No. 158, Original

In the Supreme Court of the United States

STATE OF ALABAMA, ET AL., PLAINTIFFS

v.

STATE OF CALIFORNIA, ET AL.

ON MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the motion for leave to file a bill of complaint should be denied.

STATEMENT

Private energy companies that produce coal, oil, and natural gas are defendants in numerous pending state-court suits brought by various States and local governments. Each suit alleges a set of claims arising under the law of a particular State. Although the claims differ in various respects, including in their legal basis (statutory or common law) and the scope of relief requested, many of the claims seek to hold the companies liable for allegedly deceiving the public about the dangers of using their fossil-fuel products. See, *e.g.*, *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230, 234 (2021). In general, those claims allege that the companies have

known for decades that greenhouse-gas emissions from the use of their fossil-fuel products would contribute to climate change; that instead of warning consumers about those consequences, the companies engaged in deceptive marketing by concealing and mispresenting the dangers of using their fossil-fuel products; and that as a result of that deception, consumers used more of the companies' fossil-fuel products than they otherwise would have, causing a substantial portion of the injuries that the States and municipalities have suffered because of climate change. See Br. in Opp. 2-6.

Invoking this Court's original jurisdiction under Article III and 28 U.S.C. 1251(a)(1), other States—the plaintiff States here—have filed a motion for leave to file a bill of complaint seeking to halt some, though not all, of the pending state-court suits against the private energy companies. Compl. ¶¶ 1, 39. The suits that the plaintiff States challenge are five suits filed by the defendant States here. Compl. ¶¶ 70-84. Each suit was filed by a different State in a different state court, alleging multiple different violations of that State's statutory or common law. See Br. in Opp. App. 1a-782a. Each suit is still in its early stages. See Br. in Opp. 7-8.

The plaintiff States ask this Court to enjoin, and declare unlawful, each of the state-court suits filed by the defendant States. Compl. 36-37. In support of that request, the plaintiff States challenge the validity of the various state-law claims asserted in those suits on three grounds. First, the plaintiff States allege that the state-law claims pending in state court violate the Constitution's horizontal separation of powers to the extent those claims seek to regulate activity beyond the defendant States' borders. See Compl. ¶¶ 85-88; Br. in Support 6-12. Second, the plaintiff States allege that the

state-law claims intrude into an area governed by federal common law. See Compl. ¶¶ 89-93; Br. in Support 13-20. And third, the plaintiff States allege that the state-law claims violate the Commerce Clause to the extent they seek to regulate extraterritorially. See Compl. ¶¶ 94-98; Br. in Support 20-22.

DISCUSSION

This is a suit to enjoin other suits, which are pending in various state courts. Those other suits were brought by the defendant States in their own courts against private energy companies and assert many different claims related to the companies' fossil-fuel products. The plaintiff States request leave to file a bill of complaint challenging the validity of the defendant States' state-law claims on several grounds. For reasons explained in a brief filed simultaneously with this one, there is no merit to the contention that the federal common law of transboundary air pollution governs (and therefore precludes) the defendant States' claims. U.S. Amicus Br. at 14-17, *Sunoco LP* v. *Honolulu*, No. 23-947 (Dec. 10, 2024).[1] But the private energy companies may ultimately prevail on their contention that the Constitution itself precludes some or all of those claims to the extent they rely on conduct occurring outside Hawaii. *Id.* at 6-7.

This case, however, is not the right vehicle for addressing the validity of the defendant States' claims. First, the plaintiff States lack Article III standing to

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[1] The petitions for writs of certiorari in *Sunoco LP* v. *Honolulu*, No. 23-947, and *Shell PLC* v. *Honolulu*, No. 23-952, seek review of an interlocutory ruling by the Hawaii Supreme Court allowing a suit brought by local governmental entities against private energy companies to go forward. In a brief filed simultaneously with this one in both of those cases, the United States has expressed the view that those certiorari petitions should be denied.

challenge the validity of those claims, which are still pending in state court. Second, the plaintiff States' complaint does not satisfy this Court's usual criteria for hearing an original action—both because the defendant States' claims directly affect only the private energy companies' interests, and because the pending state-court suits are adequate (indeed, better) forums for addressing the validity of the claims against those companies. And third, the plaintiff States' complaint faces additional procedural obstacles that, at the very least, would require resolution and would complicate this Court's ability to reach the merits. Accordingly, the motion for leave to file a bill of complaint should be denied.

A. The Plaintiff States Lack Article III Standing

This Court routinely denies leave to file a bill of complaint because a case does not present an Article III case or controversy. See, *e.g.*, *Texas* v. *Pennsylvania*, 141 S. Ct. 1230, 1230 (2020) (denying leave to file "for lack of standing under Article III"); *Pennsylvania* v. *New Jersey*, 426 U.S. 660, 664 (1976) (per curiam) (denying leave to file because "the defendant State" had not "inflicted any injury upon the plaintiff States"); *Massachusetts* v. *Missouri*, 308 U.S. 1, 17 (1939) (denying leave to file because there was no "controversy in the constitutional sense"); see also *Texas* v. *California*, 141 S. Ct. 1469, 1470 n.1 (2021) (Alito, J., dissenting from denial of motion for leave to file complaint) (noting the Court's history of denying States leave to file "for lack of standing and on account of other justiciability defects"). The Court should deny leave here because the plaintiff States lack standing to bring this suit and thus cannot establish the requisite Article III case or controversy.

1. The judicial power vested by Article III extends only to "Cases" and "Controversies." U.S. Const. Art.

III, § 2, Cl. 1; see U.S. Const. Art. III, § 2, Cl. 2 (providing that "[i]n all Cases * * * in which a State shall be Party, the supreme Court shall have original Jurisdiction"). "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 341 (2006). Disputes "between two or more States" are no exception. U.S. Const. Art. III, § 2, Cl. 1. They, too, must present a proper case or controversy to fall within this Court's jurisdiction. See *ibid.*; *Maryland* v. *Louisiana*, 451 U.S. 725, 735-736 (1981); *Pennsylvania* v. *New Jersey*, 426 U.S. at 663; *Texas* v. *Florida*, 306 U.S. 398, 405 (1939).

"A proper case or controversy exists only when at least one plaintiff 'establishes that [it] has standing to sue.'" *Murthy* v. *Missouri*, 603 U.S. 43, 57 (2024) (brackets and citation omitted). To establish standing, "a plaintiff must demonstrate (i) that [it] has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 380 (2024). With respect to the first requirement, the asserted "injury must be actual or imminent, not speculative—meaning that the injury must have already occurred or be likely to occur soon." *Id.* at 381; see *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). Similarly, with respect to the second requirement, "the 'line of causation between the illegal conduct and injury'—the 'links in the chain of causation'—must not be too speculative or too attenuated." *Alliance for Hippocratic Medicine*, 602 U.S. at 383 (citation omitted); see *Clapper*, 568 U.S. at 410-411.

Here, the plaintiff States allege that the defendant States are unlawfully "attempt[ing] to use their laws and their courts to impose liability on traditional energy companies." Compl. ¶ 42. The plaintiff States' theory of how those state-court suits could injure the plaintiff States or their citizens rests on the following contingencies: (1) the defendant States, in each of their respective state-court suits, will succeed in proving the state-law elements of their various claims; (2) the state courts adjudicating those suits will reject all of the private companies' defenses, including on the federal issues that the plaintiff States seek to raise here; (3) the state courts will enter final judgments "impos[ing] liability" on the private companies on the defendant States' claims, *ibid.*; (4) this Court will allow those judgments to stand, see 28 U.S.C. 1257(a); (5) the judgments will have the effect of "enjoin[ing]" the "sale of certain energy products," Compl. ¶ 45, or "impos[ing] a *de facto* carbon tax by extracting extensive monetary damages," Compl. ¶ 33; (6) those remedies will "increase the cost to produce, distribute, and procure energy" within the plaintiff States, Compl. ¶ 69; (7) the increased costs will "make energy less affordable and less available," Compl. ¶ 48; and (8) the plaintiff States and their citizens will suffer economic harm as a result, see Compl. ¶¶ 45, 46, 48 (alleging that the plaintiff States would lose tax revenue, would lose revenue from activities on the Outer Continental Shelf, and would incur higher energy costs); Compl. ¶¶ 47, 69 (alleging that the plaintiff States' citizens would face lower wages and employment in energy-dependent industries and increased prices for electricity and other goods and services).

That chain of possibilities is too speculative and too attenuated to establish standing. See *Alliance for Hip-*

pocratic Medicine, 602 U.S. at 390; *Clapper*, 568 U.S. at 414. The state-court suits are still in their early stages. See Br. in Opp. 7-8. The most that can be said is that a state court "might" find the private companies liable on the defendant States' claims. Br. in Support 23. But even then, those directly affected would be the private companies, not the plaintiff States or their citizens. And the effect of any final judgment would be contingent on this Court allowing the judgment to stand. Yet the plaintiff States provide no explanation why, if the federal issues they seek to raise here are meritorious and worthy of this Court's attention (as they contend), and if those federal issues would prove to be dispositive of the state-court litigation, the Court would not simply grant certiorari to review such a final judgment against the private companies. See 28 U.S.C. 1257(a).

The rest of the chain of causation is just as speculative and attenuated. The plaintiff States allege that the "remedies" sought in the state-court suits "would necessarily decrease" the "promotion" and "sale" of "certain energy products." Compl. ¶¶ 71, 79; see Br. in Support 22 ("If the [private companies] want to avoid all liability, then their only solution would be to cease global production altogether.") (citation omitted). But the defendant States maintain that their state-court suits target only the allegedly deceptive marketing of fossil-fuel products —not the products' promotion or sale in the absence of any deception. Br. in Opp. 19; see *id.* at 9, 18-20. According to the defendant States, the companies "can produce and sell as much fossil fuel as they are able without incurring any additional liability," "just so long as they provide adequate warnings and stop deceiving the public." *Id.* at 19 (citation omitted). The plaintiff States' prediction about what, if any, remedies a state court might

order—let alone what future effects such remedies might have "downstream"—is speculative. *Alliance for Hippocratic Medicine*, 602 U.S. at 383.

The uncertainty is particularly pronounced with respect to the nature, and thus to the extraterritorial reach and effect, of any remedies that a state court might order. The defendant States' claims vary within and across the five state-court suits, and not all of the state-law claims or proposed remedies would necessarily implicate conduct occurring outside of the defendant States. See p. 16, *infra*. If the state court ordered a remedy limited to marketing practices within the defendant State itself, that remedy would not necessarily have any of the alleged downstream economic effects on the plaintiff States.

2. The plaintiff States' counterarguments lack merit. The plaintiff States contend that "[b]y asserting extraterritorial power, [the defendant States] have already violated State sovereignty." Reply Br. 8 (citing Compl. ¶¶ 42-44). But the defendant States have only asserted claims in court. See Br. in Opp. App. 1a-782a. Those claims represent mere litigating positions, which do not bind the state courts. See, *e.g.*, *Virginia* v. *American Booksellers Ass'n*, 484 U.S. 383, 395 (1988). And the state courts have yet to adjudicate the claims or reject the federal defenses that the plaintiff States here contend would be applicable, let alone impose any liability. See Br. in Opp. 7-8. Thus, even accepting for present purposes that "[i]mposing liability under state law is a form of regulation," Compl. ¶ 43, there has been no such regulation—and thus no possibility that the plaintiff States have "already" been injured, Reply Br. 8.

That alone distinguishes this case from *Wyoming* v. *Oklahoma*, 502 U.S. 437 (1992), *Maryland* v. *Louisiana*,

supra, and *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923), on which the plaintiff States rely, see Compl. ¶¶ 45, 49-50. In each of those cases, the plaintiff States had standing to challenge another State's regulation embodied in statutes that had already gone into effect. See *Wyoming* v. *Oklahoma*, 502 U.S. at 445 (involving a challenge to an Oklahoma statute that was already "effective"); *Maryland* v. *Louisiana*, 451 U.S. at 743 (involving a challenge to a Louisiana tax that already had "to be paid"); *Pennsylvania* v. *West Virginia*, 262 U.S. at 590 (involving a challenge to a West Virginia statute that had already gone "into effect"). Here, in contrast, there is no "regulation" in effect, even in the form of an "[i]mposi[tion]" of "liability," and it is speculative whether there ever will be. Compl. ¶ 43; see pp. 5-8, *supra*. The plaintiff States have cited no precedent for finding standing in a case like this, in which the plaintiff's asserted injury is premised on the defendant's "attempts to * * * impose liability on" other parties in other suits. Compl. ¶ 42.

The plaintiff States emphasize (Reply Br. 8) that they assert standing not only "on their own behalf," but also as *parens patriae* "on behalf of their citizens." But any injury to their citizens is just as speculative and attenuated as any injury to the plaintiff States themselves. See pp. 5-8, *supra*. The fact that the plaintiff States also assert standing as *parens patriae* therefore does not change the bottom line: The plaintiff States lack Article III standing.

B. The Complaint Does Not Satisfy This Court's Usual Criteria For Hearing Original Actions

The Constitution grants this Court original jurisdiction over "all Cases * * * in which a State shall be Party." U.S. Const. Art. III, § 2, Cl. 2. By statute, Con-

gress has granted the Court "original and exclusive jurisdiction of all controversies between two or more States." 28 U.S.C. 1251(a). Although that jurisdiction is exclusive, the Court has "interpreted the Constitution and [Section] 1251(a) as making [its] original jurisdiction 'obligatory only in appropriate cases,' and as providing [the Court] 'with substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court.'" *Mississippi* v. *Louisiana*, 506 U.S. 73, 76 (1992) (citations omitted).

This Court exercises its discretionary power to sit as a tribunal of first and last resort only "sparingly." *Mississippi* v. *Louisiana*, 506 U.S. at 76 (citation omitted). "Determining whether a case is 'appropriate' for [the Court's] original jurisdiction involves an examination of two factors." *Id.* at 77. First, the Court "look[s] to the 'nature of the interest of the complaining State,' focusing on the 'seriousness and dignity of the claim.'" *Ibid.* (citations omitted). Second, the Court "explore[s] the availability of an alternative forum in which the issue tendered can be resolved." *Ibid.* Neither factor supports exercising jurisdiction here.[2]

[2] The plaintiff States invite (Br. in Support 26-27) this Court to reconsider its longstanding precedent holding that the exercise of original jurisdiction in controversies between States under 28 U.S.C. 1251(a) is discretionary. See *Arizona* v. *New Mexico*, 425 U.S. 794, 796-797 (1976) (per curiam). The Court has recently declined similar invitations and opportunities. See, *e.g.*, *Missouri* v. *New York*, No. 159, Orig., 2024 WL 3643573 (Aug. 5, 2024); *New Hampshire* v. *Massachusetts*, 141 S. Ct. 2848 (2021) (No. 154, Orig.); *Texas* v. *California*, *supra* (No. 153, Orig.); *Texas* v. *Pennsylvania*, *supra* (No. 155, Orig.); *Arizona* v. *California*, 140 S. Ct. 684 (2020) (No. 150, Orig.). The plaintiff States identify no sound basis to take a different course here. The Court has explained that its interpretation of Article III and the statute is grounded in the historical understand-

1. The only interests directly at stake are the interests of private energy companies

a. The Constitution grants this Court original jurisdiction "as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force." *North Dakota* v. *Minnesota*, 263 U.S. 365, 372-373 (1923). The Court therefore exercises that jurisdiction only in cases of sufficient "seriousness and dignity." *Mississippi* v. *Louisiana*, 506 U.S. at 77 (citation omitted). At one end of the spectrum are "dispute[s] between States of such seriousness that [they] would amount to *casus belli* if the States were fully sovereign." *Ibid.* (citation omitted). A dispute of that kind is "[t]he model case for invocation of this Court's original jurisdiction." *Ibid.* (citation omitted). At the other end of the spectrum are suits brought "in the name of the State but in reality for the benefit of particular individuals," even though "the State asserts an economic interest in the claims and declares their enforcement to be a matter of state policy." *Oklahoma ex rel. Johnson* v. *Cook*, 304 U.S. 387, 394 (1938). Suits of that kind—which are, at bottom, "suits to redress private grievances"—do not warrant

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ing that original jurisdiction over suits between States arose from the " 'extinguishment of diplomatic relations between the States' " and was therefore intended by "the framers of the Constitution" to be available only "when the necessity was absolute." *Louisiana* v. *Texas*, 176 U.S. 1, 15 (1900) (citation omitted). The Court's interpretation also finds support in the equitable nature of a suit for injunctive or declaratory relief; the structural limits on the Court's ability "to assume the role of a trial judge," *South Carolina* v. *North Carolina*, 558 U.S. 256, 278 (2010) (Roberts, C.J., concurring in the judgment in part and dissenting in part); the Court's duty to attend to its appellate docket, see *Illinois* v. *Milwaukee*, 406 U.S. 91, 93-94 (1972); and the doctrine of stare decisis, see *United States* v. *Maine*, 420 U.S. 515, 527-528 (1975).

the Court's exercise of original jurisdiction. *Pennsylvania* v. *New Jersey*, 426 U.S. at 665.

The suit in this case challenges the defendant States' "attempts to use their laws and their courts to impose liability on traditional energy companies." Compl. ¶ 42. As the very first paragraph of the complaint makes clear, the suit seeks to protect those private companies from "ruinous liability and coercive remedies." Compl. ¶ 1. Thus, despite being brought "in the name[s] of" the plaintiff States, this suit is "in reality" one "for the benefit of" the private companies. *Cook*, 304 U.S. at 394.

b. The plaintiff States assert that this suit also implicates their sovereign and quasi-sovereign (or *parens patriae*) interests because, if the defendant States succeed in imposing liability on the companies, there will be "downstream . . . economic injuries" to the plaintiff States and their citizens. Reply Br. 8 (citation omitted); see Compl. ¶¶ 41, 45-48, 69. That assertion of downstream "economic interest[s]," however, does not change the fundamental nature of this suit. *Cook*, 304 U.S. at 394. As already noted, it is entirely speculative whether or to what extent the defendant States' attempts to impose liability on the companies will even succeed—let alone whether the remedy granted would have any substantial downstream economic effects on the plaintiff States and their citizens. See pp. 5-8, *supra*. The only interests directly at stake here are therefore the companies' private interests in avoiding "liability and coercive remedies." Compl. ¶ 1.

For that reason, the plaintiff States' reliance (Reply Br. 3) on *Maryland* v. *Louisiana*, *supra*, and *Pennsylvania* v. *West Virginia*, *supra*, is misplaced. *Maryland* v. *Louisiana* involved a Louisiana state tax on "certain uses of natural gas brought into Louisiana." 451 U.S. at

728. Maryland and other States invoked this Court's original jurisdiction to challenge the tax as unconstitutional. *Id.* at 734. At the time the plaintiff States filed their complaint, the tax had already been levied on private "pipeline companies," *id.* at 736; see *id.* at 731, 743, and it was "clear" that those companies had "[i]n fact" "passed on the cost of the [tax] to their customers," *id.* at 737; see *id.* at 736, 739. Thus, the tax "directly affected" not just the pipeline companies, but also their customers, which included the plaintiff States and their citizens. *Id.* at 737; see *id.* at 739. In invoking this Court's original jurisdiction, the plaintiff States could therefore claim to be vindicating their own as well as their citizens' interests—not merely those of the private companies. *Id.* at 736-739.

The circumstances of *Pennsylvania* v. *West Virginia* were similar. That case involved a West Virginia statute that required private pipeline companies in the State "to meet the needs of all local customers before shipping any [natural] gas interstate." *Maryland* v. *Louisiana*, 451 U.S. at 731; see *Pennsylvania* v. *West Virginia*, 262 U.S. at 593. Pennsylvania and Ohio invoked this court's original jurisdiction to challenge the statute as unconstitutional. *Pennsylvania* v. *West Virginia*, 262 U.S. at 581-583. At the time the plaintiff States filed their complaints, the statute had already gone into effect, *id.* at 590, and it was "clear" that the statute "directly and immediately would work a large curtailment of the volume of gas moving into the complainant States," *id.* at 594. Thus, the statute would directly affect not just the pipeline companies, but also the plaintiff States and their citizens, whose supply of natural gas would be largely cut off. *Id.* at 591-592, 594-595, 597. As in *Maryland* v. *Louisiana*, the plaintiff States could therefore claim to

be vindicating their own as well as their citizens' interests —not just the companies'—in invoking this Court's original jurisdiction. See *id.* at 591 ("The attitude of the complainant States is not that of mere volunteers attempting to vindicate the freedom of interstate commerce or to redress purely private grievances.").

The plaintiff States here can make no similar claim because neither their own asserted interests nor the asserted interests of their citizens are directly at stake. See *Cook*, 304 U.S. at 396 (requiring a plaintiff State to "show a direct interest"). The conduct that this suit challenges—*i.e.*, the defendant States' attempts in their own courts to impose liability on private energy companies, Compl. ¶ 42—directly affects only the companies themselves as parties to those suits, as would any remedy if the suits were successful. This Court has previously declined to exercise jurisdiction when the injury that the plaintiff asserts is not directly caused by the defendant State. See, *e.g.*, *Pennsylvania* v. *New Jersey*, 426 U.S. at 663 (per curiam); *Louisiana* v. *Texas*, 176 U.S. 1, 15-16, 18 (1900); see also *Florida* v. *Mellon*, 273 U.S. 12, 18 (1927). This case likewise does not warrant the Court's exercise of original jurisdiction.

2. The very suits that the complaint seeks to enjoin are better forums for resolving the issues raised

a. In deciding whether to hear an original case, this Court also considers the "availability of an alternative forum in which the issue tendered can be resolved." *Mississippi* v. *Louisiana*, 506 U.S. at 77. That approach reflects the Court's appreciation that its original jurisdiction is "so delicate and grave" that it should be invoked only "when the necessity [i]s absolute." *Louisiana* v. *Texas*, 176 U.S. at 15. The Court's approach also reflects the practical reality that the Court is structured

"as an appellate tribunal, ill-equipped for the task of fact-finding." *Ohio* v. *Wyandotte Chems. Corp.*, 401 U.S. 493, 498 (1971). And the Court's approach prevents "abuse of the opportunity to resort to its original jurisdiction." *Massachusetts* v. *Missouri*, 308 U.S. 1, 19 (1939).

Here, the plaintiff States seek to challenge the validity of the defendant States' suits in their own state courts. See pp. 2-3, *supra*. But the state courts themselves can resolve any challenges to the validity of the suits before them, including under the Constitution and federal laws. In fact, the private energy companies defending against those suits have already raised the same federal challenges in pending state-court proceedings. See Br. in Opp. 12-13. If those challenges succeed, the plaintiff States' view of the law "will have been vindicated." *Arizona* v. *New Mexico*, 425 U.S. 794, 797 (1976) (per curiam). And if the challenges fail, the companies may seek this Court's review of a final state-court judgment. 28 U.S.C. 1257(a). The very suits that the plaintiff States seek to enjoin are thus adequate forums for resolving the federal issues raised in the plaintiff States' complaint.

Indeed, the state-court suits are not just adequate, but superior, forums for resolving those issues in the first instance. As noted, the States that are parties before this Court dispute the nature of the defendant States' claims in each of the pending state-court suits against private energy companies. See p. 7, *supra*. The plaintiff States characterize the claims as seeking to enjoin the "promotion" and "sale" of "certain energy products." Compl. ¶¶ 71, 79; see Compl. ¶ 45 (characterizing the defendant States' claims as seeking to "enjoin[] or otherwise diminish[]" the "sale of certain energy products"). In contrast, the defendant States characterize

their claims as seeking to prevent only "consumer deception." Br. in Opp. 19. To resolve that dispute about the nature of the defendant States' claims, this Court would need to take on the role of a state trial court, parsing the allegations in all five complaints, each of which involves a different State's law. See Br. in Opp. App. 1a-782a (reproducing the five complaints). But that task is far better performed in the first instance by the state courts themselves, which have already begun to examine the nature of the defendant States' claims. See Br. in Opp. 7-8.

Moreover, even if the defendant States' claims rested on the same basic theory of deceptive marketing, the claims might not all implicate the plaintiff States' constitutional concerns to the same degree. For example, a State's false-advertising or unfair-competition statute might reach only deceptive marketing in, or originating from, that State; if so, a claim based on that statute might not implicate the plaintiff States' concerns about extraterritorial regulation. See, *e.g.*, Br. in Opp. App. 193a-194a (alleging a violation of California's Unfair Competition Law); *Sullivan* v. *Oracle Corp.*, 254 P.3d 237, 248 (Cal. 2011) (holding that "the presumption against extraterritoriality" applies with "full force" to California's Unfair Competition Law). But determining the reach of state law is the province of state courts. See *Mullaney* v. *Wilbur*, 421 U.S. 684, 691 (1975) (reaffirming that "state courts are the ultimate expositors of state law"). And there is no reason for this Court to address the constitutionality of the defendant States' claims before their courts have addressed those state-law matters.

b. The plaintiff States fail to show that the courts of the defendant States are inadequate forums for resolving the constitutional and other issues that they raise in

their complaint. First, the plaintiff States assert that they cannot trust the state courts to be "fair." Br. in Support 2; see Reply Br. 11 (describing their sister States' courts as "potentially hostile"). But "state courts have the solemn responsibility equally with the federal courts" to enforce the Constitution and federal laws. *Trainor* v. *Hernandez*, 431 U.S. 434, 443 (1977) (citation omitted). The plaintiff States lack any legitimate basis for questioning the ability of their sister States' courts to do so, just as the defendant States would lack any legitimate basis for questioning the plaintiff States' courts if the shoe were on the other foot. And if the private energy companies are dissatisfied with the state courts' resolution of their federal defenses, this Court's review of final state-court judgments would remain available under 28 U.S.C. 1257(a).

Second, the plaintiff States contend (Br. in Support 24) that the state courts are inadequate forums because only this Court can hear controversies between States. But the relevant question is whether "the *issues* tendered here may be litigated" in the pending state-court suits. *Mississippi* v. *Louisiana*, 506 U.S. at 77 (citation omitted). The answer is plainly yes: Those very issues may be litigated, and are in fact being litigated, in those ongoing suits. See p. 15, *supra*.

Third, the plaintiff States contend (Reply Br. 9) that their interests are not adequately represented by the private energy companies litigating the state-court suits. But the companies are the ones directly affected by the defendant States' "attempts" to "impose liability on [them]." Compl. ¶ 42. The plaintiff States, in contrast, have "not suffered any direct harm," and it is "highly uncertain" whether the interests they assert will be "adversely affected" at all. *Maryland* v. *Louisiana*, 451 U.S.

at 743; see pp. 5-8, *supra*. The companies are therefore the most natural parties to be litigating the issues raised. See *Arizona* v. *New Mexico*, 425 U.S. at 797-798 (finding a "pending state-court action" to be an "appropriate forum" for challenging a state tax where the "legal incidence" of the challenged tax fell directly on the parties to the state-court action).

Fourth, the plaintiff States contend that the state courts are inadequate forums because the plaintiff States "seek not only the termination of ongoing litigation," but also "relief prohibiting *any* attempts to restrict traditional energy usage." Reply Br. 10 (emphasis added). But the plaintiff States' complaint does not identify any such attempts other than the pending state-court suits, see Compl. ¶¶ 70-84; their suggestion that there may be other such attempts in the future is entirely "speculative," *Alliance for Hippocratic Medicine*, 602 U.S. at 381; and even if there were such future attempts, the plaintiff States provide no legitimate reason to doubt the state courts' ability to address the validity of such attempts, see *Trainor*, 431 U.S. at 443.

C. The Complaint Faces Additional Procedural Obstacles

This Court also ordinarily denies leave to file a bill of complaint if a case faces other "threshold barriers." *Federal Republic of Germany* v. *United States*, 526 U.S. 111, 112 (1999) (per curiam). The Court need not definitively resolve such threshold issues before denying leave to initiate an original case; even serious "doubt[s]" can justify declining to exercise jurisdiction. *Ibid.* Here, the relief sought in the plaintiff States' complaint raises questions about the possibility of two additional procedural obstacles—the Anti-Injunction Act, 28 U.S.C. 2283, and *Younger* abstention—that at a minimum the Court would need to address if it were to entertain this action.

1. The Anti-Injunction Act provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. 2283; see 28 U.S.C. 451 (defining "[t]he term 'court of the United States,'" "[a]s used in this title," to "include[] the Supreme Court of the United States"). The "Act's core message is one of respect for state courts." *Smith* v. *Bayer Corp.*, 564 U.S. 299, 306 (2011). "The Act broadly commands that those tribunals 'shall remain free from interference by federal courts,'" "subject to only 'three specifically defined exceptions.'" *Ibid.* (citations omitted). "And those exceptions, though designed for important purposes, 'are narrow and are not to be enlarged by loose statutory construction.'" *Ibid.* (brackets and some internal quotation marks omitted).

The plaintiff States contend (Reply Br. 12) that the Anti-Injunction Act cannot "restrict the Court's original jurisdiction." But the Court has not addressed the applicability of the Act to original cases. The plaintiff States appear to contend (*ibid.*) that the Act does not apply as a statutory matter and that if it did, its application would be unconstitutional. Cf. *South Carolina* v. *Regan*, 465 U.S. 367, 398-400 (1984) (O'Connor, J., concurring) (proposing, as a matter of constitutional avoidance, a construction of the Tax Anti-Injunction Act that would not reach original proceedings in this Court). If this Court were to entertain the merits of a suit that expressly asks the Court to enjoin state-court proceedings, it would necessarily have to reach and resolve those issues about the Anti-Injunction Act—issues that would not be present on review of a final state-court judgment under Section 1257(a).

And even if the Court were to conclude that the Act were inapplicable (whether as a statutory or constitutional matter), the Court would still need to consider, in exercising its own discretion over the matter, whether an anti-suit injunction would be appropriate in light of the "respect" state courts are generally owed. *Smith*, 564 U.S. at 306; see *Kansas* v. *Colorado*, 556 U.S. 98, 103 (2009) (holding that even if a federal statute governing witness-attendance fees did not apply to cases within the Court's original jurisdiction, there was "no good reason" to apply a different rule in such cases). At a minimum, then, the Anti-Injunction Act—and the respect for state courts that the statute reflects—would complicate this Court's consideration of the merits of the issues raised and relief sought in the plaintiff States' complaint.

2. This Court would also need to consider whether principles of *Younger* abstention would counsel against the exercise of original jurisdiction in this matter. The doctrine of *Younger* abstention recognizes the existence of "exceptional circumstances" in which a federal court should abstain from deciding a case in order to avoid interfering with pending state-court proceedings. *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 78 (2013) (citation omitted). This Court has held that those exceptional circumstances include "certain 'civil enforcement proceedings.'" *Ibid.* (citation omitted). In *Trainor*, for example, the Court found that abstention was warranted in deference to a "civil proceeding 'brought by [a] State in its sovereign capacity' to recover welfare payments [the] defendants had allegedly obtained by fraud." *Id.* at 79 (quoting *Trainor*, 431 U.S. at 444).

Here, the pending state-court proceedings that the plaintiff States seek to enjoin are also civil proceedings

brought by States in their sovereign capacity. Compl. 36-37. The plaintiff States nevertheless contend (Reply Br. 10-11) that abstention would be inappropriate because *Younger* does not apply to this Court's exercise of original jurisdiction. But the plaintiff States do not cite (*id.* at 11) any precedent addressing "*Younger*'s application to original actions." And it is unclear why the principles animating *Younger*, including respect for the competence of state courts to adjudicate federal-law questions, should apply less forcefully to this Court's exercise of its original jurisdiction over a suit by one sovereign State against another. That is especially so here, where the defendants in the state-court suits are private companies, not the plaintiff States. The *Younger*-abstention issue, too, would not arise if the Court instead were to conduct any review upon final judgment in the state-court actions that the plaintiff States seek to challenge.

CONCLUSION

The motion for leave to file a bill of complaint should be denied.

Respectfully submitted.

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DECEMBER 2024