**IN THE SUPREME COURT OF MARYLAND**

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No. 11
September Term, 2025

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MAYOR & CITY COUNCIL OF BALTIMORE,
Appellant,
V.
B.P. P.L.C. ET AL.,
Appellees.

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Appeal from the Circuit Court for Baltimore City
Honorable Videtta Brown, Judge

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CITY OF ANNAPOLIS,
Appellant,
V.
B.P. P.L.C. ET AL.,
Appellees.

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ANNE ARUNDEL COUNTY,
Appellant,
V.
B.P. P.L.C. ET AL.,
Appellees.

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Appeals from the Circuit Court for Anne Arundel County
Honorable Steven Platt, Senior Judge

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# *AMICUS CURIAE* BRIEF OF NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION IN SUPPORT OF APPELLANT

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## STATEMENT OF THE CASE

*Amici curiae* incorporate by reference the Appellant's statement of the case.*

## STATEMENT OF THE FACTS

*Amici curiae* incorporate by reference the Appellant's statement of facts.

## STATEMENT OF INTEREST

*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. 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 populations greater than 30,000 people (approximately 1,400 cities in total). USCM has adopted several resolutions in recent years that acknowledge the significant costs that municipalities must expend in response to climate-change related costs and damages and the importance of

* No person other than amici National League of Cities, the U.S. Conference of Mayors, and the International Municipal Lawyers Association and its attorneys made a monetary or other contribution to the preparation or submission of the brief.

access to the courts to resolve disputes over responsibility for those costs. *See, e.g.,* https://www.usmayors.org/the-conference/resolutions/?category=a0D4N00000FCaUsUAL&meeting=87th%20Annual%20Meeting (2019) & https://www.usmayors.org/the-conference/resolutions/?category=a0F4N00000QhCW3UAN&meeting=90th%20Annual%20Meeting (2022).

The International Municipal Lawyers Association (IMLA) is a nonprofit, nonpartisan professional organization with more than 2,500 members. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters.

More than 80 percent of Americans live in urban areas, and an even higher percentage of them work there. As a consequence, *Amici,* as representatives of local governments, have a unique interest in assuring the well-being of the residents of their jurisdictions. When misinformation of the kind alleged here is allowed to fester, it can adversely affect municipal finances, undermine or destroy economically consequential infrastructure, and increase residents' tax burdens. It often falls to local government to remediate the harmful consequences.

This case also exemplifies a concern for cities throughout the nation: can they protect their residents from misrepresentations that can injure a municipality, or must it await the actions of others, which may never come.

## ARGUMENT

### I. IF AFFIRMED, THE DECISION BELOW WOULD RENDER STATE, COUNTY, AND MUNICIPAL GOVERNMENTS HELPLESS IN ADDRESSING DECEPTIVE MARKETING WHEN EXERCISED ON A NATIONAL SCALE.

#### A. Municipalities Play Critical Roles in Society and in the Economy.

Pursuant to 13 U.S.C. § 161, a 2022 U.S. Census Bureau survey determined that there are 3,031 county governments and 35,705 township and municipal governments. Fed. Reserve Bank of St. Louis, "Local Governments in the U.S.: A Breakdown by Number and Type (Mar. 14, 2024), https://www.stlouisfed.org/publications/regional-economist/2024/march/local-governments-us-number-type.

These local governments play an incredibly important role in American society and its governance. As one scholar recognized, "many of the most vexing issues of social policy and legal institutions are found at the local level." Daniel B. Rodriguez, *Localism and Lawmaking*, 32 Rutgers L.J. 627, 627 (2001). Perhaps for that reason, many state constitutions grant local governments significant home-rule powers. The purpose of these constitutionally mandated home-rule provisions was to

> creat[e] for municipalities both a power of *initiation* – that is, a power to act in the absence of an express state legislative grant – and a power of *immunity* – that is, a power to act in the specified area notwithstanding any conflicting state law.

Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 86 Denv. U. L. Rev. 1337, 1341 (2009) (footnote omitted).

In Maryland, the state constitution's Home Rule Amendment, Md. Const. art. XI–A, § 1, enhanced the self-governance authority of qualifying local governments, called "charter home-rule jurisdictions," by transferring the General Assembly's authority to enact certain types of laws to the local governments. *Montrose Christian School v. Walsh*, 363 Md. 565, 579 (2001). Baltimore is a charter home-rule jurisdiction under Article XI–A. *Piscatelli v. Bd. of Liquor License Comm'rs*, 378 Md. 623, 633 (2003).

Municipalities also make an outsized contribution to the health of State economies. In 2017, municipalities accounted for 90 percent of the Gross State Product (GSP) in 21 states and 80 percent of GSP in 32 states. U.S. Conference of Mayors, U.S. Metro Economies: Economic Growth and Full Employment, Annual GMP Report 1 (2018), http://www.usmayors.org/wp-content/uploads/2018/06/Metro-Economies-GMP-June-2018.pdf.

Economic development and infrastructure improvements, both of which are closely related to residents' financial and social well-being, remain key urban planning and policymaking issues. National League of Cities, State of the Cities 2023, at 2, 5-6 (Jul. 21, 2023), https://www.nlc.org/resource/state-of-the-cities-2023/. Municipalities also provide the first line of defense for public safety. *Id*. at 4.

Regardless of commonality of these issues throughout the nation, these problems are truly local.

Those that framed the federal Constitution equally recognized that local governments would form an essential part of the sovereign nation they were building. James Madison wrote that the government being formed was "neither wholly *national* nor wholly *federal"* and that certain problems would still "rely on powers vested partially in municipal legislatures," and that "local or municipal authorities form distinct and independent portions of the supremacy." The Federalist No. 39, at 246, 245 (James Madison) (Clinton Rossiter ed., 1961).

The Framers believed that local government would be "more familiarly and minutely conversant" with the people's "domestic and personal interests" for purposes of regulation while also allowing the people to engage the local government with greater impact on policy as an exercise in self-government. *Id*., No. 46, at 294-95 (Madison). Thus, as Alexander Hamilton echoed that sentiment, the "superintendence of local administrations" will form the "immediate and visible guardian of life and property . . . to which the sensibility of individuals is more immediately awake" and provide the "great cement of society," when government is diffused among various levels. *Id*., No. 17, at 120 (Alexander Hamilton). The constitutional structure thus poses no impediment to Baltimore's case.

It also cannot be disputed that cities play an important part of state governance. In Maryland, Baltimore has an outsized role as "Maryland's most sophisticated and powerful local government." Mark M. Viani, Primary Units of Local Government 1-1, 1-9, in Maryland Local Government Law and Structure (Md. St. Bar Ass'n, 1999). Its role in the state "combin[es] aspects of incorporated municipality, charter county, and State agency." *Id*. Successive Maryland Constitutions recognized Baltimore "as a separate political entity similar in character to the several counties," and the 1867 state constitution set up the city's governing framework. *Pressman v. D'Alesandro*, 211 Md. 50, 57 (1956). Even Maryland's first constitution gave the city separate legislative representation from that of the county in which it resides. Viani, at 1-10. Its self-governing powers date back to 1796. *See* 1796 Md. Laws Ch. 68.

### B. Local Government Plaintiffs Are Masters of their Complaint As Much As Any Other Litigant.

State and local government plaintiffs, no less than other plaintiffs, are the masters of their claims and may plead the cause of action of their choice, rather than be saddled with one they have not pleaded. As the U.S. Supreme Court observed in the context of removal, if a defendant (or, in this case, a judge,) could "transform the action into one arising under federal law . . . the plaintiff would be master of nothing." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 399 (1987).

In this case, the trial judge took away Baltimore's status as master of the complaint and transformed claims of misrepresentation into a "de facto regulation on greenhouse gas emissions." E.19 (quoting *City of New York v. Chevron Corp*., 993 F.3d 81, 96 (2d Cir. 2021)).

That should not have happened. Maryland courts "assume the truth of all relevant and material facts that are well pleaded." *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 121 (2007) (citation omitted). Baltimore has a right to bring the action it chooses and not have it transmogrified into one chosen for them. Its action alleged a massive misrepresentation in the service of a profit motive by the oil and gas industries so that the public would not question their product's impact on climate change when Defendants knew their denials were false.

Court after court reviewing this very action had no difficulty discerning the gist of the claim. The Fourth Circuit labeled the defendants' assertions about the gist of this action, the one accepted in the court below, as "rest[ing] on a fundamental confusion of Baltimore's claims." *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 217 (4th Cir. 2022), *cert. denied*, 143 S.Ct. 1795 (2023). It held that the action focused on an "extravagant misinformation campaign that contributed to [Baltimore's] injuries" and was not about "emission standards, federal regulations about those standards, or pollution permits." *Id*. The Supreme Court agreed, characterizing the lawsuit as seeking accountability for the defendants' "promoting

fossil fuels while allegedly concealing their environmental impacts" and "defendants' alleged failure to warn about the dangers of their products—and the injuries the City says it suffered as a result." *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S.Ct. 1532, 1536 (2021).

Other similar actions have received the same deference to the plaintiff's' chosen causes of action. *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); *Rhode Island v. Shell Oil Prods. Co.,* 35 F.4th 44, 55 (1st Cir. 2022); *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1198−1207 (Haw. 2023), *cert. denied sub nom. Shell PLC v. Honolulu,* No. 23-952, 2025 WL 76704 (U.S. Jan. 13, 2025), and *Sunoco LP v. Honolulu*, No. 23-947, 2025 WL 76706 (U.S. Jan. 13, 2025).

Against these detailed analyses, the lower court inaptly relied on a Second Circuit decision that found that federal common law supplanted a local government's *public-nuisance claim* against fossil fuel companies for climate-related harms. 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. Baltimore has made no similar claim about global emissions. Instead, its claims relate to local misrepresentations directed to local consumers.

Choosing the cause of action that Baltimore did was not an instance of "artful pleading." To be artful pleading, a successful lawsuit in this matter would seek to end or substantially restrict the sale of fossil fuels through obfuscation of the gravamen of the claim. *See Veydt v. Lincoln Nat. Life Ins. Co.*, 94 Md. App. 1, 5 (1992). This lawsuit does not seek that result.

Unlike the court below, Maryland instructs its courts, much as the prior courts had, to focus their concern on the nature of the *issues* legitimately raised by the pleadings." *Higgins v. Barnes,* 310 Md. 532, 535 n. 1 (1987); *see also Gluckstern v. Sutton*, 319 Md. 634, 650–651 (1990) (directing a court to look at the "substance of the allegations before them"). If the court below had followed that instruction, there would be no appeal to this Court today.

### C. Municipal Lawsuits Based on Consumer Protection Laws Are Well-Known Phenomena that Do Not Become Federal Cases Because of a Connection to Some Related Subject Matter.

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. They do so regularly without being preempted by federal law.

For example, one major claim made by Baltimore is under the Maryland Consumer Protection Act, Md. Code Ann., Comm. L. § 13–101 *et seq*. Like the laws of every state, Maryland's act prohibits material representations that tend to deceive or mislead. *Id*. at § 13-301. These laws reflect the ideal that "honesty should govern competitive enterprises, and that the rule of caveat emptor should 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 consumer-protection 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 in litigating asbestos and tobacco claims. *See* Sarah L. Swan, *Plaintiff Cities*, 71 Vand. L. Rev. 1227, 1233 (2017). They have sued using product liability and public nuisance claims or

consumer protection laws because of misinformation about products over the marketing and distribution of guns, lead paint, and subprime mortgages. *Id*. at 1234−37, 1239-1240. Cities have also relied heavily on state consumer-protection laws for tobacco litigation, where the manufacturers denied a connection to lung cancer until they began losing those cases. *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 where they also 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 involved state-law claims, and none saw them judicially converted into a federal common-law claim—much less converted into any type of federal claim.

There is no reason to treat this case differently. Baltimore has pleaded state-law consumer-protection claims based on Defendants' misrepresentations that fossil-fuel products were not hazardous 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, nor does federal law supplant them. 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. 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.

## II. THERE IS NO FEDERAL COMMON-LAW BASIS TO PREEMPT THIS MATTER.

The court below held that the central allegations of Baltimore's complaint are matters of federal common law. That holding is incorrect and is disruptive of the federal-state balance that properly guides preemption decisions.

Unlike state courts with respect to state common law, federal common law occupies a narrow spectrum limited largely to what Congress authorizes in order "to formulate substantive rules of decision." *Texas Indus., Inc. v. Radcliff Materials, Inc*., 451 U.S. 630, 641 (1981). Federal common-law 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). As a result, "[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. Fed. Deposit*

*Ins. Corp.*, 589 U.S. 132, 136 (2020). Common-law authority is also conditioned on an identified need "to protect uniquely federal interests." *Id*. None of these cordoned-off areas of law and no uniquely federal interest are implicated by this lawsuit.

Critically, the Supreme Court has also noted that the 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 v. Illinois*, 451 U.S. 304, 313 n.7 (1981). Here, where the issue is consumer misrepresentation, federal law does not preempt state-law prohibitions.

Past experience on environmental issues provides important guidance. There was a time when interstate water pollution was the subject of federal common law. Congress, however, ended the 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 suit.

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).

Even the Eighth Circuit's cautious approach to the issue still recognizes that "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.*, 63 F.4th 703, 710 (8th Cir. 2023), *cert. denied sub nom. Am. Petroleum Inst. v. Minnesota*, 144 S. Ct. 620, 217 L. Ed. 2d 331 (2024). The court 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*.

Because federal statutory law displaced federal common law, 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).

## III. THERE IS NO BASIS TO TREAT THIS CASE AS STATUTORILY PREEMPTED.

Nor can there be any doubt about the continued vitality of state law even if the defendant oil companies' misrepresentations concern 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) (emphasis added). 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 by Baltimore. 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.

In fact, it is worth noting that the Clean Air Act specifies that "[n]othing in this section shall restrict any right which any person . . . may have *under any statute or common law* to seek enforcement of any emission standard or limitation or to seek any other relief[.]" 42 U.S.C. § 7604(e) (emphases added). A second savings clause assures that "any State or political subdivision thereof" may adopt or enforce emission standards as long as it is not less stringent than the federal ones and, additionally, permits States and cities to establish control or abatement requirements. Rather than supplant state and municipal efforts, Congress enlisted local governments in the effort. Still, Baltimore's lawsuit does not seek to impose emissions standards or control or abatement requirements. Its prayer for relief would not stop the Defendants from selling or even from marketing their products *honestly*.

Municipalities seek truthful representations in this area because the concentration of people in urban areas, as well as their dependency on private vehicles for intra-city travel, are significant drivers of air pollution. *See* Environmental Protection Agency, "Climate Change Impacts on Built Environment," https://www.epa.gov/climateimpacts/climate-change-impacts-built-environment. Cities cover only as much as five percent of the land on this continent, but produce 80 percent of the greenhouse gases. *Id*. The result is that cities must deal with damaged or stressed infrastructure, adverse effects on productivity, resident and worker health, and increasing power demands that will only get worse if the public

believes fossil fuels are not a significant contributor to these problems. Municipal efforts to address the consequences will continue to be undermined if the disinformation campaign that Baltimore accuses the defendants of orchestrating continues.

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). The trial court overlooked this principle as well by suggesting that the remedy sought would invariably trench upon federal concerns.

Still, 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 because federal law does not exclusively address the type of misrepresentations at issue here and compliance with truthful representations about Defendants' products does not conflict with any obligatory federal law.

## CONCLUSION

For the foregoing reasons, the decision of the Circuit Court of Baltimore County should be reversed.

Dated: June 10, 2025

Respectfully Submitted,

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**Certification of Word Count and Compliance With Rule 8-112**

1. This brief contains 3,818 words, excluding the parts Rule 8-503 exempts from the word count.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112 (Times New Roman, 14 point).

## Certificate of Service

I HEREBY CERTIFY that on this 10th day of June 2025, a copy of the foregoing document was filed and served electronically via the Court's MDEC system, on all counsel of record.

/s/ *Anna C. Haac*