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August 22, 2025

VIA ECF

Greg Hilton
Clerk of Court
Supreme Court of Maryland
361 Rowe Boulevard
Annapolis, MD 21401

Re: *Mayor & City Council of Baltimore v. B.P. P.L.C., et al.*; *Anne Arundel County v. B.P. P.L.C., et al.*; *City of Annapolis v. B.P. P.L.C., et al.*; SCM-REG-0011-2025
Defendants-Appellees' Citation of Supplemental Authority re: *City of Charleston v. Brabham Oil Co.*, No. 2020-CP-10-03975 (S.C. Ct. Com. Pl. Aug. 6, 2025)

Dear Mr. Hilton:

Defendants-Appellees submit this Maryland Rule 8-502(e) citation of supplemental authority regarding the South Carolina Court of Common Pleas' order dismissing the City of Charleston's climate-change lawsuit. Charleston's suit is nearly identical to these cases. The court held that, "although [p]laintiff's claims purport to be about deception, they are premised on, and seek redress for, the effects of greenhouse gas emissions." Ex. A, at 1-2. It dismissed the claims on grounds that apply equally here:

Constitutional Structure. The court held that state law "cannot constitutionally apply" because "the federal Constitution's structure generally precludes and preempts states from using their own laws to resolve disputes involving interstate and international emissions," and thus "these disputes are not 'matters of substantive law appropriately cognizable by the states.'" Ex. A, at 5 (quoting *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421-22 (2011)). The court explained "states cannot apply their own law to claims dealing with 'air and water in their ambient or interstate aspects'; in those contexts, 'borrowing the law of a particular State would be inappropriate.'" *Id*. at 12. If allowed to proceed, climate-change lawsuits like those here "promise to create a chaotic web of conflicting legal obligations for Defendants as each state and municipality (sometimes within the very same state) imposes its own de facto regulations on the worldwide production, marketing, transport, and sale of fossil fuels." *Id.* at 4-5. The same is true here. *See* Appellees' Br. 11-21.

Clean Air Act. The court further held that Charleston's claims were preempted by the CAA, which entrusts the "'complex balancing' of total permissible national greenhouse gas emissions 'to [the] EPA,'" and "precludes [p]laintiff's attempt to use South Carolina law to obtain damages for injuries allegedly caused by innumerable worldwide sources of greenhouse gas emissions." Ex. A, at 6 (citation omitted). The same is true here. *See* Appellees' Br. 27-31.

Failure to State a Claim. The court also held that Charleston failed to state its nuisance, trespass, and failure-to-warn claims on state-law grounds, many of which are applicable to Plaintiffs-Appellants' claims under Maryland law. Ex. A, at 30-38; *see* Appellees' Br. 32-47.

Sincerely,

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP
Counsel for Defendants-Appellees
Chevron Corporation and Chevron U.S.A.

CERTIFICATE OF SERVICE

I HERBY CERTIFY that on this 22nd day of August 2025, a copy of the foregoing, was served upon all counsel of record via MDEC.

/s/ Alison C. Schurick
Alison C. Schurick (AIS No. 1412180119)

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CITY OF CHARLESTON,

Plaintiff,

v.

BRABHAM OIL COMPANY, INC.; COLONIAL GROUP, INC.; ENMARK STATIONS, INC.; COLONIAL PIPELINE COMPANY; PIEDMONT PETROLEUM CORP.; EXXON MOBIL CORPORATION; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY LLC; CHEVRON CORPORATION; CHEVRON U.S.A. INC.; BP P.L.C.; BP AMERICA INC.; MARATHON PETROLEUM CORPORATION; MARATHON PETROLEUM COMPANY LP; SPEEDWAY LLC; MURPHY OIL CORPORATION; MURPHY OIL USA, INC.; HESS CORPORATION; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; and PHILLIPS 66 COMPANY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICAL CIRCUIT

C/A No. 2020-CP-10-03975

ORDER GRANTING DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM AND FOR LACK OF PERSONAL JURISDICTION

ORDER GRANTING DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM AND FOR LACK OF PERSONAL JURISDICTION

This matter came before the Court for a hearing on May 29 and May 30, 2025. During this hearing, the Court heard oral argument on Defendants' Joint Motions to Dismiss Plaintiff's Complaint for Failure to State a Claim and for Lack of Personal Jurisdiction and all other Motions to Dismiss filed by individual Defendants.

After careful consideration of the memoranda of law filed related to these motions and the arguments of counsel made during the hearing, the Court GRANTS Defendants' Joint Motions to Dismiss Plaintiff's Complaint for Failure to State a Claim and for Lack of Personal Jurisdiction.

INTRODUCTION

To frame the complicated issues facing this Court as succinctly as possible, one need look no further than the well-written and well-reasoned opinion of the Second Circuit United States Court of Appeals in *City of New York v. Chevron Corporation*, wherein Circuit Court Judge Richard J. Sullivan, writing for that Court, states the question – and the answer - as follows:

> The question before us is whether municipalities may utilize state tort law to hold multinational oil companies liable for the damages caused by global greenhouse gas emissions. Given the nature of the harm and the existence of a complex web of federal and international environmental law regulating such emissions, we hold that the answer is "no."
>
> Global warming presents a uniquely international problem of national concern. It is therefore not well-suited to the application of state law. Consistent with that fact, greenhouse gas emissions are the subject of numerous federal statutory regimes and international treaties. These laws provide interlocking frameworks for regulating greenhouse gas emissions, as well as enforcement mechanisms to ensure that those regulations are followed.

(City of New York v Chevron Corporation, 993 F.3d 81 (2021)).

In the case before this Court, the City of Charleston ("Plaintiff" or the "City") filed this lawsuit seeking to hold two dozen energy companies, retailers, and a pipeline liable under South Carolina law for harms allegedly arising from the effects of global greenhouse gas emissions and global climate change. Plaintiff alleges that Defendants failed to warn the public about the

climate impacts of oil-and-gas products and engaged in a disinformation campaign to cast doubt on the science of climate change. According to Plaintiff, this allegedly tortious conduct inflated and sustained consumers' demand for fossil fuels, which they allege led to increased greenhouse gas emissions, accelerating climate change, and greater sea-level rise, storm surges, and other weather-related harms to the City. Plaintiff seeks compensation under South Carolina tort law and the South Carolina Unfair Trade Practices Act ("UTPA").

Defendants jointly moved to dismiss the Complaint, arguing that Plaintiff's claims are based on harms allegedly arising from the effects of global greenhouse gas emissions and global climate change and thus are precluded and preempted by the structure of the federal Constitution and by the federal Clean Air Act ("CAA"). *See* Jt. Merits Br. 10–27. Defendants also argue that Plaintiff's claims fail as a matter of South Carolina law because they are barred by the political-question doctrine and statute of limitations, and because they exceed the bounds of recognized South Carolina tort law and the UTPA. *Id.* at 28–55. The Attorney General of South Carolina submitted an amicus brief supporting Defendants' position that the federal Constitution's structure requires dismissal of the Complaint.[1]

For the reasons below, the Court grants Defendants' motions and dismisses Plaintiff's Complaint with prejudice. In doing so, the Court concludes that, although Plaintiff's claims purport to be about deception, they are premised on, and seek redress for, the effects of greenhouse gas emissions. This Court thus joins the "growing chorus of state and federal courts

[1] On April 8, 2025, the President of the United States issued Executive Order 14260, which addresses the issues raised in this litigation, among other matters. While the President states his belief that lawsuits of this nature may be unconstitutional, preempted by federal law, or otherwise unenforceable, the Executive Order ultimately directs the Attorney General to investigate within 60 days, and to take prompt action with respect to any conduct the Attorney General determines to be unlawful. To date, this Court has received no communication from the Attorney General of the United States regarding her findings, and the Court draws no inference from that absence of communication.

across the United States, singing from the same hymnal, in concluding that the claims raised by [climate-change plaintiffs] are not judiciable by any state court" and that "our federal structure does not allow . . . any State's law[] to address [these types of climate-change] claims." *Bucks Cnty. v. BP P.L.C.*, 2025 WL 1484203, at *6, *8 (Pa. Com. Pl. May 16, 2025) (citing *City of New York v. Chevron Corp.*, 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); *State ex rel. Jennings v. BP Am. Inc.*, 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024) ("*Delaware*"); *Mayor & City Council of Baltimore v. BP P.L.C.*, 2024 WL 3678699 (Md. Cir. Ct. July 10, 2024); *City of Annapolis v. BP PLC*, 2025 WL 588595 (Md. Cir. Ct. Jan. 23, 2025); *Platkin v. Exxon Mobil Corp.*, 2025 WL 604846 (N.J. Super. L. Feb. 5, 2025) ("*New Jersey*")).

The ranks of this chorus are swelling for sound public policy reasons. While the scope of the state-law claims alleged here exceeds the recognized bounds of South Carolina law, Plaintiff's theory of liability appears almost limitless. Under Plaintiff's theory, virtually anyone could be a plaintiff—and a defendant—in what would effectively amount to a perpetual series of lawsuits that reset after every storm. Like in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) ("*AEP*"), "[s]imilar suits could be mounted . . . against 'thousands or hundreds or tens' of other defendants." *Id.* at 428. Already, scores of states, counties, and municipalities have sued a hodgepodge of oil-and-gas companies for the alleged weather-related effects of climate change. If these lawsuits were successful, municipalities, companies, and individuals across the country could bring suits for injuries after every weather event. The list of potential plaintiffs is unbounded. Moreover, under Plaintiff's theory, there is no reason to limit the universe of potential defendants to energy companies alone. Fossil fuels in their natural state (coal, oil, natural gas) do not emit greenhouse gases while lying dormant in the ground or sitting in storage. Greenhouse gas

emissions occur during combustion or processing — that is, when fossil fuels are burned in power plants, vehicles, factories, etc. The chemical reaction of burning carbon-based fuels with oxygen produces carbon dioxide (CO_2), methane (CH_4), and other greenhouse gases, which then contribute to global warming.

Under Plaintiff's theory, any emitters of or contributors to greenhouse gas emissions—such as airlines, automotive manufacturers, power companies, and agricultural companies—could be liable for contributing to global climate change unless they adequately (according to Plaintiff's standards) warned consumers of the climate-related risks of using their products. That would appear to include even the Plaintiffs in this and other climate-change lawsuits, since they have long used and continue to use fossil fuels for myriad purposes—and built and maintained nearly all the roads and bridges that make fossil-fuel-powered transportation possible—despite their admitted knowledge of the potential climate-change consequences of their actions. As with the list of plaintiffs, the list of potential defendants thus appears boundless. In fact, in this very case, Plaintiff has sued—alongside large energy companies, retailers, and a pipeline—two small, family-owned South Carolina businesses.

These lawsuits—seeking untold billions of dollars in damages—attempt to impose a "potent" form of regulation of Defendants: the only way that Defendants could avoid liability is if they had produced, marketed, transported, and sold their fossil-fuel products in the precise manner that each jurisdiction mandates and continue to do so in the future. *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012). But this state-by-state regulation cannot stand because it would lead to the very "chaotic confrontation between sovereign states" that the U.S. Supreme Court has warned against. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987) (citation omitted). These lawsuits promise to create a chaotic web of conflicting legal obligations for

Defendants as each state and municipality (sometimes within the very same state) imposes its own de facto regulations on the worldwide production, marketing, transport, and sale of fossil fuels. Neither federal nor South Carolina law permits such a result. Any resolution to the climate-change issues Plaintiff seeks to remedy must rest with the federal political branches that are legally and substantively equipped to address them.

Federal law precludes and preempts Plaintiff's claims in at least two ways.

First, although Plaintiff purports to plead state-law claims, South Carolina law cannot constitutionally apply here. As the U.S. Supreme Court has long made clear, the federal Constitution's structure generally precludes and preempts states from using their own laws to resolve disputes involving interstate and international emissions because under "the basic scheme of the Constitution," these disputes are not "matters of substantive law appropriately cognizable by the states." *AEP*, 564 U.S. at 421–22. As that Court has explained, in cases involving "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations," "our federal system does not permit the controversy to be resolved under state law" "because the interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981); *accord City of New York*, 993 F.3d at 91–92 ("disputes involving interstate air . . . pollution . . . implicate . . . federal interests that are incompatible with the application of state law"). That prohibition on the use of state law in this case is further supported by the constitutional bar preventing one State from using its law to "impose its own policy choice on neighboring States" or to "impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571–72 (1996).

Second, Plaintiff's claims are preempted by the CAA. More than thirty years ago, the U.S. Supreme Court held that the Clean Water Act ("CWA") "precludes a court from applying the law of an affected State against an out-of-state source" because doing so would "upse[t] the balance of public and private interests so carefully addressed by the Act." *Ouellette*, 479 U.S. at 494. Because the CWA and CAA are closely analogous, the preemptive scope of the CAA is materially identical to that of the CWA. The "Clean Air Act entrusts such complex balancing" of total permissible nationwide greenhouse gas emissions "to [the] EPA." *AEP*, 564 U.S. at 427. The CAA thus precludes Plaintiff's attempt to use South Carolina law to obtain damages for injuries allegedly caused by innumerable worldwide sources of greenhouse gas emissions.

Because all of Plaintiff's claims are precluded and preempted by the federal Constitution and federal law, this Court could dismiss the Complaint on that basis alone. In the interest of completeness, however, the Court further concludes that the claims also should be dismissed as a matter of state law for at least four reasons. *First*, by attempting to regulate matters of public policy through tort law and the UTPA, Plaintiff's claims violate the State's political-question doctrine, asking this Court to intrude on the policy prerogatives of national and state policymakers. *Second*, Plaintiff's Complaint is time-barred under South Carolina's three-year statute of limitations because Plaintiff has long been on notice of the potential dangers of climate-change and its connection to fossil-fuel use. *Third*, Plaintiff fails to make out the requisite elements of each of its claims, asking this Court to adopt radically expanded theories of liability that have no basis in South Carolina law. Among other deficiencies, South Carolina law does not require producers, transporters, or retailers of lawful products to warn the world about risks that have been widely debated in the public realm for decades. *Fourth*, this Court lacks personal jurisdiction over certain Defendants because Plaintiff's claims are not related to and do not arise

out of those Defendants' alleged activities in South Carolina and because exercising personal jurisdiction over those Defendants would be unreasonable under the Due Process Clause.

Accordingly, and for the reasons below, the Court grants Defendants' joint motion to dismiss.

BACKGROUND

Plaintiff filed its Complaint on September 9, 2020. The Complaint asserts six causes of action: (1–2) public and private nuisance, (3–4) strict-liability and negligent failure to warn, (5) trespass, and (6) violations of the UTPA, S.C. Code Ann. § 39-5-20. Compl. ¶¶ 153–218. Plaintiff's claims rest on the premise that Defendants' production, distribution, and sale of fossil fuels, combined with Defendants' allegedly deceptive public-relations and lobbying activities, renders Defendants liable for Plaintiff's alleged climate change-related injuries—increased flooding, more damaging storms, higher temperatures, and disruption of its ecosystems. *See, e.g.*, *id.* ¶¶ 148–49. Plaintiff seeks compensatory damages; treble damages under the UTPA, S.C. Code Ann. § 39-5-140; equitable relief, including abatement of the alleged nuisances; attorneys' fees; punitive damages; disgorgement of profits; costs of suit; and other relief as the court may deem proper. Compl. p. 136 (Prayer for Relief).

Defendants timely removed the case to the U.S. District Court for the District of South Carolina on October 14, 2020. The case was remanded in July 2023, and the Parties briefed motions to dismiss.

On November 6, 2023, Defendants jointly moved to dismiss Plaintiff's claims for failure to state a claim ("Joint Merits Motion"). Out-of-state Defendants also jointly moved to dismiss Plaintiff's claims for lack of personal jurisdiction, and several Defendants filed individual

motions to dismiss on Defendant-specific grounds.[2] On May 29–30, 2025, this Court heard argument on these motions.

LEGAL STANDARD

South Carolina Rule of Civil Procedure 12(b)(6) "permits the trial court to address the sufficiency of a pleading stating a claim." *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). A motion to dismiss "'must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.'" *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32–33, 550 S.E.2d 584, 586 (Ct. App. 2001) (citation omitted). "[C]onclusory allegation[s], unsupported by any particularized allegations of fact," are insufficient to avoid dismissal. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455 n.9, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018). Likewise, "[w]hen a plaintiff states nothing more than legal conclusions, [its] claim should fail." *Paradis v. Charleston Cnty. Sch. Dist.*, 424 S.C. 603, 613, 819 S.E.2d 147, 153 (Ct. App. 2018), *rev'd on other grounds*, 433 S.C. 562, 861 S.E.2d 774 (2021).

ANALYSIS

Defendants' Joint Merits Motion raises five principal grounds for dismissal: (1) the structure of the federal Constitution precludes and preempts state law, Jt. Merits Br. 10–20; (2) Plaintiff's claims are preempted by the CAA, *id.* at 20–28; (3) South Carolina's political-question doctrine bars Plaintiff's claims because there are no judicially discoverable or manageable standards for resolving them, and any attempt to do so would encroach upon the political branches, *id.* at 28–34; (4) South Carolina's three-year statute of limitations bars

[2] Individual motions were filed by Piedmont Petroleum Corp. on October 30, 2023, and by BP Defs.; Brabham Oil Co.; Chevron Defs. (failure to state a claim); Chevron Defs. (Anti-SLAPP); Colonial Pipeline Co.; ConocoPhillips Defs.; Exxon Defs.; Hess Corp.; Marathon Petroleum Defs.; Murphy Oil Corp.; Murphy Oil USA Inc.; Phillips 66 Defs.; and Shell Defs., on November 6, 2023.

Plaintiff's claims, *id.* at 34–39; and (5) Plaintiff's putative state-law claims fail on the merits as a matter of state law, *id.* at 40–55. Defendants also argue that the Court lacks personal jurisdiction over the out-of-state Defendants. *See* PJ Jt. Br. 9–15.

I. Preclusion And Preemption By Federal Constitutional Structure

The Court joins the federal and state courts across the country that have held in recent years that the structure of the U.S. Constitution precludes state-law claims seeking damages for injuries allegedly caused by out-of-state and international emissions.

The Court finds most persuasive the Second Circuit's decision in *City of New York*, which considered functionally identical claims and held that "a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may [not] proceed under [state] law." 993 F.3d at 91. Such "sprawling" claims, which attempt "to hold [energy companies] liable, under [state] law, for the effects of emissions made around the globe" and which seek "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet" are "simply beyond the limits of state law." *Id.* at 92.

Plaintiff contends that *City of New York* does not apply because Plaintiff's claims concern—and its alleged injuries were caused by—Defendants' "tortious failure to warn and deceptive promotion," rather than "lawful fossil fuel production." Merits Opp. 7–8. This Court, however, concludes that the City's effort to plead around clearly prohibited state regulation is unavailing. In *City of New York*, as here, the City argued that state law governed because the litigation "concern[ed] only 'the production, promotion, and sale of fossil fuels,' not the regulation of emissions." 993 F.3d at 91. Plaintiff, the City of New York, alleged that certain energy companies (including several Defendants here) "ha[d] known for decades that their fossil fuel products pose[d] a severe risk to the planet's climate," yet "downplayed the risks and

continued to sell massive quantities of fossil fuels" and were therefore liable under state law for injuries caused by global climate change. *Id.* at 86–87. The Second Circuit rejected the plaintiff's contentions. As here, the City of New York's claims targeted the alleged harms from interstate pollution. "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." *Id*. at 91. "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." *Id*.

The other federal courts to consider that question have agreed. *See City of New York v. BP P.L.C.*, 325 F. Supp. 3d 466, 471–72, 476 (S.D.N.Y. 2018) (claims of this sort "are ultimately based on the 'transboundary' emission of greenhouse gases," so "our federal system does not permit the controversy to be resolved under state law"); *City of Oakland*, 325 F. Supp. 3d at 1021 (holding that only federal law can be used to resolve climate-change claims because such claims "depend on a global complex of geophysical cause and effect involving all nations of the planet" and "demand[] to be governed by as universal a rule of apportioning responsibility as is available").

Most state courts that have addressed the question have come to the same conclusion, holding that these cases seek damages for interstate and international emissions and, as a result, state-law claims are preempted and precluded by the U.S. Constitution's structure. In July 2024, the Circuit Court for Baltimore City dismissed Baltimore's nearly identical claims, concluding that Baltimore's claims "g[o] beyond the limits of Maryland state law" because "the Constitution's federal structure does not allow the application of state law to claims like those

presented by Baltimore." *Baltimore*, 2024 WL 3678699, at *6–7. The court explained that Baltimore's assertion that "it only seeks to address and hold Defendants accountable for a deceptive misinformation campaign" was "artful but not sustainable" because its "complaint is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries." *Id.* at *5. Thus, Baltimore's claims could not "survive because they [we]re preempted by" federal law. *Id.* at *6.

In January 2025, the Circuit Court for Anne Arundel County, Maryland, likewise dismissed two more materially identical cases, holding that "the U.S. Constitution's federal structure does not allow" such state-law claims to proceed because they are "federally preempted" and "beyond the limits of [state] law." *Annapolis*, 2025 WL 588595, at *6. The court went on to state that any dissatisfaction regarding interstate emissions levels must be addressed by "seek[ing] federal court review" of EPA regulations governing greenhouse gases. *Id.* at *7.

A month later, in February 2025, the New Jersey Superior Court dismissed yet another climate-change case on the grounds that "only federal law can govern [p]laintiffs' interstate and international emissions claims because 'the basic scheme of the Constitution so demands.'" *New Jersey*, 2025 WL 604846, at *5 (quoting *AEP*, 564 U.S. at 421). "[E]ven under the most indulgent reading, [the case] is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries." *Id.* at *4. The court found plaintiff's arguments to the contrary "not persuasive" because "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard." *Id.*

Finally, in May 2025, the Pennsylvania Court of Common Pleas dismissed Bucks County's identical claims, concluding that "our federal structure does not allow Pennsylvania law, or any State's law, to address the claims raised in Bucks County's Complaint." *Bucks Cnty.*, 2025

WL 1484203, at *8. The court stated that "there is no question that emissions are the sole province of the federal government through the CAA and EPA regulations that flow from it." *Id.* at *7. Because the case was unavoidably "about emissions," even though the plaintiffs presented it as being solely about misrepresentations, it is an "inescapable fact" that Pennsylvania law could not resolve Bucks County's claims. *Id*. Instead, the court joined previous state and federal courts that found that the claims "are solely within the province of federal law." *Id.*

The Court agrees with the reasoning of these cases and adds its voice to the growing chorus of state and federal courts dismissing nearly identical claims. Fundamental principles of federalism embodied in the U.S. Constitution bar state law from operating in areas of uniquely federal interests. *See Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981); *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988) (these "few areas, involving 'uniquely federal interests,' are so committed by the Constitution . . . to federal control that state law is pre-empted" (citation omitted)); *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 246 (2019) (in these areas, the Constitution "implicitly forbids that exercise of power because the 'interstate . . . nature of the controversy makes it inappropriate for state law to control'").

Applying this principle, the U.S. Supreme Court has long held that disputes involving interstate and international pollution fall within this category of "controvers[ies] touch[ing] basic interests of federalism" that "requires" and "demands . . . applying federal law," not the "varying" "law of the individual States." *Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6, 107 n.9 (1972) ("*Milwaukee I*"). As a result, states cannot apply their own law to claims dealing with "air and water in their ambient or interstate aspects"; in those contexts, "borrowing the law of a particular State would be inappropriate" because, under "the basic scheme of the Constitution," these disputes are not "matters of substantive law appropriately cognizable by the states." *AEP*, 564

U.S. at 421–22 (internal quotation marks omitted). Adopting the same reasoning, the South Carolina Attorney General, in an amicus brief to this Court, urged dismissal of Plaintiff's claims, arguing that the federal constitutional structure "requires this Court to dismiss Plaintiff's claims as preempted" because "[i]f allowed to proceed, these claims threaten to disrupt 'basic interests of federalism' and impair state sovereignty." AG Br. 2, 7–8 (quoting *City of New York*, 993 F.3d at 92).

The conclusion that federal law must govern Plaintiff's claims also reflects the horizontal separation of powers and "equality" of states inherent in the Constitution's structure, which bars any one state from imposing its law on other states. *Coyle v. Smith*, 221 U.S. 559, 567 (1911); *see also* 5/29/2025 Tr. at 29–30 (Attorney General stating that allowing Plaintiff's claims to move forward would "effectively undermine that equal dignity that's afforded to other states, . . . violate the equal dignity that's afforded [to] each state in the union [and be] an affront to horizontal separation of powers as well as an affront to the . . . cooperative federalism system"). But that is what Plaintiff seeks to do. Plaintiff does not (and cannot) predicate its claims under South Carolina law on Defendants' allegedly wrongful conduct only in South Carolina, since this State accounts for a negligible share of the global emissions that Plaintiff alleges have caused its damages. In fact, the Supreme Court recognized this limit on the application of South Carolina law to conduct outside the State in *Doctors Hospital of Augusta, L.L.C. v. CompTrust AGC Workers' Compensation Trust Fund*, holding that "the principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another." 371 S.C. 5, 9, 636 S.E.2d 862, 864 (2006). Accordingly, Plaintiff's attempt to hold Defendants liable for violating South Carolina law based on conduct and activities that took place in other states is constitutionally prohibited.

The U.S. Constitution makes certain matters the exclusive domain of federal law for good reason. If all fifty states, let alone the tens of thousands of political subdivisions therein, were permitted to apply their own laws to such federal issues as interstate and international emissions, the result would be conflicting state standards that would be impossible for energy companies to navigate—what the U.S. Supreme Court called a "chaotic confrontation between sovereign states." *Ouellette*, 479 U.S. at 496. That chaos would hamstring national energy production, which the Executive Branch has highlighted as a priority across Administrations. *See* Exec. Order 14,260, 90 Fed. Reg. 15,513, 15,513–14 (Apr. 8, 2025) ("My Administration is committed to unleashing American energy, especially through the removal of all illegitimate impediments"—including these "causes of action"—"to the identification, development, siting, production, investment in, or use of domestic energy resources—particularly oil, natural gas, coal, hydropower, geothermal, biofuel, critical mineral, and nuclear energy resources."); Ben Lefebvre, *"We are on war footing": Granholm calls on oil companies to ramp up production*, Politico (Mar. 9, 2022), https://bit.ly/40b52i6 (Biden Administration emphasizing the "need [for] oil and gas production to rise to meet current demand"); *Obama's Remarks on Offshore Drilling*, N.Y. Times (Mar. 31, 2010), https://bit.ly/4lG2mkO (Obama Administration announcing "the expansion of offshore oil and gas exploration" because "our dependence on foreign oil threatens our economy").

The Court rejects Plaintiff's arguments to the contrary. Plaintiff's principal argument—just as plaintiffs in the other cases have argued—is that its claims focus solely on supposed deception and misrepresentation, not on emissions. Plaintiff, however, does not and could not dispute that it seeks damages for the alleged consequences of global greenhouse gas emissions

and global climate change. That fact precludes and preempts Plaintiff's state-law claims. Other courts have reached this same conclusion.

The Second Circuit rejected the same argument Plaintiff offers here, stating: "Artful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions." *City of New York*, 993 F.3d at 91. The Pennsylvania court followed the Second Circuit's analysis in concluding that the plaintiff's claims were about emissions and the damages those emissions allegedly caused. Despite the plaintiff's "artful" attempts to frame its Complaint as solely about misrepresentations, "Bucks County is truly seeking redress for harm caused by climate change, a global phenomenon caused by the emission[s] of greenhouse gases in every nation in the world"—*not solely* "damages from Defendants' [allegedly] deceptive marketing campaign." *Bucks Cnty.*, 2025 WL 1484203, at *7. The court stated that this fact was clear based on "[a] simple reading of the Complaint." *Id.* The *Baltimore* court, too, followed the Second Circuit's analysis that the plaintiff's suit was "over global greenhouse emissions" and agreed that "allegations of deceptive promotion and marketing of Defendants' products is simply artful pleading." 2024 WL 3678699, at *3. That court recognized that the plaintiff's "complaint is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries." *Id.* at *5. Any suggestion by the plaintiff that "it only seeks to address and hold Defendants accountable for a deceptive misinformation campaign is simply a way to get in the back door what they cannot get in the front door." *Id.* Similarly, the *New Jersey* court correctly saw that, "even under the most indulgent reading, [the case] is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries." 2025 WL 604846, at *4.

Plaintiff urges this Court to follow the minority position of a few courts that have declined to dismiss similar claims as a matter of law. *See Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, 2025 WL 1363355 (Colo. May 12, 2025); *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173 (Haw. 2023); *State ex rel. Ellison v. Am. Petroleum Inst.*, 2025 WL 562630 (Minn. Dist. Ct. Feb. 14, 2025). But these decisions rely on the notion that the CAA has displaced federal common law, while failing to account for the fact that the plaintiffs' theory of causation and damages hinges on transboundary emissions, to which only federal law can apply. Although "[t]he States would have had the raw power to apply their own law to such matters before they entered the Union," after ratification "the Constitution implicitly forbids that exercise of power because the interstate nature of the controversy makes it inappropriate for state law to control." *Hyatt*, 587 U.S. at 246 (ellipsis and internal quotation marks omitted). As the Second Circuit explained, "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"; *i.e.*, the CAA. *City of New York*, 993 F.3d at 98. Indeed, as the Second Circuit explained, "[s]uch an outcome is too strange to seriously contemplate." *Id.* at 98–99. Whether a *remedy* is available under federal common law—and, if so, whether such a remedy has been displaced by federal statute (here, the CAA)—are completely separate issues from the question presented here: whether state law can apply in the first place. It cannot. It is *the U.S. Constitution and its federal structure* that precludes and preempts state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international pollution—and whether Congress has displaced federal common law does "nothing to undermine that result," as the Seventh Circuit long ago explained. *Illinois v. City of Milwaukee*, 731 F.2d 403, 410 (7th Cir. 1984) ("*Milwaukee III*"). The *New Jersey* court recognized this point, noting that "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." 2025 WL 604846, at *4. Indeed, two Justices recognized this point in dissenting from the majority decision in *Boulder*. *See* 2025 WL 1363355, at *12 (Samour, J., dissenting). And, as the *New Jersey* court further explained, decisions like *Honolulu* are "not persuasive . . . because [they] d[o] not address this critical point." *Id*.

As in *City of New York*, Plaintiff in this case alleges that its injuries were "caused by anthropogenic greenhouse gas emissions" all over the world. Compl. ¶¶ 39–41. These interstate and international emissions are "[t]he mechanism" of its alleged injuries. *Id.* ¶ 40. As a result, the basis for all of Plaintiff's claims is that "Defendants' deceptive business practices have—in the aggregate and over the course of decades—inflated total consumption of fossil fuels" and "accelerated global warming," "resulting in widespread climate impacts." Merits Opp. 38, 40–41. Alleged misrepresentations matter to Plaintiff's theory of causation and requested relief only insofar as they increased transboundary emissions. However Plaintiff labels its claims, it cannot use South Carolina law to *seek redress for cumulative emissions* from billions of sources worldwide.

Plaintiff cannot avoid that its claims turn on emissions. Plaintiff attempts to distinguish between emissions as the "avenue of injury" and as a "source of liability." But this is a meaningless distinction because it ignores the true nature of the claims. Plaintiff acknowledges that what it calls the "avenue of injury" is the increase in greenhouse gas emissions that it claims third-party consumers emitted as a result of statements by Defendants stretching back decades. What Plaintiff labels the "avenue of injury" is what South Carolina law calls "causation." There is

no question that causation is part of the "source of liability" because without it, Defendants would have no liability, and Plaintiff would have no claim. And because all of Plaintiff's claims turn on interstate and, in fact, international emissions, only federal law may apply under our constitutional structure and the CAA.

Plaintiff is incorrect that its claims resemble those in other mass-tort lawsuits concerning tobacco, opioids, and per- and polyfluoroalkyl substances ("PFAS"). Those cases involve fundamentally different claims. *First*, the in-state injuries in the tobacco, opioid, and PFAS litigation allegedly arose directly from the in-state consumers' use of those products. A plaintiff smoking tobacco in South Carolina causes direct adverse health effects to that plaintiff in South Carolina. The City's claims, by contrast, depend on interstate and international emissions allegedly causing global climate change, ultimately resulting in alleged in-state injuries caused by, for example, the weather. Because any alleged injury under Plaintiff's claims necessarily relies on the cumulative effect of interstate and international emissions from global consumers, the claims are readily distinguishable from these other mass-tort cases and are uniquely precluded and preempted by federal law. *Second*, plaintiffs in those other lawsuits alleged that they never would have used the products in question had it not been for the defendants' misrepresentations. Here, by contrast, the City never alleges that it or any non-party consumers would have ceased using fossil fuels had they known about the potential impact of greenhouse gas emissions on the climate. Proving the point, it is undisputed that the City continues to use fossil fuels to this day.

Moreover, "[t]here is simply no counter" to the fact that federal common law "has *not* been displaced with respect to *foreign* emissions," *New Jersey*, 2025 WL 604846, at *5 (emphases added)—emissions for which Plaintiff necessarily seeks damages—and that "federal common law preempts state law" with respect to such foreign emissions, *City of New York*, 993

F.3d at 95. Federal common law is "still require[d]" to govern the international aspects of claims challenging global emissions because the CAA "does not regulate foreign emissions"; viewed through that lens, "federal common law preempts [the] state law" claims Plaintiff attempts to plead. *Id.* at 95 & n.7, 101; *accord City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) ("*Milwaukee II*") ("[I]f federal common law exists, it is because state law cannot be used."). Neither *Honolulu* nor *Boulder* confronted this crucial point, ignoring that federal common law remains intact as to foreign emissions, which comprise the vast bulk of worldwide emissions that Plaintiff alleges caused its injuries. And state law cannot govern claims for harms caused by foreign emissions because allowing individual states to inject their law into international affairs would "needlessly complicate the nation's foreign policy, while clearly infringing on the prerogatives of the [federal government's] political branches." *City of New York*, 993 F.3d at 103. The Constitution preempts and precludes that result: "Power over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942). States lack the power to regulate international activities or foreign policy and affairs, and such matters "must be treated exclusively as an aspect of federal law." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964). In sum, because Plaintiff seeks damages under state law for undifferentiated global emissions, those claims must yield to a uniform federal rule of decision.

Finally, during oral argument, Plaintiff suggested that, even if its common-law claims were precluded and preempted by the federal constitutional structure, its UTPA claim was not, because it seeks solely statutory penalties, not damages. This belated argument is forfeited and would be unavailing in any event because Plaintiff framed all its claims—including the

UTPA claim—as stemming from the increase in global greenhouse gas emissions and corresponding climate change, alleging that:

> [Defendants'] chronic failure to warn of the threats their fossil fuel products posed to the world's climate; their wrongful promotion of their fossil fuel products and concealment of known hazards associated with use of those products; their public deception campaigns designed to obscure the connection between their products and global warming and its environmental, physical, social, and economic consequences; and their failure to pursue less hazardous alternatives available to them; is a substantial factor in causing global warming and consequent sea level rise and attendant flooding, erosion, and beach loss in Charleston; increased frequency and intensity of extreme weather events in Charleston, including hurricanes, drought, heatwaves, "rain bomb" extreme precipitation events, and others; ocean warming and acidification; and the cascading social, economic, and other consequences of these environmental changes.

Compl. ¶ 146. Indeed, Plaintiff incorporated these allegations into its UTPA claim, which describes "Defendants' acts and omissions as . . . *indivisible causes of the City's injuries and damage*," links those alleged misrepresentations to "greenhouse gas molecules [that] do not bear markers that permit tracing them to their source," and seeks recovery for "damage to publicly owned infrastructure and real property." *Id.* ¶¶ 212, 216 (emphasis added). Under Plaintiff's own theory, such damage could not have been caused by the misrepresentations absent interstate and international emissions. As pleaded, Plaintiff's UTPA claim therefore depends in large part not on activity that occurred within South Carolina, but on activity that took place outside its borders, all over the world.

Other courts in climate-change cases have dismissed nearly identical consumer-protection claims on the grounds that such claims fundamentally sought to impose liability for the alleged impact of global emissions, which "the U.S. Constitution's federal structure does not allow." *Annapolis*, 2025 WL 588595, at *6; *see also Bucks Cnty.*, 2025 WL 1484203, at *11; *New Jersey*, 2025 WL 604846, at *8; *Baltimore*, 2024 WL 3678699, at *4–7.

Moreover, even if Plaintiff's UTPA claim does not seek damages for purported injuries arising from global climate change, the claim still would be precluded and preempted under the federal constitutional structure, as well as the Due Process Clause, which "limits a State's power to extend its law outside its borders." *Am. Beverage Ass'n v. Snyder*, 735 F.3d 362, 380 (6th Cir. 2013) (Sutton, J., concurring); *see also Fuld v. Palestine Liberation Org.*, 145 S. Ct. 2090, 2104 (2025) ("State sovereign authority is bounded by the States' respective borders.").

In sum, all of Plaintiff's claims are precluded and preempted by the federal Constitution's structure and must be dismissed.

II. Clean Air Act Preemption

The Court independently holds that Plaintiff's claims are preempted by the CAA, which "preempts state law to the extent a state attempts to regulate air pollution originating in other states." *Delaware*, 2024 WL 98888, at *10; *see* Jt. Merits Br. 20–27.

Through the CAA, Congress evaluated and balanced the societal harms and benefits associated with extraction, production, processing, transportation, sale, and use of fossil fuels. And Congress has already comprehensively regulated fossil fuels and greenhouse gas emissions through an "informed assessment of competing interests," including the "environmental benefit potentially achievable" and "our Nation's energy needs and the possibility of economic disruption." *AEP*, 564 U.S. at 427. Under the CAA, EPA has the authority to determine, and has in fact established, permissible levels of greenhouse gas emissions for many applications of combustible fossil-fuel products. For example, Title II of the CAA governs greenhouse gas emissions standards for vehicles, aircraft, locomotives, motorcycles, and nonroad engines and equipment. *See* 42 U.S.C. §§ 7521 (new motor vehicles and motorcycles), 7571 (aircraft), 7547 (locomotives and nonroad engines). Based on authority delegated through the Act, EPA has set

vehicle-specific greenhouse gas emission standards that appropriately balance environmental and other national needs. *See, e.g.*, 40 C.F.R. §§ 86.1818-12 (light-duty vehicles and trucks and medium-duty passenger vehicles), 86.1819-14 (heavy-duty vehicles); *see also* Jt. Merits Br. 20–22 (listing further regulations).

The CAA also governs "whether and how to regulate carbon-dioxide emissions from powerplants" and other stationary sources. *AEP*, 564 U.S. at 426; *see also* 42 U.S.C. § 7411 (governing standards of performance for emissions from new, modified, and existing sources). EPA has issued or is finalizing comprehensive regulations to control greenhouse gas emissions up and down the fossil-fuel supply chain, which include: (i) limiting emissions of methane (the second-most prevalent greenhouse gas) from crude oil and natural gas production, processing, transmission, and storage, including facilities operated by some of the Defendants, *see, e.g.*, 87 Fed. Reg. 74,702 (Dec. 6, 2022); (ii) regulating carbon-dioxide emissions from fossil-fuel-fired power plants, *see, e.g.*, 88 Fed. Reg. 33,240 (May 23, 2023); and (iii) requiring many major industrial sources—including several Defendants' oil refineries and gas-processing facilities, as well as manufacturers that use Defendants' products—to employ the best available control technologies to limit greenhouse gas emissions, 42 U.S.C. § 7475; 40 C.F.R. Parts 51, 52.

The Court agrees with Defendants that, because Plaintiff's claims seek remedies for harms allegedly caused by cumulative worldwide greenhouse gas emissions over more than a century, those remedies would necessarily regulate out-of-state emissions. Jt. Merits Br. 24–25. The Court further agrees that granting such remedies would upset the careful balance Congress struck through the comprehensive CAA regime overseen by EPA. *Id.* at 24. Relying on *Ouellette*—which concluded that "[t]he [Clean Water] Act pre-empts state law to the extent that the state law is applied to an out-of-state point source," 479 U.S. at 500—courts have consistently held that the

CAA likewise preempts state law, including common law, insofar as it purports to regulate emissions originating out of state. *See, e.g., North Carolina ex rel. Cooper v. TVA*, 615 F.3d 291, 303, 306 (4th Cir. 2010) ("[S]tate law is preempted 'if it interferes with the methods by which the federal statute was designed to reach [its] goal.'" (quoting *Ouellette*, 479 U.S. at 494)); *Merrick v. Diageo Ams. Supply, Inc.*, 805 F.3d 685, 693 (6th Cir. 2015) ("[C]laims based on the common law of a non-source state . . . are preempted by the [CAA].").

Under Plaintiff's theory, Defendants would be subject to ongoing future liability for producing and selling fossil-fuel products unless they do so in the precise manner that Plaintiff and this Court dictate. That is the paradigm of using "damages" to "regulat[e]" an industry, *Kurns*, 565 U.S. at 637, by forcing Defendants to "change [their] methods of doing business . . . to avoid the threat of ongoing liability," *Ouellette*, 479 U.S. at 495. "Any actions" Defendants "take to mitigate their liability" in South Carolina "must undoubtedly take effect across every state (and country)." *City of New York*, 993 F.3d at 92. But regulation via tort law "cannot be reconciled with the decisionmaking scheme Congress enacted." *AEP*, 564 U.S. at 429. Under the CAA, "Congress designated an expert agency, . . . EPA, as best suited to serve as primary regulator of greenhouse gas emissions." *Id.* at 428. It is not for this Court—or any other court—to second-guess or undermine those emissions limits, either directly or indirectly, because "[t]he expert agency is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions." *Id.*

Plaintiff denies that it seeks to regulate emissions, whether interstate, international, or otherwise. But that is precisely what Plaintiff's Complaint would do. Plaintiff's entire theory rests on the notion that Defendants should be held liable for statements or actions that allegedly caused the level of emissions to increase to some excessive level beyond what they otherwise would have

been. And Plaintiff's theory seeks to impose massive financial liability on Defendants for allegedly causing these increased out-of-state emissions, without regard to whether such emissions complied with all applicable requirements under the CAA regulatory regime administered by the EPA. In the CAA, Congress tasked an "expert administrative agency"—the EPA—with the responsibility of conducting an "informed assessment of competing interests," such as "our Nation's energy needs and the possibility of economic disruption," and "establish[ing] emissions standards." *AEP*, 564 U.S. at 426–27. Because Congress designated the EPA as "best suited to serve as primary regulator of greenhouse gas emissions," *id*. at 428, Congress left no room for this Court or any other court to impose liability for allegedly excessive emissions in a manner different from the comprehensive CAA regime, which "embodies carefully wrought compromises" that state law cannot override. *Cooper*, 615 F.3d at 298. Requiring Defendants to pay money for allegedly having caused excessive emissions levels is the very definition of regulation and would directly interfere with the regulatory balance carefully struck by the EPA under the CAA.

Plaintiff asks this Court to "set aside a congressionally sanctioned scheme of many years' duration . . . that reflects the extensive application of scientific expertise and that has set in motion reliance interests and expectations on the part of those states and enterprises that have complied with its requirements." *Cooper*, 615 F.3d at 301. While *AEP* left open the narrow question whether state-law claims may be brought under "the law of each State *where the defendants operate powerplants*," 564 U.S. at 429 (emphasis added), its articulation of that potential exception proves the rule—one state cannot apply its own laws to claims based on emissions from *another* state.

Here, Plaintiff's claims intentionally and explicitly target global emissions. *See, e.g.*, Compl. ¶¶ 182, 194, 203, 216. Plaintiff, however, sues under one state's law, which federal law prohibits. *See Ouellette*, 479 U.S. at 495; *City of New York*, 993 F.3d at 92. Accordingly, multiple courts have held that the CAA preempts nearly identical claims. *See, e.g.*, *Bucks Cnty.*, 2025 WL 1484203, at *7; *Baltimore*, 2024 WL 3678699, at *8; *Delaware*, 2024 WL 98888, at *10. Indeed, relying on *AEP*, the *Annapolis* court noted that the CAA "prescribes a specific statutory means to seek limits on emissions" and establishes "a prescribed order of decision-making" regarding the regulation of emissions: "first by the expert [agency] then by *federal* judges." 2025 WL 588595, at *7. As the U.S. Supreme Court explained, this "is yet another reason to resist setting emissions standards by judicial decree under . . . tort law." *AEP*, 564 U.S. at 427. The "appropriate amount of regulation in any particular greenhouse gas-producing sector" requires "informed assessment of competing interests," and the CAA "entrusts such complex balancing to EPA in the first instance, in combination with state regulators." *Id.* There is "no room for a parallel track" of state-court regulation. *Id*. at 425.

III. Failure To State A Claim Under South Carolina Law

Because the Court holds that Plaintiff's claims are precluded and preempted by the federal Constitutional structure and the CAA, the Court need not reach Defendants' arguments that Plaintiff's claims also fail under South Carolina law. Nevertheless, to complete the record, the Court will address Defendants' arguments in turn.

A. Political Question Doctrine

Plaintiff's claims are barred by the political-question doctrine, which applies to "questions that are exclusively or predominantly political in nature rather than judicial." *Segars-Andrews v. Jud. Merit Selection Comm'n*, 387 S.C. 109, 122, 691 S.E.2d 453, 460 (2010); *see* Jt. Merits Br.

28–34. A political question is present if courts lack "judicially discoverable and manageable standards for resolving it," or if it is impossible to "decid[e] without an initial policy determination of a kind clearly for nonjudicial discretion." *Baker v. Carr*, 369 U.S. 186, 217 (1962); *Segars-Andrews*, 387 S.C. at 122, 691 S.E.2d at 460. Both conditions are met here.

First, "[t]he appropriate amount of regulation in any particular greenhouse gas-producing sector" raises "questions of national or international policy" that require an "informed assessment of competing interests." *AEP*, 564 U.S. at 427. Courts lack "the scientific, economic, and technological resources" to address these issues. *Id.* at 428. For similar reasons, the court in *Native Village of Kivalina v. ExxonMobil Corp.* dismissed claims seeking to impose liability on energy companies for climate change (and alleging that they "misle[d] the public about the science of global warming") on political-question grounds. 663 F. Supp. 2d 863, 874–75 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849, 854 (9th Cir. 2012); *accord Sagoonick v. State*, 503 P.3d 777, 795–96 (Alaska 2022); *California v. Gen. Motors Corp.*, 2007 WL 2726871, at *8 (N.D. Cal. Sept. 17, 2007).

Second, the balancing of various public interests required by Plaintiff's claims would require this Court to make sensitive policy determinations meant for nonjudicial discretion. South Carolina's Executive and Legislative branches have already made such determinations through numerous official acts, enabling the creation of (1) the Governor's Climate, Energy, and Commerce Advisory Committee and (2) the Charleston City Council's "Green Committee," which facilitates local planning for climate change. *See Charleston Green Plan*, City of Charleston at 3–4 (2009), https://bit.ly/3NX9V96. At the same time, South Carolina's political branches also determined that the risks of climate change do not warrant abandonment of petroleum products. At the federal level, as early as 1989, Congressman Arthur Ravenel, who

then represented Charleston, co-sponsored the Global Warming Prevention Act of 1989, which was aimed at reducing—not eliminating—greenhouse gas emissions. *See* H.R. 1078, 101st Cong. (1988); *see also* Jt. Merits Br. 32.

These issues are political questions that have been considered and addressed by the executive and legislative branches for decades. The relief Plaintiff seeks—an order providing for "abatement of the nuisances complained of," Compl. p. 136 (Prayer for Relief)—would require this Court to estimate potential future damages resulting from global climate change over the next century and to oversee and administer a fund to address those future injuries. Such tasks are beyond the judicial function. *See Juliana v. United States*, 947 F.3d 1159, 1171 (9th Cir. 2020).

B. Statute of Limitations

Plaintiff's claims are also barred under South Carolina's statute of limitations. *See* Jt. Merits Br. 34–40. Under South Carolina law, Plaintiff's claims are subject to a three-year limitations period. *See* S.C. Code Ann. §§ 15-3-530, 15-3-535, 39-5-150. Plaintiff alleges a supposed "campaign of deception" that "focused on concealing, discrediting, and/or misrepresenting information" about climate change, Compl. ¶¶ 3, 100, but does not allege any act of deception committed by Defendants within the three years preceding Plaintiff's filing of the Complaint on September 9, 2020—*i.e.*, after September 9, 2017.

Plaintiff does not allege that Defendants committed any act of deception or misrepresentation within the three-year limitations period. The most recent allegedly deceptive statement by any Defendant was made in 2007—ten years before the relevant limitations period began. *See* Compl. ¶ 124. Although the Complaint cursorily alleges that Defendants' purported greenwashing "continues today," *id.* ¶ 141, Plaintiff fails to allege a single "greenwashing" statement made within the limitations period.

The failure-to-warn claims rest on information that, according to the Complaint, was known by Plaintiff and the general public for decades. Given the widespread nature of the climate science and policy debates alleged in the Complaint—stretching back decades—Plaintiff's claims are time-barred. The Complaint alleges that as early as 1965, "concern over the potential for fossil fuel products to cause disastrous global warming reached the highest levels of the United States' scientific community," culminating in a White House report and President Johnson's special message to Congress. Compl. ¶ 58; *see id.* ¶ 98 (alleging "world events marked a shift in public discussion of climate change" in the 1980s and 1990s). Similarly, Plaintiff alleges that Defendants began their supposed "campaign" 30 years before Plaintiff filed this action, and that this alleged "campaign" was purportedly carried out in full view of the public. *See, e.g.*, *id.* ¶ 97. Moreover, there has been ample information in the public record for decades confirming that Plaintiff was on notice that emissions from fossil-fuel combustion may affect climate change, including suits filed alleging a link between fossil fuels and climate change more than a decade before this suit was filed, some of which reached the U.S. Supreme Court. *See, e.g.*, *AEP*, 564 U.S. at 418 (filed in 2004); *Kivalina*, 663 F. Supp. 2d at 869 (filed in 2008); *see also* Jt. Merits Br. 37–39. In fact, this lawsuit is part of the latest wave of litigation, in which states and municipalities have been suing energy companies seeking damages for the alleged impacts of global climate change under the exact same theories as Plaintiff asserts here. Many of these lawsuits were filed by municipalities in 2017 and were represented by the same counsel as Plaintiff.[3] Plaintiff thus unquestionably has

[3] *See Cnty. of San Mateo v. Chevron*, No. 17-3222 (Cal. Super. Ct. San Mateo Cnty.); *City of Imperial Beach v. Chevron*, No. 17-1227 (Cal. Super. Ct. Contra Costa Cnty.); *Cnty. of Marin v. Chevron*, No. 17-2586 (Cal. Super. Ct. Marin Cnty.); *Cnty. of Santa Cruz v. Chevron*, No. 17-3242 (Cal. Super. Ct. Santa Cruz Cnty.); *City of Santa Cruz v. Chevron*, No. 17-3243 (Cal. Super. Ct. Santa Cruz Cnty.); *City of Oakland v. BP P.L.C.*, No. RG17875889 (Cal. Super. Ct. Alameda Cnty.); *City & Cnty. of San Francisco v. BP P.L.C.*, No. CGC-17-561370 (Cal. Super. Ct. S.F. Cnty.).

been on notice since, at a minimum, September 2017—more than three years before it filed the Complaint in this case.

Plaintiff contends that the Court may not grant a Rule 12(b)(6) motion based on the statute of limitations—particularly where the issue is contested. Merits Opp. 24–25 (citing *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999), *overruled by Proctor v. Whitlark & Whitlark, Inc.*, 414 S.C. 318, 778 S.E.2d 888 (2015)). But the limitations discussion in *Gentry*, confined to a footnote, is dicta; the only holding in that case related to "lack of standing." 337 S.C. at 5 n.2, 522 S.E.2d at 139 n.2. In any event, other appellate decisions confirm that claims may be dismissed on the pleadings as time-barred. *See, e.g.*, *Gillman v. City of Beaufort*, 368 S.C. 24, 26–27, 627 S.E.2d 746, 748 (Ct. App. 2006); *Brown v. Lexington Cnty.*, 283 S.C. 27, 28, 320 S.E.2d 498, 498 (Ct. App. 1984).

Plaintiff also contends that Defendants' statute-of-limitations defense fails at this stage because this Court cannot infer from newspaper articles or "earlier complaints in faraway litigation" that Plaintiff was put "on notice about Defendants' deceptive conduct." Pl.'s Summ. Br. 17–18. Here, the Complaint itself acknowledges that the information underlying Plaintiff's claims was widely reported and publicly known well outside the limitations period in press coverage, *see, e.g.*, Compl. ¶¶ 69 n.41, 82 n.61, 83 n.62, in congressional testimony, *id.* ¶ 97(a), and in reports by the Intergovernmental Panel on Climate Change, *id.* ¶¶ 97(d), 120. And Plaintiff itself alleges that the national news sources were "circulated widely to South Carolina consumers," *id.* ¶ 24(j), and that the City is a sophisticated actor that has deep familiarity with climate change, *id.* ¶ 150. It thus defies belief that Plaintiff and its officers were not aware of—or should not reasonably have been aware of—the numerous news articles with broad local circulation laying out the alleged climate risks that Plaintiff alleges Defendants failed to disclose.

See Delaware, 2024 WL 98888, at *19 (dismissing as time-barred a substantially identical claim because the "general public had knowledge of or had access to information about the disputes, regarding the existence of climate change and effects, decades prior to the expiration of the five-year limitations period").

Finally, Plaintiff argues that Defendants are engaged in a "continuing tort" in the form of a purported conspiracy akin to those alleged against tobacco companies. This theory fails as well. Plaintiff does not allege a continuing tort. Rather, Plaintiff relies on allegations of disconnected acts and statements by various entities—some of which are not even defendants here—in different times and places. Far from being "continuing," Plaintiff's allegations fall into at least two general categories: (1) alleged denials of climate science in the 1990s and 2000s, and (2) "greenwashing" statements in more recent years. The only apparent common thread is that these are statements and acts with which Plaintiff disagrees. Plaintiff first seeks to impose liability for alleged statements that the threat of climate change was exaggerated and then, seeks to impose liability for more recent statements that Defendants were taking efforts to address climate change.

In sum, Plaintiff alleges no actionable conduct related to the purported "campaign of deception" in the three years before it filed suit. Any assertion that Plaintiff was not on reasonable notice of the facts giving rise to its claims by September 2017 is belied by its own allegations. Thus, Plaintiff's claims are barred by the statute of limitations. *See* Jt. Merits Reply 20–24.

C. South Carolina Law Causes of Action

Plaintiff's claims are also fundamentally deficient under South Carolina law. *See* Jt. Merits Br. 40–55.

1. Public and Private Nuisance

Under South Carolina law, a "[private] nuisance is an interference with the interest in the private use and enjoyment of the land," *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 139,

747 S.E.2d 468, 473 (2013) (quoting Restatement (Second) of Torts § 821D), and a "public nuisance" is an interference that is "suffered by the public generally," *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 78, 753 S.E.2d 846, 852 (2014). Both claims necessarily fail here.

First, South Carolina has not recognized private- or public-nuisance claims based on the production, promotion, transportation, sale, and use of lawful consumer products. Like other state courts, South Carolina courts have recognized nuisance claims based only on a defendant's *use of land*. That is because "[n]uisance law is based on the premise that '[e]very citizen holds his property subject to the implied obligation that he will use it in such a way as not to prevent others from enjoying the use of their property.'" *Clark v. Greenville Cnty.*, 313 S.C. 205, 209, 437 S.E.2d 117, 119 (1993). The *Baltimore* court rejected an analogous public-nuisance claim for the same reason, noting that Maryland courts "have yet to extend public nuisance to deceptive marketing complaints." 2024 WL 3678699, at *10. In Maryland, "public nuisance theory has only been applied to cases involving a defendant's use of land," and "cases concerning production, promotion and sale of consumer products" "are more suited as product liability claims." *Id*. The same is true in South Carolina, and this Court declines to extend the bounds of nuisance law to fit Plaintiff's claims.

Indeed, courts across the country have held that the boundary between products liability and nuisance must be respected. "[E]ssential to the concept of a public nuisance tort . . . is the fact that it has historically been linked to the use of land by the one creating the nuisance." *In re Lead Paint Litig.*, 924 A.2d 484, 495 (N.J. 2007); *see also State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 724 (Okla. 2021) (public nuisance "has historically been linked to the use of land by the one creating the nuisance"). Whereas "[p]ublic nuisance focuses on the abatement of

annoying or bothersome activities," claims based on a defendant's sale or distribution of an allegedly harmful product sound in products liability, which is "designed specifically to hold manufacturers liable for harmful products." *State v. Lead Indus. Ass'n*, 951 A.2d 428, 456 (R.I. 2008). Allowing Plaintiff to pursue public-nuisance claims based on the production, promotion, transportation, sale, and use of lawful products would vitiate the carefully crafted rules governing products-liability law.

Plaintiff insists that no such distinction exists under South Carolina law, citing several South Carolina cases purporting to support its novel theory. *See* Merits Opp. 31–37; Pl.'s Summ. Br. 18–19. But none of those cases involved the promotion or sale of a lawful product. To the contrary, these cases confirm the rule that nuisance claims are "linked to the use of land by the one creating the nuisance," not to the promotion and sale of a lawful consumer product. *Hunter*, 499 P.3d at 724; *In re Lead Paint Litig.*, 924 A.2d at 495 (same). Moreover, Plaintiff's own cases confirm the commonsense principle that nuisance claims must be linked to the use of land. *State v. Turner*, for example, involved the "keeping and operating [of] a disorderly house," 198 S.C. 499, 499, 18 S.E.2d 376, 378 (1942), and *Woodstock Hardwood & Spool Manufacturing Co. v. Charleston Light & Water Co.* involved "damages arising from the alleged flooding of a large tract of land" because of the erection of a dam on a leased portion of that land, 63 S.E. 548, 549 (S.C. 1909). South Carolina adheres to the "clear national trend to limit public nuisance to land or property use." *Hunter*, 499 P.3d at 730. Accordingly, the City's public-nuisance claim must be dismissed.

Second, both Plaintiff's private- and public-nuisance claims fail for the additional reason that Defendants did not control the instrumentality alleged to cause the nuisance. The Supreme Court of South Carolina has held that the "one who has no control over property at the time of the

alleged nuisance cannot be held liable therefor." *Clark*, 313 S.C. at 210, 437 S.E.2d at 119. Plaintiff alleges no such control here—nor could it. Plaintiff asserts that alleged impacts of global climate change constitute a nuisance caused by the combustion of fossil-fuel products that releases emissions into the atmosphere. Compl. ¶¶ 5, 46, 159, 167. Plaintiff does not, and cannot, allege that Defendants control the time, place, or rate of combustion of coal, oil, and natural gas used by countless third parties worldwide. Under nuisance law, it "would run contrary to notions of fair play" to hold sellers liable when "they lack direct control over how end-purchasers use" the product. *City of Phila. v. Beretta U.S.A., Corp.*, 126 F. Supp. 2d 882, 911 (E.D. Pa. 2000). And so, "courts have refrained from applying public nuisance doctrine in cases where the instrument of the nuisance is a lawfully sold product which has left the manufacturer's control." *Id.* This Court, too, will refrain from extending the law so far.

Plaintiff contends that "Defendants controlled the nuisance-causing instrumentality" because they "exercised complete control over the warnings they gave (or did not give) to consumers and the public and over the climate deception campaigns they orchestrated and implemented." Merits Opp. 39. But Plaintiff's alleged nuisance is the increase in global greenhouse gas emissions in the Earth's atmosphere that have impacted global climate change and allegedly caused changes to the weather that resulted in harm to the City. Compl. ¶¶ 5, 46, 159, 167. The "instrumentality" allegedly causing Plaintiff's claimed harms is the worldwide combustion of fossil fuels that releases greenhouse gas emissions, *not* their extraction, production, transportation, promotion, or sale. Indeed, Plaintiff repeatedly asserts that the allegedly misleading marketing caused an incremental increase in worldwide fossil-fuel combustion, which only "in turn" created a public nuisance in Charleston. *See, e.g.*, Merits Opp. 31, 38, 40–41. The Complaint confirms this, alleging that the nuisance-causing instrumentality is the cumulative

fossil-fuel combustion resulting from billions of individual decisions around the world. Compl. ¶¶ 5, 39–47.

Plaintiff thus fails to state a claim for public or private nuisance.

2. Failure to Warn

Plaintiff's failure-to-warn claims also fail because Defendants had no duty under South Carolina law to warn of the potential risks of fossil-fuel use.

First, the alleged environmental consequences of global reliance on oil and gas were well known to Plaintiff and the public, and Defendants had no duty to warn customers, let alone the public at large, of such well-understood dangers. In South Carolina, "a seller is not required to warn of dangers that are generally known and recognized," *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 239, 754 S.E.2d 714, 721 (Ct. App. 2014), or "open and obvious," *Moore v. Barony House Rest., LLC*, 382 S.C. 35, 41, 674 S.E.2d 500, 504 (Ct. App. 2009); *see also* Restatement (Second) of Torts § 402A, cmts. g, j. Although the question whether a danger was open and obvious is typically reserved for a factfinder, where "the complaint demonstrate[s] the existence of the affirmative defense," dismissal without further factual development is appropriate. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006).

Here, the Complaint affirmatively alleges that the dangers posed to the climate by fossil-fuel use have been well-documented and publicized since at least the 1960s. *See* Jt. Merits Br. 47–48 (listing examples). For example, the Complaint alleges that "[b]y 1965, concern over the potential for fossil fuel products to cause disastrous global warming reached the highest levels of the United States' scientific community." Compl. ¶ 58. The Complaint goes on to state that in 1965, "President Lyndon B. Johnson's Science Advisory Committee's Environmental Pollution Panel reported that a 25% increase in carbon dioxide concentrations could occur by the year

2000" and listed numerous expected side effects that would be caused by "global warming." *Id.* Similarly, the Complaint highlights a bipartisan bill titled "The Global Environmental Protection Act" that was introduced in 1988 to regulate CO_2 and other greenhouse gases. *Id.* ¶ 97(b). As a New York court held in dismissing consumer-protection claims that "effectively re-purpos[ed]" the same allegations made here, claims that consumers were "duped by Defendants' failure to disclose" are not "cognizable where [Plaintiff] has otherwise conceded widespread public awareness of this information." *City of New York v. Exxon Mobil Corp.*, 226 N.Y.S.3d 863, 868, 879 (N.Y. Sup. Ct. 2025) ("*City of New York II*"). Plaintiff cannot plausibly suggest that it has not been well-aware for decades of the potential dangers that the use of fossil fuels has on the climate.

Unlike a typical product-liability suit, Plaintiff identifies no undisclosed danger to the actual user posed by the user's own use of the product. On the contrary, the Complaint is concerned exclusively with alleged adverse impacts of worldwide collective use of products like those produced by Defendants—whatever their source. That is not the sort of thing that the law requires producers of lawful products to disclose.

Second, the Complaint barely contains any allegations about warnings (or the alleged absence thereof) in connection with *purchases* of products at all. Instead, it focuses on Defendants' alleged speech aimed at legislators, regulators, and voters—much of it by trade associations that do not even sell products—concerning *policy* messages with which Plaintiff disagrees. South Carolina law does not require producers of lawful products to warn the world about the need to adopt policy measures favored by one perspective in a complex policy debate. Much less does it empower courts to impose them. This novel and sweeping duty-to-warn-the-world theory has no basis in the law of this State. "Under South Carolina law, there is no general

duty to control the conduct of another or to warn a third person or potential victim of danger." *Faile v. S.C. Dep't of Juvenile Just.*, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002).[4]

Third, a failure-to-warn claim is particularly inapt here, given that Plaintiff does not even allege that it purchased Defendants' products directly. Plaintiff objects that it is a "prototypical plaintiff" that "consumed and used Defendants' products." Pl.'s Summ. Br. 23. But this contention conflicts with Plaintiff's own Complaint, which focuses not on Defendants' asserted failure to warn Plaintiff or other specified users, but on Defendants' alleged general failure to warn "the public," "public officials," "or any other party." Compl. ¶¶ 173, 177. And even if Plaintiff did use oil-and-gas products produced, transported, or sold by Defendants, its alleged injuries resulted not from its own use of those products, but rather from third-party use worldwide. *See, e.g., id.* ¶¶ 5–10, 39–49; *see also Baltimore*, 2024 WL 3678699, at *11 (agreeing "Defendants had no duty to warn the world").

Accordingly, Plaintiff's failure-to-warn claims must be dismissed.

3. Trespass

Under South Carolina law, trespass "is any intentional invasion of the plaintiff's interest in the exclusive possession of his property." *Hawkins v. City of Greenville*, 358 S.C. 280, 296, 594 S.E.2d 557, 565 (Ct. App. 2004). "For a trespass action to lie, 'the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion.'" *Id.* at 297, 594 S.E.2d at 566. Plaintiff alleges none of these elements, and so its trespass claim must be dismissed.

[4] South Carolina is not unique in this respect. The *Baltimore* court rejected a near-identical failure-to-warn claim on this ground, ruling that the plaintiff's proposed duty to warn would "exten[d] to every single human being on the planet whose use of fossil fuel products may have contributed to global climate change," which was impermissible. 2024 WL 3678699, at *12.

First, Plaintiff does not allege it held "exclusive possession" of the subject property. *Hawkins*, 358 S.C. at 296, 594 S.E.2d at 565. Although Plaintiff alleges trespasses to "beaches" and "wetlands," Compl. ¶ 35, those lands are generally held in public trust, and Plaintiff cannot allege exclusive possession, *see Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 29, 766 S.E.2d 707, 715 (2014). The *Delaware* court reached the same conclusion, rejecting a virtually identical trespass claim for "land the State holds in public trust." 2024 WL 98888, at *24. In fact, Plaintiff concedes (Merits Opp. 48) that it has not alleged exclusive possession, and that some of its property is not subject to exclusive possession under the public-trust doctrine. Plaintiff also points to a few allegations of damage to "City-owned or operated facilities and property" or "property within the City's jurisdiction or that the City owns or is responsible for," Compl. ¶¶ 147, 150, but the Complaint does not allege that the City has exclusive possession over those properties and that those properties are not held in public trust, *see Kiawah Dev. Partners*, 411 S.C. at 29, 766 S.E.2d at 715.

Second, Plaintiff does not allege that Defendants—or the products they produce, distribute, transport, or sell—invaded the City's land. Plaintiff alleges only that Defendants indirectly "caused flood waters, extreme precipitation, saltwater, and other materials, to enter [the City's] real property." Compl. ¶ 201. The Court is aware of no South Carolina precedent (and Plaintiff cites none) supporting the novel assertion that a party can be held liable for trespass because *third-party use* of its product around the world for nearly a century resulted in weather changes that affect another's property. Like the *Baltimore* court, this Court rejects Plaintiff's "novel theory of trespass" because Defendants did not have "control of the foreign matter or ma[k]e a substantial contribution to the invasion" from the "attenuated" "link between [their] activity and the harms." 2024 WL 3678699, at *14.

Plaintiff's claim also fails because Defendants did not control the products (or emissions) at the time of the alleged trespass. "[O]wnership or control of the intruding instrumentality is dispositive of an actor's trespass liability," and "courts do not impose trespass liability on sellers for injuries caused by their product after it has left the ownership and possession of the sellers." *Parks Hiway Enters., LLC v. CEM Leasing, Inc.*, 995 P.2d 657, 664 (Alaska 2000). Here, Plaintiff alleges that greenhouse gas emissions entered the atmosphere only after the products produced, distributed, or sold by Defendants were combusted by billions of third parties around the world. *See* Compl. ¶ 5. It is undisputed that, at the time the fossil-fuel products were combusted, Defendants had no control over those products (or the resulting emissions).

Third, Plaintiff has failed to allege the necessary intent to make out a trespass claim. To do so, Plaintiff must allege that the defendant "intend[ed] the act which constitutes the unwarranted entry on another's land," *Snow v. City of Columbia*, 305 S.C. 544, 553, 409 S.E.2d 797, 802 (Ct. App. 1991) (citations omitted), but the Complaint does not specifically identify any intentional acts by Defendants aimed at causing the alleged "flood waters," Compl. ¶ 199. Nor could Plaintiff credibly make any such allegations, given that Plaintiff alleges that climate change and its alleged consequences (including rising sea levels) are caused by global greenhouse gas emissions that have been released for decades by billions of independent actors in every state in the nation and every country in the world. *See, e.g.*, *id.* ¶¶ 5–6, 40–41, 203.

Given these deficiencies, Plaintiff's trespass claim must be dismissed. Indeed, allowing the claim to proceed would ignore the clear guidance of the Supreme Court that trespass law must "provide[] a workable rule" that "avoid[s] . . . absurd result[s] and the arresting effect [they] would have on modern life." *Babb*, 405 S.C. at 150–51, 747 S.E.2d at 479–80.

4. South Carolina Unfair Trade Practices Act

Plaintiff's UTPA claim must also be dismissed for both procedural and substantive reasons.

First, the City does not possess the authority to bring this suit under the UTPA. Section 39-5-130 of the South Carolina Code authorizes "municipal governments" to "bring [UTPA] causes of action" only "*with the prior approval of the Attorney General*." *City of Charleston v. Hotels.com, LP*, 487 F. Supp. 2d 676, 680 n.1 (D.S.C. 2007) (emphasis added). No such approval was granted here; indeed, the Attorney General has filed a brief urging this Court to *dismiss* Plaintiff's claims. The City asserts (Merits Opp. 52) that only an injunction or civil penalty requires Attorney General approval, but it cites no authority for this proposition.

Second, Plaintiff's UTPA claim fails because its Complaint does not identify any alleged misrepresentations concerning Defendants' *products*, as opposed to *climate change* generally. *See City of New York II*, 226 N.Y.S.3d at 882 (dismissing consumer-protection claim because alleged "corporate greenwashing statements d[id] not reference fossil fuel products"). The UTPA requires that the misrepresentations be "in the conduct of any trade or commerce," S.C. Code Ann. § 39-5-20(a), and defines "[t]rade" and "commerce" as "the advertising, offering for sale, sale or distribution of any services and any property," *id.* § 39-5-10(b). As a result, UTPA claims cannot be based on alleged misrepresentations that were not made in the course of "advertisement, sale, or distribution of services or property within a business context." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 639, 743 S.E.2d 808, 816 (2013). Plaintiff thus fails to adequately plead its UTPA claim because its allegations relate only to alleged deception concerning the *risks of climate change* generally—not statements concerning Defendants' specific products, or "the advertising, offering for sale, sale or distribution of" those products, S.C. Code

Ann. § 39-5-10(b). *See* Compl. ¶ 101 (alleging "a concerted public relations campaign to cast doubt on [climate-change] science").

Third, Plaintiff fails to state a viable UTPA claim because the Complaint lacks factual allegations that Defendants engaged in any specific acts of deception in South Carolina. The UTPA applies only to unfair or deceptive practices that take place *within South Carolina*. *See Noack Enters., Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 477, 351 S.E.2d 347, 349 (Ct. App. 1986) (noting that "[t]he legislature intended in enacting the UTPA to control and eliminate the large scale use of unfair and deceptive trade practices within the state of South Carolina" (citation and internal quotation marks omitted)); *Callen v. Daimler AG*, 2020 WL 10090879, at *20 (N.D. Ga. June 17, 2020) ("no indication that South Carolina's legislature intended for SCUTPA to have extraterritorial application"). But nowhere in its 136-page Complaint does Plaintiff identify a single misrepresentation or other act of purported deception that Defendants made in the State. Plaintiff points to only a few boilerplate allegations that Defendants "distribute, market, advertise, and promote [their] products in South Carolina," Compl. ¶ 20(e), without identifying any specific misrepresentation or deceptive acts. Such allegations are insufficient to make out an UTPA claim.

D. Personal Jurisdiction

Because the Court holds that Plaintiff has failed to state a claim against all Defendants, it need not reach the personal jurisdiction arguments raised by the out-of-state Defendants. Nevertheless, to make the record complete, the Court will address the out-of-state Defendants' personal jurisdiction arguments.

The Court lacks personal jurisdiction over the out-of-state Defendants and Plaintiff's claims against those Defendants must be dismissed on that additional basis. Personal jurisdiction

over the out-of-state Defendants is improper here for two primary reasons: (1) Plaintiff's claims do not "arise out of or relate to" Defendants' alleged activities in South Carolina, *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021); and (2) exercising personal jurisdiction over Defendants would be unreasonable under the Due Process Clause, *see* PJ Jt. Br. at 1024.

First, specific jurisdiction "must arise out of or relate to the defendant's contacts with the forum." *Ford Motor*, 592 U.S. at 359 (internal quotation marks omitted); *see also* PJ Jt. Br. 9–15. Thus, Plaintiff must establish that the cause of action arises from, or is directly related to, each Defendant's contacts with the forum state. *Ford Motor*, 592 U.S. at 359. To satisfy this "related to" prong, a plaintiff must allege facts that, taken as true, would show that the plaintiff's use and the malfunction of a defendant's product in South Carolina injured the plaintiff in South Carolina. *Id.* at 363. But Plaintiff does not (and cannot) allege that the use of any Defendant's oil and gas products in South Carolina caused global climate change and Plaintiff's alleged injuries. South Carolina accounts for only a small fraction of global greenhouse gas emissions, and Plaintiff's alleged injuries would be the same if Defendants had never sold or promoted any such products in South Carolina.

Contrary to Plaintiff's contention, Defendants are not arguing that personal jurisdiction requires that the defendants' in-state activities be "a but-for cause" of a plaintiff's injuries. *See* Plaintiff's Personal Jurisdiction Opposition 11–12. But-for causation by a defendant's in-state tortious contacts is not required under *Ford Motor*. The Supreme Court held that "some relationships [between plaintiff's claims and defendant's forum contacts] will support jurisdiction without a causal showing." *Ford Motor*, 592 U.S. at 362. But this "does not mean anything goes," because "the phrase 'relate to' incorporates real limits." *Id*. The *Ford Motor* plaintiffs came within these "real limits" by showing that, even absent a causal nexus, the defendant's products were

used, malfunctioned, and injured the plaintiff within the forum states. Plaintiff has not made that essential allegation here and thus has not established that this Court has personal jurisdiction over the out-of-state Defendants.

Second, exercising personal jurisdiction over Defendants would be constitutionally unreasonable and conflict with principles of federalism. "[R]estrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.'" *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255, 263 (2017) (citation omitted). To exercise personal jurisdiction over the out-of-state Defendants in this case would violate these limitations.

For these reasons, the Court lacks personal jurisdiction over the out-of-state Defendants with respect to the claims asserted, and Plaintiff's claims against those Defendants therefore must be dismissed.

CONCLUSION

The Court concludes that the federal constitutional structure and CAA preclude and preempt the application of state law to Plaintiff's claims. Additionally, the Court concludes that Plaintiff's Complaint fails to state a claim for relief under South Carolina law. Finally, the Court concludes that it lacks personal jurisdiction over the out-of-state Defendants for the claims asserted. And because no amendment to Plaintiff's Complaint can cure the fundamental flaws and deficiencies in Plaintiff's claims, the Court concludes that the Complaint should be dismissed with prejudice.

* * *

Accordingly, upon consideration of Defendants' Joint Motion to Dismiss for Failure to State a Claim, and the entire record herein, and after argument on May 29–30, 2025, for the reasons set forth above, it is hereby **ORDERED** and **DECREED** as follows:

1. Defendants' Joint Motion to Dismiss for Failure to State a Claim is **GRANTED**.

2. Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction is **GRANTED**.

3. All claims against Defendants are **DISMISSED WITH PREJUDICE**.

[E-SIGNATURE FOLLOWS]

Charleston Common Pleas

Case Caption: Charleston City Of VS Brabham Oil Company Inc , defendant, et al

Case Number: 2020CP1003975

Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134