cases unduly risk constricting the availability of oil and gas to the detriment of national security interests, at a critical juncture in our Nation's history, when geopolitical forces and energy security are especially vulnerable to belligerent nations. The availability of Petitioners' fuel products remains crucial to the success of our armed forces. As Admiral Mullen once put it, "[e]nergy security needs to be one of the first things we think about, before we deploy another soldier, before we build another ship or plane, and before we buy or fill another rucksack."[3] The Second Circuit correctly recognized,

> [t]o hold the [energy companies] accountable for purely foreign activity … would require them to internalize the costs of climate change and would presumably affect the price and production of fossil fuels abroad. It would also bypass the various diplomatic channels that the United States uses to address this issue, such as the U.N. Framework and the Paris Agreement. Such an outcome would obviously sow confusion and needlessly complicate the nation's foreign policy, while clearly infringing on the prerogatives of the political branches.

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[3] Energy Security Forum, Washington, D.C., 13 October 2010, https://www.dvidshub.net/news/58040/mullen-military-has-strategic-imperative-save-resources.

City of New York, 993 F.3d at 103; *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413 (2003) (quoting *Banco National de Cuba v. Sabbatino*, 376 U.S. 398 (1964), at 427 n.25) ("There is … no question that at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy, given the 'concern for uniformity in this country's dealings with foreign nations' that animated the Constitution's allocation of the foreign relations power to the National Government in the first place.").

And while Respondents may argue that their case is only about commercial speech and warnings to consumers – and is not about stopping the sale of fossil fuels – the reality is their theory of causation and the relief they seek is not so limited.[4] "[R]egulation can be

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[4] Indeed, in the related Delaware climate change case, Respondent's counsel, who represents many states and municipalities in these cases, argued for certification of an interlocutory appeal to the Delaware Supreme Court of the state trial court's Order dismissing all of Delaware's claims predicated on out-of-state emissions as preempted by federal law. Respondent's counsel admitted that limiting the case to in-state emissions would significantly shrink the scope of the case: "The Order's CAA preemption ruling, which precludes tort liability insofar as it involves out-of-state emissions, fundamentally constrains the State's theory and proof of its case. Whereas the State originally set out to prove that Defendants' [alleged violations of state law] injured the State by increasing emissions in Delaware *and elsewhere* (italics in the original), it must now prevail on a far narrower path to liability, causation and damages, namely that Defendants' tortious conduct caused in-state impacts by increasing *exclusively in-state emissions* (italics in the original). The Order potentially drastically limits the State's ultimate damages claim, ..." *State of Delaware, ex rel., v BP America Inc., et al*., Superior Court of

effectively exerted through an award of damages," *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (cleaned up), and "[s]tate power" can be wielded as much by the "application of a state rule of law in a civil lawsuit as by a statute," *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 n.17 (1996). Environmental tort claims force defendants "to change [their] methods of doing business." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, at 495 (1987). Allowing Respondent to obtain its requested sweeping relief, therefore, "would encourage courts to use vague public nuisance standards to scuttle the nation's carefully created system for accommodating the need for energy production and the need for clean air. The result would be a balkanization of clean air regulations and a confused patchwork of standards, to the detriment of industry and the environment alike." *N. Car., ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 301 (4th Cir. 2010) *see also United States v. Standard Oil Co. of Cal.*, 332 U.S. 301, 311 (1947).

Because Respondent's Complaint seeks to penalize Petitioners for their lawful past, present and future sale of oil and gas, it risks making them prohibitively costly and scarce. Their claims, therefore, necessarily cause national security concerns. This *amicus* brief provides an historical background of the Federal Government's oversight and control of the oil and gas industry, and an explanation of how these state court

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the State of Delaware, C.A. No. N20C-09-097, State of Delaware's Application for Certification of Interlocutory Appeal (Jan. 19, 2024), at p. 15.

damages and abatement suits imperil our nation's ability to be "deployment-ready."

ARGUMENT

For more than a century, and to this day, the Federal Government has incentivized, compelled and controlled aspects of United States oil and gas sales and has reserved rights to take additional control for the benefit of the nation's defense, security, and economy. The Federal Government has required and otherwise been inextricably involved in the development of the nation's oil resources both for governmental use and the use of billions of consumers. Respondent's claims arising from the production and sale of oil and gas necessarily implicate the Federal Government's actions and policy choices, including the extensive history of federal laws, contracts and leases that supported and controlled significant portions of our nation's fuel supply.

I. The Important National Security Interests in the Crosshairs of These Cases: An Historical Overview of the Federal Government's Role in the Production and Sale of Oil and Gas.

More than a century ago, in 1910, President Taft implored Congress to develop domestic oil sources: "As not only the largest owner of oil lands, but as a prospective large consumer of oil by reason of the increasing use of fuel oil by the Navy, the Federal Government is directly concerned both in encouraging rational development and at the same time insuring the longest possible life to the oil supply." Hearings Before Committee on Naval Affairs of the House of

Representatives on Estimates Submitted by the Secretary of the Navy, 64th Cong. 761 (1915).

Within two years, on September 2, 1912, President Taft established by Executive Order the first "Naval Petroleum Reserve" at Elk Hills, California, taking the extraordinary step of withdrawing large portions of land from eligibility for private ownership and designating them for the development of fuel resources to ensure the United States Navy would remain deployment-ready in the event of war. *See* U.S. Gov't Accountability Off., GAO/RCED-87-75FS, Naval Petroleum Reserves: Oil Sales Procedures and Prices at Elk Hills, April Through December 1986, at 3 (1987) ("GAO Fact Sheet").[5]

The defining characteristic of World War I was mechanization (*i.e.*, the emergence of tanks, aircraft, and submarines), and accordingly "oil and its products began to rank as among the principal agents by which the Allies would conduct war and by which they could win it.'" Ian O. Lessor, *Resources and Strategy: Vital Materials in International Conflict 1600 – The Present* (1989) at 42. The necessity was echoed among the Allies, as British Cabinet Minister Walter Long expressed in an address to the House of Commons in 1917:

> Oil is probably more important at this moment than anything else. You may have men, munitions, and money, but if you do not have oil, … all your other advantages would be of comparatively little value.

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[5] http://www.gao.gov/assets/90/87497.pdf

Yergin, THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER (1991) at 177.

By 1917, American oil was vital for war efforts. As the Admiralty Director of Stores stated, "[W]ithout the aid of oil from America our modern oil-burning fleet cannot keep the sea." Lessor, *Resources and Strategy* at 43. In response to the Allies' cry for help, the United States provided over 80 percent of the Allied requirements for petroleum products and greatly influenced the outcome of the war. *Id.* (explaining that "petrol … is as necessary as blood in the battles of tomorrow") (quoting Clemenceau's letter to President Wilson)).

World War II confirmed petroleum's role as a key American resource and underscored the government's interest in maintaining and managing it. Statement of Ralph K. Davies, Deputy Petroleum Administrator of War, Special Committee Investigating Petroleum Resources, S. Res. 36, at 4 (Nov. 28, 1945) ("Our overseas forces required nearly twice as many tons of oil as arms and armament, ammunition, transportation and construction equipment, food, clothing, shelter, medical supplies, and all other materials together. In both essentiality and quantity, oil has become the greatest of all munitions."); National Petroleum Council, *A National Oil Policy for the United States* at 1 (1949) ("A prime weapon of victory in two world wars, [oil] is a bulwark of our national security.").

In 1941, as the United States prepared to enter World War II, its need for large quantities of oil and gas to produce high-octane fuel for planes ("avgas"), oil for ships, lubricants, and synthetic rubber far outstripped the nation's capacity. Given the role

played by strategic bombers, small attack bombers, fighters, and search and rescue aircraft, Avgas was particularly essential to the war effort in both Europe and the Pacific. It is fair to describe it as the most critically needed petroleum product during the War. And it has continued being essential up to today. To insure its supply, the Federal Government created agencies to control petroleum production and distribution; it directed the production of certain petroleum products; and it managed resources.

In 1942, President Roosevelt established several agencies to oversee wartime petroleum production, including the War Production Board ("WPB") and the Petroleum Administration for War ("PAW"). The PAW centralized the government's petroleum-related activities. The PAW dictated products, quantity and quality to America's oil refiners. See John W. Frey & H. Chandler Ide, *A History of the Petroleum Administration for War, 1941-1945*, at 219 (1946)).

At the direction of the Federal Government, the oil companies increased avgas production "over twelve-fold from approximately 40,000 barrels per day in December 1941 to 514,000 barrels per day in 1945, [which] was crucial to Allied success in the war." *Shell Oil Co. v. United States*, 751 F.3d 1282, 1285 (Fed. Cir. 2014). "No one who knows even the slightest bit about what the petroleum industry contributed … can fail to understand that it was, without the slightest doubt, one of the most effective arms of this Government" in fulfilling the government's core defense functions. Statement of Senator O'Mahoney, Chairman, Special Committee Investigating Petroleum Resources, S. Res. 36, at 1 (Nov. 28, 1945) (emphasis added).

In 1950, President Truman, established the Petroleum Administration for Defense ("PAD") under authority of the Defense Production Act of 1950, Pub. L. No. 81–774 ("DPA"). The PAD ordered production of oil and gas to ensure adequate quantities of avgas for military use. *Exxon*, 2020 WL 5573048, at *28; *see also id.* at *15 (detailing the government's use of the Defense Production Act of 1950 to "force" the petroleum industry to "increase [its] production of wartime . . . petroleum products").

To further promote domestic oil and gas production in 1953, Congress passed the Outer Continental Shelf Lands Act ("OCSLA"), directing the U.S. Department of the Interior to make nearly 27 million acres of the OCS available for "expeditious and orderly development" of fossil fuel production. 43 U.S.C. §1332(3).

During the Cold War, the U.S. military commanded the development of more innovative military fuels and continued its role as the driving force behind domestic production. During the 1960s, U.S. energy consumption increased 51%, compared to only 36% during the previous decade. Jay Hakes, A Declaration of Energy Independence at 17 (2008). As demand continued to climb into the early 1970s, the Nation faced a precarious shortage of oil and gas.

To avert a national energy crisis, in 1973, President Nixon ordered a dramatic increase in development for ready-production from the OCS:

> Approximately half of the oil and gas resources in this country are located on public lands, primarily on the Outer Continental Shelf [OCS]. The speed at which we can increase our

> domestic energy production will depend in large measure on how rapidly these resources can be developed. I am therefore directing the Secretary of the Interior to take steps which would triple the annual acreage leased on the Outer Continental Shelf by 1979 ….

Nixon Message, *N.Y. Times,* Apr. 19, 1973.[6]

Also in 1973, President Nixon announced a goal of *energy independence* by 1980. Annual Message to the Congress on the State of the Union, 1 Pub. Papers 59 (Jan. 23, 1974).[7] "Project Independence 1980" ordered, among other things, that the Secretary of the Interior "increase the acreage leased on the [OCS] to 10 million acres beginning in 1975, more than tripling what had originally been planned." Special Message to the Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).[8]

Congress passed the Trans-Alaska Pipeline Authorization Act of 1973, determining that it was in the "national interest" to deliver oil and gas from Alaska's North Slope "to domestic markets … because of growing domestic shortages and increasing dependence upon insecure foreign sources." Trans-Alaska Pipeline Authorization Act, Pub. L. No. 93-153, § 202(a), 87 Stat. 576, 584 (1973), Pub. L. No. 93-153, at https://www.govinfo.gov/content/pkg/STATUTE-87/pdf/STATUTE-87-Pg576.pdf.

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[6] https://www.nytimes.com/1973/04/19/archives/excerpts-from-nixon-message-developing-our-domestic-energy.html.

[7] https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/99?view=image&size=100

[8] https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/69

To address "immediate and critical" petroleum shortages in the military brought by the 1973 OPEC Oil Embargo, the Federal Government invoked the DPA to bolster its reserves with additional petroleum from domestic oil and gas companies. Twenty-Fourth Annual Report of the Activities of the Joint Committee on Defense Production, S. Rep. No. 94-1, Pt. 1, at 442 (Jan. 17, 1975, 1st Sess.).

In 1974, responding to President Nixon's direction to "increase the acreage leased on the Outer Continental Shelf", Congress amended OCSLA. This amendment increased federal control over lessees "to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade." *California ex rel. Brown v. Watt*, 668 F.2d 1290, 1296 (D.C. Cir. 1981) (quoting 43 U.S.C. § 1802); *see also* Special Message to the Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).[9]

In 1978, as part of amendments to OCSLA, the Congressional Ad Hoc Select Committee on the OCS concluded again that "alternative sources of energy will not be commercially practical for years to come," H.R. Rep. No. 94-1084, at 254 (1976) and "[d]evelopment of our OCS resources will afford us needed time—as much as a generation—within which

[9]https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001?rgn=main;view=fulltext.

to develop alternative sources of energy." H.R. Rep. No. 95-590, at 53 (1977).

II. The Federal Government's Efforts to Ensure a Dependable, Abundant Supply of Oil and Gas Continue to be Essential to Its Conduct of Foreign Affairs and Military Preparedness.

In 1995, Congress and President Bill Clinton amended OCSLA to permit the Secretary of the Interior to "unlock an estimated 15 billion barrels of oil in the central and western Gulf of Mexico" for exploration, production and sale. Press Secretary, White House Office of Communications, Statement on North Slope Oil Bill Signing (Nov. 28, 1995), 1995 WL 699656, at *1.

Federal promotion and use of domestic oil continued to grow in the 2000s. In 2006, the Bush administration opened leases of approximately 8 million additional acres of OCS lands in the Gulf of Mexico to "address *high energy prices, protect American jobs, and reduce our dependence on foreign oil*." *Statement By President George W. Bush Upon Signing [H.R. 6111]*, 2 Pub. Papers 2217 (Dec. 20, 2006)(emphasis added).[10]

In 2010, President Obama "announc[ed] the expansion of offshore oil and gas exploration," explaining "in order to sustain economic growth, produce jobs, and keep our businesses competitive, *we are going to need to harness traditional sources of fuel* even as we ramp up production of new sources of

[10] https://books.google.com/books?id=o2ei8yOphboC&printsec=frontcover#v=onepage&q&f=false.

renewable, homegrown energy." President Barack Obama, Remarks on Energy at Andrews Air Force Base, Maryland (Mar. 31, 2010)(emphasis added).[11]

In 2019, the United States became a net total energy exporter for the first time since 1952. U.S. Energy Info. Admin., U.S. energy facts explained (Apr. 27, 2020), https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php. The Department of Defense alone purchased 94.2 million barrels of military-spec compliant fuel products, totaling $12.1 billion in procurement actions.[12] And even today, as former Vice Admiral Robert Harward reports, "energy manufacturers are answering President Biden's directive to export natural gas to our allies in Europe. For example, the U.S. has been able to respond to Russia's chokehold of the European energy market by increasing shipments of liquefied natural gas and crude oil by 137 percent and 38 percent, respectively."[13]

When Respondent's Complaint is viewed within the historical context of the Federal Government's pervasive control and direction of oil and gas

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[11] https://obamawhitehouse.archives.gov/the-press-office/remarks-president-energy-security-andrews-air-force-base-3312010

[12] Def. Logistics Agency Energy, Fiscal Year 2019 Fact Book (2019) at 4, 27, https://www.dla.mil/Portals/104/Documents/Energy/Publications/FactBook-FiscalYear2019_highres.pdf?ver=2020-01-21-103755-473.

[13] U.S. Climate Lawsuits Endanger Military and U.S. National Security Interests by Robert Harward, Vice Admiral, U.S. Navy Retired, *American Military News* (April 20, 2023) at https://americanmilitarynews.com/2023/04/u-s-climate-lawsuits-endanger-military-and-u-s-national-security-interests/

production, it is clear Respondent's state law claims seek to undercut these national and international policies and actions governing the sale of oil and gas and trigger national security concerns for a reliable and stable energy supply.

III. Our Nation's Vital Interests in Fuel Security and Climate Change Must be Reconciled in a Uniform, National Way, Which Will Not Occur If Petitioners Are Subject to a Patchwork of State-Court Actions Regarding Inter-state and International Emissions.

At the end of the day, we are concerned that the upshot of this litigation and the broad relief it seeks would negatively impact strong national interests in fuel security and military readiness. Fuel security is a crucial national interest and is especially critical to the U.S. military, in times of both war and peace, to power ships, tanks, and aircraft, provide energy to run bases, stations, and detachments, and enable numerous operations. It should thus come as no surprise that the US military is the single largest purchaser and consumer of fuel in the United States.

Climate change is likewise an issue of critical national (indeed, global) importance. Greenhouse-gas emissions are a form of transboundary air pollution and thus present a matter of uniquely federal concern, rather than a State or local matter. *See City of New York*, 993 F.3d at 85-86 (2d Cir. 2021) ("Global warming presents a uniquely international problem of national concern. It is therefore not well-suited to the application of state law.").

Litigating Plaintiff's claims against Defendants in a decentralized way under various states' laws will undermine these vital national interests and undermine a reliable domestic, fuel supply. It would subject Defendants to potential liability and injunctions under a patchwork of state laws, without a uniform guide. Courts have recognized that this 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." *City of New York*, 993 F.3d at 93; *see also id.* ("And as states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the Producers' global operations to a welter of different states' laws could undermine important federal policy choices.").

To be sure, the United States Military continues to look for "greener" ways to fuel the military, and we support ameliorating climate change risks at our bases, but the reality is the U.S. military must always take into account its enemies' own fossil-fuel uses and potential superior deployment abilities because of those uses. The United States could go it alone and unilaterally strip itself of higher-performing fossil fuels, but that risks putting the Nation at a significant competitive disadvantage, militarily and otherwise. The ruinous damages these cases seek risk knee-capping this country while empowering others who seek to exploit just such vulnerabilities. Stated differently, energy security and national security go

hand-in-hand; we cannot achieve national security without first accomplishing energy security.

At bottom, our experience has taught us that private-sector production and sale of oil and gas are essential to our military operations and thus our national security. Our Constitutional oath includes our commitment to "support and defend the Constitution of the United States against all enemies, foreign and domestic," which necessarily includes a commitment to ensure the military has sufficient fuel to accomplish its missions. In order to adhere to that oath, it is the duty of military officers to enable a plentiful supply of fuel to operate vehicles, ships, and planes. Because energy is essential to protect our Nation, its people, and the world at large, the decision of how much is appropriate must be left with the Federal Government and the branches of the Federal Government tasked with our foreign policy and national security.

CONCLUSION

The Shell (Dkt. No. 93-952) and Sunoco LP, *et. al.* (Dkt. No. 23-947) writs of certiorari should be granted.

Respectfully submitted,

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