NORTH CAROLINA

ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV003385-670

THE TOWN OF CARRBORO, NORTH CAROLINA,

Plaintiff,

v.

DUKE ENERGY CORPORATION,

Defendant.

DUKE ENERGY'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS UNDER N.C. RULE 12(b)(1)

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INTRODUCTION

Carrboro's Complaint extends far beyond the "garden-variety common law claims" it seeks to portray in its Response. (Response at 1.) Carrboro brought a sponsored advocacy lawsuit centered around greenhouse gas emissions. Now, facing dismissal for failure to demonstrate proper authority and standing to pursue its emissions-based claims, Carrboro's Response attempts to walk back that focus on emissions by emphasizing Duke Energy's alleged misrepresentations. (Response at 9.) But regardless of how Carrboro now seeks to characterize its Complaint, Carrboro cannot sidestep the fact that its claims involve emissions-based harms that Carrboro cannot regulate through litigation.

As pled by Carrboro, adjudication of those claims would require second-guessing every power generation decision previously made by utilities commissions in multiple states pursuant to state-specific laws and policies. (Response at 22.) Carrboro's expansive request conflicts with North Carolina's express commitment to the separation of powers among political branches, *see Bacon v. Lee*, 353 N.C. 696, 716 (2001), and would require a jury to speculate as to whether these decisions would have changed in the absence of Duke Energy's allegedly deceptive statements.

Carrboro also misinterprets and fails to meet its burden on standing. Carrboro overreads *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558 (2021), as limiting its burden solely to alleging any injury. But North Carolina requires Carrboro to meet each of the three elements of standing, including traceability and redressability, which Carrboro fails to satisfy. And as to injury, Carrboro doubles down on a non-traditional injury—climate-related harms—that it

traces to climate change (not Duke Energy) and that cannot satisfy the required injury element.

Finally, Carrboro lacks authority to bring this suit because it far exceeds the authority Carrboro has been delegated by the General Assembly. This suit should be dismissed.

ARGUMENT

I. Carrboro's claims are based on emissions.

Carrboro seeks to recover damages in its "climate-change action" allegedly arising from global greenhouse gas emissions and attendant climate-related harms. (Response at 2, 13.) But in its Response, Carrboro attempts to recast this climate-change lawsuit as a run-of-the-mill tort case about the "inevitable consequences of [Duke Energy's] deceptions." (Response at 11.) According to Carrboro, the "occasional[] reference[]" to Duke Energy's emissions or its regulated utilities' fossil-fuel portfolios "does not mean that Carrboro's action seeks to regulate emissions." (*Id.*) But this post-hoc characterization undersells the extent to which Duke Energy's emissions and "investment in fossil fuels" permeate Carrboro's Complaint. (*See, e.g.*, Compl. ¶¶21, 22, 24–26, 61, 110–11, 135, 137–45, 154–55, 157, 190, 210, 225, 236, 244–45, 249, 263, 265.) Tellingly, Carrboro's Complaint uses the word "emission(s)" 3 times more than the words "deceptive" and "deception" combined: 184 to 66. (*See generally* Compl.; *cf. Bucks County v. BP*, No. 2024-01836 (Penn. Ct. Common Pleas May 16, 2025) (emphasizing a comparable ratio—100 "emissions" references to 39 "deception" references—in dismissing a similar complaint for seeking to regulate emissions).)

These are not passing references: Carrboro asserts in each of its causes of action that *both* Duke Energy's alleged "campaign of deception" *and* Duke Energy's own direct emissions or "investment in fossil fuels" are the source of Carrboro's injuries. (*See, e.g.,* Compl. ¶225.) Carrboro cannot now amend its complaint with its Response; nor can it avoid the implication of its climate-change claims—without emissions, Carrboro has no damages. *See City of New York v. Chevron*, 993 F.3d 81, 91 (2d Cir. 2021) ("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.").

The fundamental allegation of this lawsuit is that Duke Energy's alleged tortious conduct has "materially worsened climate change" by increased emissions from the use of fossil fuels and a delayed transition to renewable fuels. (Compl. ¶¶3, 5, 69, 134, 146, 154, 158, 191, 214, 227, 242, 245, 247, 253.) Carrboro's Response confirms what the Complaint plainly alleges: the crucial link between Duke Energy's alleged misconduct and Carrboro's claimed injuries is "massive emissions, resulting in climate change and thereby causing Carrboro's damages." (Response at 11; *see also id.* 22–23 ("[e]missions by Duke and others are part of the causal chain" of damages.).)

"Any fair review" of Carrboro's "overall factual allegations," (Response at 10), leads to the inescapable conclusion that Carrboro seeks to impose liability on Duke Energy alone for the alleged harms of cumulative emissions released from billions of sources worldwide, in an effort to change Duke Energy's behavior. But this it cannot

do. *See City of New York*, 993 F.3d at 91; *cf. Domestic Elec. Serv. v. City of Rocky Mount.*, 285 N.C. 135, 144 (1974) (municipalities cannot regulate conduct far outside their borders). And Carrboro's "disavowal" that it "does not seek any limitations on Duke Energy's emissions or operations," (Compl. ¶11), does not make it so. Other courts have seen through these denials, with one finding a similar complaint was "entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries," *Mayor and City Council of Baltimore v. BP*, No. 24-C-18-004219, 2024 WL 3678699, at *5 (Md. Cir. Ct. July 10, 2024). Another held that the plaintiff "[could not] avoid the fact that if there were no emissions there would be no damages" despite "do[ing] everything it can to avoid the issue of emissions." *Bucks County*, No. 2024-01836 (Penn. Ct. Common Pleas May 16, 2025).

In an effort to salvage its claims, Carrboro avers that this Court must accept as true Carrboro's allegation that "[Carrboro] seeks compensation for the damages that it has incurred" "as the proximate result of [Duke Energy's] knowing deception campaign[.]" (Response at 9–10.) But this does nothing, as an award of damages can "effectively exert[]" regulation, no matter how the relief is framed or viewed. *Kurns v. R.R. Friction Prods.*, 565 U.S. 625, 637 (2012). This is by design; as the Supreme Court recognized: "[t]he obligation to pay compensation can be, *indeed is designed to be*, a potent method of governing conduct and controlling policy." *Id.* (cleaned up).

II. Carrboro's claims are barred by North Carolina's political question doctrine.

Regardless of how Carrboro characterizes its claims, it cannot escape the fact that these so-called "garden-variety common law claims" require a jury to review, and

pass judgment on, energy and climate policy choices committed to other branches. Though Carrboro asserts that its Complaint "does not—*ever*—question the decisions of regulators," (Response at 17), Carrboro admits that it seeks to hold Duke Energy responsible for others' determinations regarding the mix of fuels for generating power. (Response at 22 ("Duke's deceptions played a material role in delaying the overall transition away from fossil fuels.").) Duke Energy does not make these determinations—legislatures and regulators do. (Brief at 13–15.)

Carrboro's theory of liability depends on showing that Duke Energy duped hundreds of decision-makers into choosing the "wrong" mix of fuels across decades of legislative and regulatory processes in multiple states, including thousands of individual regulatory proceedings weighing that question. Carrboro thereby invites this Court to second guess these decisions by putting to a jury both the question of whether legislators and utilities commissions would have acted differently in the absence of Duke Energy's allegedly deceptive statements, and also what mix of fuels for generating power could or should have been used over the past decades while providing reliable and affordable energy for millions of customers. This exercise is distinct from adjudicating claims that "overlap with a regulatory scheme of some type," (Response at 17), and is the kind of judicial exercise that North Carolina's political question doctrine is designed to prevent.

Specifically, the doctrine bars a case from the judiciary's consideration if: (i) the constitution expressly assigns responsibility to one branch of government; (ii) there is not a judicially discoverable or manageable standard by which to decide the issue;

or (iii) adjudicating the issue requires courts to make policy determinations that are better suited for the policymaking branch of government. *Bacon*, 353 N.C. at 717. All three conditions inhere here.

A. Carrboro cannot supersede the NCUC's delegated authority for deciding the appropriate mix of fuels for generating power.

There is no dispute that North Carolina's Constitution expressly assigns responsibility for energy and climate policy to the General Assembly, or that the General Assembly established those policies and delegated authority to the NCUC to implement those policies. (Brief at 13-15.) Instead, Carrboro suggests that North Carolina's general commitment to open courts supersedes this delegation. (Response at 15.) This is inconsistent with North Carolina's explicit commitment to separation of powers among political branches, *see Bacon*, 353 N.C. at 716, which prohibits courts from exercising their judicial power to second guess the decisions of duly-authorized regulators: "It is not the role of the judicial branch of government to pre-empt the legislative branch's policy considerations and appropriate authorization of an activity." *Neuse River Found. v. Smithfield Foods*, 155 N.C. App. 110, 118 (2002), *abrogated on other grounds by Dan Forest*, 376 N.C. at 601. Moreover, "[c]ourts will not undertake to control the exercise of discretion and judgment on the part of the members of a commission in performing the functions of a State agency." *Town of Williamston v. Atl. Coast Line R. Co.*, 236 N.C. 271, 275 (1952).

Duke Energy's subsidiaries are bound by state legislation and the resulting resource planning decisions made by state utilities commissions, including the NCUC. As electric utilities, Duke Energy's subsidiaries are subject to rigorous

regulatory requirements that control their generation resource decisions and operations. For example, the NCUC regulates utilities' "rates, services and operations" and develops a plan regarding the "size, mix and general location of generating plants." N.C. Gen. Stat. § 62-2(b) and § 62-110.1. Unlike commercial entities, such as the fossil fuel providers in other cases cited by Carrboro, electric utilities cannot adjust their services at will—generally speaking, any change in generating resource mix and operations must go through state utilities commissions. *See, e.g.*, N.C. Gen. Stat. § 62-110.1 (requiring NCUC to approve construction of generation facilities and analyze long-range needs for expansion of facilities).

As a provider of an essential service, nearly every aspect of Duke Energy's operations is subject to oversight by state utilities commissions, including every operational decision at issue here. "There is a distinction between an activity that is merely not illegal versus one that is explicitly granted a permit to operate in a particular fashion." *North Carolina, ex rel. Cooper v. TVA*, 615 F.3d 291, 309 (4th Cir. 2010). Thus, Carrboro's comparison to other "highly regulated activities" is inapposite. (Response at 12.)

Utility commissions do not make resource planning decisions in isolation. Instead, they follow the policy choices made by state legislatures. For instance, the NCUC is required to consider least-cost energy planning and reliable energy generation, N.C. Gen. Stat. §§ 62-2, and must take all reasonable steps to achieve net zero carbon emissions by 2025, N.C. Gen. Stat. § 62-110.9 (2021). Moreover,

interested parties can participate in NCUC proceedings, including Carrboro as a customer of Duke Energy. N.C. Gen. Stat. § 62-73; NCUC Rule R1-9.

Evaluating whether *different* policy decisions might have been made in the absence of any allegedly deceptive statements by Duke Energy would require this Court, and the jury, to step into the shoes of legislators and balance these competing priorities itself. These choices are solely committed to the legislative branch.

B. There are no judicially manageable standards sufficient to determine "unreasonableness" of regulators' resource planning decisions.

Furthermore, there are no "satisfactory and manageable criteria or standards" that would allow a court or jury to assess whether the General Assembly would have placed additional weight on climate considerations in developing energy policy or whether the NCUC would have evaluated resource planning needs differently. This is particularly true where the NCUC already considered a variety of positions on generation resources during individual proceedings. *Compare* NCUC Docket No. E-100, Sub 190, Post-Hearing Brief of NC WARN, et al. (Sept. 3, 2024) *with* Post-Hearing Brief of Carolina Utility Customers Association (Sept. 3, 2024). Carrboro (and NC Warn) has and had the opportunity to intervene in regulatory proceedings where those energy choices are made.

Additionally, determining the extent to which Duke Energy's allegedly deceptive statements influenced thousands of fuel mix outcomes among myriad outside factors is speculative and too attenuated to provide judicially manageable standards. (Brief at 15-17.) Carrboro's suggestion to use "the elements of each tort claim" and "North Carolina's Pattern Jury Instructions" is unworkable. (Response at

16.) The elements of the common law torts alleged are insufficient to provide guidance to a jury to measure "unreasonableness" of the fuel mix determined by the General Assembly and the NCUC in light of the emissions produced. (Brief at 15.) Listing the elements in the abstract does not create a judicially manageable standard by which judgment can be made on the specific claims in this case.

C. Decisions cited by Carrboro that do not apply North Carolina's political question doctrine are inapposite.

Finally, while Carrboro asserts that "numerous" courts have found that climate-related cases may be justiciable, the cases cited by Carrboro are inapposite. (Response at 13–14.) None of these cases apply *North Carolina's* political question doctrine, which rests on Fa different foundation than the federal political question doctrine and differs from another state's interpretation of its own constitution. The NC Supreme Court explained that "[u]nlike the United States Constitution" "the Constitution of North Carolina includes an express separation of powers provision." *Bacon*, 353 N.C. at 716. Duke Energy highlighted the leading cases involving the North Carolina doctrine. *See id.*; *Harper v. Hall*, 384 N.C. 292 (2023). Carrboro failed to engage with this authority.

III. Carrboro lacks standing to bring these claims.

Carrboro lacks standing under North Carolina law to bring claims for alleged harms from global climate change via state common tort law because it fails to allege (1) a legal injury that is (2) fairly traceable to Duke Energy and that is (3) redressable through this case. (Brief at 21-29.)

A. Carrboro misconstrues Duke Energy's legal injury argument.

Carrboro misconstrues Duke Energy's standing argument and relies on an overreading of the *Dan Forest* majority's statement that "the legal injury itself gives rise to standing," which Carrboro interprets as disposing of the traceability and redressability requirements because there is "no case-or-controversy requirement" in the NC Constitution. (Response at 2, 19). But North Carolina courts were not limited by a "case or controversy" requirement even *before Dan Forest*. *See Neuse River Found.*, 155 N.C. App. at 114. In *Dan Forest*, the Court simply clarified one way in which "the nuts and bolts" of federal and North Carolina standing doctrine "are not coincident": injury-in-fact is not a general, constitutional requirement to establish standing under North Carolina law.[1] *Id.* at 563, 609.

Carrboro quotes *Dan Forest* out of this context and ignores the majority's reasoning in deciding the case. *See Dan Forest*, 376 N.C. at 590–608; *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020) ("It is usually a judicial decision's reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.") (Gorsuch, J.) (plurality opinion). Nowhere in *Dan Forest* does the NC Supreme Court disavow the traceability and redressability requirements, nor is such a disavowal implicit in the majority's rationale—because traceability and redressability were not at issue. *See* 376 N.C. at 561. Following *Dan Forest*, plaintiffs—including Carrboro—must still plead those elements to establish

[1] But "federal standing doctrine can be instructive as to general principles" "and for comparative analysis." *Dan Forest*, 376 N.C. at 563 (quoting *Goldston v. State*, 361 N.C. 26, 35 (2006)).

standing. *See Soc'y for Hist. Pres. of Twentysixth N. Carolina Troops v. Asheville*, 282 N.C. App. 700, 704, *aff'd as modified sub nom.* 385 N.C. 744 (2024).[2]

B. Carrboro does not have a statutory or common law injury.

To establish a "legal injury" under *Dan Forest*, Carrboro must show either a "traditional injury" protected at common law, or a statutory injury with a cause of action created by the General Assembly. (Brief at 21.)

Carrboro fails to meaningfully address the fact that it has not alleged a legal injury under *Dan Forest* because its claims do not allege a "traditional injury" protected at common law or an injury under a "cause[] of action" created by the General Assembly that allows "a plaintiff to recover in the absence of a traditional injury." (*Dan Forest*, 376 N.C. at 598; *see also* Brief at 21-25.) Rather, Carrboro continues to present a non-traditional injury—climate-related harms—that it has shoehorned into speculative common law torts not traditionally used *in North Carolina* to rectify a global injury.[3] *See, e.g., McManus v. S. R. Co.*, 150 N.C. 655 (1909) (plaintiff can pursue nuisance claim for "nauseous and loathsome odors" *from neighboring property*). None of the cases cited by Carrboro provide a traditional common law analog to such a diffuse injury, nor has Carrboro pointed to any statute providing a cause of action under which it can recover for climate-related harms.

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[2] Carrboro misstates the decision in *Soc'y for Hist. Pres.* (Response at 19.) The NC Supreme Court did not address the elements of standing but determined the lower court applied a merits-based analysis and therefore the complaint should have been dismissed under Rule 12(b)(6). *Soc'y for Hist. Pres.*, 385 N.C. at 751.

[3] To the extent the lack of legal injury is "inappropriate for a standing defense," (Response at 22), Carrboro's claims should likewise be dismissed for failure to state a claim. (12(b)(6) Brief at 16–19.)

Moreover, Carrboro's citations to complaints filed by other municipalities "seeking redress of damages to their property," (Response at 21, Exs. F, G), likewise do not support its claim of legal injury here. These inapposite complaints, which allege breach of contract claims, do not establish that any actions, including this one, are "authorized" by North Carolina law.

C. Carrboro cannot trace its alleged injuries to Duke Energy.

The second element of standing, traceability, requires that Carrboro allege a causal link between Duke Energy's "challenged conduct" *i.e.,* direct emissions and alleged misleading statements, and its injuries, *i.e.*, money spent on climate-induced weather effects, costs to provide stormwater protection, and costs to cool buildings. (Compl. ¶270; Brief at 25-28.) Carrboro fails to do so, as it avers that it has spent "substantial sums to *mitigate climate-related harms*." (Compl. ¶254.). Carrboro traces its injuries to *climate change*, not Duke Energy, (Compl. ¶¶194-199), and therefore lacks standing to bring this action. *N. Carolina Fisheries Ass'n v. Pritzker*, No. 4:14-CV-138-D, 2015 WL 4488509, *7 (E.D.N.C. July 22, 2015; (*see also* Brief at 26-28). "It is not enough to merely allege that the defendants caused both the injury and the challenged conduct—there must be a causal link between the two." *Id.* (cleaned up).

Rather than fairly trace its claimed injuries to Duke Energy, Carrboro attacks a strawman, arguing that the "fairly traceable" standard is not equivalent to tort causation. (Response at 23.) But Duke Energy is not attempting to hold Carrboro to such a standard. Additionally, *Estate of Long*, cited by Carrboro, does not support the proposition that "traceability is 'a question for the jury.'" (Response at 22). Instead, it states that "[p]roximate cause is ordinarily a question of fact for the jury." *Est. of*

Long v. Fowler, 378 N.C. 138, 150. Traceability, as an element of standing, is a question of law for the Court. *See Cherry Cmty. Org. v. Charlotte*, 257 N.C. App. 579, 582 (2018).

D. Carrboro's claims are not redressable.

As to the third element of standing, Carrboro's decision to seek damages, rather than injunctive relief, does not render its injuries redressable. (Brief at 28-29.) Courts "cannot redress 'injury that results from the independent action of some third party not before the court.'" *Murthy v. Missouri*, 603 U.S. 43, 44 (2024) (cleaned up). Carrboro's claimed injuries all allegedly arise from ongoing global climate change, caused by the acts of billions of third parties worldwide. Redressability is not met because Carrboro has not—and cannot—allege that it would not have suffered the same damages even if Duke Energy had not engaged in the alleged conduct. *Cf. Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021) (stating that damages provide redress because they theoretically effect behavior that injured plaintiff). Carrboro's reliance on decisions in other "climate-deception lawsuits" parsing legal causation under the common law of other states is misplaced. (Response at 24.) Carrboro must have standing under *North Carolina law* to proceed in this case, and it does not.

IV. Carrboro misjudges the scope of its authority as a municipal corporation.

Finally, Carrboro was recruited to file this lawsuit by NC WARN, and together they have made a shared political statement in furtherance of NC WARN's goals. (Brief at n.2.) NC WARN brought this "opportunity" to Carrboro. NC WARN's stated mission is to "tackl[e] the climate crisis" "by watch-dogging Duke Energy practices."

Podcast and WRAL News Interview; *NC Warn – About Us* (https://www.ncwarn.org/about-us/) (last accessed May 8, 2025). That this is a political issue cannot be contested.

In defending NC Warn's funding and behind-the-scenes support for this lawsuit, Carrboro suggests that the General Assembly granted it broad authority to "file civil actions" without providing any "limitation on this right." (*See* Response at 15 (citing N.C. Gen. Stat. §§ 160A-11, 160A-4).) But a municipality's authority to "sue and be sued" is not without limit, and Carrboro cannot dispute that municipalities "can exercise *only* that power which the legislature has conferred upon them." *Bowers v. City of High Point*, 339 N.C. 413 (1994) (emphasis added). In particular, a municipality may not put itself in conflict with regulatory authorities acting within their delegated authority. *See Domestic Elec. Serv.*, 285 N.C. at 143-44.

Carrboro incorrectly suggests that it "has a constitutional right to work with others to pursue this litigation." (Response at 24-25.) "[A] political subdivision, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 363–64 (2009) (cleaned up). The People of North Carolina have not authorized Carrboro to co-regulate Duke Energy with the NCUC. Carrboro's suit exceeds any reasonable scope of municipal authority delegated to it by the General Assembly.

CONCLUSION

Duke Energy respectfully requests that the Court dismiss Carrboro's lawsuit.

This is the 22nd day of May, 2025.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with Rule 7.8 of the North Carolina Business Court Rules in that it (excluding the caption, any index, table of contents, or table of authorities, signature blocks, and required certificates) contains no more than 3,750 words, as determined by the word count feature of Microsoft Word.

This the 22nd day of May, 2025.

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IN THE COURT OF COMMON PLEAS, BUCKS COUNTY, PENNSYLVANIA
CIVIL ACTION LAW

BUCKS COUNTY	:	No.: 2024-01836
	:	
v.	:	
	:	
BP P.L.C.;	:	
BP AMERICA INC.;	:	
BP PRODUCTS NORTH AMERICA INC.;	:	
CHEVRON CORPORATION;	:	
CHEVRON U.S.A. INC.;	:	
CONOCOPHILLIPS COMPANY;	:	
CONOCOPHILLIPS;	:	
PHILLIPS 66 COMPANY;	:	
PHILLIPS 66;	:	
EXXON MOBIL CORPORATION;	:	
EXXONMOBIL OIL CORPORATION;	:	
SHELL OIL PRODUCTS COMPANY LLC	:	
SHELL PLC;	:	
SHELL USA, INC.; and	:	
AMERICAN PETROLEUM INSTITUTE	:	

DECISION AND ORDER

Pending before the Court are: 1) Defendants' Preliminary Objections to Personal Jurisdiction (Docket seq. 130 and 131), together with Plaintiff's response in opposition (Docket seq. 169 and 173); 2) Defendants' Joint Preliminary Objections to the Complaint on the Merits (Docket seq. 132 and 133), together with Plaintiff's response in opposition (Docket seq. 172, 174, and 175) ; 3) Shell plc, Shell USA, Inc., and Shell Oil Products Company LLC's Preliminary Objections to the Complaint on the Merits (Docket seq. 136 and 137), together with Plaintiff's response in opposition (Docket seq. 167 and 168); 4) American Petroleum Institute's Preliminary Objections to Complaint (Docket seq. 138 and 139), together with Plaintiff's

response in opposition (Docket seq. 165 and 166); and, 5) Defendants' Joint Motion for Hearing to Determine Immunity Pursuant to the Participation in Environmental Law of Regulation Act, 27 Pa.C.S. §§8301-8305, and to Dismiss Plaintiff's Complaint with Prejudice (Docket seq. 134 and 135), together with Plaintiff's response in opposition (Docket seq. 170 and 171). Upon review and consideration of all the pleadings, memoranda of law, supplemental memoranda of law, and after a full day of oral argument, we enter this Decision and Order and dismiss Plaintiff's Complaint with prejudice for the reasons set forth herein.

FACTUAL AND PROCEDURAL HISTORY

On January 17, 2024, the Bucks County Commissioners held a public meeting to conduct county business. The published "Meeting Agenda" for the meeting was broken into nine separate sections. A copy of the Meeting Agenda is attached to Defendants' Joint Preliminary Objections to the Complaint on the Merits, Exhibit 11. Section IV of the Agenda was titled "Consent Agenda," and section V of the Agenda was titled "Regular Agenda." Id. The Meeting Agenda includes the following footnote to explain the difference in the two Agenda sections:

> Consent and Regular Agenda
> Items listed on the Consent Agenda are considered by the Board of Commissioners to be routine or non-controversial, whereas items on the Regular Agenda are expected to require more discussion or explanation. On the day before each public meeting, the Consent and Regular Agendas, including a proposed list of Personnel Actions, are posted on the County's website. The Board of Commissioners votes on Personnel Actions listed on the "Commissioners List," but not on those listed under the Court of Row Officers lists.

Id. The Consent Agenda is separated into three sections: Section A to approve meeting minutes from January 2, 2024; Section B to approve meeting minutes from January 3, 2024; and Section

C to approve Resolutions. Section C is further separated into seventeen separate Items, some with several sub-items. Id. Item IV.C.10 of the Consent Agenda appears as follows:

10. Law Department
    a. With: DiCello Levitt, LLP
       Amount: 25% contingent fee on gross recovery + expenses**
       Purpose: Authorize County Solicitor to enter into Legal Services Agreement to evaluate and litigate potential environmental claims on behalf of the County on a contingent basis.

Id. A note at the end of the Consent Agenda indicates "** Unit Cost/Not to Exceed." There is no further explanation of this Agenda item, and there were no documents attached to the Agenda for the public to read. At the meeting, the Commissioners voted 3-0 to approve all items on the Consent Agenda in a single motion. See Bucks County Commissioners Public Meeting Minutes attached to Defendants' Joint Preliminary Objections to the Complaint on the Merits, Exhibit 12. None of the three County Commissioners mentioned Item IV.C.10, and there was no public explanation of the Item, nor was there discussion about the Item or its importance to the citizens of Bucks County.

On March 25, 2024, the County, through the County Solicitor, filed its Complaint in this case. That same day, the County Commissioners along with the County Solicitor called a press conference to discuss the lawsuit. See Defendants' Joint Preliminary Objections to the Complaint, ¶70, fn. 11, and https://www.buckscounty.gov/CivicAlerts.aspx?AID=1005. During the press conference, Commissioner Chair Diane Ellis-Marseglia referred to the lawsuit as a "momentous and important step" in the fight against climate change. Id. Commissioner Bob Harvie referred to the filing of the lawsuit as "an historic event precipitated by historic challenges." Id. Commissioner Gene DiGirolomo, while speaking of climate change in the

context of this lawsuit stated, "it's our children and grandchildren who will be affected by this in the coming years." Id.

Understandably, the Bucks County Commissioners are concerned about climate change in general, and the negative effects climate change is having, and will have in the future, on Bucks County and its citizens, both physically and financially. To address those concerns, Bucks County filed the instant lawsuit against fourteen fossil fuel companies together with their largest trade association (hereinafter referred to collectively as "Defendants") seeking to recover money damages for the harm allegedly caused by climate change. See, generally, Bucks County's *Complaint*. Bucks County's Complaint asserts seven causes of action[1]: Count I Strict Products Liability – Failure to Warn; Count II Negligent Products Liability – Failure to Warn; Count III Negligence; Count IV Public Nuisance; Count V Private Nuisance; Count VII Trespass; and Count VIII Civil Conspiracy. Id. Bucks County alleges that Defendants engaged in a decades-long disinformation campaign which was designed to discredit the scientific consensus on climate change, create doubt in the minds of consumers about the climate change impact of burning fossil fuels, and delay the energy economy's transition to a lower-carbon future. Id. at ¶1. According to Bucks County, Defendants' successful disinformation campaign "drove up greenhouse gas emissions, accelerated global warming, and brought about devastating climate change impacts to Bucks County." Id.

Pursuant to Pa.R.Civ.P. 1028, Defendants have filed various preliminary objections to the Complaint. Specifically, Defendants' preliminary objections raise issues of capacity to sue, personal jurisdiction, subject matter jurisdiction, federal preemption, failure to state a cognizable cause of action, as well as the statute of limitations and laches.

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[1] The Complaint asserts seven causes of action. Counts VII and VIII are misnumbered because there is no Count VI in the Complaint.

ANALYSIS

In their preliminary objections, Defendants raise two threshold issues that must be decided before we can address the merits of their preliminary objections. First, Defendants argue that Bucks County does not have the capacity to sue because the County Commissioners violated Pennsylvania's Sunshine Act, 65 Pa.C.S.A. §§701, *et seq.* If they are correct, the filing of the Complaint would be a nullity and must be dismissed. Second, if Defendants are incorrect, and Bucks County does have the capacity to sue, Defendants argue this court lacks personal jurisdiction over many of the Defendants. As set forth in more detail below, we find Bucks County does have the capacity to sue, and this court does have personal jurisdiction over each of the Defendants. However, we agree with Defendants that Bucks County fails to state a claim upon which relief can be granted because Pennsylvania cannot apply its own law to claims dealing with air in its ambient or interstate aspects, and, therefore, we are compelled to dismiss this lawsuit for lack of subject matter jurisdiction.

BUCKS COUNTY'S CAPACITY TO SUE

Defendants first seek dismissal of this case arguing that Bucks County lacks the capacity to file this suit. In support of that argument, Defendants rely upon Pennsylvania's Second Class County Code, 16 P.S. §§3101-6302, together with the Pennsylvania Sunshine Act, 65 Pa.C.S.A. §§701, *et seq.* (hereinafter "Sunshine Act"). We agree with Bucks County that Defendants' reliance upon Pennsylvania's Second Class County Code, 16 P.S. §§3101-6302, is misplaced as that version of the County Code did not apply to Bucks County when this lawsuit was filed. Regardless of what version of the County Code applied, the crux of the argument made by

Defendants is that Bucks County did not approve the filing of this lawsuit at an open public meeting as required by the Sunshine Act.

Pursuant to the Sunshine Act:

> Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 707 (relating to exceptions to open meetings), 708 (relating to executive sessions) or 712 (relating to General Assembly meetings covered).

65 Pa.C.S.A. §704. A public "agency"[2] may meet in executive session, not open to the public, "to consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed." 65 Pa.C.S.A. §708(a)(4). The purpose of the Sunshine Act is "to provide the Commonwealth's citizens with a right to be present at all meetings of public agencies and to witness deliberations, policy formulation and decision-making processes." Silver v. Borough of Wilkinsburg, 58 A.3d 125, 128 (Pa. Cmwlth. 2012). The Sunshine Act "is designed to enhance the proper functioning of the democratic process by curtailing secrecy in public affairs." Smith v. Township of Richmond, 82 A.3d 407, 416 (Pa. Super. 2013). In other words, the objective of the Sunshine Act is to bring transparency to our government and prevent our political leaders from conducting official business in secret. Simply put, the Sunshine Act is supposed to ensure that politicians keep their constituents well-informed.

Here, there is no question that the Public Meeting Agenda on January 17, 2024 included Item 10 authorizing the County Solicitor to "enter into Legal Services Agreement to evaluate and litigate potential environmental claims on behalf of the County on a contingent basis." See Defendants' Joint Preliminary Objections to the Complaint on the Merits, Exhibit 11. The Bucks County Commissioners were permitted to meet in executive sessions to consult with their

[2] The Bucks County Commissioners meet the definition of "agency" as set forth in 65 Pa.C.S.A. §703.

attorneys, negotiate the terms of the Legal Services Agreement, and strategize with respect to the filing of this lawsuit. 65 Pa.C.S.A. §708(a)(4). Therefore, we conclude that the Commissioners met the letter of the Sunshine Act and did not commit a direct violation of the Act.

However, as we expressed at oral argument, we are concerned about the manner in which the Commissioners went about hiring counsel and filing this lawsuit. We believe the conduct of the Commissioners violated the spirit of the Sunshine Act. While we have found no appellate authority prohibiting government bodies from employing a "Consent Agenda" at a public meeting, it appears to this Court that the use of a "Consent Agenda" has a chilling effect on the public discourse with respect to items contained in that portion of the Agenda. This particular Agenda item was buried among 17 other items, some with multiple sub-items. The cryptic summary of the "Purpose" of the Agenda item, i.e., "Authorize County Solicitor to enter into Legal Services Agreement to evaluate and litigate potential environmental claims on behalf of the County on a contingent basis," provides the public with such little information that the average citizen attending the meeting would be hard-pressed to formulate an intelligent question to ask. Indeed, at the meeting on January 17, 2024, no member of the public commented on any item within the "Consent Agenda." In fact, not one of the three Commissioners, nor the County Solicitor, mentioned the item at the meeting, and there was no indication that they intended to file a lawsuit within the next few weeks. That is troubling to this Court, as the Commissioners, and the County Solicitor, would, upon filing of the Complaint, call a press conference and refer to their actions as "historic" and "momentous."

At the first meeting following the filing of this lawsuit and the Commissioners' press conference at which they describe their actions in filing the lawsuit as "historic" and "momentous," three members of the public spoke out against the lawsuit, and one Commissioner

withdrew his support for the lawsuit after hearing from the public. In the endnote on their Public Meeting Agenda, the Commissioners differentiate the "Consent" and "Regular" Agenda as follows: "Items listed on the Consent Agenda are considered by the Board of Commissioners to be routine or non-controversial, whereas items on the Regular Agenda are expected to require more discussion or explanation." Id.

At oral argument, the County Solicitor admitted that climate change has been at the forefront of our local and national discourse for many years. This left the Court with several questions including: 1) How does the Board of Commissioners determine a matter is routine or non-controversial? 2) Do the Commissioners violate the Sunshine Act by deliberating privately with a quorum deciding that some Agenda items are routine or non-controversial? 3) If this lawsuit is "historic" and "momentous," why did the Board of Commissioners think this agenda item was routine or non-controversial? 4) Why did this "historic" and "momentous" decision not deserve "more discussion or explanation?" and 5) Did the Commissioners try to sneak this lawsuit by the public by burying it as item 10 on a Consent Agenda, with a cryptic description, that nobody would discuss in public? When pressed on these questions, the County Solicitor advised the Court that the Commissioners use the "Consent Agenda" to speed up their meetings. The citizens of Bucks County did not elect the Commissioners to conduct fast public meetings; rather, the citizens of Bucks County elected the Commissioners to hold transparent and informative public meetings.

The Commissioners are elected by their constituents and "hired" to be "public servants," i.e., they hold office for the sole purpose of serving the public who have entrusted them with that office. To properly serve the public, the Commissioners must be completely open and transparent, that is the point of the Sunshine Act. It seems obvious to this Court that while the

Board of Commissioners met the letter of the Sunshine Act, their use of the "Consent Agenda," particularly in this instance, violates the spirit of the Sunshine Act.

Even if the Commissioners committed a direct violation of the Sunshine Act, Defendants failed to raise this legal challenge in a timely manner. The Sunshine Act specifically provides:

> A legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting. The court may enjoin any challenged action until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid. Should the court determine that the meeting met the requirements of this chapter, all official action taken at the meeting shall be fully effective.

65 Pa.C.S.A. §713. Defendants admitted they did not file a legal challenge to the alleged violation of the Sunshine Act until they filed their Preliminary Objections which was well beyond 30 days after they were served with the Complaint.

While we believe the Bucks County Commissioners violated the spirit of the Sunshine Act by burying the resolution to retain current counsel and pursue this lawsuit within the "Consent Agenda," we do not believe they committed a direct violation of the Sunshine Act. Even if we determined there was a violation of the Sunshine Act, Defendant's challenge to any violation is untimely. Therefore, we find Bucks County has the capacity to bring this lawsuit and the Defendants' Motion in that regard will be denied.

PERSONAL JURISDICTION

For purposes of personal jurisdiction, the Defendants self-identify in three separate categories: 1) those Defendants incorporated in Pennsylvania (Chevron USA, Inc.); 2) those

Defendants registered to do business in Pennsylvania (BP America Inc., BP Products North America Inc., ConocoPhillips Company, Phillips 66 Company, Exxon Mobil Corporation, Exxon Mobil Oil Corporation, Shell Oil Products Company LLC, Shell USA, Inc., and American Petroleum Institute) (hereinafter collectively "Registered Defendants"); and 3) those Defendants who are foreign corporations not registered in Pennsylvania (BP p.l.c., Chevron Corporation, ConocoPhillips, Phillips 66 Company, and Shell, p.l.c.) (hereinafter collectively "Unregistered Defendants"). See Joint Opening Brief in Support of Defendants' Preliminary Objections to Personal Jurisdiction Raised Jointly by Certain Defendants.

Chevron USA, Inc. is incorporated under the laws of Pennsylvania and does not join in this preliminary objection challenging personal jurisdiction. Therefore, there is no question this court may exercise personal jurisdiction over Chevron USA, Inc.

The Registered Defendants are registered to do business in the Commonwealth of Pennsylvania pursuant to 42 Pa.C.S.A. §5301(a)(2)(i) and join in this preliminary objection "only insofar as the statute is successfully challenged or otherwise repealed." Id. at p. 1, fn. 1. The Supreme Court of the United States has settled the issue of the constitutionality of Pennsylvania's registration statute. See Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917), and Mallory v. Norfolk Southern Railway Co., 600 U.S. 122 (2023). In Mallory, the Supreme Court has held that Pennsylvania's statutory scheme requiring foreign corporations to consent to general jurisdiction as a condition of doing business in the Commonwealth does not violate the United States Constitution, and therefore we are satisfied that we may exercise personal jurisdiction over all the Registered Defendants.

Finally, with respect to the Unregistered Defendants, we agree with Bucks County that the Defendants misunderstand, or incorrectly interpret, the allegations made in the Complaint.

"When considering preliminary objections, all material facts set forth in the challenged pleading are admitted as true, as well as all inference deducible therefrom." Khawaja v. RE/MAX Central, 151 A.3d 626, 630 (Pa. Super. 2016). Therefore, we accept as true all well-pled facts in Plaintiffs Complaint. Those well-pled facts include allegations that each of the Defendants, including the Unregistered Defendants, engaged in conduct within the Commonwealth of Pennsylvania and that conduct is the basis of Bucks County's lawsuit. See, e.g., Plaintiff's Complaint at ¶¶ 20 – 23, 25, and 29 – 34. It is clear from a fair reading of the Complaint that Bucks County relies upon each Defendant's conduct within Bucks County, in conjunction with a worldwide campaign, as the basis of its causes of action. Therefore, we find the allegations contained in the Complaint support our exercise of specific personal jurisdiction over all the Defendants named in the Complaint, including the Unregistered Defendants.

SUBJECT MATTER JURISDICTION

Having decided the two threshold issues, concluding that Bucks County has the capacity to sue and that we have personal jurisdiction over all the Defendants, today we 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 by any state court in Pennsylvania. See City of New York v. Chevron Corporation, et al., 993 F.3d 81 (2nd Cir. 2021); City of Oakland v. BP plc, et al., 325 F.Supp.3rd 1017 (N.D. Cal. 2018); State *ex rel.* Jennings v. BP Am. Inc. et al., 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024); Mayor and City Council of Baltimore v. BP plc, et al., No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024); City of Annapolis v. BP plc, et al., No. C-02-CV-000250 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority) ; Anne Arundel County v. BP plc, et al.,

No. C-02-CV-21-000565 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority); City of New York v. Exxon Mobil Corp., et al., No. 451071/2021, 2025 WL 209843 (N.Y. Sup. Ct. Jan. 14, 2025) (Opinion attached to Defendants' Notice (Second) of Supplemental Authority); State of New Jersey *ex rel.* Platkin v. Exxon Mobil Corp., No. MER-L-001797-22 (N.J. Super. Ct. Law Div. Feb. 5, 2025) (Opinion attached to Defendants' Notice (Third) of Supplemental Authority). Because this court lacks subject matter jurisdiction over the claims raised, Defendants' Preliminary Objections on the merits must be sustained, and the case must be dismissed.

"Subject matter jurisdiction is defined as "the power of the court to hear cases of the class to which the case before the court belongs, that is, to enter into inquiry, whether or not the court may ultimately grant the relief requested." Harley v. HealthSpark Foundation, 265 A.3d 674, 687 (Pa. Super. 2021), *quoting* Lowenschuss v. Lowenschuss, 579 A.2d 377, 380 n.2 (Pa. Super. 1990). "Because subject matter jurisdiction goes to the very essence of a court's authority to adjudicate a case, the issue of subject matter jurisdiction bears two exceptional features: no party may waive it, and the court may raise it *sua sponte*. Given the gravity of the consequences flowing from a determination a court lacks subject matter jurisdiction, courts must address the issue with special care." Empire Roofing & More, LLC v. Department of Labor & Industry, State Workers' Insurance Fund, 312 A.3d 400, 405 (Pa. Comwlth. 2024) (citation omitted).

In American Electric Power Co., Inc. v. Connecticut, 564 U.S. 410 (2011) ("AEP"), eight states, New York City, and three land trusts sued electric power corporations, which owned and operated fossil-fuel-fired power plants in twenty states, seeking abatement of defendants'

ongoing contributions to global warming. In writing for the Court, Justice Ginsburg began the Court's Opinion as follows:

> We address in this opinion the question whether the plaintiffs (several States, the city of New York, and three private land trusts) can maintain federal common-law public nuisance claims against carbon-dioxide emitters (four private power companies and the federal Tennessee Valley Authority). As relief, the plaintiffs ask for a decree setting carbon-dioxide emissions for each defendant at an initial cap, to be further reduced annually. The Clean Air Act and the Environmental Protection Agency action the Act authorizes, we hold, displace the claims the plaintiffs seek to pursue.
>
> In Massachusetts v. EPA, 549 U.S. 497, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007), this Court held that the Clean Air Act, 69 Stat. 322, as amended, 42 U.S.C. § 7401 et seq., authorizes federal regulation of emissions of carbon dioxide and other greenhouse gases. "[N]aturally present in the atmosphere and ... also emitted by human activities," greenhouse gases are so named because they "trap ... heat that would otherwise escape from the [Earth's] atmosphere, and thus form the greenhouse effect that helps keep the Earth warm enough for life." 74 Fed.Reg. 66499 (2009).

Id. at 415-416 (footnote omitted). The Court pointed out that traditionally, environmental protection cases fell within the federal common law ("When we deal with air and water in their ambient or interstate aspects, there is a federal common law." Id. at 421, quoting Illinois v. City of Milwaukee, Wisc., 406 U.S. 91, 103 (1972)). The Supreme Court went on to state: "We hold that the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants." Id. at 424. While in its conclusion the Court noted "none of the parties have briefed preemption or otherwise addressed the availability of a claim under state nuisance law," (Id. at 429) we believe the holding of the Supreme Court in AEP applies equally to the case at bar, i.e., the Clean Air Act and the EPA actions it authorizes displaces any Pennsylvania common law right to seek abatement of greenhouse gas emissions from fossil fuel production companies. In other words,

the Clean Air Act and the EPA actions it authorizes preempts Pennsylvania State law in this case.

Bucks County argues that its case "does not seek to regulate or abate [greenhouse gas] emissions." *Plaintiff's Brief in response to Defendants' Joint Opening Brief in Support of Defendants' Preliminary Merits Objections Raised Jointly by All Defendants* at p. 1-2; 12-14. Rather, Bucks County argues that "the CAA [Clean Air Act] regulates subjects that are entirely distinct from Bucks' claims seeking damages from Defendants' deceptive marketing campaign and because the CAA preserves state law causes of action." Id. We agree with the Second Circuit Court of Appeals that "artful pleading cannot transform [Bucks County's] Complaint into anything other than a suit over global greenhouse gas emissions." City of New York, 993 F.3d at 91. A simple reading of the Complaint proves that Bucks County is truly seeking redress for harm caused by climate change, a global phenomenon caused by the emission of greenhouse gases in every nation in the world. In the "Introduction" section of the Compliant, Bucks County states: "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 global warming, and brought about devastating climate change impacts to Bucks County." *Complaint* at ¶1. The word "emissions" is used more than 100 times in the Complaint while the words "deceptive" and "deception" are used 39 times combined. While not conclusive, that disparity informs the Court that the focus of the Complaint is more on emissions than on deception. At oral argument, counsel for Bucks County conceded that the advertising, production, transport, and sale of Defendants' fossil fuel products in Bucks County did not cause any harm to the County. The combustion of those fossil fuel products by the citizens of Bucks County, and the County itself, produced greenhouse gas emissions, which then combined with

other greenhouse gases present in the atmosphere for as many as 100 years. According to Counsel, it is that combination of current emissions and emissions from many years ago, that caused the damages alleged by Bucks County. While Bucks County does everything it can to avoid the issue of emissions, it cannot avoid the fact that if there were no emissions there would be no damages.

The reason Bucks County avoids the issue of emissions is obvious, there is no question that emissions are the sole province of the federal government through the CAA and EPA regulations that flow from it. Bucks County recognizes the inescapable fact that if this case is about emissions, Pennsylvania courts have no subject matter jurisdiction. Because we find the causes of action set forth in the Complaint are so intertwined with emissions, we conclude that we have no subject matter jurisdiction over the claims raised.

As mentioned above, we join many other state and federal courts in finding that claims raised by Bucks County are solely within the province of federal law. See City of New York v. Chevron Corporation, et al., 993 F.3d 81, 95 (2nd Cir. 2021) ("Having concluded that the City's claims must be brought under federal common law, we see that those federal claims immediately run headlong into a problem of their own. For many of the same reasons that federal common law preempts state law, the Clean Air Act displaces federal common law claims concerned with domestic greenhouse gases."); City of Oakland v. BP plc, et al., 325 F.Supp.3rd 1017 (N.D. Cal. 2018) ("While it remains true that our federal courts have authority to fashion common law remedies for claims based on global warming, courts must also respect and defer to the other co-equal branches of government when the problem at hand clearly deserves a solution best addressed by those branches."); State *ex rel.* Jennings v. BP Am. Inc. et al., 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024) ("This Court finds that claims in this case seeking damages for

injuries resulting from out-of-state or global greenhouse emissions and interstate pollution, are preempted by the CAA. Thus, these claims are beyond the limits of Delaware common law."); Mayor and City Council of Baltimore v. BP plc, et al., No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024) ("regardless of whether Baltimore seeks injunctive relief or damages, Baltimore's claims are barred by the CAA."); City of Annapolis v. BP plc, et al., No. C-02-CV-000250 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority) ("the U.S. Constitution's federal structure does not allow the application of State Court claims like those presented in the instant cases."); Anne Arundel County v. BP plc, et al., No. C-02-CV-21-000565 (Md. Cir. Ct. Jan. 23, 2025) (Opinion attached to Defendants' [First] Notice of Supplemental Authority); City of New York v. Exxon Mobil Corp., et al., No. 451071/2021, 2025 WL 209843 (N.Y. Sup. Ct. Jan. 14, 2025) (Opinion attached to Defendants' Notice (Second) of Supplemental Authority); State of New Jersey *ex rel.* Platkin v. Exxon Mobil Corp., No. MER-L-001797-22 (N.J. Super. Ct. Law Div. Feb. 5, 2025) (Opinion attached to Defendants' Notice (Third) of Supplemental Authority). We agree with, and adopt, the logic and reasoning in each of those decisions.

CONCLUSION

We conclude that our federal structure does not allow Pennsylvania law, or any State's law, to address the claims raised in Bucks County's Complaint. Rather, "federal common law addresses "subjects within national legislative power where Congress has so directed" or where the basic scheme of the Constitution so demands." AEP at 421. Thus, this court lacks subject matter jurisdiction because the claims raised by Bucks County are preempted by federal law.

Therefore, Defendants' preliminary objections in the nature of a demurrer must be sustained, and Plaintiff's Complaint must be dismissed with prejudice.

ORDER

AND NOW, this 16th day of May, 2025, upon consideration of 1) Defendants' Preliminary Objections to Personal Jurisdiction (Docket seq. 130 and 131), together with Plaintiff's response in opposition (Docket seq. 169 and 173); 2) Defendants' Joint Preliminary Objections to the Complaint on the Merits (Docket seq. 132 and 133), together with Plaintiff's response in opposition (Docket seq. 172, 174, and 175) ; 3) Shell plc, Shell USA, Inc., and Shell Oil Products Company LLC's Preliminary Objections to the Complaint on the Merits (Docket seq. 136 and 137), together with Plaintiff's response in opposition (Docket seq. 167 and 168); 4) American Petroleum Institute's Preliminary Objections to Complaint (Docket seq. 138 and 139), together with Plaintiff's response in opposition (Docket seq. 165 and 166); and, 5) Defendants' Joint Motion for Hearing to Determine Immunity Pursuant to the Participation in Environmental Law of Regulation Act, 27 Pa.C.S. §§8301-8305, and to Dismiss Plaintiff's Complaint with Prejudice (Docket seq. 134 and 135), together with Plaintiff's response in opposition (Docket seq. 170 and 171), and after argument on March 24, 2025, for the reasons set forth above, it is hereby **ORDERED and DECREED** as follows:

1. Defendants' Joint Preliminary Objection for Lack of Capacity to Sue is **OVERRULED**.

2. Defendants' Joint Preliminary Objection to Personal Jurisdiction is **OVERRULED**.

3. Defendants' Joint Preliminary Objections in the nature of a demurrer are **SUSTAINED.**

4. Plaintiff's **COMPLAINT** is **DISMISSED WITH PREJUDICE.**

BY THE COURT:

STEPHEN A. CORR, J.

N.B. It is your responsibility to notify all interested parties of the above action.