

THIRTY-EIGHTH ANNUAL JEFFREY G. MILLER NATIONAL ENVIRONMENTAL LAW MOOT COURT COMPETITION

2026 Competition Problem

UNITED STATES COURT OF APPEALS FOR THE TWELFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee-Cross Appellant,

v.

STATE OF NEW UNION and NEW UNION
DEPARTMENT OF ENVIRONMENTAL QUALITY,

Defendants-Appellants-Cross-Appellee

and

INNOCENT PURCHASERS OF HOMES,

Intervenor Defendant-Appellant-Cross-Appellee.

C.A. No. 25-000812

On Appeal from the United States District Court for the District of New Union,
Case No. 25-CV-2012, Judge T. Douglas Bowman.

ORDER

Following the issuance of a Decision and Order of the United States District Court for the District of New Union, dated August 2, 2025, in case 25-CV-2012, the United States Environmental Protection Agency ("EPA"), the State of New Union and the New Union Department of Environmental Quality ("New Union" and "DEQ"; collectively, the "State"), and Innocent Purchasers of Homes, Inc. ("IPoH") each appeal from different parts of the district court's Decision and Order. Specifically, the district court held that:

1. IPoH's motion for permissive intervention was granted.
2. The State and IPoH's motion to dismiss the Complaint challenging the State Climate Adaptation and Mitigation Act ("CAMA") because the United States lacked standing to bring the suit was denied.
3. The United States' motion for summary judgment was denied insofar as CAMA was not preempted by the Clean Air Act.
4. The United States' motion for summary judgment was denied insofar as CAMA did not represent unconstitutional "extra-territorial legislation" by the State in violation of the Due Process Clause of the United States Constitution.
5. The United States' motion for summary judgment was granted because CAMA violated the dormant Commerce Clause of the United States Constitution.

The United States appeals from the first, third and fourth holdings. The State appeals from the first, second and fifth holdings. IPoH appeals from the second and fifth holding. Each party filed timely notices of appeal.

Therefore, it is hereby ordered that the parties brief the following issues:

- 1) Did the District Court err in holding that IPoH had established a basis for permissive intervention?

The United States and the State argue it did; IPoH argues it did not.

- 2) Did the District Court err in holding that the United States has standing to bring this action?

The State and IPOH argue it did; The United States argues it did not.

- 3) Did the District Court err in holding that CAMA is not preempted by the Clean Air Act?

The United States argues it did; The State and IPOH argue it did not.

- 4) Did the District Court err in holding that CAMA is not an unconstitutional form of extra-territorial legislation in violation of the Due Process Clause of the United States Constitution?

The United States argues it did; The State and IPOH argue it did not.

- 5) Did the District Court err in holding that CAMA is unconstitutional in that it violates the dormant Commerce Clause of the United States Constitution?

The State and IPOH argue it did; The United States argues it did not.

SO ORDERED.

Entered this 3rd day of August, 2025.

[NOTE: No court decisions or documents dated after August 2, 2025 may be cited in the briefs or in oral argument.]

[NOTE: The Problem assumes no other climate superfund litigation exists in other states, and briefs, memoranda, or decisions from climate superfund litigation in other states cannot be cited or used in any way.]

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW UNION

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW UNION and NEW UNION
DEPARTMENT OF ENVIRONMENTAL QUALITY

Defendants,

and

INNOCENT PURCHASERS OF HOMES,

Intervenor Defendant.

Docket: 25-CV-2012

DECISION AND ORDER

This case arises from disputes surrounding the Climate Adaptation and Mitigation Act, a statute passed by the State of New Union (the "State") in August of 2024 and signed into law by the Governor of New Union on September 1, 2024. *See* Code of New Union, Env. Prot., § 7-017, *et seq* ("CAMA" or the "Act"; a copy of relevant portions of CAMA are annexed to this Decision and Order). As described in more detail below, CAMA established two different sources of funds for the State to support future project proposals that the State deems necessary to adapt to impacts from climate change or to repair damages after such impacts. First, it collects two types of fees from producers of fossil fuel products that are sold in the State (called "Producers"), referred to as a Producer Assessment and a Producer Revenue Fee (collectively, the "Producer Fees"). *See* CAMA, § 7-020. Second, it collects fees from buyers or owners of certain property where those properties are purchased or renovated after the effective date of the Act (the "Property Fee"). The properties subject to the Property Fee are those valued above a certain amount and located in "Endangerment Zones," defined by the Act as areas especially susceptible to climate change impacts (primarily coastal areas and flood-prone areas within the state). *See* CAMA, § 7-021.

Subsequent to the passage of the Act, a group of homeowners and prospective buyers of properties in Endangerment Zones formed a not-for-profit corporation named Innocent Purchasers of Homes, Inc. ("IPoH"). On December 2, 2024, IPoH brought a state court challenge to the Property Fee portion of the Act, alleging substantive and procedural defects in the statute

under state law. Those issues are not before this Court, but as discussed below the existence of the lawsuit is relevant here.

On April 15, 2025, the United States of America (the "United States") brought this action against the State of New Union and the New Union Department of Environmental Quality ("DEQ"), challenging the validity and constitutionality of the Producer Fees portions of CAMA on several grounds discussed below.

On May 4, 2025, IPoH moved to intervene in this action as a defendant in support of the challenged Producer Fees sections. Both the United States and New Union oppose that intervention.

On May 12, 2025, the State moved to dismiss this action, contending that the United States does not have standing to bring this action. IPoH filed a brief joining in the standing motion, contingent on the Court granting intervention.

On June 1, 2025, the United States filed opposition to the motion to dismiss and cross-moved for summary judgment on its claims, arguing that the Producer Fees portions of CAMA are preempted or unconstitutional for three different reasons: (1) CAMA is preempted by the Clean Air Act; (2) CAMA is unconstitutional "extra-territorial" legislation by the State in violation of the Due Process Clause of the United States Constitution; and (3) CAMA violates the dormant Commerce Clause by discriminating against out-of-state products. On June 21, 2025, the State filed opposition papers responding to these legal arguments. IPoH filed an opposition brief as well, which IPoH stated was contingent on the Court granting IPoH's motion for intervention.

For the reasons set forth below, the Court grants IPoH's motion for permissive intervention, denies the State's motion to dismiss, and grants the United States' motion for summary judgment.

BACKGROUND

The following facts are not in dispute for the purposes of these motions, except where specifically noted. In CAMA, New Union finds that it is a state particularly susceptible to the effects of climate change. *See* CAMA, § 7-018. The geographic and demographic features of the State underlying this claim are not in dispute. The State's East Coast is on the Atlantic Ocean, and includes five different inhabited islands (the "Atlantic Isles"), which combined have a population of just over 50,000 full-time residents and summer seasonal tourist residents of over 200,000. This area of the State, including both the islands and the coast itself, has been hard hit by hurricanes Peter and Gilda in just the past five years, each of which caused over \$750 million in damages. Moreover, the center of New Union is replete with areas subject to extensive flooding. Most recently, in 2021, the region around Millville, New Union, suffered the worst flood in the State's history, destroying over 2,000 homes and businesses and causing nearly \$600 million in damages. New Union argues that all of these damages, and many other categories of impacts, were caused or exacerbated by the effects of climate change.

New Union further argues that the primary culprit in causing climate change is the combustion of fossil fuels. By New Union's estimate, fossil fuel combustion resulting in the

emission of greenhouse gases ("GHGs") is responsible for nearly three-quarters of global GHG emissions, releasing billions of tons of carbon dioxide, methane and other GHGs into the atmosphere each year. These emissions have warmed the planet by more than 1.1°C since pre-industrial times, driving the sea-level rise, stronger hurricanes, and inland flooding that New Union has already experienced.

As noted, no party disputes these facts for the purposes of these motions, but the United States clarifies in its papers that, while it disputes the nature and extent of the causal connection between GHGs and the impacts described above, for the purposes of its summary judgment motion it is assuming these facts to be true and nevertheless argues that the law is still preempted and unconstitutional.

In an attempt to help the State fund the necessary infrastructure to adapt to climate change or repair from its impacts, the New Union legislature passed, and Governor Lament signed, CAMA, on September 1, 2024. As noted above, CAMA creates funding by requiring certain payments (the "Producer Fees" and "Property Fee") into the New Union Mitigation and Adaptation Account ("NUMAA").

The Producer Fees apply to domestic companies that derive the majority of their revenue from selling Fossil Fuel Products (as defined in the Act), provided that at least a small portion of that revenue is generated by sales in New Union. *Id.* at § 7-019-20. If a company meets the definition of a Producer under the Act, it is subject to two types of fees. First, the company must pay a total fee calculated based on the estimated GHGs created by combustion of Fossil Fuel Products it sold in the State in the past five years (the "Producer Assessment Fee"). *Id.* at § 7-020. This past fee is to be calculated under regulations to be issued by DEQ for each affected Producer in an amount to create a \$20 billion fund in NUMAA, and will be assessed beginning in June of 2026. *Id.* at § 7-020. The Producer Assessment Fee is a pro-rata share from each Producer based on the total "carbon dioxide equivalent" ("CO₂E") generated by sales of Fossil Fuel Products by each Producer in the State. *Id.* Second, going forward after that date, each Producer must pay a 0.5% tax on the gross revenue from the sale of Fossil Fuel Products in the State of New Union (the "Producer Revenue Fee").

The Producer Assessment and the Producer Revenue Fee are defined together as the "Producer Fees." Because there are no coal-fired power plants in the State, the Producer Fees apply almost exclusively to large petroleum companies such as ExxonMobil, Chevron, and BP, and producers and distributors of natural gas sold in the state, including the same petroleum companies and other companies that are large players in natural gas production, such as EQT and Antero Resources. These entities have also filed several challenges to CAMA in separate actions and have moved to consolidate the various actions here. Because the Court grants summary judgment in favor of the United States in this Decision and Order, those motions are denied as moot.

The Producer Fees also may apply to one in-state company. Producers are limited to companies that derive a majority of their income from the sale of Fossil Fuel Products and generate at least \$1 billion in gross revenue from the sale of Fossil Fuel Products. *Id.* at § 7-019(k). Only one company in the State arguably meets that definition: the New Union Gas Company ("NUGC"), which generates nearly all of its income from the sale of natural gas (a Fossil Fuel Product), and in two of the past five years (2022 and 2024) had exceeded \$1 billion

in gross revenues from those sales. According to the State, and not disputed by any party, NUGC is on track to exceed \$1 billion in gross sales of Fossil Fuel Products again this year; if so, it would be subject to the Producer Assessment. Similarly, in any future year where NUGC meets the definition, it would be subject to the Producer Revenue Fee the following year. Based on publicly disclosed financial information, NUGC would share approximately 2% of the total Producer Assessment Fees (should it qualify this year), and, based on the past year's sales, approximately 1.5% of the total Producer Revenue Fees collected by the State. This industry represents nearly 4% of the total revenue of the State's industries. NUGC is a party in the related action filed by ExxonMobil and other petroleum companies.

Also potentially relevant here, it is also undisputed that there are multiple renewable energy companies in the State, including solar panel manufacturers, wind farms and others, which would undoubtedly indirectly benefit from restrictions or fees on the sale of Fossil Fuel Products insofar as their products would become more competitive.

The Property Fee applies to the purchase or defined "Major Renovations" of any Affected Property located in the "Endangerment Zones." *Id.* at § 7-021. Endangerment Zones are limited to high-risk flood zones and coastal areas, including the Atlantic Isles. New Union asserts, and no other party denies, that the Atlantic Isles and many areas along the coast are high-value tourist and vacation areas, as are some, but not the majority, of the areas in high-risk flood zones. In total, approximately 75,000 homes would currently meet the definition of "Affected Property" under the Act. Any purchase of an Affected Property after the effective date of CAMA is required to pay a fee of 1% of the sale price to the State, payable into NUMAA. Likewise, any current owner of an Affected Property that undertakes a "Major Renovation," defined as a renovation costing more than 5% of the current assessed value of the property, is required to pay a fee of 2% of the total cost of the renovation into NUMAA (combined, these fees constitute the "Property Fee"). *Id.* at § 7-021-22.

The Act then sets out a process for municipalities, citizens and organizations to propose projects designed to (1) repair damages from climate change-related impacts or (2) are used to adapt to future climate change impacts, such as the construction of barrier walls, breakwaters, levees, or other measures to help minimize damages from climate change impacts. The submitted project proposals are reviewed and approved or denied by the NUMAA Administrator. *Id.* at § 7-022.

DECISION

I. IPoH Has Interests in this Litigation and is Granted Permissive Intervention.

Before delving into the merits of the motions to dismiss and for summary judgment, the Court must decide whether IPoH can participate in the motions as an intervening party. Further, although the Court here grants summary judgment in favor of the United States, should this case be remanded after the likely appeal, the status of IPoH as a party should be resolved.

IPoH moves for permissive intervention, arguing that it has direct interests in this matter and can provide perspective and arguments that would aid the Court. Both other parties oppose the motion. The United States argues that any interests or arguments that IPoH may have will be adequately represented by the State given that the only issues here, in the United States' view,

are legal questions concerning whether the Producer Fees portions of the Act are preempted or violative of the United States Constitution. The United States also argues that IPoH's intervention will delay the action and prejudice the United States' ability to prosecute it, in the event the Court denies the pending motions.

The State makes similar arguments, though with some variation. As to adequacy, the State echoes that it has every interest and motivation to vigorously defend the Producer Fees portion of CAMA, and that participation of IPoH is not necessary or beneficial. The State also notes that IPoH has separately sued the State regarding the Property Fee portions of the Act, and thus agrees with the United States that delay is likely to result from intervention, contending that the only "new" arguments IPoH could bring to the Court would likely relate to issues not relevant to the validity or enforceability of the Producer Fees provisions of CAMA.

In reply, IPoH points out that the State's contention that IPoH will "complicate" the case by advocating for interests of its members, who are the State's own residents, is really an admission that the State cannot fully or adequately represent IPoH's interests. It argues that its members suffer the impacts from climate change most directly in the State, by the State's own admissions in the Act, so it should be given the right to speak to those interests and the enforceability of the Producer Fees provisions of the Act. Finally, IPoH argues, NUMAA should be entirely funded by the Producer Fees, and so it is vital that the Producer Fees remain. Otherwise, IPoH fears that if the Producer Fees provisions are struck, and only the Property Fee remains, the victims of Producers' actions will be left to pay the costs of injuries caused by those very entities.

To be granted permissive intervention, IPoH must demonstrate that its motion is timely, that it has an interest in the action, that its interest may be impaired by the disposition of the action, and that its interest is not adequately protected by the existing parties. *Floyd v. City of New York*, 770 F.3d 1051, 1057 (2d Cir. 2014). If IPoH fails to establish any one of these requirements, that is a sufficient ground to deny intervention. *Id.* Likewise, permissive intervention should not be granted if "intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

No party argues that IPoH's motion was untimely, and no party disputes that, at least on some level, IPoH and its members have an interest in the outcome of this litigation. As owners or potential owners of homes that are considered at high risk under CAMA, funding of NUMAA is vitally important to IPoH and its members. Conversely, the State and the United States are correct that IPoH's interests with respect to the Producer Fees are fully aligned with the State, and the Court does not doubt the adequacy of representation by the State. The Court is convinced, though, that the status as both homeowners threatened by climate change and potentially impacted by the Property Fee, IPoH should be given the opportunity to represent its own interests here, and the State's representation is therefore not entirely adequate.

But the Court will not adjudicate the motion solely on adequacy. Thus, the issue turns really on delay. The potential delay issue is not of significance for the instant motions, as IPoH has filed timely papers on both the pending motions and has not delayed the proceedings. Given the disposition of these motions here, there are no further proceedings in this Court. But should there be further proceedings, the Court does not see a basis for assuming any delay. It can hardly be doubted that, as a general matter, "[m]ultiplying the number of parties in a case will often lead

to delay." *T-Mobile Northeast LLC v. Town of Barnstable*, 969 F.3d 33, 41 (1st Cir. 2020). But that, in and of itself, cannot be the basis to deny intervention or there would never be permissive intervention. IPoH here has demonstrated differentiated interests in CAMA and its enforcement, as well as an undeniable interest in the way that NUMAA is funded. As such, the Court would benefit from IPoH's participation in the case.

IPoH has represented to the Court that it would abide by, and not separately seek to extend, future deadlines set by the Court, so permissive intervention here is warranted on these motions and in the event that the Twelfth Circuit should hold that further proceedings are necessary. IPoH's motion is therefore granted.

II. The United States Has Standing to Bring this Action.

Because standing is a threshold jurisdictional issue, the Court will address this argument before the arguments on the merits. Both IPoH and the State argue that the United States has failed to establish standing to challenge the Act, primarily because it cannot establish a cognizable injury caused by the Act.

Any plaintiff that files a lawsuit bears the burden of demonstrating standing. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). To establish standing, a plaintiff must show that: (1) it has "suffered an injury in fact that is concrete, particularized, and actual or imminent;" (2) "the injury was likely caused by the defendant;" and (3) "the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). These principles also apply to the federal government, meaning that the United States must also demonstrate that it has standing to invoke the Court's jurisdiction. *United States v. San Jacinto Tin Co.*, 125 U.S. 273, 285 (1888) (holding that the United States must demonstrate standing on the same general principles that would apply to a private plaintiff). The State and IPoH argue that the United States suffers no constitutional injury caused by CAMA that is sufficient to support standing.

In support of its claimed injury, the United States first argues that CAMA (especially when combined with similar statutes in other states) results in injuries to the country itself and to the entire population, and the United States has standing to address those injuries. Relying on *In re Debs*, 158 U.S. 564, 584 (1895), it first claims it is entitled to sue for "injury to the general welfare." The United States further asserts that "the Federal Government [is] the ultimate *parens patriae* of every American citizen." *South Carolina v. Katzenbach*, 383 U.S. 301, 324 (1966). The United States claims that injury will result from increased energy and fuel costs as a natural result of CAMA, through the direct increase in prices from the Producer Fees assessed to the Producers, resulting in increased prices for fossil fuel products for all Americans. The United States separately contends a direct loss through decreases in exploration and production of fossil fuels due to fees imposed under CAMA. The United States contends that, when production and exploration are reduced due to increased costs, so is revenue to the United States, which derives some income from leases on federal lands to fossil fuel companies, causing an immediate and concrete injury directly to the United States. In the United States' view, where individual states impose taxes (or "Fees" as here) on fossil fuel products coming into the state, that will directly raise costs on the sellers and purchasers, negatively impacting citizens of the country and revenue to the United States. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 103 (2d Cir. 2021) (recognizing that costs imposed on fossil fuel producers "accountable for purely foreign

activity . . . would require them to internalize the costs of climate change and would presumably affect the price and production of fossil fuels abroad.").

The State and IPoH argue that the United States' claimed injuries to the United States itself are not "certainly impending" and there is no "substantial risk" that they will occur. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). They argue that the extremely minimal increases in costs due to CAMA would have to hypothetically change operations by third parties in what is undisputedly a global marketplace, then the same minimal fees would have to hypothetically cause less production and exploration, and again hypothetically cause lost revenue to the United States through reduced investments on federal land. Each of these steps, argue the State and IPoH, are entirely speculative and not the type of concrete injury needed for constitutional standing.

The Defendants' arguments as to direct injury are persuasive. The claim that the Producer Fees applied in a single state will somehow cause decreased production and increased prices in the oil and gas industry nationwide strains credulity, and the United States offers no evidence to support this claim other than inference. That doubt is compounded when trying to then extrapolate that hypothetical reduction to loss of revenue to the United States itself. This far-fetched injury is not the type of concrete injury that courts have required to establish standing and cannot support standing for the United States here.

As for *parens patriae* standing for injuries alleged to the County's citizens, the State and IPoH argue the only citizens who may theoretically suffer any type of direct price impact will be the State's own citizens, and the United States certainly does not have standing to challenge a state's own legislation by standing in the shoes of the State's own citizens - if anyone has *parens patriae* standing for New Union's citizens, it would be New Union, not the Federal Government. New Union contends that no Supreme Court case has ever recognized *parens patriae* standing for the United States to sue a state, nor would such a theory make sense. IPoH joins in this argument, and adds that IPoH itself is *actually* representing citizens of the State, and its members and the residents of the State generally strongly support the Producer Fees aspect of CAMA. It would be highly perverse in IPoH's view for the Court to hold that the United States can sue the State under a *parens patriae* theory to eliminate legislation that the residents largely support.

As noted above, the argument that the entire country will be significantly harmed, or likewise that the citizens of the *entire* United States will be negatively impacted by rising prices due to CAMA, is speculative and unsupported, so *parens patriae* standing on behalf of the citizens of the country as a whole (even if such a theory had support in case law), is unavailable here. This leaves only the odd formulation that the United States has standing to sue New Union under a *parens patriae* theory based on injury to New Union's own residents. While the United States may well be correct that the financial cost to residents of New Union may increase as a result of the Producer Fees, the Court fails to see how such an injury can provide *parens patriae* standing for the United States as a whole. Under different circumstances, New Union may allege such standing on behalf of its own residents, but the Federal Government cannot leverage a state's own citizens' alleged injuries to abrogate *state* legislation that the federal government takes issue with. As such, the Court is not persuaded that the United States has standing under a *parens patriae* theory of any type.

The United States' alternative basis for standing fares better. The United States claims that CAMA is an end-run attempt to regulate interstate (and indeed, worldwide or at least nationwide) GHG emissions. As such, the United States argues that it has a sovereign interest in regulating nationwide air emissions and properly enforcing its own regulation of GHGs, through the Clean Air Act or otherwise. Because a patchwork of state-specific GHG penalties, limits, fees or the like will inevitably hinder a nationwide system of regulation, the United States argues that its ability to implement and enforce federal law will be impeded. *See Arizona v. United States*, 567 U.S. 387 (2012) (although not specifically on standing, finding that the United States had an interest in arguing that individual state immigration policy interfered with or was preempted by the nationwide system).

New Union and IPoH argue that this claimed "interference" is entirely speculative. They assert that CAMA does not regulate emissions at all - even indirectly. From this, they conclude, the claimed interference with the Clean Air Act or any other attempt to regulate GHG emissions is entirely speculative.

The Court finds that this issue is too inextricably intertwined with the merits of the United States' preemption and constitutional arguments, discussed below. Where deciding standing would result in a decision as to the merits of a claim, the issue should be decided on the merits through summary judgment, not on a motion to dismiss under the guise of standing. *See Herbert v. Nat'l Acad. of Sciences*, 974 F.2d 192, 198 (D.C. Cir. 1992) (the court should defer the standing inquiry until the merits are considered where the issues intertwine). In such circumstances, the issue of standing need not be conclusively resolved, but instead the court should defer its jurisdictional decision until the merits are heard. The Court will resolve the claims on the merits, not through a motion to dismiss on standing grounds. For these reasons, the Court denies the State of New Union's motion to dismiss.

III. The United States Is Entitled to Summary Judgment.

Having concluded that the United States has made sufficient allegations of standing to reach the merits, the Court next turns to the United States' motion for summary judgment. The United States' three substantive challenges in its motion to dismiss are facial challenges to CAMA. Because the Producer Fee has not yet taken effect, the United States faces a high bar. It can prevail on this pre-enforcement facial challenge only by "'establish[ing] that no set of circumstances exists under which the Act would be valid,' i.e., that the law is unconstitutional in all of its applications." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) (alteration in original) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). The Court will address each argument in turn.

A. The Clean Air Act Does Not Preempt CAMA.

The initial argument of the United States is that CAMA is, at its heart, an attempt to regulate GHGs. Because GHGs are a pollutant that does not have local effects, but rather is an undeniably nationwide and global issue, the United States argues that CAMA is preempted by the Clean Air Act insofar as only the United States can regulate inter-state and inter-country pollution issues. Specifically, the Federal Government contends that the Producer Fees, notwithstanding its express framing as a "fee" on sales not emissions, is actually an attempt to control pollution by GHGs, albeit indirectly. They point to the fact that CAMA in name, purpose

and effect is entirely about GHGs and climate change, and the "sales" portions are merely the vehicle the State adopted to penalize and regulate GHG emissions.

New Union and IPoH contend that the Court need not go beyond the express terms of CAMA to deny this motion. The Defendants point to the express terms of the Act, which regulate only past and future sales within the State, thus are not emissions regulations at all. Moreover, Defendants point to the recent proposal by the United States to rescind the 2009 Endangerment Finding, *Reconsideration of the 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards*, 90 Fed. Reg. 36, 288 (proposed Aug. 1, 2025) ("Endangerment Reconsideration"), arguing that the Federal Government cannot have it both ways - it cannot argue both that the Clean Air Act preempts CAMA while at the same time arguing that it does not have the authority under the Clean Air Act to regulate GHGs. For both reasons, Defendants contend that the Clean Air Act does not preempt regulation by the states of commerce within the state, even if that regulation may have a secondary effect on interstate emissions.

The Clean Air Act displaced what was federal common law that previously governed interstate air pollution. *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 424 (2011) ("*AEP*"); *City of New York v. Chevron Corp.*, 993 F.3d 81, 95-96 (2d Cir. 2021). Pointing to the Second Circuit's decision in *City of New York*, the Federal Government contends that "'resort[ing] to state law' on a question previously governed by federal common law is permissible only to the extent 'authorize[d]' by federal statute." *City of New York*, 993 F.3d at 99 (alteration in original) (quoting *Illinois v. City of Milwaukee (Milwaukee III)*, 731 F.2d 403, 411 (7th Cir. 1984)). As the Supreme Court has explained, "the decision whether and how to regulate" emissions as between states rests with the EPA, not individual states. *AEP*, 564 U.S. at 426. Thus, the United States claims, even if the Endangerment Finding is rescinded, that is merely a decision regarding *whether* to regulate, which does not vitiate preemption arguments.

The issue is not as clear cut as Defendants claim. In describing it as merely a form of in-state sales regulation, New Union and IPoH are minimizing the actual purpose and language of CAMA in a way that ignores its substance. It is plain from the face of the statute that the Producer Fees are expressly based on GHG emissions, not merely "sales" of products within the state. The calculation of the Producer Assessment is based on GHG emissions, not mere dollars of sales. *See* CAMA, § 7-020. Indeed, the entirety of NUMAA is to address impacts from GHGs, not impacts from *sales* of Fossil Fuel Products. Thus, the Court agrees with the United States that, at its heart, CAMA is an attempt to regulate GHGs, which are a national and global pollutant.

But that conclusion does not end the analysis. The United States is also stating separately that it potentially plans to repeal the Endangerment Finding, in part at least on the theory that it does not have authority to regulate GHGs under the Clean Air Act. *See* Endangerment Reconsideration, Section IV(A) (suggesting, *inter alia*, that effects of GHG are not sufficiently "regional" to allow for regulation under Section 202(a) of the Clean Air Act). Although where the government will end up drawing the lines as to where and how it can enforce is still an open question, having taken this position, the Federal Government cannot now be heard to also argue that the Clean Air Act entirely preempts state regulation of GHGs. *See Louisiana Public Service Com'n v. F.C.C.*, 476 U.S. 355, 374-75 (1986) (without congressional authorization to act, the federal government does not preempt validly enacted legislation of a sovereign state). While CAMA can certainly be viewed as being a type of regulation of GHGs, it is not a direct

regulation of emissions so as to violate the principles in the authority above regarding federal authority writ large, and given the very limited scope of authority that the United States may be carving out for itself in the area under the Clean Air Act, the Court cannot conclude at this stage that CAMA is preempted by that statute either. If the United States determines that it has no or very limited authority under the Clean Air Act to regulate GHGs, then there is certainly no field or conflict preemption argument available.

The extent of preemption, if there is any, at minimum must await what the United States' final position is regarding regulation of GHGs under the Clean Air Act and a more fulsome development of the facts of how CAMA is applied. Put another way, there are genuine issues of fact concerning whether the United States concludes that the science underlying GHGs and their climate impacts supports the United States' regulation of GHGs under the Clean Air Act. The motion for summary judgment on preemption grounds turns on the resolution of these questions of fact. For these reasons, the United States' motion for summary judgment on preemption grounds is denied.

B. CAMA Does Not Constitute Extra-Territorial Legislation in Violation of the Due Process Clause of the United States Constitution.

The United States next argues that the United States Constitution and the principles of "sovereignty and comity" therein forbid a state from regulating conduct in other states. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023) ("*NPPC*") (quoting *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 572 (1996)). The Supreme Court has recognized that a state may not "reach out and regulate conduct that has little if any connection with the [s]tate's legitimate interests." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 154 (2023) (Alito, J., concurring in part). Although there are several theories underlying this principle discussed in *NPPC*, the United States bases its argument on the Due Process Clause of the United States Constitution. Specifically, it contends that CAMA, in reality, is regulating out-of-state fossil fuel companies' sale of Fossil Fuel Products and the emissions from combustion of those products by third parties. As such, the statute is not permissible because this type of penalty on lawful out-of-state conduct through regulation violates the Due Process Clause. *See Watson v. Emps. Liab. Assurance Corp.*, 348 U.S. 66, 70–71 (1954) ("a state is without power to exercise 'extraterritorial jurisdiction,' that is, to regulate and control activities wholly beyond its boundaries"); *Gore*, 517 U.S. at 572 ("a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States.").

The State and IPoH both argue that the only conduct at issue here is the sale of Fossil Fuel Products in the State, thus all of the affected Producers have sufficient contact with the State to satisfy Due Process. While those fossil fuel products may be produced in other states and shipped into New Union, that is not what is being regulated. The Producer Assessment Fee applies to companies' past sales within New Union, not a retroactive punishment of out-of-state extraction or production activities. Likewise, the future Producer Revenue Fee applies to future in-State sales. The State argues that *NPPC* supports its position rather than undermining it, as *NPPC* rejects the existence of a freestanding extraterritoriality rule under the dormant Commerce Clause, holding that state laws do not violate constitutional principles merely because they have "the practical effect of controlling' extraterritorial behavior." *NPPC*, 598 U.S. at 374. The State argues that *NPPC* confirms that a law setting terms for in-State sales is not extraterritorial merely because it influences upstream practices, and *NPPC* urges "extreme caution'...before a court

deploys this implied authority [to find a state law preempted]." *Id.* at 390 (quoting *Tracy v. Dep't of Revenue*, 519 U.S. 278, 310 (1997)).

The State further distinguishes the United States' reliance on the foregoing authority and its prohibition against regulating "conduct that has little if any connection with the [s]tate's legitimate interests," *Mallory*, 600 U.S. at 154, by emphasizing that fossil fuel sales within the State's borders directly cause climate harms within the State and have a substantial connection to New Union's legitimate interests in protecting the health and safety of its citizens. Moreover, it has long been recognized that states may apply their laws to out-of-state actors when their actions have in-state consequences. *See Young v. Masci*, 289 U.S. 253, 258-59 (1933) ("The cases are many in which a person acting outside the state may be held responsible according to the law of the state for injurious consequences within it.").

Unlike laws that target out-of-state conduct by out-of-state actors, CAMA's regulated activity occurs within the State's borders, regardless of where the underlying fossil fuels were extracted or refined. The regulated conduct is the market transaction, not the upstream production activities. Moreover, CAMA applies to NUGC as well (the Court will infer as much, as it must for the purposes of this summary judgment motion), so it is not solely regulating out-of-state actors or conduct. Finally, CAMA limits Producers to those for whom at least 1% of their gross income from Fossil Fuel Products is from sales in the State. CAMA § 7-019(k)(3). This translates to a minimum of \$10 million in such sales within the State each year. Thus, CAMA regulates in-State sales by Producers that do some significant business in the State, and the regulated conduct establishes a sufficient nexus to the State to satisfy Due Process.

While, as noted above, the statute plainly seeks to remedy issues largely *caused* by out-of-State activities, it is structured to *regulate* only the in-State activities associated with those activities. As such, it does not represent unconstitutional extra-territorial regulation in violation of the Due Process Clause, and the United States' motion for summary judgment on this basis is denied as well.

C. CAMA Violates the Anti-Discrimination Requirement of the Dormant Commerce Clause of the United States Constitution.

Finally, the United States alternatively argues that, even if the Court determines that the statute regulates only in-State transactions, CAMA violates the dormant Commerce Clause of the United States Constitution as a burden on interstate commerce. It is undisputed that the only entity within New Union that would qualify as a "Producer" under the act is NUGC. The State therefore relies on large, out-of-state petroleum and natural-gas producers to supply the market, so, the United States contends, CAMA functionally penalizes and regulates commerce coming entirely from outside the State, to the benefit of in-state actors through, *inter alia*, the distribution of NUMAA and benefits to the renewable energy market in the State. The United States contends that for these reasons, CAMA violates the "antidiscrimination principle" at the "very core" of dormant Commerce Clause jurisprudence. *NPPC*, 598 U.S. at 369. Put simply, the argument is that CAMA discriminates against interstate commerce by targeting out-of-state petroleum and gas companies to subsidize New Union's in-State repairs, infrastructure projects, and renewables industry. The United States maintains that the statute runs headlong into the Commerce Clause's prohibition on states "build[ing] up...domestic commerce" through "burdens upon the industry

and business of other States." *NPPC*, 598 U.S. at 369 (quoting *Guy v. Baltimore*, 100 U.S. 434, 443 (1880)).

New Union argues that CAMA does not discriminate against interstate commerce either on its face or in effect. CAMA is facially neutral, imposing the same fee on all fossil fuel "Producers" selling in New Union, regardless of origin, and only applies to the initial in-State sales. *See Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 125–28 (1978) (upholding evenhanded regulation that neither favored in-state firms nor burdened the interstate flow of goods). New Union points out that NUGC will be equally subject to the Producer Fees. The incidental impacts on out-of-state sellers is not sufficient, in the State's view, to render the statute discriminatory.

IPoH echoes these arguments, but also focuses on the Property Fee, contending that the Court cannot ignore the entirely in-State effects of that portion of CAMA. It contends that, should its state lawsuit challenging the Property Fee fail, some portion of the revenue generated by CAMA will come from in-State actors, notwithstanding whether NUGC qualifies as a Producer. IPoH urges the Court to look at the statute as a whole, and consider these in-State burdens. For this reason as well, IPoH argues the statute is not discriminatory.

As noted above, it is undisputed that NUGC, if it is a Producer, would share approximately 2% of the total Producer Assessment and approximately 1.5% of the total Producer Revenue Fees collected by the State. Moreover, it is undisputed that the renewable energy industry in the State is strong, and these in-State companies would indirectly benefit from the Producer Fees on the sale of Fossil Fuel Products.

The Commerce Clause grants Congress power to regulate interstate commerce and, by negative implication, limits states' ability to burden such commerce. U.S. Const. art. I, § 8, cl. 3. State laws that facially discriminate against interstate commerce are "virtually per se invalid." *Oregon Waste Systems, Inc. v. Dep't of Env't Quality*, 511 U.S. 93, 99 (1994). Facially nondiscriminatory laws are evaluated under the balancing test of *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), which sustains a law unless the burden on commerce is "clearly excessive in relation to the putative local benefits." It is clear to the Court that CAMA is neutral on its face, thus the *Pike* test applies here.

The Court finds that this complicated question must be resolved in favor of the United States. First, it is undeniable that the vast majority of the burdens of CAMA fall on out-of-state actors and penalizes commerce that is almost entirely interstate. The virtual entirety of the Producer Assessment Fee is penalizing products that are generated out-of-state and sent in interstate commerce (the nominal contribution from NUGC if it is a Producer in 2025 is not material, even if it comes to pass, which the Court infers it will for the purpose of this motion). Although the Producer Revenue Fee applies to in-State sales, all of the foregoing applies equally to that Fee insofar as where the *burdens* lie.

Those burdens are extreme. The burden on interstate commerce includes the creation of a \$20 billion fund that appears not at all tied to the portion of the State's injury caused by the nominally regulated activity - sales of Fossil Fuel Products *within* the State. Rather, these excessive burdens placed on interstate commerce, while directed to a legitimate state interest, are entirely out of scale with the actual sales that they are based on. Further, even assuming NUGC is a

Producer, it cannot be ignored that CAMA is structured in such a way that the sole in-State producer of any significant volume *may* escape its obligations entirely in the future if its gross revenue falls below the \$1 billion threshold. The large out-of-State Producer do not have this escape hatch.

The benefits flowing from CAMA also raise concerns. The Supreme Court has invalidated state laws that operated like tariffs, such as a New York ban on lower-priced out-of-state milk (*Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935)) and a Massachusetts milk tax used to subsidize local farmers (*West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994)). As noted above, the Commerce Clause prohibits states from "build[ing] up...domestic commerce" through "burdens upon the industry and business of other States." *NPPC*, 598 U.S. at 369. While CAMA is not a statute of the same type as those in *Baldwin* and *Healy*, the benefits of CAMA are patently to "build up" commerce within the State. The use of NUMAA funds must be for projects within the State, *see* CAMA § 07-022(g), and the indirect benefits of burdening the interstate Fossil Fuel Products will flow in part to the in-State competing renewables industry. For this reason as well, CAMA pushes against the limits found in the dormant Commerce Clause.

Finally, the fact that the Property Fee is part of CAMA is not material here. The only statutory provisions in question relate to the Producer Fees, and the Court finds other portions of the statute to be irrelevant. The principle that a statute must be reviewed in its entirety does not apply here, where the Property Fee is entirely distinct from the Producer Fees. The "burdens" imposed by the Property Fee do nothing to alter the foregoing analysis.

The Court therefore finds persuasive the argument that the burdens imposed by CAMA on interstate commerce far outweigh the State's legitimate interests under the dormant Commerce Clause. It must be noted that the State does *not* argue that the statute is severable in order to preserve the Producer Revenue Fee, which may have fared better in this analysis if it were standing alone. Rather, the State and the United States both argue that the Producer Fees must stand or fall together. IPoH did not address severability in its papers, and the Court deems that argument waived by IPoH.

Accordingly, summary judgment in favor of the United States is granted on the ground that the Producer Fees violate the dormant Commerce Clause.

CONCLUSION

It is therefore **ORDERED** that:

IPoH's motion for permissive intervention is **GRANTED**

The State of New Union and IPoH's motions to dismiss the Complaint are **DENIED**.

The United States' motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

This 2nd day of August, 2025.

T. Douglas Bowman
United States District Judge

ADDENDUM

Consolidated Laws of the State of New Union Environmental Protection Law

Ch. 7 - Air Regulation and Protection

Part J - The Climate Adaptation and Mitigation Act

Section 7-017 Purpose

The purpose of this Act is to establish funding mechanisms to support climate mitigation and adaptation projects within the State of New Union as well as fund repairs necessary after climate impacts. This Act creates the New Union Mitigation and Adaptation Account to provide dedicated revenue resources for repairing damages from climate change impacts and for climate adaptation projects essential to protect the health, safety, and welfare of New Union residents from climate impacts, including but not limited to sea level rise, hurricanes, flooding, and other climate-related hazards.

Section 7-018 Legislative Findings

The Legislature finds that:

- (a) Climate change poses an urgent and significant threat to the State of New Union, its residents, infrastructure, economy, and natural resources;
- (b) The State of New Union is particularly vulnerable to climate impacts due to its extensive coastline, including the Atlantic Isles, and flood-prone interior regions that have experienced unprecedented flood damage in recent years;
- (c) The State of New Union is further prone to extreme weather events caused or exacerbated by climate change, including hurricanes and flooding, that have caused billions of dollars in damages, demonstrating the urgent need for adaptive infrastructure;
- (d) Climate change is primarily caused by human activities, particularly the emission of greenhouse gases from the combustion of fossil fuels, and it is imperative that the State adapt to and respond to the impacts from climate change, while at the same time moving to renewable alternatives to fossil fuels;
- (e) The costs of climate adaptation, mitigation and repair should be borne primarily by those entities that profit from fossil fuel sales within the State under the "polluter pays" principle, establishing dedicated funding for climate adaptation, mitigation and repair projects in the State.
- (f) Those individuals within the state with the financial ability and desire to benefit from the State's natural resources and beauty despite the known risks of climate change should

also bear some portion of the burdens caused by adapting and responding to climate change impacts.

Section 7-019 Definitions

- (a) "Affected Property" means real property valued at over \$500,000 based on the most recent tax year assessment and located in an Endangerment Zone.
- (b) "Atlantic Isles" means the five inhabited islands off the coast of New Union: Shallows End, Coral's Grace, Harrow Isle, Echo Point and Silent Harbor.
- (c) "CO₂E" means carbon dioxide equivalent, a metric used to compare the warming potential of different GHGs to carbon dioxide, as defined in regulations promulgated by DEQ.
- (d) "DEQ" means the New Union Department of Environmental Quality.
- (e) "Endangerment Zones" means areas located within one mile of the coast of the State of New Union, on the Atlantic Isles or in the "high risk" Flood Zones as defined on the DEQ flood zone maps.
- (f) "Flood Zones" means areas designated on the State of New Union Flood Risk Area map as Flood Risk Area 1 through 4.
- (g) "Fossil Fuel Products" means coal, natural gas, and oil or derivatives of oil such as gasoline and diesel fuel.
- (h) "Greenhouse gases" or "GHGs" means carbon dioxide, methane, nitrous oxide, and other gases emitted into the air from the combustion of Fossil Fuel Products that contribute to climate change as identified by DEQ.
- (i) "Major Renovation" means any home improvement project costing in excess of 5% of the total property value based on the most recent tax year assessment.
- (j) "NUMAA" means the New Union Mitigation and Adaptation Account established under this Act.
- (k) "Producers" means any domestic company that:
 - (i) derives the majority of its revenue from the sale of Fossil Fuel products;
 - (ii) has at least \$1 billion annually of gross revenues from the sale of Fossil Fuel Products; and
 - (iii) at least 1% of its total gross revenue from sales of Fossil Fuel Products occurs in the State of New Union.

Section 7-020 Producer Fee

Effective June 1, 2026, all Producers are subject to two Producer Fees:

1. A one-time assessment calculated from total CO₂E produced by Fossil Fuel Products sold by any entity that meets the definition of a Producer under this Act as of the end of 2025.
 - a. This assessment shall be based on the pro-rata sales of Fossil Fuel Products in the State of New Union between June 2020 and June 2025. (The "Producer Assessment Fee").
 - b. By May 1, 2026, DEQ shall promulgate regulations establishing the methodology for calculating the Producer Assessment Fee based on estimated CO₂E generated from the Fossil Fuel Products sold anywhere in the State of New Union.
 - c. This total Producer Assessment Fee shall be established to create a fund of \$20 billion total, calculated in a manner consistent with this Act.
 - d. The Producer Assessment Fee paid by each Producer may be paid in up to five annual installments beginning in 2026, with the total of all installments equaling the full Producer Assessment.
2. A 0.5% fee on gross revenues of the sale of any Fossil Fuel Products in the State of New Union each year after 2025, calculated from June 1 of the prior year to May 31 of the current year. (The "Producer Revenue Fee").

Section 7-021 Property Fee

- (a) Anyone purchasing Affected Property after the effective date of this Act shall pay to the State a fee equal to 1% of the purchase price.
- (b) Any owner of Affected Property who undertakes a Major Renovation after the effective date of this Act shall pay to the State a fee equal to 2% of the total cost of the renovation.

Section 7-022 Administration and Use of NUMAA

- (a) NUMAA is to be administered by a NUMAA Administrator appointed by the Governor of the State of New Union. Funds shall be used only for the projects described below located in New Union.
- (b) The NUMAA Administrator shall accept proposals for climate adaptation or to repair projects located in New Union. Such projects can include:
 - (i) Costs to repair damages from climate change impacts such as, for example, hurricanes, floods, sea level rise or storm surges ("Climate Repair Costs").
 - (ii) Costs to assist local communities build or modify infrastructure to adapt to climate change impacts ("Adaptation Projects").

- (c) Municipalities, counties, citizens, and organizations may propose Adaptation Projects designed to adapt to climate-related impacts such as barrier walls, breakwaters, levees, coastal restoration, flood protection systems, or other measures to help minimize damages in New Union from climate change impacts.
- (d) Municipalities, counties, citizens, and organizations may submit evidence of Climate Repair Costs after the occurrence of a climate change event, as so designated by the NUMAA Administrator.
- (e) The NUMAA Administrator shall award funds based on 1) project effectiveness in addressing repair needs or climate adaptation effectiveness in terms of risk reduction to New Union communities and infrastructure; 2) geographic distribution, prioritizing areas in New Union that have suffered documented climate damages or are at highest risk of climate impacts, including Endangerment Zones; and 3) cost-benefit analysis demonstrating efficient use of resources.
- (f) The NUMAA Administrator shall review and approve or deny submitted proposals based on the criteria established in subsection (e).
- (g) All fees collected under Section 7-020 and 7-021 shall be deposited into NUMAA and used exclusively for the purposes within the State as set forth in this Act.
- (h) DEQ shall promulgate regulations to carry out this Section by no later than April 1, 2026. Such regulations shall include, without limitation, criteria and procedures for:
 - (i) Determining when a climate impact has occurred;
 - (ii) Determining which Adaptation Projects or Climate Repair Costs will be covered by NUMAA;
 - (iii) Challenges to any determination made pursuant to the Act.