MATTHEW J. PLATKIN, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY; NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND CARI FAIS, ACTING DIRECTOR OF THE NEW JERSEY DIVISION OF CONSUMER AFFAIRS, Plaintiff, v. EXXON MOBIL CORP., EXXONMOBIL OIL CORP., BP P.L.C., BP AMERICA INC., CHEVRON CORP., CHEVRON U.S.A. INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, SHELL PLC; SHELL OIL COMPANY, and AMERICAN PETROLEUM INSTITUTE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MERCER COUNTY Docket No. MER-L-001797-22 Civil Action CBLP Action **ORDER AND OPINION**

THIS MATTER having been brought before the Court by Defendants, through their counsel, by way of a Motion to Dismiss for Failure to State a Claim, and granting such other and further relief as the Court deems just (the "Motion"), and the Court having considered all papers submitted in support thereof and in opposition thereto, and oral argument held on April 11, 2024; and for the reasons stated below:

IT IS, on this 5th day of February, 2025, **ORDERED** that:

1. The Motion is **GRANTED.**
2. This action is hereby dismissed with prejudice.
3. All other pending motions are withdrawn as moot.

/s/ Douglas H. Hurd
Hon. Douglas H. Hurd, PJ. Cv.

OPINION

The lawsuit is brought by Plaintiffs, including the Attorney General of New Jersey and two state agencies, against thirteen energy companies and an industry trade association ("Defendants"). Plaintiffs allege that Defendants are liable for the effects of global climate change, wrought namely by their campaign of disinformation upon the citizens of the State. Defendants include major energy corporations involved in the extraction, production, and distribution of fossil fuels, as well as an industry trade association (American Petroleum Institute or "API").

Plaintiffs assert that Defendants have engaged in a decades-long campaign to discredit the science of global warming, conceal the dangers posed by their fossil fuel products, and misrepresent their efforts to combat climate change. They claim that despite knowing about the adverse climate impacts of their products since the 1950s, Defendants failed to adequately warn consumers, the public, and decision-makers about these risks.

Defendants are alleged to have engaged in deceptive marketing practices, including promoting fossil fuel products as environmentally friendly or "clean," while downplaying their role in contributing to climate change. Plaintiffs contend that these deceptive campaigns have led to an increase in greenhouse gas pollution, resulting in sea-level rise, extreme weather events, and other climate change impacts that have affected New Jersey residents.

Plaintiffs filed a complaint alleging eight causes of action against Defendants, including failure to warn, negligence, impairment of the public trust, trespass, public and private nuisance, and violations of the New Jersey Consumer Fraud Act (CFA). The complaint seeks compensatory and punitive damages, abatement of the alleged nuisance and trespass, injunctive relief, and attorneys' fees and costs.

Defendants filed joint motions to dismiss on theories of constitutional preemption, preemption by federal environmental laws such as the Clean Air Act, the political question doctrine, and the statute of limitations. Additionally, Defendants filed individual motions in which they present defenses as to their arguments and localities such as the inapplicability of the New Jersey Consumer Fraud Act and extraterritorial anti-SLAPP statutes. In sum, Defendants argue that Plaintiffs' claims are without merit and fail to meet the legal standards required for judicial consideration.

This decision addresses Defendants' joint motion on the issue of preemption. As discussed in detail below, this court agrees with Defendants that Plaintiffs' claims are preempted because federal common law governs this dispute. This decision in favor of Defendants on preemption is dispositive of all of Plaintiffs' claims in this case. It is, therefore, not necessary for this court to address the other issues and motions brought before the Court in the Defendants' joint and

The judge is stating that New Jersey cannot use its own state-law claims to regulate or recover for this alleged harm, because the subject is considered a uniquely federal one.
"Plaintiffs' claims are preempted" = New Jersey's state-law claims are blocked and cannot go forward.

individual motions to dismiss. Those unaddressed motions will be withdrawn by this court as moot.

In determining whether a Plaintiff has failed to state a claim upon which relief can be granted under Rule 4:6-2(e), the Court must limit its examination to evaluating the legal sufficiency of the facts alleged on the face of the complaint. Rieder v. Dept. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). The Court is to "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." DiCristoforo v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957). The Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint at this preliminary stage of the litigation; therefore, plaintiffs are entitled to every reasonable inference of fact. Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956). In short, "the test for determining the adequacy of a pleading [is] whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989).

Defendants' contend that Plaintiffs' claims, seeking damages for interstate and international emissions and global warming, are preempted by federal law. Defendants' cite federal cases holding that areas involving conflicting state rights or federal interests must be governed exclusively by federal law to uphold

principles of federalism. As such, Defendants' argue that state law is constitutionally inappropriate in such cases because the federal courts have uniformly held that state law cannot provide relief for alleged consequences of global climate change. Plaintiffs' attempt to hold Defendants liable for emissions globally through New Jersey tort law is preempted by federal law, according to the Defendants.

Defendants also point out that federal law governs and preempts state claims seeking damages for international emissions, as they encroach upon federal foreign policy concerns. Even after displacement of federal common law by the Clean Air Act, federal law continues to preempt state law in matters involving international emissions. Defendants' highlight that Plaintiffs' claims, based on misrepresentations, still relate to interstate and international emissions, triggering the exclusive application of federal law. State law cannot regulate extraterritorial activities or impose liability for harms from emissions beyond the state's jurisdictional bounds. Therefore, according to Defendants, Plaintiffs' claims are preempted by federal law due to federalism and comity concerns, and the Court must affirm that federal law governs disputes involving interstate and international emissions, precluding Plaintiffs' attempts to use state law for relief.

The Plaintiffs' claim that Defendants' reliance on federal common law, traditionally addressing pollution from discrete out-of-state sources, is misplaced.

The conduct challenged by the State—deceptive promotion and failure to warn—does not align with the scope of federal common law historically applied to pollution cases, according to the Plaintiffs' opposition. Moreover, congressional legislation, such as the Clean Air Act (CAA), has displaced federal common law concerning interstate pollution, rendering it inapplicable to the State's claims.

As noted above, and with all due respect to the Plaintiffs' arguments, this court agrees with the Defendants' legal position on the issue of ordinary preemption. The "basic scheme of the [federal] Constitution . . . demands that federal common law," Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 421, 131 S. Ct. 2527, 2535 (2011) (quotation marks omitted)("AEP"), govern any dispute involving "air and water in their ambient or interstate aspects," Illinois v. City of Milwaukee, 406 U.S. 91, 103, 92 S. Ct. 1385, 31 L. Ed. 2d 712 (1972) ("Milwaukee I") (holding that "where there is an overriding federal interest in the need for a uniform rule of decision or where the controversy touches basic interests of federalism, we have fashioned federal common law.")

This court's decision is reliant upon and consistent with both federal and state courts across the country that have rejected the availability of state tort law in the climate change context. See City of New York v. Chevron Corp., 993 F.3d 81 (2d Cir. 2021) ("City of New York"); City of New York v. Chevron Corp., 325 F.Supp. 3d 466 (S.D.N.Y. 2018), aff'd, 993 F.3d 81(2d Cir. 2021); City of Oakland

v. BP P.L.C., 325 F.Supp. 3d 1017 (N.D. Cal. 2018), *vacated on other grounds*, 960 F.3d 570 (9th Cir. 2020); Mayor & City Council of Baltimore v. BP P.L.C., 2024 WL 3678699 (Md. Cir. Ct. July 10, 2024); State ex rel. Jennings v. BP Am. Inc., 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024); cf. City of New York v. Exxon Mobil Corp., No. 451071/2021, 2025 WL 209843 (N.Y. Sup. Ct. Jan. 14, 2025); City of Annapolis v. BP P.L.C., No. C-02-CV-21-250 (Md. Cir. Ct. Jan. 23, 2025); Anne Arundel County v. BP P.L.C., No. C-02-CV-21-565 (Md. Cir. Ct. Jan. 23, 2025) (dismissing similar state law claims for public and private nuisance, failure to warn, trespass and violation of the state consumer protection statue, seeking damages for harms allegedly caused by global greenhouse gas emissions; holding that "the U.S. Constitution's federal structure does not allow such state-law claims to proceed because they are federally preempted."). Many of these courts conclusions flow, in part, from the United States Supreme Court's 2011 decision in AEP.

This court agrees that the logic and reasoning of those decisions compel dismissal of claims seeking damages by transboundary emissions. The leading and most persuasive case supporting dismissal is the Second Circuit decision in City of New York. There, the federal appeals court rejected the availability of state tort law in the climate change context. City of New York applies to this case as well because that lawsuit, like the one before this court, regardless of Plaintiffs'

characterizations, seeks redress for harm allegedly caused by climate change and damages for such alleged injuries. The Second Circuit persuasively stated:

> Artful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions. It is precisely because fossil fuels emit greenhouse gases – which collectively exacerbate global warming – that the City is seeking damages. Put differently, the City's complaint whipsaws between disavowing any intent to address emissions and identifying such emissions as the singular source of the City's harm. But the City cannot have it both ways.
>
> Stripped to its essence, then, the question before us is whether a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may proceed under New York law. Our answer is simple: no.
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> City of New York at 92.

Counsel for the Defendants at oral argument similarly stated to this court that at the end of the day, this case is about emissions and, therefore, is subject to preemption. There is no legal basis for this court to distinguish the Second Circuit's reasoning or the cogent argument of counsel.

Plaintiffs' contend that if federal common law is displaced by Congress, that state law may govern. City of New York held that such an argument is "too strange to seriously contemplate." As pointed out correctly by Defendants' counsel in its August 30, 2024 submission to this court:

> Indeed, federal common law applied in the first place only because state law was not fit to govern; Congress's decision to displace and replace federal common law with a statutory scheme (the Clean Air Act) did not somehow render state law competent to apply

> to this exclusively federal subject matter. In any event, while federal common law has been displaced by the Clean Air Act as to domestic emissions, it has not been displaced as to international emissions, as the Maryland Circuit Cour recognized. See Baltimore at 7. Plaintiffs have no answer for this point.

Indeed, because the CAA does not regulate foreign emissions, federal law is still required – and still exists --- to settle such disputes, thereby preempting state law claims sounding in global emissions. Baltimore at 8. There is simply no counter to the argument that federal law has not been displaced with respect to foreign emissions. Despite the artful pleading by the Plaintiffs in this case, this court finds that Plaintiffs' complaint, even under the most indulgent reading, is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries.

As Defendants state in their moving brief, "the federal system does not permit a State to apply its laws to claims seeking redress for injuries allegedly caused by interstate or worldwide emissions." Defendants' Moving Brief at 2. And we know from Plaintiffs' complaint that they seek damages for the alleged impacts of interstate and international emissions. At paragraph 7 of the complaint, Plaintiffs cite to the damage from "the buildup of CO2 in the atmosphere that drives global warming and its physical, environmental, and socioeconomic consequences, including those affecting the State."

Fundamental principles of federalism in the United States Constitution are clear that state law cannot operate in areas of "uniquely federal interests." Tex Indus., Inc. v. Radcliffe Materials, Inc., 451 U.S. 630, 640 (1981). Such a uniquely federal area is interstate air pollution as stated by City of New York. The Hawai'i Supreme Court's decision in City & County of Honolulu v. Sunoco LP, 537 P.3d 1173 (Haw. 2023) is not persuasive to this court because it does not address this critical point. And that point being that "state 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. City of New York at 98. And federal common law has not been displaced with respect to foreign emissions – emissions for which damages are sought in the complaint – and "federal common law preempts state law." Id. at 92.

In conclusion, only federal law can govern Plaintiffs' interstate and international emissions claims because "the basic scheme of the Constitution so demands." AEP at 421. Therefore, Plaintiffs' complaint is hereby dismissed with prejudice for failure to state a claim.