

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

STATE OF WEST VIRGINIA, et al.,

Plaintiffs,

v.

LETITIA JAMES, et al.,

Defendants.

Civil Action No. 1:25-cv-00168-BKS-DJS

**PLAINTIFFS CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA, AMERICAN PETROLEUM INSTITUTE, NATIONAL
MINING ASSOCIATION, AND THE BUSINESS COUNCIL OF NEW YORK
STATE, INC.'S COMBINED SURREPLY IN SUPPORT OF THEIR MOTION FOR
SUMMARY JUDGMENT ON COUNTS I AND II AND OPPOSITION TO
DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

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Introduction

Binding Supreme Court and Second Circuit precedent establishes that New York may not impose state-law liability for global greenhouse gas emissions. That conclusion flows from the Constitution’s structure, over a century of federal common law, and Congress’s comprehensive delegation of authority over interstate air pollution to EPA under the Clean Air Act.

In an attempt to undermine that conclusion, New York seizes on EPA’s new final rule regarding the regulation of greenhouse gas emissions from motor vehicles, *Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act*, 91 Fed. Reg. 7686 (Feb. 18, 2026) (the “rescission rule”), and the United States’ decision to withdraw from the United Nations Framework Convention on Climate Change, *see Withdrawing the United States From International Organizations, Conventions, and Treaties That Are Contrary to the Interests of the United States*, 91 Fed. Reg. 2281 (Jan. 7, 2026). But neither action alters the binding precedent that bars New York from regulating emissions beyond its borders.

First, EPA’s rescission rule does not alter the analysis here. As a matter of constitutional structure and federalism, New York may not impose liability for global greenhouse gas emissions. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 91-92 (2d Cir. 2021). EPA’s rule cannot undo Second Circuit precedent, which holds that state attempts to impose liability for global greenhouse gas emissions are “simply beyond the limits of state law.” *Id.* Moreover, the rule does not alter the Clean Air Act’s preemptive force over New York’s attempt to regulate interstate greenhouse gas emissions. The preemption flows from both the statute and over a century of federal common-law doctrine, not from any particular EPA rulemaking. *See Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421, 424 (2011) (“*AEP*”); *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007); *City of New York*, 993 F.3d at 91-92. Congress, through the Clean Air Act, comprehensively

addressed interstate pollutants, including greenhouse gases, and “delegated to EPA the decision whether and how to regulate them.” *AEP*, 564 U.S. at 429. That delegation remains intact regardless of *how* EPA exercises its authority at any particular moment. Indeed, EPA’s own rescission rule acknowledged that the Clean Air Act “continues to preempt state common-law claims and statutes that seek to regulate out-of-state emissions.” 91 Fed. Reg. at 7739. EPA’s acknowledgment repeats what the governing case law already establishes.

Second, the United States’ decision to withdraw from the Framework Convention changes nothing here because foreign affairs preemption rests on the Constitution’s structural allocation of foreign policy to the national government and does not depend on which treaties or international agreements the executive maintains at any moment or in the future. *See Zschernig v. Miller*, 389 U.S. 429, 440 (1968) (“[E]ven in the absence of a treaty, a State’s policy may disturb foreign relations.”). Thus, the United States’ decision to withdraw from a single agreement does not open the door for States to impose liability schemes for global greenhouse gas emissions. That decision itself reflects the federal Government’s own considered judgment about how to conduct climate diplomacy. New York’s attempt to impose massive liability on global energy producers intrudes on the federal Government’s exclusive authority regardless of the current status of any particular international agreement. As the Second Circuit held, permitting States to impose liability for global greenhouse gas emissions “under state law . . . upset[s] the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other.” *City of New York*, 993 F.3d at 93.

This Court should grant Plaintiffs’ motion for summary judgment and deny Defendants’ cross motion for summary judgment.

Argument

I. EPA’s Rescission Rule Does Not Alter New York’s Authority Under the Constitution, the Clean Air Act’s Preemptive Scope, or Binding Precedent on Those Issues.

EPA’s new rescission rule does not alter the analysis of the claims before the Court. Rescinding a 2009 EPA decision, the rule concludes that Section 202(a)(1) of the Clean Air Act does not authorize EPA to prescribe greenhouse gas emission standards for new motor vehicles based on global climate change concerns, and therefore repeals those standards. 91 Fed. Reg. at 7702, 7710. The rule is limited to new light-duty, medium-duty, and heavy-duty motor vehicles and engines. It does not amend EPA’s existing regulations governing greenhouse gas emissions from other sources of air pollution, such as fossil fuel-fired power plants. *See id.* at 7688. In the rule, EPA expressly rejected the notion that the Clean Air Act does not still reach, and does not continue to preempt state regulation of, greenhouse gases. *See id.* at 7739.

New York’s arguments that EPA’s rescission rule undermines Plaintiffs’ claims and the Second Circuit’s holding in *City of New York* fail. First, nothing about EPA’s rule changes the fact that as a matter of constitutional structure, New York may not impose liability for global greenhouse gas emissions. Second, the rescission rule does not undermine the preemptive force of the Clean Air Act because the preemptive force turns on the legal framework Congress established, not on how EPA exercises its delegated authority at any given moment. And these conclusions continue to be controlled by *City of New York*, which is undisturbed by EPA’s rule.¹

¹ Indeed, under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412-13 (2024), courts, not agencies, determine statutory meaning independently. Thus, EPA’s rule neither binds this Court’s analysis nor disturbs binding Supreme Court and Second Circuit precedent that controls it. It is true that EPA’s rescission rule reached the same conclusion that Plaintiffs assert here, *see* 91 Fed. Reg. at 7739 (Clean Air Act’s comprehensive regime “continues to preempt state common-law claims and statutes that seek to regulate out-of-state emissions”), and that conclusion is still entitled to “due respect.” *Loper Bright*, 603 U.S. at 403 (citation modified). But ultimately EPA’s rule can have no effect on the binding case law that governs Plaintiffs’ claims and the

A. The Structure of the U.S. Constitution and Binding Precedent Preclude New York’s Act, Regardless of EPA’s Rescission Rule.

As explained in Plaintiffs’ prior briefing, the structure of the U.S. Constitution precludes New York’s attempt to impose liability for global greenhouse gas emissions. *See* ECF 216-1 at 9-19; ECF 248 at 12-26. The constitutional foundations for that conclusion—including the overriding need for a uniform federal rule of decision over interstate pollution; the limits imposed by due process and equal sovereignty; and the federal Government’s exclusive authority over foreign affairs; all addressed in the prior briefing—remain undisturbed by EPA’s rescission rule. In short, federal law has always governed in this area and continues to do so under the United States’ federalist structure. States have never had such authority. ECF 216-1 at 9-14; ECF 248 at 13-18.

Because EPA’s rescission rule cannot change the constitutional analysis, *City of New York* remains controlling. As the Second Circuit held, state attempts to impose liability for global greenhouse gas emissions are “simply beyond the limits of state law.” *City of New York*, 993 F.3d at 91-92. That holding did not turn on the 2009 endangerment-finding action that the rescission rule reverses, or on any other agency rule. Instead, it was grounded in “over a century [of] . . . cases . . . appl[ying] federal law to disputes involving interstate air or water pollution” because such disputes raise “an overriding need for a uniform rule of decision” and “basic interests of federalism.” 993 F.3d at 91-92 (cleaned up). Thus, EPA’s rescission rule does not—and cannot—undermine Plaintiffs’ constitutional preclusion claim or *City of New York*’s holding controlling that claim.

outcome here, because the relevant holdings in that case law are not based on EPA’s actions in the first place.

B. EPA’s Rescission Rule is Consistent with Precedent Interpreting the Clean Air Act, Does Not Alter the Preemptive Scope of the Clean Air Act, and Does Not Change the Clean Air Act’s Preemption of New York’s Act.

New York’s Act is also preempted by the Clean Air Act, ECF 216-1 at 19-22; ECF 248 at 34-40. EPA’s rescission rule does not change that conclusion. The rule flows from, and is consistent with, Supreme Court precedent interpreting the Clean Air Act.

1. In *Massachusetts v. EPA*, the Supreme Court held that “[b]ecause greenhouse gases fit well within the Clean Air Act’s capacious definition of ‘air pollutant,’” under 42 U.S.C. § 7602(g), “EPA has the statutory authority to regulate the emission of such gases.” *Massachusetts*, 549 U.S. at 532; *see also AEP*, 564 U.S. at 424 (“*Massachusetts* made plain that emissions of carbon dioxide qualify as air pollution subject to regulation under the Act.”). Later, in *AEP*, the Court confirmed that the Clean Air Act supplies the governing source of federal authority for regulating greenhouse gas emissions. *See* 564 U.S. at 424. The Court emphasized that Congress left for EPA the decision whether and how to regulate those emissions. *See id.* at 426 (holding that Congress, through the Clean Air Act, “delegated to EPA the decision *whether* and how to regulate” greenhouse gas emissions (emphasis added)).

In short, Congress, through the Clean Air Act, entrusted the role of governing interstate air pollution, including greenhouse gases, to EPA, not the States. *See City of New York*, 993 F.3d at 98-100. That decision makes sense—permitting individual States to upset the balance struck by EPA in the exercise of its congressionally delegated authority under the Clean Air Act would disrupt Congress’s comprehensive regulatory regime over interstate pollution and “lead to chaotic confrontation between sovereign states,” all of which could seek to impose their varying laws on the same out-of-state emissions. *Int’l Paper Co. v. Ouellette*, 479 U.S. 482, 496 (1987) (quoting *Illinois v. City of Milwaukee*, 731 F.2d 403, 414 (7th Cir. 1984)). As the Supreme Court held in a similar context when interpreting the Clean Water Act: “The application of affected-state laws” to out-of-state pollution “would be incompatible with the Act’s delegation of authority [to EPA] and

its comprehensive regulation of water pollution.” *Id.* at 500; *see also City of New York*, 993 F.3d at 100.

The preemptive force of the Clean Air Act turns on Congress’s delegation of authority to EPA, not on whether and how EPA exercises that authority. As the Court explained in *AEP*, “[t]he Clean Air Act is no less an exercise of the Legislature’s ‘considered judgment’ concerning the regulation of air pollution because it permits emissions *until* EPA acts.” 564 U.S. at 426. EPA’s rescission rule does not alter the Clean Air Act’s delegation of authority over interstate air pollutants. As noted above, the Clean Air Act gives EPA authority to regulate greenhouse gas emissions under its general definition of “air pollutant” in 42 U.S.C. § 7602(g). And, as EPA noted in its final rule, the statute continues to grant authority to set emission standards regardless of whether the agency adopts particular regulations for particular sources of emissions: EPA “retain[s] [its] authority to prescribe emission standards for any air pollutant that, in the Administrator’s judgment, causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare.” 91 Fed. Reg. at 7739.

Moreover, EPA’s authority under “section 202” is just one “critical part of the comprehensive framework of regulating air pollution” under the Clean Air Act, along with regulations under “Title II authorities for mobile sources working in tandem with the National Ambient Air Quality Standards (NAAQS) program and Title I authorities for stationary sources.” *Id.* at 7696. Indeed, EPA continues to regulate greenhouse gas emissions from stationary sources of air pollution. For example, the agency recently finalized technical corrections to the standards for methane and volatile organic compound emissions from facilities in the Crude Oil and Natural Gas Source Category, “which were promulgated “to mitigate climate-destabilizing pollution and protect human health by reducing greenhouse gas (GHG) and VOC emissions.” Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil &

Natural Gas Sector Climate Review, 89 Fed. Reg. 16,820, 16,822 (March 8, 2024); *see* Reconsideration of Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil & Natural Gas Sector Climate Review, 91 Fed. Reg. 18056 (April 9, 2026) (making technical corrections). And Clean Air Act section 209(a) continues to expressly preempt States from adopting or attempting to enforce emissions controls on new motor vehicles or engines. *See Eng. Mfrs. Ass’n v. S. Coast Air Qual. Mgmt. Dist.*, 541 U.S. 246, 252-54 (2004) (holding that local fleet-purchase or -lease requirements were preempted because they effectively imposed new motor-vehicle emission standards, which § 209(a) reserves to the federal Government).

2. Nor does EPA’s rescission rule undermine *City of New York*’s holding and application of the Supreme Court’s reasoning from *Ouellette*. First, in *City of New York*, the Second Circuit did not rely on the 2009 endangerment-finding decision that was overturned by the rescission rule. The Second Circuit instead relied on Supreme Court precedent, including *AEP*. *See City of New York*, 993 F.3d at 92-93, 95-96, 99-100. As noted above, *AEP* held that Congress, through the Clean Air Act, comprehensively addressed all air pollutants, including greenhouse gases, but “delegated to EPA the decision *whether and how to regulate*” them. 564 U.S. at 426 (emphasis added).² Second, the rescission rule does nothing to change *City of New York*’s application of *Ouellette* to hold that the Act did “not authorize the City’s state-law claims” because those claims would

² Making such a decision, in the discrete context of applying Clean Air Act Section 202 to motor vehicle emissions, is exactly what the rescission rule does. *See* 91 Fed. Reg. at 7739 (citing *AEP*, 564 U.S. at 426); *cf. AEP*, 564 U.S. at 426 (“The Clean Air Act is no less an exercise of the Legislature’s ‘considered judgment’ concerning the regulation of air pollution because it permits emissions until EPA acts. . . . Indeed, were EPA to decline to regulate carbon-dioxide emissions altogether at the conclusion of its ongoing . . . rulemaking [to set greenhouse-gas-emissions standards for fossil fuel-fired power plants], the federal courts would have no warrant to employ the federal common law of nuisance to upset the Agency’s expert determination.” (internal citation omitted)).

impose liability on greenhouse gas emissions originating beyond New York’s borders. *City of New York*, 993 F.3d at 99-100. That holding was based on the long history of applying federal law to issues involving interstate pollution, the Clean Air Act’s displacement of federal common law, and that the Clean Air Act’s savings clause does not permit States to impose liability for greenhouse gas emissions originating beyond their borders. *Id.* The Second Circuit’s binding application of *Ouellette*’s reasoning still applies here, and nothing about EPA’s rescission rule disturbs that precedent (nor could it). *See* 91 Fed. Reg. at 7739 (citing *Ouellette*, 479 U.S. at 492).

* * *

EPA’s rule does not change the outcome here. The rule does not change the fact that, as a matter of constitutional structure, interstate emissions are governed by federal law; the rule does not alter the Clean Air Act’s comprehensive regulatory regime over interstate pollutants or its preemptive effect here; and the rule does not disturb the binding precedent foreclosing New York’s attempt to regulate global greenhouse gas emissions beyond its borders. *See City of New York*, 993 F.3d at 98-100; *Ouellette*, 479 U.S. at 492.

II. The United States’ Decision to Withdraw from the Framework Convention Does Not Undermine Plaintiffs’ Foreign Affairs Arguments Because Foreign Affairs Preemption Flows from the Constitution, Not from Any Particular Treaty Obligation.

The United States’ decision to withdraw from the United Nations Framework Convention on Climate Change does not alter the analysis of the claims before the Court. As before, *City of New York* controls the outcome of this case. The Constitution continues to bar New York from intruding on the field of foreign relations by imposing liability for greenhouse gas emissions outside New York.

As an initial matter, New York errs in suggesting that the United States’ decision to withdraw from the Framework Convention somehow weakens *City of New York*. *See* ECF 254 at 33 (arguing that without the United States’ participation in the Framework Convention, “the foreign

policy concerns that formed the basis for the Second Circuit’s ruling are no longer extant”). That decision’s conclusion that State attempts to impose liability for global greenhouse gas emissions “implicate . . . our relations with foreign nations” was grounded in constitutional structure, not the United States’ participation in any particular treaty. 993 F.3d at 92. Although the Second Circuit referenced the Framework Convention and the Paris Agreement, it did so only as examples of the “various diplomatic channels” through which the United States addresses climate change, not as bases (let alone a sole basis) for its conclusion. *Id.* at 103. The United States’ decision to withdraw from those agreements does not transfer to New York the authority to govern in an area the Constitution places exclusively in federal hands, and it does not extinguish the conflict between New York’s Act and the United States’ foreign policy prerogatives concerning energy, fossil fuels, and emissions. *City of New York*’s holdings rest on constitutional bedrock that no executive action can disturb, and they remain controlling here.

The same structural constitutional principles that defeat New York’s attempt to govern domestic emissions—including the principle that States have never possessed authority to regulate emissions originating beyond their borders—apply with the same force to New York’s attempt to govern *global* emissions, as *City of New York* made clear. The constitutional limits on state extra-territorial authority that bar New York from regulating out-of-state domestic emissions operate just as forcefully when those emissions originate outside the United States’ borders. *See id.* at 102-03. Thus, the principle that the federal Government’s foreign affairs power preempts interfering state laws is grounded in the Constitution’s structural assignment of authority over foreign relations to the national government, not in any particular agreement or treaty the Executive Branch maintains at any particular time. *See Zschernig v. Miller*, 389 U.S. 429, 432, 440 (1968) (the Constitution “entrusts” the “field of foreign affairs” “to the President and the Congress” and

“even in the absence of a treaty, a State’s policy may disturb foreign relations” (second quote modified)); *see also Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (“Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.”). That structural allocation is self-executing: “[U]nlike its traditional statutory counterpart, foreign affairs field preemption may occur ‘even in [the] absence of a treaty or federal statute, [because] a state may violate the Constitution by establishing its own foreign policy.’” *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 964 (9th Cir. 2010) (quoting *Deutsch v. Turner Corp.*, 324 F.3d 692, 709 (9th Cir. 2003)).

Moreover, federal courts have long recognized that they “must proceed cautiously when venturing into the international arena so as to avoid unintentionally stepping on the toes of the political branches.” *City of New York*, 993 F.3d at 102 (discussing cases). That is because the federal Government retains exclusive authority over diplomacy, negotiation, and the articulation of national policy toward foreign sovereigns. *See Zschernig*, 389 U.S. at 442-43 (Stewart, J., concurring) (“Our system of government . . . imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.” (citation omitted)); *Hines*, 312 U.S. at 62 (“[T]he supremacy of the national power in the general field of foreign affairs . . . is made clear by the Constitution.”).

Thus, under field preemption, where “a State . . . take[s] a position on a matter of foreign policy with no serious claim to be addressing a traditional state responsibility,” federal law preempts state law “whether the National Government has acted and, if it had, without reference to the degree of any conflict because the Constitution entrusts foreign policy exclusively to the National Government.” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 420 n.11 (2003). Here,

through its Act, New York attempts to insert itself into an area of traditional federal authority that “the states have traditionally *not* occupied.” *City of New York*, 993 F.3d at 98. That is sufficient to preempt the Act under a field preemption analysis, regardless of any treaty or executive action addressing greenhouse gases.

One of the clearest illustrations of New York’s invading the field of the United States’ foreign policy positions is the Act’s imposition of strict liability for global greenhouse gas emissions despite the fact that the United States government, across administrations, has maintained a “longstanding position in international climate-change negotiations” that it is opposed to “the establishment of liability and compensation schemes at the international level.” *Id.* at 103 n.11. That consistent federal position has nothing to do with the United States’ participation in the Framework Convention or any other specific agreement. The United States’ long-held position was sufficient, standing alone, for the Second Circuit to conclude in *City of New York* that the City’s attempt to impose liability for global greenhouse gas emissions would “obviously sow confusion and needlessly complicate the nation’s foreign policy, while clearly infringing on the prerogatives of the political branches.” *Id.* at 103. The rationale is entirely unaffected by the United States’ decision to withdraw from the Framework Convention.

Moreover, even under conflict preemption analysis, *see Garamendi*, 539 U.S. at 419, New York’s Act conflicts with the United States’ foreign policy. The United States’ decision to withdraw from the Framework Convention does not reduce that conflict. If anything, it deepens it. The decision reflects the considered judgment of the federal Government as to how to best advance the Nation’s energy, economic, and national security interests in international fora. And that judgment is itself an exercise of exclusive federal foreign policy authority, not a cession of it. New York inserts itself into the international discussion by trying to take matters into its own hands and

impose strict liability on energy companies for their international conduct, contrary to the policy goals of the United States. *See* ECF 216-1 at 18 (citing federal Government’s energy and national security priorities); ECF 222-1 ¶ 15 (declaration of Deputy Secretary of State Landau, explaining that New York’s Act “directly conflicts with . . . U.S. foreign policy in multiple respects,” including that it “would increase costs for energy producers with ties to New York, which could in turn increase energy costs for U.S. consumers, thereby undermining crucial U.S. policy and national security interests in increasing affordable domestic energy.”). That intrusion cuts against the United States’ foreign policy goals and exemplifies the Second Circuit’s concern that permitting States to impose liability for global greenhouse gas emissions creates “a real risk that subjecting the Producers’ global operations to a welter of different states’ laws could undermine important federal policy choices.” *City of New York*, 993 F.3d at 93.

In sum, the United States’ decision to withdraw from the United Nations Framework Convention has no effect on Plaintiffs’ claims because the Constitution still bars New York from imposing substantial financial liability for global greenhouse gas emissions, as held in *City of New York*.

Conclusion

Plaintiffs request that the Court enter judgment in Plaintiffs’ favor, declare the Act unconstitutional, and enjoin Defendants from enforcing the Act against Plaintiffs’ members.

Dated: April 10, 2026

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Certificate of Service

I, Steven P. Lehotsky, certify that on April 10, 2026, the foregoing was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.

/s/ Steven P. Lehotsky
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