IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket No. 1525 CD 2025

BUCKS COUNTY,

Plaintiff/Appellant,

v.

BP P.L.C., *et al.*,

Defendant/Appellee.

BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY, PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION, MARCELLUS SHALE COALITION, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. IN SUPPORT OF APPELLEES/DEFENDANTS

Appeal from the Judgment of the Bucks County Court of Common Pleas
No. 2024-01836, entered on May 16, 2025

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Pennsylvania Coalition for Civil Justice Reform ("PCCJR") is a statewide, bipartisan organization representing businesses, health care, and other perspectives. PCCJR is dedicated to improving Pennsylvania's civil justice system by elevating awareness of problems and advocating for legal reform in the legislature and fairness in the courts. As such, PCCJR often participates as an *amicus* in appeals of statewide importance.

Pennsylvania Chamber of Business and Industry ("PA Chamber") is the Commonwealth's largest broad-based business advocacy association, whose membership comprises over 13,000 member businesses of all sizes—from sole proprietors to Fortune 100 companies—and industry sectors throughout Pennsylvania. The PA Chamber's purpose is to provide a unified voice for businesses in the halls of the state Capitol and to advocate for job creation in Pennsylvania to lead to greater prosperity for its residents. It represents approximately 50% of the private workforce in the Commonwealth.

The Pennsylvania Independent Oil & Gas Association ("PIOGA") is the oldest and largest trade association representing oil and gas interests in the Commonwealth of Pennsylvania.[1] PIOGA's approximately 300 members include

[1] PIOGA was formed by the April 2010 merger of the Pennsylvania Oil and Gas Association (POGAM), which traced its origin to 1907 and was ultimately founded in 1918, and the Independent Oil and Gas Association of Pennsylvania (IOGA of PA).

oil and natural gas producers, marketers, oil and gas field service companies, oil and gas royalty owners, and other industry-supporting businesses such as accounting, engineering, law, and environmental mitigation firms. PIOGA producer members develop Pennsylvania crude oil and natural gas reserves from conventional and unconventional (*i.e.*, organic shale) formations located under private and public lands, on land owned by producers in fee simple, and on leased land, including that from the Commonwealth itself. In all forms, PIOGA members serve a critical role in the health and well-being of the citizens and businesses of the Commonwealth through energy production and usage that is essential to the sustainability of the citizenry and business interests within the Commonwealth and beyond.

The Marcellus Shale Coalition ("MSC") represents producers, midstream, and local supply-chain companies that promote the safe and responsible development of natural gas from the Marcellus and Utica geological formations located in the Commonwealth. The Commonwealth accounted for 20% of the nation's natural gas product and produced more natural gas than any state except Texas due predominately to the advent of "unconventional" development from tight shale formations like the Marcellus and Utica. MSC members produce more than 95% of the unconventional natural gas in the Commonwealth.

The National Federation of Independent Business Small Business Legal Center, Inc. ("NFIB Legal Center") is a nonprofit, public interest law firm

established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. ("NFIB"), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

This appeal involves whether a lone municipality may address the effects of global climate change through state tort law—or whether such claims are preempted by federal law. The Bucks County Court of Common Pleas "join[ed] a growing chorus of state and federal courts across the United States, singing from the same hymnal, in concluding that the claims raised by [Appellant] Bucks County are not judiciable by any state court in Pennsylvania," due to federal preemption. (Br. of Appellant, Ex. A at 11.) Because a reversal of the Common Pleas Court's opinion would set a dangerous precedent and have a crippling impact on the Pennsylvania economy, *Amici Curiae* PCCJR, PA Chamber, MSC, PIOGA, NFIB Legal Center, and their respective members have a compelling interest in this appeal.

SUMMARY OF ARGUMENT

This case is about one municipality trying to address the effects of global climate change through state tort law. But because climate change "presents a uniquely international problem of national concern," "[i]t is . . . not well-suited to the application of state law." *City of New York v. Chevron Corp.*, 993 F.3d 81, 85 (2d Cir. 2021). Indeed, the vast majority of courts have held that state-law tort claims against fossil-fuel companies seeking damages for the effects of global climate change are preempted by federal law. The same is true of the claims raised by the County here. But this Court need not even wade into the preemption issue because Bucks County's lawsuit raises a nonjusticiable political question, providing a separate and independent basis to affirm the Common Pleas Court's Order.

Were this Court to nonetheless reach the merits of this case and ultimately render a ruling in Bucks County's favor, it would have a crippling effect on Pennsylvania's economy, as virtually every business and individual within the Commonwealth either directly or indirectly is a source of greenhouse gas emissions—including the County itself—thus potentially subjecting them to liability under Bucks County's novel theory. "After all, we each emit carbon dioxide merely by breathing." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011) ("*AEP*"). This Court should not turn a blind eye to that reality.

Accordingly, this Court should "decline[] to interpose its own will above the will of the President or the Congress," *Chaser Shipping Corp. v. United States*, 649 F.Supp. 736, 739 (S.D.N.Y. 1986), and affirm the Common Pleas Court's dismissal of the County's lawsuit.

ARGUMENT

I. This Court Should Affirm the Common Pleas Court's Order Dismissing Bucks County's Complaint on Preemption Grounds

A. Federal Common Law and the Displacement Doctrine

Despite the proclaimed extinction of "federal general common law" in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), federal common law still exists today in certain areas of national concern. *AEP*, 564 U.S. at 410–21. One such area is the general subject of environmental law and, specifically, ambient or interstate air and water pollution. *Id.* Thus, federal common law can apply to transboundary pollution suits, and they are often based on a theory of public nuisance. *See*, *e.g.*, *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 855 (9th Cir. 2012). Under federal common law, a public nuisance is defined as "unreasonable interference with a right common to the general public." RESTATEMENT (SECOND) OF TORTS § 821B(1) (1979).

The right to assert a federal common-law public nuisance claim is not without limits, however. "Federal common law is used as a necessary expedient when Congress has not spoken to a particular issue." *Cnty. of Oneida, N.Y. v. Oneida*

Indian Nation of N.Y. State, 470 U.S. 226, 236–37 (1985) (internal citation and quotation marks omitted). Conversely, where Congress has addressed a particular federal issue by statute, "there is no gap for federal common law to fill," and the federal common law—and any implied right of action arising thereunder—are displaced. *Kivalina*, 696 F.3d at 856. The test for whether congressional legislation displaces federal common law is "whether the statute speak[s] directly to [the] question at issue." *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978).

B. The Federal Clean Air Act

The Clean Air Act, 42 U.S.C. §§ 7401–7515 (the "CAA" or "Act"), was originally signed into law by President Lyndon Johnson in 1963 as "the nation's first modern environmental law." *N.Y. Pub. Int. Research Grp. v. Whitman*, 321 F.3d 316, 319 (2d Cir. 2003). But it was not until seven years later, when Congress passed a round of significant amendments to the statute as part of the Clean Air Amendments of 1970, that the modern version of the CAA was born. *See* Pub. L. No. 91-604, 84 Stat. 1676. "[D]esigned to safeguard our precious air resources," *Connecticut v. EPA*, 696 F.2d 147, 151 (2d Cir. 1982)), this statutory scheme "regulates pollution-generating emissions from both stationary sources, such as factories and powerplants, and moving sources, such as cars, trucks, and aircrafts," *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014). "It is an intricate regulatory regime intended to 'protect and enhance the quality of the [n]ation's air resources so

as to promote the public health and welfare and the productive capacity of its population.'" *N.Y. Pub. Int. Research Grp.*, 321 F.3d at 319–20 (quoting 42 U.S.C. § 7401(b)(1)).

Consistent with that mandate, the federal Environmental Protection Agency ("EPA") was established in 1970 to implement programs to regulate pollution from both mobile and stationary sources under the Clean Air Act and other related statutes, *see Friends of the Earth v. Carey*, 535 F.2d 165, 168–69 (2d Cir. 1976), a role which was later interpreted to include the regulation of carbon dioxide and other greenhouse gases, *see Massachusetts v. EPA*, 549 U.S. 497, 528–32, (2007). The EPA pursues this directive through a variety of programs and rules. *See City of New York*, 993 F.3d at 87.

But the CAA does not make environmental policy an exclusively federal matter. Rather, the Act envisions extensive cooperation between federal and state authorities. *See* 42 U.S.C. §§ 7401, 7411(c)(1), (d)(1)–(2). Under this "cooperative federalis[t]" approach, *N.Y. Pub. Int. Research Grp.*, 321 F.3d at 320 (internal quotation marks omitted), states are given a meaningful role in regulating greenhouse gases and other emissions from sources within their borders, *see* 42 U.S.C. § 7401(a)(3) (delegating to states and localities the "primary responsibility" of preventing and controlling air pollution). Specifically, states are required to adopt plans to implement emission standards applicable to any existing source of air

pollution. *Id.* § 7411(d). Those plans are then subject to EPA approval. *Id.* While state standards must be at least as stringent as the corresponding federal requirements, states may promulgate more stringent standards if they so choose. *Id.* § 7416.

C. Courts Uniformly Have Held That the CAA, and the EPA Action It Authorizes, Displace Federal Common-Law Nuisance Claims Regarding Greenhouse Gas Emissions

Courts uniformly have held that the CAA, and the EPA action it authorizes, displace federal common-law nuisance claims regarding greenhouse gas emissions. In *AEP*, several States, the City of New York, and three private land trusts filed suit against five major electric power companies and the federal Tennessee Valley Authority, asserting federal common-law public nuisance claims. The United States Supreme Court held that the CAA, and the EPA action it authorizes, displace any federal-common law public nuisance abatement action involving greenhouse gas emissions because "the Act 'speaks directly' to emissions of carbon dioxide from the defendants' plants." 564 U.S. at 424. Therefore, "federal judges may [not] set limits on greenhouse gas emissions in [the] face of a law empowering [the] EPA to [do] the same." *Id.* at 429.

Similarly, in *Kivalina*, a city and a village filed a civil action against multiple oil, energy, and utility companies, seeking damages from the effect of greenhouse gas emissions under a federal common law claim of public nuisance. The United

States Court of Appeals for the Ninth Circuit held that the CAA displaces any federal common-law public nuisance damage action concerning greenhouse gas emissions on field preemption grounds. 696 F.3d at 857.

D. The Vast Majority of Courts Have Held That State-Law Nuisance Claims and Related Causes of Action Seeking Damages for the Effects of Global Climate Change are Similarly Preempted by the CAA

In the wake of *AEP*, several state and local governments have tried a different tact and filed suits against fossil-fuel companies under state tort law seeking damages for the effects of global climate change, including, among others, the State of California, *People ex rel. Bonta v. ExxonMobil Corp.*, No. CGC-23-609134 (Cal. Super. Ct. S.F. Cnty.); the State of Delaware, *State ex rel. Jennings v. BP Am. Inc.*, No. N20C-09-097 MMJ CCLD, 2024 WL 98888 (Del. Super. Ct.); the State of Rhode Island, *State v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.); the City of Baltimore, *Mayor & City Council of Balt. v. B.P. P.L.C.*, No. 24-C-18-004219 (Balt. Cir. Ct.), *aff'd* ___ A.3d ___, 2026 WL 809501 (M.D. 2026); the City of Charleston, South Carolina, *City of Charleston v. Brabham Oil Co.*, No. 2020-CP-10-03975 (S.C. Ct. Com. Pl., 9th Cir.); the City of New York, *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021); the City and County of Honolulu, *City & County of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1198 (Haw. 2023); Boulder County, Colorado, *Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, ___ P.3d ___, 2025 WL 1363355 (Colo. 2025); and the New Jersey Attorney General,

Platkin v. ExxonMobil Corp., No. MER-L-001797-22 (N.J. Super. Ct.). The vast majority of courts have rebuffed state-law tort claims as being preempted by federal law. *See City of Charleston*, No. 2020-CP-10-03975, Order Granting Defs.' J. Mot. to Dismiss, *slip op.* at 2–3 (collecting cases).

In *City of New York*, the City instituted a state-law tort suit against five oil companies to recover damages caused by their "admittedly legal commercial conduct in producing and selling fossil fuels around the world." 993 F.3d at 86. The United States Court of Appeals for the Second Circuit held that the CAA displaces the City's claims, concluding that "the City's claims, if successful, would operate as a *de facto* regulation on greenhouse gas emissions" and that "[s]uch a sprawling case is simply beyond the limits of state law." 993 F.3d at 92, 96. In reaching that determination, the Second Circuit rejected the City's self-serving characterization of its own claims:

> To hear the City tell it, this case concerns only "the production, promotion, and sale of fossil fuels," not the regulation of emissions. Though the City admits (as it must) that greenhouse gas emissions play a role in the case, the City insists that such emissions are only a link in "the causal chain" of the City's damages. So, because it is not seeking to directly penalize emitters, and because it seeks damages rather than abatement, the City argues that its claims will not result in the regulation of global emissions. In other words, we are told that this is merely a local spat about the City's eroding shoreline, which will have no appreciable effect on national energy or environmental policy. We disagree.
>
> *Artful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions*. It is precisely

> *because* fossil fuels emit greenhouse gases—which collectively "exacerbate global warming"—that the City is seeking damages. Put differently, the City's complaint whipsaws between disavowing any intent to address emissions and identifying such emissions as the singular source of the City's harm. But the City cannot have it both ways.

City of New York, 993 F.3d at 91 (internal citations omitted, first emphasis added, second emphasis in original).

Several state courts have reached the same result. In *Jennings*, for example, the State of Delaware filed a state-law tort action against several fossil-fuel companies seeking damages, due to out-of-state or global greenhouse emissions and interstate pollution. The Delaware Superior Court held that the claims were preempted by the CAA and thus "beyond the limits of Delaware law." 2024 WL 98888, at *9. In *Mayor & City Council of Baltimore*, the Circuit Court for Baltimore City rebuffed a similar suit against 25 national and international fossil-fuel companies, holding that "the Constitution's federal structure does not allow the application of state law claims like those presented by Baltimore," and that "[g]lobal pollution-based complaints were never intended by Congress to be handled by individual states." *Baltimore*, No. 24-C-18-004219, Mem. Op. & Order, *slip op.* at 11, 12.

The Maryland Supreme Court affirmed on appeal, reasoning, in relevant part, as follows:

> [W]e determine that state common law has never applied to the conduct alleged by the local governments. We determine that the local governments, through their various state law claims, are seeking to regulate air emissions beyond their jurisdictional boundaries. For over a century, the United States Supreme Court has held that cases involving regulation of interstate pollution arise under federal law. Under the United States Supreme Court's jurisprudence, we conclude that any state law claims are displaced by federal common law. Moreover, as the United States Supreme Court held in *American Electric Power Co., Inc. v. Connecticut*, 564 U.S. 410, 131 S.Ct. 2527, 180 L.Ed.2d 435 (2011), the Clean Air Act, 42 U.S.C. § 7401, *et seq.* (1970), displaces applicable federal common law. Applying the preemption framework adopted by the Supreme Court in *International Paper Company v. Ouellette*, 479 U.S. 481, 107 S.Ct. 805, 93 L.Ed.2d 883 (1987), we hold that that the Clean Air Act does not authorize the broad state law claims under its saving clause. Additionally, to the extent that the local governments seek recovery for harms caused by foreign emissions, foreign policy concerns would foreclose a federal common law action targeting emissions emanating from beyond our borders.

Mayor & City Council of Baltimore v. B.P. P.L.C., 2026 WL 809501, at *1.

Likewise, in *City of Charleston*, the City of Charleston filed a lawsuit against two dozen energy companies, retailers, and a pipeline, seeking to hold them liable under South Carolina tort law for harms allegedly arising from the effects of global greenhouse gas emissions and global climate change. The trial court dismissed the suit holding that federal law "precludes and preempts" the City of Charleston's claims in at least two respects: (1) the United States Constitution's structure precludes and preempts states from "using their own laws to resolve disputes involving interstate and international emissions;" and (2) "[t]he CAA . . . precludes Plaintiff's attempt to use South Carolina law to obtain damages for injuries allegedly

caused by innumerable worldwide sources of greenhouse gas emissions." No. 2020-CP-10-03975, Order Granting Defs.' J. Mot. to Dismiss, *slip op.* at 5–6.[2]

E. The County's State-Law Claims Against Defendants are Likewise Preempted by Federal Law

This Court, like the Common Pleas Court, must look beyond Bucks County's self-serving characterizations to see the true nature of its claims. *See City of New York*, 993 F.3d at 91. Though framed as state-law "deception" causes of action (whatever that means) (Br. of Appellant at 6),[3] the County's claims, in substance, are an attempt to regulate greenhouse gas emissions and recover for alleged harms caused by climate change. A cursory reading of Bucks County's Complaint reveals as much. In fact, the Court need not look any further than the first paragraph of the Complaint to determine what this lawsuit is really about: "This successful climate deception campaign had the purpose and effect of inflating and sustaining the market for fossil fuels, which—in turn—drove up greenhouse gas emissions, accelerated

[2] While the Hawaii Supreme Court and Colorado Supreme Court each reached the opposite conclusion, *see Sunoco*, 537 P.3d at 1198; *Suncor Energy USA*, 2025 WL 1363355, they both based their holdings on a legal fiction—specifically, that while federal common law preempted state common law claims concerning interstate pollution, that preemption evaporated once Congress enacted the CAA. *Sunoco*, 537 P.3d at 1198, 1203; *Suncor Energy USA*, 2025 WL 1363355, at *7. But the Second Circuit rejected that very argument in *City of New York*, 993 F.3d at 98–99, undermining, if not completely defeating, the persuasive value of those decisions. Moreover, the United States Supreme Court recently granted certiorari in *Suncor Energy USA*, ___ P.3d ___, 2026 WL 490537 (Feb. 23, 2026), further calling into question the propriety of the decisions of the Hawaii and Colorado Supreme Courts.

[3] Bucks County notes in its Complaint that it is not bringing a cause of action "for fraud or misrepresentation" against Defendants. (R.R. 22a (Compl. ¶ 12 n.6).) But absent such claims, it is unclear how the County has a viable claim against Defendants as there is no cause of action for "misinformation" or "deception" in Pennsylvania.

global warming, and brought about devastating climate change impacts to Bucks County." (R.R. 18a (Compl. ¶ 1).)

Moreover, Bucks County spends the first 24 paragraphs of its "Factual Allegations" section discussing how Defendants are purportedly responsible for causing and accelerating climate change and how this has impacted sea levels, average surface and ocean temperature, greenhouse gases, and other environmental metrics, (R.R. 53a–59a (Compl. ¶¶ 35–47),) which only reinforces that the focus of the Complaint is more on emissions than on "deception." Further, and as noted by the Common Pleas Court, the County uses the word "emissions" more than 100 times in its Complaint, while the words "deceptive" and "deception" are used a mere 39 times *combined*. (Br. of Appellant, Ex. A at 14.) And perhaps most important, Bucks County's own counsel conceded at oral argument that "it is [the] combination of current emissions and emissions from many years ago, that caused the damages alleged by Bucks County," not "the advertising, production, transport, and sale of Defendants' fossil fuels products in Bucks County." (*Id.* at 14–15.)

Finally, it is worth noting that Bucks County did not bring a claim under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1–2101-10, even though the statute contains a "catchall" provision that prohibits "[e]ngaging in any other fraudulent or *deceptive* conduct which creates a likelihood of confusion or misunderstanding." *Id.* §201-2(4)(xxi) (emphasis added).

If this were truly a "deception" case as Bucks County repeatedly professes, that would be the obvious vehicle to pursue the County's claims. Instead, all of the alleged harm is environmental (*i.e.*, climate impacts, infrastructure costs, resiliency measures), not consumer injury tied to any commercial dealing with any Defendant. That omission cements that this is an emissions case dressed up as something else.[4]

Because "[n]o amount of creative pleading can masquerade the fact that the local governments are attempting to utilize state law to regulate global conduct that is purportedly causing global harm" *Mayor & City Council of Baltimore*, 2026 WL 809501, at *20, this Court should affirm the Common Pleas Court's Order and likewise "join a growing chorus of state and federal courts across the United States, singing from the same hymnal, in concluding that the claims raised by Bucks County are not judiciable in any state court in Pennsylvania." (Br. of Appellant, Ex. A at 11.)

[4] Of course, had Bucks County brought a UTPCPL claim, the County would have run into a host of problems—from lack of commercial dealings with the named Defendants, *see*, *e.g.*, *Bowers v. T-Netix*, 837 A.2d 608, 613–614 (Pa. Commw. Ct. 2003) (plaintiff "statutorily precluded" from bringing UTPCPL claim against defendant he did not purchase services from), to lack of justifiable reliance, *Gregg v. Ameriprise Fin., Inc.*, 245 A.3d 637, 646 (Pa. 2021) (noting the oft-stated proposition that Section 201.92 of the UTPCPL "creates a causation element, which requires a private plaintiff to demonstrate justifiable reliance"), to untimeliness, *Gabriel v. O'Hara*, 534 A.2d 488, 494 (Pa. Super. Ct. 1987) (holding that a UPTCPL claim is subject to a six-year statute of limitation); (*see*, *e.g.*, RR 109a (Compl. ¶ 137 ("Beginning in 2015, journalists began to uncover mounting evidence of Defendants' campaign of deception.").))

II. This Court Should Separately Affirm the Common Pleas Court's Order Because This Case Presents a Nonjusticiable Political Question

But this Court need not wade into the preemption issue at all. The right-for-any-reason doctrine allows an appellate court to uphold an order of a lower court for any valid reason appearing from the record. *See, e.g.*, *Ario v. Ingram Micro, Inc.*, 965 A.2d 1194, 1200 (Pa. 2009). This jurisprudential doctrine stems from the focus of review as on the judgment or order before the appellate court, rather than any particular reasoning or rationale employed by the lower tribunal. *See, e.g.*, *Hader v. Coplay Cement Mfg. Co.*, 189 A.2d 271, 274 (Pa. 1963). The doctrine applies with full force here because it is apparent from the record that the County's lawsuit presents a nonjusticiable political question.

Issues of justiciability are threshold matters that must be resolved before a court may reach the merits of a dispute. *See*, *e.g.*, *Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 917 (Pa. 2013). The political question doctrine is one such limitation, constraining the judiciary's authority to adjudicate disputes constitutionally committed to a coordinate branch of government. The doctrine derives from foundational separation-of-powers principles and reflects the judiciary's obligation "to avoid an intrusion upon the prerogatives of a sister branch of government." *Consumer Part of Pa. v. Commonwealth*, 507 A.2d 323, 332 (Pa. 1986). A determination that an issue is a nonjusticiable political question is "essentially a matter of judicial abstention or restraint." *Jubelirer v. Singel*, 638

A.2d 352, 358 (Pa. Commw. Ct. 1994).

In determining whether a dispute concerns a non-justiciable political question, Pennsylvania courts have adopted the standard enunciated by the United States Supreme Court in *Baker v. Carr*, 369 U.S. 186 (1962). *See*, *e.g.*, *Jubelirer*, 638 A.2d at 358. There, the Court set forth the following contours of the political question doctrine:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker, 369 U.S. at 217. The presence of any one of these elements will prompt a court to refrain from considering the claim asserted. *Zemprelli v. Daniels*, 436 A.2d 1165, 1169 (Pa. 1981).

At least four of those elements are implicated here.

A. Bucks County's Lawsuit Runs Afoul of Demonstrable Constitutional Commitments Vested in Two Coordinate Branches of Government

The United States Constitution's structure generally precludes 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. Interstate matters are properly the domain of Congress, *see*, *e.g.*, *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012), while international matters are properly shared between the President of the United States, *see*, *e.g.*, *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319 (1936), and Congress, *see* U.S. CONST. art. 1, § 8.

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 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).

Thus, Bucks County's lawsuit runs afoul of demonstrable constitutional

commitments vested to two coordinate branches of government. On this basis alone, the instant matter presents a nonjusticiable political question.[5]

B. The Claims Raised by Bucks County Also Lack Judicially Discoverable and Manageable Standards

The claims raised by Bucks County also lack judicially discoverable and manageable standards. Start with liability. To determine liability, the factfinder would need to conclude that Bucks County has a "right" to the climate as it stood at some unspecified time in the past and then find not only that this idealized climate has changed, but that Appellants/Defendants caused that change through "unreasonable" action that deprived the County of that purported right. RESTATEMENT (SECOND) OF TORTS § 821B (1979). And as a remedy, the factfinder would need to impose a regulatory scheme on fossil fuel emissions already subjected to a comprehensive state-federal regulatory scheme by way of balancing the gravity of harm alleged by Bucks County against the utility of each Defendant's conduct. *See* Phillip Weiser, *Towards a Constitutional Architecture for Cooperative Federalism,* 79 N.C. L. Rev. 663, 668–70, 671–73 (2001). Such decisions have no principled or reasoned standards.

Causation fares no better. In every tort case, a plaintiff must show that the

[5] As noted by one or more Defendants, the structure of the United States Constitution also provides a separate basis to find that Bucks County's claims are preempted by federal law. *Amici* join, in full, with those arguments.

actions attributed to the defendant has caused the specified harm. *See*, *e.g.*, *Mietelski v. Banks*, 854 A.2d 579, 584 (Pa. Super. Ct. 2004) ("Since causation is an essential element of a negligence action, … the jury must be instructed that the defendant is liable *only* for those injuries that the defendant's negligence was a substantial factor in bringing about."). But Bucks County cannot satisfy that burden by claiming vague adverse climate effects from temperature increases as it does in the Complaint. (*See*, *e.g.*, R.R. 58a–59a (Compl. ¶ 47).) Rather, the County must prove that each Defendant made a specific misrepresentation to Bucks County or its citizens; if the alleged misrepresentation did not take place, there would have been a lower level of consumption of fossil fuels by the County and its citizens; and but-for the increase in fuel-consumption level, the alleged local adverse events would not have occurred. How on Earth (pun intended) can Bucks County establish such causation when it was not the *sale* of fossil fuels that caused the supposed harm to the County and its citizens, but the subsequent *combustion* of those fossil fuels by the County, its citizens, and other consumers worldwide? (*See* Br. of Appellant, Ex. A at 14–15.)

Damages pose perhaps an even bigger challenge. Under Bucks County's theory, the factfinder would have to calculate the total costs of global climate change to Bucks County for "past, ongoing, and future disruptions to the environment," (R.R. 60a (Compl. ¶ 51)), an immensely difficult task in and of itself. It would then require the factfinder to allocate those costs (assuming they are even quantifiable)

among the millions, if not tens or hundreds of millions, of companies, municipalities, and individuals worldwide that contributed to greenhouse gas emissions over the past few centuries. *Cf. City of New York*, 993 F.3d at 85 (explaining that, once released, greenhouse gases "can remain in the atmosphere for hundreds of years"). "Such a sprawling case is simply beyond the limits of state law." *Id.* at 92.

C. Further, it is Impossible to Decide the Issues Presented by Bucks County's Complaint Without Making an Initial Policy Determination of a Kind Clearly for Nonjudicial Discretion

It should not be lost on this Court that judges and juries "lack the scientific, economic and technological resources an agency can utilize in coping with issues of this order." *AEP*, 564 U.S. at 428. Among other issues, judges and juries "may not commission scientific studies or convene groups of experts for advice, or issue rules under notice-and-comment procedures inviting input by any interested person, or seek the counsel of regulators in the States where the defendants are located." *Id.* This reality only reinforces the need for judicial restraint.

Indeed, there should be no doubt that adjudicating these claims would require a complex "initial policy determination" that is more appropriately addressed by other branches of government, *Baker,* 369 U.S. at 217, as"[t]he issue of global climate change . . . has been discussed extensively during the last three Presidential campaigns; it is the subject of debate and negotiation in several international bodies; and numerous bills have been introduced in Congress over the last 15 years to

address the issue," *Control of Emissions from New Highway Vehicles and Engines,* Notice of Denial of Pet. for Rulemaking, 68 Fed. Reg. 52922, 52928 (Sept. 8, 2003), and"[u]navoidably, climate change raises important foreign policy issues, and it is the President's prerogative to address them." *Id.* at 52931.

D. Finally, The Issue of Climate Change Requires an Unusual Need for Unquestioning Adherence to a Political Decision Already Made

Finally, the issue of climate change requires an unusual need for unquestioning adherence to a political decision already made. As explained by the Second Circuit:

> To permit this suit to proceed under state law would further risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other. To be sure, global warming does not present a zero-sum contest between these ideals. One need look only at the burgeoning clean energy sector to see that these concepts can even be married. But compromises still must be struck. And as states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the Producers' global operations to a welter of different states' laws could undermine important federal policy choices.

City of New York, 993 F.3d at 93 (internal citations omitted).

In short, this case presents a classic nonjusticiable political question. Accordingly, this Court should invoke the right-for-any-reason doctrine and affirm the Common Pleas Court's Order on this separate and independent basis.

III. Were This Court to Nonetheless Reach the Merits and Issue a Ruling in Favor of the County, It Would Have a Crippling Effect on Pennsylvania's Economy

A reversal of the Common Pleas Court's Order would have a dire impact on the Commonwealth. Pennsylvania "consistently ranks among the world's leading energy producers." T.J. Rooney, "Pennsylvania is one of the world's top energy producers—so why can't it build pipelines?," HARRISBURG PATRIOT-NEWS (Apr. 9, 2026).[6] As a result, the oil and gas industry has had a significant impact on the Commonwealth's economy. A study conducted by PricewaterhouseCoopers found that, in 2019, Pennsylvania's oil and gas industry:

- Supported 480,300 total jobs (102,500 direct and 377,800 indirect), or 6.1% of the state's total employment;
- Provided $40.5 billion in labor income ($14.5 billion direct and $25.9 billion indirect) to Pennsylvania, or 7.9% of the state's total; and
- Contributed $78.4 billion to Pennsylvania gross domestic product ($39.4 billion direct and $38.9 billion indirect), or 9.7% of the state's total.

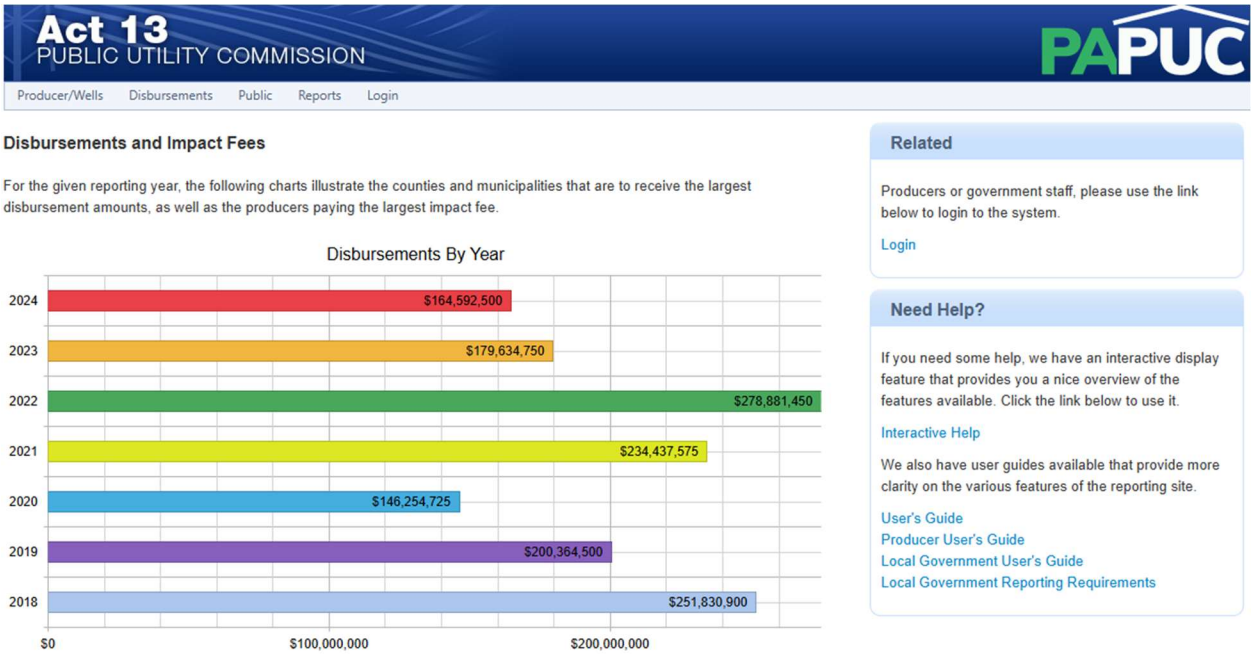
PricewaterhouseCoopers, "Impacts of the Oil and Natural Gas Industry on the US Economy in 2019" (July 2021).[7] PricewaterhouseCoopers conducted the same study in 2021 and found similar numbers. PricewaterhouseCoopers, "Impacts of the Oil

[6] *Available at*: https://www.pennlive.com/opinion/2026/04/pennsylvania-is-one-of-the-worlds-top-energy-producers-so-why-cant-it-build-pipelines-opinion.html.
[7] *Available at*: https://www.api.org/-/media/Files/Policy/American-Energy/PwC/API-PWC-Economic-Impact-Report.pdf

and Natural Gas Industry on the US Economy in 2021" (Apr. 2023) (finding that, in 2021, the oil and gas industry in Pennsylvania supported 423,700 total jobs (93,060 direct and 330,640 indirect) or 5.6% of Pennsylvania's total employment; provided $40.3 billion in labor income ($14.3 billion direct and $26.0 billion indirect) to Pennsylvania, 7.5% of the state's total; and contributed $75 billion to Pennsylvania's total gross domestic product ($35.9 billion direct and $39.1 billion indirect), 8.9% of the state's total).[8]

The economic impact of the oil and gas industry on Pennsylvania extends beyond those figures. Through the industry's payment of impact and spud fees, the Pennsylvania Public Utility Commission has disbursed nearly $1.5 billion to counties and municipalities all across Pennsylvania since 2018, as shown below:

[8] *Available at*: https://www.api.org/-/media/files/policy/american-energy/pwc/2023/api-pwc-economic-impact-report-2023.



Pennsylvania Public Utility Commission, Act 13, Disbursements and Impact Fees, https://www.act13-reporting.puc.pa.gov/Modules/PublicReporting/Overview.aspx (last visited Apr. 12, 2026). Those funds, in turn, have been used by counties and municipalities for public infrastructure construction, storm water/sewer systems, emergency preparedness/public safety, environmental programs, information technology, social services, and other key initiatives. *Id.* And although the figures are not publicly available, landowners are paid at least 12.5% of the value of the oil or gas removed or recovered from their property, 58 P.S. § 33.3, providing a vital source of additional income to countless Pennsylvanians.

But all of those economic benefits to the Commonwealth, its political subdivisions, and its citizens will be lost if this Court allows Bucks County to proceed with this litigation. Bucks County's theory of liability is virtually limitless

as it seeks to hold Defendants liable for their alleged "deception campaign to conceal and misrepresent the risks of fossil fuel consumption" dating back to "at least the 1950s." (Br. of Appellant at 4; R.R. 18a (Compl. ¶ 1).) "Similar suits could be mounted . . . against thousands or hundreds or tens of other defendants." *AEP*, 564 U.S. at 428–29.

A South Carolina state court recently elaborated on this point:

> 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.

City of Charleston, No. 2020-CP-10-03975, Order Granting Defs.' J. Mot. to Dismiss, *slip op.* at 3–4; *see also Control of Emissions from New Highway Vehicles and Engines,* Notice of Denial of Pet. for Rulemaking, 68 Fed. Reg. 52922, 52928 (stating that, because "[v]irtually every sector of the U.S. economy is either directly or indirectly a source of [greenhouse gas] emissions," the EPA believes that "an effort to impose controls on U.S. [greenhouse gas] emissions would have far greater economic and political implications than FDA's attempt to regulate tobacco").

Consequently, were this Court to reach the merits and issue a ruling in favor of Bucks County, it would have a crippling effect on Pennsylvania's economy. This further militates in favor of affirmance.

CONCLUSION

For the foregoing reasons and the additional reasons set forth in the Briefs submitted by Appellees/Defendants, *Amici Curiae* Pennsylvania Coalition for Civil Justice Reform, Pennsylvania Chamber of Business and Industry, Pennsylvania Independent Oil & Gas Association, Marcellus Shale Coalition, and National Federation of Independent Business Small Business Legal Center, Inc. respectfully request that this Court affirm the Bucks County Court of Common Pleas' May 16, 2025 Order dismissing Appellant Bucks County's Complaint with prejudice.

Respectfully submitted,

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Dated: April 15, 2026

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY, PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION, MARCELLUS SHALE COALITION, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. IN SUPPORT OF APPELLEES/DEFENDANTS complies with the word-count limit set forth in Pa.R.A.P. 531(b)(3). Based on the word-count function of the word processing system used to prepare the Brief, the substantive portions of the Brief (as required by Pa.R.A.P. 2135(b) and (d)), contain 6,606 words.

I also certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Casey Alan Coyle

Date: April 15, 2026 Casey Alan Coyle, Esquire

PROOF OF SERVICE

I hereby certify that, on this 15th day of April, 2026, I am caused to be served the foregoing BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY, PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION, MARCELLUS SHALE COALITION, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. IN SUPPORT OF APPELLEES/DEFENDANTS upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

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