

**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
RESPONSE TO DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY**

Hencely v. Fluor Corp., 146 S. Ct. 1086 (2026), neither supports Defendants’ position nor undermines Plaintiffs’ arguments under Counts I and II. As in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), the Court in *Hencely* applied the settled principle that “a few areas, involving uniquely federal interests, are so committed by the Constitution and laws of the United States to federal control that state law is pre-empted and replaced, where necessary, by federal law.” 146 S. Ct. at 1094 (quoting *Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988)). The state-law claims in *Hencely*, which involved military contracting, did not encroach upon any such uniquely federal interest. By contrast, binding Second Circuit precedent squarely addresses why New York’s Act intrudes into a field reserved to federal authority and why Plaintiffs are entitled to summary judgment on Count I. *Hencely* has no impact on that precedent. Nor, for that matter, does *Hencely* have any effect on Plaintiffs’ statutory preemption arguments under Count II.

In *City of New York*, the Second Circuit applied the same governing framework later invoked by the Supreme Court in *Hencely*. The Second Circuit explained that federal law precludes state law where “a federal rule of decision is necessary to protect uniquely federal interests,” which requires both “the . . . existence of a federal interest” and “a conflict between that federal interest

and the operation of state law.” *City of New York*, 993 F.3d at 90 (citation omitted). Applying that test, the court held that the City’s state-law claims—seeking to impose massive monetary liability for harms allegedly caused by global greenhouse gas emissions—impermissibly conflicted with federal interests and therefore could not proceed. *Id.* at 90-92 (emphasizing that “[f]or over a century, a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution,” and holding that City’s “sprawling case” of liability was “simply beyond the limits of state law”). Defendants aver that “‘areas of uniquely federal interest’ are ‘rare,’” ECF 273 at 2 (quoting *Hencely*, 146 S.Ct. at 1094), but the Second Circuit has already held that this is such an area. That holding controls here—New York’s attempt to impose financial consequences for the effects of global greenhouse gas emissions is barred by federal law.

Hencely, conversely, rejected the proposition that “a state-law suit premised on a military contractor’s activities in a war zone is preempted even when the contractor was not required or authorized to take the action at issue,” a holding that has no bearing on this case. 146 S. Ct. at 1093. In *Hencely*, the military had already determined that the defendant violated its contractual obligations to the United States and base-security policies, and no federal policy authorized or directed the defendant’s allegedly negligent supervision, much less the suicide bombing that gave rise to the plaintiff’s injuries. *Id.* at 1095. Accordingly, the Court concluded that “[e]ven granting that there is a ‘uniquely federal interest’ in the regulation of military bases overseas, there would be no ‘significant conflict’ between that interest and state-law negligence liability premised on a contractor’s departure from military instructions.” *Id.* (quoting *Boyle*, 487 U.S. at 507).

Hencely is distinguishable in that both federal legislation and Supreme Court precedent have recognized and permitted tort suits to be brought against military contractors in certain instances, *see id.* at 1095, 1097, so permitting such a suit under state law presented no conflict with

federal interests. Here, however, federal law—including federal common law and the Clean Air Act—has never permitted States to impose monetary liability “for the cumulative impact” of greenhouse gases emitted “simultaneously across just about every jurisdiction on the planet.” *City of New York*, 993 F.3d at 92. Thus, New York’s attempt to impose massive financial liability for emissions originating beyond its borders conflicts with the “careful balance” struck by Congress in the Clean Air Act, and the federal government’s “important . . . policy choices,” *id.* at 93, including its longstanding opposition to liability schemes in foreign affairs, *id.* at 103 n.11.

Defendants suggest that *Hencely*’s recognition of the general rule that “[t]here is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it” undermines Plaintiffs’ arguments under Count I. 146 S. Ct. at 1093 (citation omitted) (alteration in original). Not so. Unlike the parties in *Hencely*, Plaintiffs *have* tied Count I to both text and constitutional structure.¹ Specifically, Plaintiffs have argued that there are identifiable textual limits on state authority in the Constitution, including the Due Process Clause of the Fourteenth Amendment, the provisions protecting the States’ equal sovereignty (*see, e.g.*, U.S. Const. amend. X), and the provisions granting the federal government exclusive authority over foreign affairs (*see, e.g.*, U.S. Const. arts. I & II). ECF 216-1 at 15-19; ECF 248 at 18-26. Moreover, the Second Circuit has said that the long-standing rule that a state may not reach beyond its borders to impose monetary liability for interstate and international greenhouse gas emissions is grounded in the United States’ “constitutional architecture.” *City of New York*, 993 F.3d at 90; *cf. Hencely*, 146 S. Ct. at 1094 (recognizing that “uniquely federal interests” doctrine flows from Constitution itself).

¹ Count II asserts that the Clean Air Act preempts New York’s Act. Thus, not only have Plaintiffs tied Count I to both text and constitutional structure, but they have also separately asserted a statutory theory of preemption in Count II. Neither claim is affected by *Hencely*.

Contrary to Defendants’ suggestion, the Supreme Court did *not* hold that the Constitution’s structure can never preclude or preempt state law. Rather, it simply held that the Constitution’s grant of war powers “does not imply that courts must reject any tort claim connected to a war zone.” *Hencely*, 146 S. Ct. at 1098. That is, the Constitution’s structure did not support the sweeping rule proffered *in that case*. *See id.* at 1091, 1098-99 (noting lack of precedent supporting petitioner’s rule). There is no question, however, that the Constitution’s structure can preempt state law, *see, e.g., Osborn v. Bank of U.S.*, 9 Wheat 738, 22 U.S. 738, 865-66 (1824) (Ohio preempted from taxing U.S. Bank by structure of Constitution); *McCulloch v. Maryland*, 4 Wheat 316, 17 U.S. 316, 429-32 (1819) (same for Maryland), and here, the Second Circuit’s holding that federal law controls disputes involving interstate pollution is grounded in that constitutional structure and the “basic interests of federalism,” *City of New York*, 993 F.3d at 92 (citation omitted); *see Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 487-88 (1987) (interstate pollution “is a matter of federal, not state, law”); *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 420-21 (2011) (“basic scheme of the Constitution” requires federal law to govern interstate pollution).

Finally, Defendants misconstrue (and misquote) *Hencely* when they say it “noted that ‘assertions by a party of an indirect burden on federal activities’ are an insufficient basis for preemption.” ECF 273 at 2. In the portion of the decision Defendants cite, the Court was discussing the unrelated issue of whether the defendant contractor was protected from state law claims because it was working for the federal Government. *Hencely*, 146 S. Ct. at 1098 (holding that because federal contractors are not federal “officers or agencies,” “absent a statute to the contrary, States can regulate or tax federal contractors on the same terms as any private company, even where the party asserts an indirect burden on federal activities”). Regardless, here, New York’s Act *directly* interferes with federal authority over interstate and global greenhouse gas emissions.

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Certificate of Service

I, Steven P. Lehotsky, certify that on May 12, 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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