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, F/K/A ROYAL DUTCH SHELL PLC, ET AL., *Petitioners,*
v.
CITY AND COUNTY OF HONOLULU, HAWAII, ET AL., *Respondents.*

On Petitions for Writs of Certiorari to the Supreme Court of the State of Hawaii

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONERS

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April 1, 2024

QUESTION PRESENTED

Whether federal law preempts state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as amicus curiae in disputes over the regulation of greenhouse-gas emissions. *See, e.g.*, *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014); *Massachusetts v. EPA*, 549 U.S. 497 (2007).

WLF also regularly publishes, through its Legal Studies Division, articles by outside experts on climate-change lawsuits. *See, e.g.*, Lincoln Davis Wilson, *Flawed Federal Jurisdiction Ruling Grants State Court National Climate-Change Policymaking Power*, WLF LEGAL OPINION LETTER (Mar. 25, 2022); Peter Glaser & Lynne Rhode, *Three Federal Courts Reject Public Nuisance As Climate Change Control Tool*, WLF LEGAL OPINION LETTER (Nov. 16, 2007).

WLF does not deny the realities of climate change. But that does not mean that States have unlimited power to regulate greenhouse-gas emissions. For many reasons, the question of how America should respond to rising global temperatures is one solely for federal policymakers. WLF thus opposes States' and municipalities' efforts to regulate global conduct based on energy companies' activities here and abroad.

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission. WLF timely notified all parties of its intent to file this brief.

INTRODUCTION

A world that never had oil is not one that sane people would want to live in. The standard of living for all mankind skyrocketed when humans realized how to harness the power of oil. *See* John Majewski, *How the industrial revolution raised the quality of life for workers and their families*, Found. Econ. Educ. (July 1, 1986), https://perma.cc/L6AL-G269. Rather than having to choose between living in overcrowded cities or on a farm, many people now enjoy suburban life. And rather than taking a boat across the Atlantic for vacation or work, people can hop on a redeye flight and make the journey overnight.

These may be mere conveniences. But other things are matters of necessity. No longer must farmers rely on oxen when plowing their fields. Now they can use gas-powered tractors to help produce more food, which leads to reduced food prices. This innovation, of course, helps alleviate the scourge of hunger worldwide.

Oil has also increased life expectancies in other ways. It helped power the industrial and technological revolutions. The resulting increased economic activity lifted the standard of living and allowed more spending on healthcare. The overall effect was to almost double the life expectancy of Americans. *See* Aaron O'Neill, *Life expectancy (from birth) in the United States, from 1860 to 2020* (Feb. 3, 2021), https://perma.cc/5ERD-VTL7.

Rational people are happy that we have abundant oil at our disposal. Although prices have fluctuated recently, there is no risk that when you go

to the gas station you will be unable to fill your tank. But politicians are rarely rational. Some don't care that oil has made Americans' lives better. They believe it's advantageous for their political careers to press for de-development rather than allow oil to continue playing a critical role in our nation's progress.

This placing of politics over sound policy explains why, as part of their climate-change crusade, many municipalities and States have brought public-nuisance lawsuits against oil producers. There can be "no pretense," however, "that there is a nuisance" here "of the simple kind that was known to the older common law." *Missouri v. Illinois*, 200 U.S. 496, 522 (1906). These States and municipalities are not seeking to abate the sort of "minor offenses involving public morals or the public welfare" that public-nuisance law traditionally addressed. Donald G. Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. Cin. L. Rev. 741, 800-01 (2003). Rather, they are pursuing purely political goals.

The States' and municipalities' lawsuits raise legal and policy questions of national and international import. Fifty separate sovereigns cannot regulate untraceable emissions that travel across state and international borders. These petitions are thus critical both to our country's and our world's future. The Court should grant review to reaffirm that federal law governs these disputes.

STATEMENT

I. OIL IN AMERICA

In the early 1800s the world was a dark place, just as it had always been. The main source of artificial light, candlelight, was both expensive and weak. Candles "were also dangerous: forget to snuff your candle and you could be incinerated in a ball of fire." Alan Greenspan & Adrian Wooldridge, *Capitalism in America: A History* 432 (2018). "Productivity improvements" at that time were "limited by the speed that horses could run or ships could sail." *Id.* at 18. Even by the mid-nineteenth century, "the country still bore the traces of the old world of subsistence. Cities contained as many animals as people, not just horses but also cows, pigs, and chickens." *Id.* at 91.

Then, in the second half of the 1800s, the Industrial Revolution accelerated. Key to this transformation was oil. America's "rise was propelled, in no small way, by its immense natural-resource wealth"—"starting with oil." Bhu Srinivasan, *Americana: A 400-Year History of American Capitalism* 151 (2017).

Oil lit the darkness. The development in the 1860s of "viable [oil] drilling technique[s]" made "basic, cheap lighting possible for millions of Americans." Srinivasan at 151. "From 1880 to 1920," therefore, "the amount of oil refined every year jumped from 26 million barrels to 442 million." Greenspan & Woodridge at 102. This led to "an astonishing decline in the price of kerosene paid by consumers from 1860 to 1900." *Id.* "Unlike the

spermaceti candles of decades prior[,] * * * cheap tin cans filled with kerosene now allowed the common man to light his home." Srinivasan at 161.

The United States illuminated not just itself but also the world. Much of the kerosene Standard Oil produced in the late nineteenth century was exported. In Europe, light went from something precious to something ubiquitous. In Britain, for example, the cost of a million lumen hours of light dropped from around £9,400 in 1800 to around £230 in 1900. Max Roser, *Light, Our World in Data* (2019), https://perma.cc/4BVV-P4QZ.

And oil provided much more than light. It "became the nation's primary source of energy: as gasoline and diesel for cars, fuel oil for industry, [and] heating oil for homes." Greenspan & Woodridge at 102-03. This energy helped drive "America's takeoff into self-reinforcing [economic] growth." *Id.* at 92. Economic growth, in turn, opened the way for better lives for millions of people. Oil enabled Americans to "live in far-flung suburbs because filling their cars was cheap." *Id.* at 103. It empowered average people to leave multi-tenant buildings and move into their own houses, to "choose space over proximity." *Id.*

"More than any other country," in short, "America was built on cheap oil." Greenspan & Wooldridge at 103. Oil "laid the foundations of the age of the common man: an age in which almost every aspect of life for ordinary people became massively—and sometimes unrecognizably—better." *Id.* at 427.

The United States remains a leading innovator of oil and natural gas production. In the development

of fracking, for instance, the "oil industry saw one of the most surprising revolutions of the second half of the twentieth century." Greenspan & Wooldridge at 356-57. "Shale beds now produce more than half of America's natural gas and oil * * * compared with just 1 percent in 2000." *Id.* at 357. Thanks to fracking, the United States recently became a net energy exporter for the first time in more than sixty years. *U.S. energy facts explained*, U.S. Energy Info. Admin. (Aug. 9, 2023), https://perma.cc/ZK6Z-G7VA.

President Biden agrees "that the U.S. needs to be energy independent." Michael McAdams, *Biden called for US energy independence — advanced biofuels can propel us*, The Hill (Apr. 2, 2022), https://perma.cc/XQQ3-8BTM. The modern oil and natural-gas renaissance has therefore enjoyed bipartisan political support. A report issued by President Obama's administration, for example, applauded the fact that the recent increase in oil and natural-gas production has "made a significant contribution to GDP growth and job creation." *New Report: The All-of-the-Above Energy Strategy as a Path to Sustainable Economic Growth*, The White House (May 29, 2014), https://perma.cc/KR8M-2NYN. "Increased domestic oil production," the report noted, "reduce[s] the vulnerability of the U.S. economy to oil price shocks stemming from international supply disruptions." *Id.*

II. STATES AND MUNICIPALITIES IGNORE REALITY

In 2017, many state and municipal governments sued energy companies in state court. *See* Jeremy Hodges et al., *Climate Change Warriors'*

Latest Weapon of Choice is Litigation, Bloomberg (May 24, 2018), https://bloom.bg/3fczCz8. Those suits alleged that the defendant energy companies contributed to global warming by extracting, producing, and selling fossil fuels. *See*, *e.g.*, *id.* Although energy companies provided vast benefits to these States and municipalities and their citizens, the governments decided it was time to pounce.

Inspired by this flood of lawsuits, in 2020 Honolulu sued energy companies in Hawaii state court. Honolulu claims the energy companies contributed to climate change by producing, promoting, and (misleadingly) marketing fossil fuel products after their dangers became apparent.

The energy companies removed the suit to the District of Hawaii, but the case was later remanded to state court. On remand, the Hawaii state courts held that Honolulu's claims were not preempted by federal law. The energy companies now ask this Court to resolve an issue that the circuit court called "unprecedented [] for any court, let alone a state [trial court]." Sunoco Pet. App. 74a; Shell Pet. App. 85a.

SUMMARY OF ARGUMENT

I.A. For the past century, federal common law has continued to shrink. But that does not mean it is a dead letter. Several issues are governed by active federal common law. Three examples are interstate water disputes, tribal sovereignty, and lost airline cargo. This case involves a fourth area of federal common law—interstate and international air emissions. These four issues share many similarities.

It thus makes sense to categorize Honolulu's claims as arising under federal common law.

B. Congress has eliminated any federal common-law cause of action for interstate greenhouse-gas emissions. But that does not mean that the federal common law governing interstate and international greenhouse-gas emissions lost its preemptive effect. Congress often passes laws that limit or expand recovery for causes of action governed by federal common law. The common law, however, still preempts state claims related to those issues.

II. These cases are immensely important for our nation's economy and the well-being of all Americans. If the Hawaii Supreme Court's decision stands, dozens of lawsuits from around the country will proceed in state courts. The potential for massive liability could cause oil companies to exit the American market. Or the price of oil products could spike. Either way, all Americans will be worse off if the Court denies review.

ARGUMENT

I. THE COURT SHOULD RESOLVE THE SPLIT ON WHETHER FEDERAL LAW PREEMPTS STATE-LAW CLIMATE-CHANGE CLAIMS.

As described in the petitions, the Hawaii Supreme Court's decision deepens an acknowledged split on an important question: Does federal law preempt state-law claims alleging cross-border pollution from greenhouse gases? This Court should grant the petitions to resolve this vital question.

A. Climate-Change Claims Are Governed By Federal Common Law.

1. Since *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), the role of federal common law has been restricted. *See Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1015 (2020) (citing *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001)). Rather than the province of the federal courts, common law now is generally left to state courts.

But that does not mean that federal common law no longer exists. Several issues are still governed by federal common law. For example, this Court has created a federal common law governing interstate water disputes. *See Arkansas v. Oklahoma*, 503 U.S. 91, 98-99 (1992); *Illinois v. City of Milwaukee*, 406 U.S. 91, 106 (1972). The federal resolution of interstate water disputes makes sense. It would be illogical to have Texas common law govern the State's water disputes with Oklahoma. The Texas courts would create rules to ensure victory over Oklahoma. The same is true of Oklahoma courts applying Oklahoma law.

Another factor that makes federal common law appropriate for interstate water disputes is that it is impossible to link water that flows between two States to only one of those States. For example, water from Texas and Oklahoma flows into the Red River from both tributaries and runoff. Deciding how much

water each State is entitled to thus cannot be governed by state law.

The same is true for air pollution. When carbon dioxide enters the atmosphere from a power plant in West Virginia, it is impossible to track every molecule to see if it is resting above Honolulu and increasing temperatures there. So too for gasoline used to power cars in Fiji or Canada. It makes no sense to have one State's common law govern emissions that emanate from across state or international borders. Yet that is the approach the Hawaii Supreme Court blessed here. In its view, just because Honolulu framed this case as one arising under state common law, state law controls.

2. Federal common law also governs certain Indian issues. For example, questions about "inherent tribal sovereignty" are governed by federal common law. *See In re Otter Tail Power Co.*, 116 F.3d 1207, 1214 (8th Cir. 1997). This makes sense because "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." *Washington v. Confederated Tribes of Colville Indian Rsrv.*, 447 U.S. 134, 154 (1980). In other words, States lack power over tribal governance. *See* U.S. Const. art. I, § 8, cl. 3.

A similar situation is present here. Besides having sole authority to regulate tribal governance, the federal government also has sole power to regulate interstate and international commerce. *See* U.S. Const. art. I, § 8, cl. 3. It makes no sense to have state common law govern an area of law the

Constitution assigns to Congress. But that is what the Hawaii Supreme Court's decision here permits.

3. Both rationales above support applying federal common law to lost airline shipments. *See Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 929 (5th Cir. 1997). When shipments are lost during an interstate flight, you don't know if the loss occurred in the State of departure, the State of arrival, or somewhere in between. So the Constitution gives the federal government power to regulate this type of commerce.

As described above, there are two reasons that federal common law governs some claims—a constitutional grant of power and the lack of a practical way for state law to decide a dispute. Both reasons apply here. First, air pollution does not recognize state and international borders. Second, the Constitution grants the federal government the sole power to regulate interstate and international commerce. Thus, like these other issues, federal common law governs Honolulu's claims, and state-law claims are preempted by the federal common law. The Hawaii Supreme Court's contrary holding is wrong.

B. Federal Legislation On Issues Governed By Federal Common Law Does Not Eliminate The Preemptive Effect Of Federal Common Law.

The Hawaii Supreme Court held that federal common law does not preempt state-law claims seeking damages for interstate and international greenhouse-gas emissions because the Clean Air Act displaced federal common law. True, the CAA

eliminated federal common-law causes of action otherwise available for interstate pollution. *See Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 424 (2011). But Honolulu's argument still fails for two reasons. First, even when Congress enacts legislation displacing federal common-law claims, that does not extinguish the preemptive effect of the federal common law. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 98 (2d Cir. 2021) ("[S]tate law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one."). Second, the CAA itself evidences Congress's intent to preempt all state-law claims not expressly allowed by the CAA. Either of these reasons is enough to reverse the Hawaii Supreme Court's decision. Combined, they underscore the political nature of the lower court's decision.

1.i.a. States may not, "without the Consent of Congress * * * enter into any Agreement or Compact with another State, or with a foreign Power." U.S. Const. art. I, § 10 cl. 3. "[C]ongressional consent transforms an interstate compact within this Clause into a law of the United States." *Cuyler v. Adams*, 449 U.S. 433, 438 (1981) (citations omitted). These compacts often deal with interstate water rights. *See generally*, *e.g.*, Pecos River Compact, ch. 184, 160 Stat. 159 (1949).

Although compacts become federal statutory law (not common law) after their passage, the Court has not recognized state-law causes of action because of the displacement of the federal common law. Rather, the Court has faithfully applied the compacts'

terms. When necessary to resolve an issue where the compacts are silent, the Court turns to federal common law.

The Court's decision in *Montana v. Wyoming*, 563 U.S. 368 (2011) is instructive. There, the compact directed that the Court should use "principles of apportionment doctrine." *Id.* at 377 n.5. The Court, however, did not look to only Montana law, only Wyoming law, or only another State's laws when deciding the case. Rather, the Court looked to Wyoming law, Montana law, *and* "Western water law more generally." *Id.* at 375 n.4. This makes sense. What would not make sense is for the Court to have looked at only Wyoming law or only Montana law. As discussed above, that would give one party an unfair advantage over the other.

Yet that is what the Hawaii Supreme Court's decision here allows. Rather than look to the federal common law, it looked to one State's—its own—common law. Neither Honolulu nor the Hawaii Supreme Court cite a case in which this Court applied one State's common law after Congress ratified an interstate water compact. And for good reason. The federal common law preempts state laws on interstate water issues, even when interstate water compacts exist.

b. Besides interstate water compacts, Congress also enacted the Clean Water Act. After the CWA's enactment, some citizens sued a company under Vermont state law arguing that the company engaged in a nuisance because of its water pollution. This Court held that the plaintiffs' claims were preempted to the extent that they alleged interstate pollution. As

the Court explained, the CWA's "pervasive regulation" of water pollution, "and the fact that the control of interstate pollution is primarily a matter of federal law," means that "the only state suits that remain available are those specifically preserved by the [CWA]." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987).

The same is true of the CAA. Under the CAA, the Environmental Protection Agency is the "primary regulator of [domestic] greenhouse gas emissions." *Am. Elec. Power*, 564 U.S. at 428. Of course, no CAA provision gives States or localities the power to regulate interstate greenhouse-gas emissions through common-law suits. Rather, "the issues raised in this dispute concerning domestic emissions are squarely addressed by the" CAA's grant of power to the EPA. *City of New York*, 993 F.3d at 98. Because the CAA and EPA do not "authorize the City's state-law claims," the "claims concerning domestic emissions are" preempted. *Id.* at 100.

ii. Like most States, Washington regulates the transportation of cigarettes. *See* Wash. Rev. Code § 82.24.250(1) (2007). That law made it a crime for most people to transport unstamped cigarettes. *See id.* Congress also enacted a law dealing with the same subject. Under that provision, a large enough violation of Washington law also was a federal crime. *See* 18 U.S.C. § 2342.

Still, the Washington statute could not be applied against certain Indians. Even with the passage of the federal statute touching on the same subject, the Ninth Circuit explained that the federal common law of interstate transportation for Indians

preempted the Washington statute. *See United States v. Smiskin*, 487 F.3d 1260, 1269-72 (9th Cir. 2007). As the court said, Congress has the ability under the Constitution to give States like Washington the power to regulate Indians' transit on its highways. *Id.* at 1271. But Congress had not taken that step when the *Smiskin* defendants' conduct occurred. So the federal common law preempted Washington state law.

This case presents a similar situation despite *Smiskin* involving treaty-based federal common law while this case deals with federal common law arising from the Constitution's structure. Under the Supremacy Clause, the "Constitution * * * and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. So in either scenario, the federal common law preempts state-law actions when Congress has not given States power to regulate in that area.

Congress has given States limited power to regulate air emissions. That was a conscious decision that left the preemptive effect of federal common law in place today. State-law actions like Honolulu's are thus preempted and the Hawaii Supreme Court erred in holding otherwise.

iii. Before the turn of the last century, "the liability of common carriers was dictated by federal and state common law." *Sam L. Majors Jewelers*, 117 F.3d at 926 (footnote omitted). But in 1906, Congress decided that federal common law should govern such claims. *See id.* at 926 n.5 (citation omitted). In the 1970s, Congress deregulated the airline industry. This deregulation abrogated many federal causes of

action but kept other "remedies [then] existing at common law or by statute." *In re Air Cargo Shipping Servs. Antitrust Litig.*, 697 F.3d 154, 160 (2d Cir. 2012) (quotation omitted).

While keeping remedies then existing at common law or by statute, Congress still barred States from regulating airlines' rates, routes, or services. 49 U.S.C. § 41713(b)(4)(A). In short, Congress decided that federal common law should govern disputes over cargo lost or damaged on interstate flights. So although Congress gave States some power over airlines, it decided that they should not regulate interstate shipments by airplane.

Congress made a similar decision here. In the CAA, Congress gave States some power to regulate greenhouse-gas emissions within their borders. What Congress did not do, however, was extend that power to regulation of interstate or international greenhouse-gas emissions. *Cf. City of New York*, 993 F.3d at 95 ("[T]he Clean Air Act does not regulate foreign emissions. So the City's claims concerning those emissions still require us to apply federal common law."). Yet that is how the Hawaii Supreme Court read the CAA. This erroneous reading deserves the Court's attention now.

2. Even absent federal common law, the CAA preempts state-law claims related to interstate greenhouse-gas emissions. Preliminarily, this "Court has indicated that the presumption [against preemption] does not apply when a state law would interfere with inherently federal" matters. *Geo Grp., Inc. v. Newsom*, 50 F.4th 745, 761 (9th Cir. 2022) (en banc) (citing *Buckman Co. v. Plaintiffs' Legal Comm.*,

531 U.S. 341, 347 (2001)). So this Court just looks to whether the text, structure, and history of the CAA suggests that it preempts state-law claims about interstate and international greenhouse-gas emissions. It does.

This Court's decision in *American Electric Power* is illustrative. There, the Court examined the text, structure, and history of the CAA. Ultimately, it declined to decide whether plaintiffs could sue under "the law of each State where the defendants operate powerplants." *Am. Elec. Power*, 564 U.S. at 429. The Court's choice of words shows that the CAA preempts state-law claims like those here.

The key phrase in *American Electric Power* is "where the defendants operate powerplants." 564 U.S. at 429. This means that the Court reserved the question of whether a common-law suit under Montana law may be filed in Montana state court for emissions that occurred in Montana. What the Court did not reserve is whether a common-law suit under Montana law may be filed in Montana state court for emissions that occurred in Mississippi or Vanuatu. Such a suit for emissions that occurred in another State or in a foreign country is preempted by the CAA. As only Congress may regulate interstate and international greenhouse-gas emissions, the Hawaii Supreme Court's contrary decision warrants this Court's review.

II. DECLINING TO RESOLVE THE SPLIT WILL HAVE DEVASTATING EFFECTS.

The signs above gas stations tell a sobering story. In October 2020, regular gasoline averaged

$2.17 per gallon nationwide. Nancy Yamaguchi, *EIA Gasoline and Diesel Retail Prices Update, Oct. 20, 2020*, Fuel Market News (Oct. 21, 2020), https://perma.cc/LU5S-YJH3. Now, gas is $4.71 per gallon in Hawaii. AAA, National Average Gas Prices (Mar. 27, 2024), https://perma.cc/VMG5-LW65.

This helps explain why President Biden has asked the energy companies to sell their product below cost. *See* Francesca Chambers, *With gas prices at $5 a gallon, Biden tells oil companies to cut costs for Americans*, USA Today (June 15, 2022), https://perma.cc/X9X2-HSAK. If this Court denies review, there is little chance that gas prices will go down anytime soon. Rather, consumers should be prepared to fork over even more money when they fill their tanks to get to work.

Orders denying certiorari would send the wrong message to federal and state courts around the nation: Federal law does not preempt state-law claims about greenhouse-gas emissions. There is a reason that Honolulu is fighting to litigate this case under state law rather than federal law. It understands that bringing state-law claims in state court gives it an unfair advantage over the energy companies.

"State judges, holding their offices during pleasure, or from year to year, [are] too little independent to be relied upon for an inflexible execution of the national laws." The Federalist No. 81, 486 (Alexander Hamilton) (Clinton Rossiter ed. 1961). And "some of the most important and avowed purposes of" our federal government would disappear if "the judiciary authority of the Union may be eluded at the pleasure of every plaintiff or prosecutor." The

Federalist No. 82 at 494 (Alexander Hamilton); *see* Felix Frankfurter & James Landis, *The Business of the Supreme Court*, 38 Harv. L. Rev. 1005, 1014 (1925) (federal law is necessary to protect "against the obstructions and prejudices of local authorities").

Imagine a politically vulnerable state court judge who has the power to make "Big Oil" pay billions of dollars to Honolulu. Taxpayers would see lower taxes and more amenities. And most taxpayers are voters. So the state court judges are not motivated to faithfully apply basic legal principles.

The pressure is even stronger given the number and variety of similar suits around the country. Each of these suits seeks billions of dollars for harm that cannot be traced to one actor—much less one actor in one jurisdiction. A few outsized, unsupported verdicts for States or municipalities could undermine energy companies' businesses. Were that to happen, Americans could forget driving to the beach for July 4th or flying to Europe for vacation. But even if energy companies continued operations, the effects will be felt by all Americans. Some energy companies may back out of selling oil products in America. Again, that would cause America's energy gains to reverse as it falls behind countries like China and India that allow unlimited emissions. *Cf. City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017, 1023 (N.D. Cal. 2018), *vacated*, 969 F.3d 895 (9th Cir. 2020) ("[O]ur industrial revolution and the development of our modern world has literally been fueled by oil and coal. Without those fuels, virtually all of our monumental progress would have been impossible. All of us have benefitted.").

If energy companies don't leave the country, consumers will still feel the effects of an explosion in state-court climate litigation. It may cost $200 to fill a tank with gas once the energy companies factor in uncapped state-law liability for their actions around the world. Again, there is no limit to the potential damages that state courts could award if this Court does not grant review and reverse the Hawaii Supreme Court's decision.

* * *

The petitions advance slightly different arguments for why federal law preempts state-law claims over interstate greenhouse-gas emissions. But whether it be federal common law, the CAA, the Constitution's structure, or a combination thereof, Honolulu's state-law claims are preempted by federal law. The Hawaii Supreme Court's contrary decision directly conflicts with the Second Circuit's decision on the same question. This Court should not allow that conflict to persist. Rather, it should grant the petitions and resolve the split now.

CONCLUSION

This Court should grant the petitions.

Respectfully submitted,

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April 1, 2024