UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN PETROLEUM INSTITUTE, NATIONAL MINING ASSOCIATION, and THE BUSINESS COUNCIL OF NEW YORK STATE, INC., *Plaintiffs*, v. LETITIA JAMES, in her official capacity as New York Attorney General, and AMANDA LEFTON, in her official capacity as Interim Commissioner of the New York Department of Environmental Conservation, *Defendants*.	Civil Action No. 1:25-cv-01738-MKV

RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER

Table of Authorities

Page(s)

Cases

Other Authorities

Table of Contents

Introduction

Plaintiffs the Chamber of Commerce of the United States of America ("U.S. Chamber"), the American Petroleum Institute ("API"), the National Mining Association ("NMA"), and The Business Council of New York State, Inc. ("BCNYS") respectfully submit this response in opposition to the motion to transfer filed by Defendants. Plaintiffs filed this lawsuit to challenge the constitutionality of New York's unprecedented Climate Change "Superfund" Act (the "Act") in the Southern District of New York, and the Manhattan Division, because this Court routinely hears constitutional cases of national (and international) importance. By imposing $75 billion in retroactive penalties on America's energy producers (Plaintiffs' members), the Act will have significant worldwide economic consequences. Plaintiffs not only selected this forum because of its expertise in such high-profile cases, but also because Defendants are at home here, and the Attorney General has consistently recognized Manhattan as her "principal office" and "home forum." New York City is also more convenient than Syracuse or Albany for Plaintiffs seeking a swift adjudication of their members' constitutional rights. Defendants do not dispute that venue is proper in this Court—nor could they. Plaintiffs' choice of this forum is therefore entitled to substantial deference.

Defendants cannot overcome the deference due to Plaintiffs' chosen forum. They have failed to carry their burden to show by clear and convincing evidence that a transfer of this case to the Northern District of New York would serve the convenience of the parties or the interests of justice. Defendants do not seriously contend that they would be moving to transfer this suit but for the existence of *West Virginia v. James*, No. 1:25-cv-00168-BKS-DJS (N.D.N.Y.) ("*West Virginia*"), which is pending before Chief Judge Sannes in Syracuse. Yet denying Plaintiffs' their choice of forum based on that challenge would be contrary to judicial economy and the interests

of justice. Plaintiffs have no control over the sovereign States leading that challenge, and the States' suit predated the filing of Plaintiffs' suit simply because Plaintiffs waited to file until the current version of the Act was passed with the chapter amendments upon which the Governor conditioned her signature of the bill, itself a decision that promoted judicial economy. Transferring Plaintiffs' case under such circumstances would only spur a race to the courthouse that is contrary to the interests of justice.

Moreover, transfer will delay adjudication of Plaintiffs' claims. In particular, the States in *West Virginia* are raising different and additional claims than those included in Plaintiffs' complaint, all of which could delay adjudication of the dispute. This Court should deny Defendants' Motion to Transfer.

Background

New York enacted a law that makes out-of-state energy producers strictly liable for their products' purported share of contributions to global greenhouse gas emissions. Compl. ¶¶ 1, 65, 68, 70. The Climate Change "Superfund" Act, S.2129B, as amended by S.824, ("Act") does not target emissions released within New York's borders. *Id.* ¶ 84. Instead, it seeks to penalize energy producers for greenhouse gases emitted worldwide over the past 25 years. *Id.* ¶¶ 79-83. The vast majority of covered energy producers are out-of-state; no energy producers conduct coal mining or refining activities in New York, and only small amounts of oil and gas are produced in the State. *Id.* ¶¶ 36, 50. Nevertheless, the Act aims to extract substantial penalties from these largely out-of-state energy producers, shifting burdensome costs onto other states while New York profits from these penalties and uses them to fund New York's own climate initiatives. *Id.* ¶ 134.

When Governor Hochul signed the original version of the Act into law on December 26, 2024, she did so on the condition of the New York State Legislature passing certain chapter

amendments that would change key provisions of the Act. *Id.* ¶ 65. The New York State Legislature passed those chapter amendments on February 24, 2025. *Id.* The Governor signed those amendments into law February 28, 2025, and Plaintiffs filed this suit in the Southern District of New York the same day against Defendants Letitia James and Sean Mahar in their official capacities.[1] Plaintiffs' complaint seeks to enjoin enforcement of this plainly unconstitutional law against Plaintiffs' covered members, *id.* ¶ 13, and to protect the constitutional rights of their members, *see id.* ¶ 3 (citing *City of New York v. Chevron Corp.*, 993 F.3d 81, 91-99 (2d Cir. 2021) (holding that neither our federal constitutional structure nor the Clean Air Act authorizes a State to impose liability or penalties on out-of-state energy producers for harms arising from out-of-state and global greenhouse gas emissions)).

Defendants—who are represented here exclusively by attorneys located in the Southern District of New York—submitted a letter to the Court on March 17, 2025, seeking transfer of this action to the Northern District of New York. ECF 28. Plaintiffs responded with a letter in opposition. ECF 30. The Court considered the letters and entered a scheduling order, setting deadlines for briefing on the motion to transfer. ECF 31.

On April 11, 2025, Defendants moved to transfer this action to the Northern District of New York, *see* ECF 33, and filed a memorandum, *see* ECF 33-1 ("Mem."), and declaration, *see* ECF 33-2 ("Dec."), in support. For the reasons explained below, this Court should deny Defendants' Motion to Transfer.

[1] Defendants have substituted Amanda Lefton for Sean Mahar pursuant to Federal Rule of Civil Procedure 25(d).

Argument

Defendants do not and cannot dispute that venue is proper in this District. Defendant James maintains a principal office here, accepts service here, and regularly files official lawsuits here on behalf of the State of New York. *See* ECF 1 ¶ 28. Her presence in this District is not occasional—it is foundational to the operations of her office. Nevertheless, Defendants request that this action be transferred to the Northern District, in large part due to the *West Virginia* matter pending before Chief Judge Sannes (who sits in Syracuse). This Court should reject that request and continue to preside over this matter to expeditiously provide relief to Plaintiffs that protects their members' constitutional rights.

Defendants bear a heavy burden to justify transfer. They must show by clear and convincing evidence that the Northern District is not just an alternative forum, but a *clearly* more appropriate one, and that Plaintiffs' choice of forum should be disregarded. *See Chanel, Inc. v. Shiver & Duke LLC*, No. 1:21-cv-01277, 2022 WL 3868113, at *4 (S.D.N.Y. Aug. 30, 2022); *see also N.Y. Marine & Gen. Ins. Co. v. Lafarge N. Am., Inc.*, 599 F.3d 102, 114 (2d Cir. 2010). Defendants have not come close to meeting that burden.

Courts consider multiple factors in determining whether transfer is warranted, including: "(1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, and (7) the relative means of the parties." *N.Y Marine & Gen.*, 599 F.3d at 112 (citation omitted). A court may also consider (8) "the forum's familiarity with the governing law" and (9) "trial efficiency and the interest of justice, based on the totality of the circumstances." *Knowles-Carter v. Feyonce, Inc.*, 16-CV-2532 (AJN), 2017 WL 11567528, at *9 (S.D.N.Y. Sept. 23, 2017)

(citation omitted). Ultimately, the decision to transfer based on these factors is left to the "broad discretion" of this Court. *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 106 (2d Cir. 2006); *Ahmed v. T.J. Maxx Corp.*, 777 F. Supp. 2d 445, 449 (E.D.N.Y. 2011).

Here, Defendants concede that most of these factors are neutral at best, and even those that they cite in favor of transfer actually weigh against. *First*, Plaintiffs' choice of forum is entitled to substantial deference. Defendants cannot overcome that presumption here. *Second*, the interests of justice weigh against transfer. Plaintiffs here assert distinct claims on behalf of different parties, raising different legal theories and injuries than those at issue in the *West Virginia* matter. *Third*, this District is the more convenient forum. Plaintiffs the U.S. Chamber and BCNYS and Defendants conduct substantial and ongoing business in this District. Furthermore, Defendants have identified no specific witnesses for whom the Northern District would be more convenient, especially considering that the *West Virginia* action is pending before Chief Judge Sannes in Syracuse, not Albany. *Fourth*, the remaining venue factors are neutral. Because Defendants have not carried their burden, the Court should deny the motion to transfer.

I. Plaintiffs' choice of forum is entitled to significant weight and weighs against transfer.

"[A] plaintiff's choice of forum is presumptively entitled to substantial deference" and "should only be disturbed if the factors favoring the alternative forum are compelling." *Atl. Recording Corp. v. Project Playlist, Inc.*, 603 F. Supp. 2d 690, 698 (S.D.N.Y. 2009) (citation omitted). This factor is typically accorded *the most* weight. *See id.*; *see also D.H. Blair & Co.*, 462 F.3d at 107 (plaintiff's choice of forum is "a decision that is given great weight").

Plaintiffs have good reasons for choosing this forum. New York City, and Manhattan in particular, is the financial and commercial capital of the world. Two of the Plaintiffs conduct substantial and ongoing business in this District and have physical office spaces here. Quaadman

Decl. ¶¶ 5-7; Mulligan Decl. ¶ 5-9. It is easier for Plaintiffs and most of their potential witnesses to travel here, as compared to any venue in the Northern District, particularly Syracuse, where the District Judge assigned to *West Virginia* sits. This Court also regularly adjudicates constitutional cases of national and international importance. And this Court has a faster disposition rate than the Northern District. *See* Office of the U.S. Courts, Table C-5—U.S. District Courts–Civil Federal Judicial Caseload Statistics (Mar. 31, 2024), https://perma.cc/J7SD-2ZQ4; *Hernandez v. Graebel Van Lines*, 761 F. Supp. 983, 991 (E.D.N.Y. 1991) ("[D]ocket conditions or calendar congestion of both the transferee and transferor districts is a proper factor for the Court to consider and is accorded 'some weight'" (citation omitted)). All of these factors drove Plaintiffs' choice of forum, given that their members' constitutional rights are imminently at stake and the international reach of New York's law imposes penalties on Plaintiffs' members for their purported share of global greenhouse gas emissions.

Defendants' only point in opposition on this most-significant factor is that "none of the plaintiffs is located in the Southern District." *See* Mem. 15. *First*, that is incorrect. Plaintiff BCNYS has a physical location in this District, in addition to its office in Albany: it has a key office in Manhattan that serves as its "official NYC headquarters," allowing BCNYS to "serve [its] current New York City members while providing an opportunity to attract new members." Mulligan Decl. ¶ 7. Indeed, BCNYS serves approximately 248 members that are based in the Southern District, including 46 of its "major members" in terms of financial support. *Id.* ¶ 8. Likewise, the U.S. Chamber maintains a physical Manhattan office space to which eight full-time employees are presently assigned. Quaadman Decl. ¶¶ 6-7.

Second, plaintiffs' choice of forum "is given substantial deference especially if it is the plaintiff's home state or where the plaintiff is engaged in ongoing business activity." *Freeplay*

Music, LLC v. Gibson Brands, Inc., 195 F. Supp. 3d 613, 620 (S.D.N.Y. 2016). New York is Plaintiff BCNYS's home state, and two of Plaintiffs have ongoing business activity in this District. Mulligan Decl. ¶¶ 5-9; Quaadman Decl. ¶¶ 5-7. Plaintiff U.S. Chamber, although headquartered in Washington, D.C., regularly conducts business activities in this district. Quaadman Decl. ¶¶ 5-7. In particular, the Chamber regularly meets with and hosts events for its numerous members and/or prospective members located in New York City (including over 75 formal meetings and events since 2023), and Chamber employees routinely participate in briefings, panels, and policy summits in New York City. *Id.* ¶ 5. The Chamber employees who work in the Chamber's Manhattan office space work across several departments, including international policy, member event production, marketing, editorial, and software. *Id.* ¶ 7. Likewise, Plaintiff BCNYS conducts a variety of business through its Manhattan office, including maintaining direct contact with its New York City based members, recruiting new members, holding board meetings, hosting member-oriented functions, and promoting programs such as BCNYS's recently launched Civic & Community Engagement program that highlights business support for community actions. Mulligan Decl. ¶ 8. Several of BCNYS's employees work out of BCNYS's Manhattan office, including the organization's Vice President of membership. *Id.* ¶ 9. Accordingly, Plaintiffs are entitled to *substantial* deference in their choice of forum. *See Freeplay Music, LLC*, 195 F. Supp. 3d at 620 (rejecting transfer motion where plaintiff "engages in ongoing business activity" in New York); *AEC One Stop Grp. v. CD Listening Bar, Inc.*, 326 F. Supp. 2d 525, 531 (S.D.N.Y. 2004) (non-resident plaintiff's choice of forum "accorded significant weight" because it "does a substantial amount of business in the Southern District").

Third, even beyond the question of business activity, in this Circuit the plaintiff's choice is entitled to deference as a matter of principle. Specifically, courts hold that where plaintiffs "have

chosen a forum in which [the] 'defendant[s are] amenable to suit,'" "the Court [should] not 'withhold deference for [their] choice merely because [they] did not sue in [their] home district.'" *Goldfarb v. Channel One Russia*, 442 F. Supp. 3d 649, 657 (S.D.N.Y. 2020) (quoting *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 72-73 (2d Cir.2001)); *Kauffman v. NHCLC-Seattle LLC*, No. 13 CIV. 4464 HB, 2013 WL 6409328, at *3 (S.D.N.Y. Dec. 9, 2013) (citing *Iragorri* in 28 U.S.C. § 1404 context and holding that that plaintiff's choice of forum outside of "home district . . . still carries some weight");[2] *cf. Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 103 (2d Cir. 2000) ("The benefit for a U.S. resident plaintiff of suing in a U.S. forum is not limited to suits in the very district where the plaintiff resides.").

Plaintiffs the U.S. Chamber, API, and NMA are at home in Washington, D.C. But they cannot sue Defendants there. And so they sued on behalf of their members in the obvious place to bring a lawsuit over New York legislation of such massive economic significance—New York City. It is a short 3-hour train ride away for potential witnesses coming from Washington, as compared to the less frequent air travel that would be required to get to Syracuse or Albany. And for all the reasons noted above, it is a convenient forum for expeditious resolution of Plaintiffs' members' rights. Defendants have failed to carry their burden of showing, "by clear and convincing evidence, that the balance of convenience strongly favors the alternative forum," *Chanel, Inc.*, 2022 WL 3868113, at *5, and the Court should not disturb Plaintiffs' choice of this proper forum.

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[2] "Although *Iragorri* dealt with forum non conveniens, its reasoning is equally applicable to determinations of convenience under § 1404(a)." *Medien Pat. Verwaltung AG v. Warner Bros. Ent.*, 749 F. Supp. 2d 188, 191 n.2 (S.D.N.Y. 2010); *Fteja v. Facebook, Inc.*, 841 F. Supp. 2d 829, 843 n.3 (S.D.N.Y. 2012) (similar).

II. Judicial economy and the interests of justice weigh against transfer.

Defendants' only real argument for transfer on this factor rests on another challenge to the Act filed in the Northern District of New York, but transfer based on *West Virginia* would frustrate, not further, the interests of justice. When a transfer motion is based on the presence of a potentially related case in the transferee district, courts assess the interests of justice based upon practical considerations, including whether the cases involve overlapping parties, claims, or relief; whether consolidation would streamline litigation; and whether transfer would promote consistent outcomes. Defendants do not, and cannot, show that these interests support transfer here. The parties are different. The claims are different. The injuries are different. The relief the parties request is different. And the litigation posture is different. Transferring this case to the Northern District would not conserve judicial resources or avoid duplication. It would instead delay resolution of this case. The law does not require that result, and the interests of justice weigh against it.

A. The parties are different.

Of critical importance, the plaintiffs in *West Virginia* are different from those here. Plaintiffs represent private entities directly targeted by the statute. Some of Plaintiffs' members have been explicitly named by New York legislators as the intended targets of the Act. *See* Compl. ¶¶ 19, 75-77. Meanwhile, the plaintiffs in *West Virginia* are largely sovereign States. *See Savarese v. City of New York*, No. 18 CIV. 5956 (ER), 2019 WL 2482387, at *6 (S.D.N.Y. June 13, 2019) (denying motion to transfer in part where the related case in the transferee district and present case "involve[d] two different plaintiffs"). Defendants argue that there is "overlap," but they ignore the significant differences in the plaintiffs, including the lead sovereign States, and fail to address the absence of many of the member companies who are targeted by the Act and are members of the

Plaintiffs in this case. Plaintiffs here are entitled to litigate their own claims, in their own forum, without being swept into a separate case brought by States advancing sovereign claims that Plaintiffs here cannot raise. Forcing transfer would wrongly conflate the identity of these parties.

Second, the defendants are somewhat different. Here, Plaintiffs sued only the two individuals with enforcement authority under the amended Act in their official capacities—the New York Attorney General and the Acting Commissioner of the New York Department of Environmental Conservation. *Compl.* ¶¶ 24-25. The *West Virginia* plaintiffs, however, have included an additional defendant—the Acting Tax Commissioner of the New York State Department of Taxation and Finance. *See* First Amend. Compl., *West Virginia,* No. 1:25-cv-00168-BKS-DJS (N.D.N.Y. Apr. 7, 2025). The addition of a different defendant in the *West Virginia* case, whom Plaintiffs deemed unnecessary to the resolution of their claims, could require Plaintiffs to adjust their arguments and strategies to accommodate the addition of a Defendant they chose not to sue.

Third, there could soon be even more adverse parties in the *West Virginia* matter given that four groups have now moved to intervene in defense of New York's rule in *West Virginia*. Mot. to Intervene, *West Virginia,* No. 1:25-cv-00168-BKS-DJS (N.D.N.Y. Apr. 11, 2025). If such intervention is granted and this case ends up consolidated with that one, Plaintiffs' case would only be further complicated and delayed.

B. The claims are different.

Plaintiffs' claims in this case, although similar to some of those in *West Virginia*, are distinct. *Cf. Torres v. Kohlberg, Kravis, Roberts & Co.*, No. 1:20-cv-05025, 2021 WL 4267578, at *2 (S.D.N.Y. Sept. 20, 2021) (holding that transfer was inappropriate even though many claims were "identical" in the plaintiffs' case in that jurisdiction and in the transfer jurisdiction because

some claims differed, and the plaintiffs in each case sought relief from different harms). Most significantly, the sovereign States in *West Virginia* raise several state law claims that the private Plaintiffs here *cannot* raise in federal court under the *Pennhurst State School v. Halderman*, 465 U.S. 89 (1984), doctrine of sovereign immunity. Moreover, the sovereign States in *West Virginia* also raise an Equal Protection Claim that the Plaintiffs here do not. Combining the suits would unnecessarily complicate the claims being asserted and require Plaintiffs in this case to litigate alongside claims they cannot, or chose not to, bring.

Moreover, Plaintiffs have already indicated that they intend to file a partial motion for summary judgment on the purely legal issues raised in Counts I and II of their complaint. ECF 30 at 1, 3. Forcing Plaintiffs to be transferred to the Northern District to be consolidated with the various parties to *West Virginia* could upend Plaintiffs' efforts to seek prompt relief on those Counts.

C. The requested relief is different.

Plaintiffs' request for relief is narrower than the relief requested by the *West Virginia* plaintiffs. Here, Plaintiffs seek an injunction that applies only to private parties that are the subject of New York's unlawful penalty. Compl. ¶¶ 13, 139, 155, 182, 193, 211, 224, 227, 234. Meanwhile, the *West Virginia* plaintiffs seek a universal injunction against enforcement of the Act. First Amend. Compl. at 77, *West Virginia*, No. 1:25-cv-00168-BKS-DJS (N.D.N.Y. Apr. 7, 2025). That distinction matters. Plaintiffs chose a more-tailored request for relief that may more likely be granted than a wider request for injunctive relief. And the Northern District may need to consider additional factors in determining appropriate relief for the various claims asserted by the States.

D. Other considerations of justice and judicial economy weigh against transfer.

Several other considerations of justice and judicial economy weigh against transfer.

First, transferring the case would require the court in the Northern District to manage two sets of litigants pursuing different claims under distinct legal doctrines. That burden would not promote judicial economy. It would compound it.

Second, the interests of justice do not warrant transfer in light of *West Virginia*, as Plaintiffs here acted promptly to protect their members' rights. Plaintiffs here filed their suit the day the Governor signed the amendments that made key changes to the Act and that were a condition of the Governor's signature.[3] Plaintiffs' perseverance in waiting for the New York Legislature's amendments and the Governor's subsequent signature to those chapter amendments should not be penalized because other plaintiffs sued elsewhere before those necessary changes became law. Plaintiffs conserved judicial resources by waiting to bring their claims rather than racing to file, knowing the substance of the Act would soon materially change with the passed amendments. Moreover, as discussed above and below, the majority of factors here—including the most important, Plaintiffs' choice of forum—weigh against transfer.[4]

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[3] The plaintiffs in the *West Virginia* matter recently amended their complaint, and, consequently, it may be behind the timetable in this case.

[4] Defendants make passing references to a couple of cases involving the "first-to-file" rule, Mem. 12, but that rule is of no help to Defendants here. *First*, Plaintiffs in this action were the first to challenge the *current, operative* version of the Act as amended by the chapter amendments in this District. *Second*, that rule only applies where "in fact the suits are duplicative," which means there must be "substantial overlap between the cases, in that they have identical or substantially similar parties and claims." *Am. Steamship Owners Mut. Prot. & Indem. Ass'n, Inc. v. Lafarge N. Am., Inc.*, 474 F. Supp. 2d 474, 481 (S.D.N.Y. 2007) (cleaned up), *aff'd sub nom. New York Marine & Gen. Ins. Co. v. Lafarge N. Am., Inc.*, 599 F.3d 102 (2d Cir. 2010). As explained above, the parties and claims in this case are different from those in *West Virginia*. *Third*, even if the cases were duplicative, the rule is only a presumption, and it "need not be applied where there is a showing of balance of convenience or special circumstances giving priority to the second [case]," which are "essentially the same" as the factors for "deciding a motion to transfer." *Id.* (cleaned up). As discussed throughout this response, the interests of justice and the balance of convenience weigh against transfer.

Third, the same goes for the risk of inconsistent judgments—any risk that may exist is outweighed by the other factors discussed herein. Indeed, if the risk of district courts reaching different opinions were dispositive, courts faced with a related case would *always* transfer, overriding the plaintiff's choice of forum and other factors. But that is not the law. Courts in this District routinely deny motions for transfer despite the risk of federal district courts coming to different conclusions in cases, like this one, involving different parties. *See, e.g.*, *Albright v. Terraform Lab'y, Pte. Ltd.*, 641 F. Supp. 3d 48, 57 (S.D.N.Y. 2022) (finding that possibility of inconsistent judgments was outweighed by other factors); *Pergo, Inc. v. Alloc, Inc.*, 262 F. Supp. 2d 122, 132-33 (S.D.N.Y. 2003) (denying motion to transfer even though movant argued transfer would result in possibility inconsistent judgments).

And if the Northern District and the Southern District come to different conclusions on the constitutionality of the Act, the Second Circuit would resolve that intracircuit dispute. There is also litigation of similar claims pending in the District of Vermont against Vermont's similar legislation, and thus, the possibility of inconsistent judgments within the Second Circuit is omnipresent, regardless of whether there is litigation in one or two federal district courts in New York.

III. This District is a more convenient forum, also weighing against transfer.

Defendants have not met their burden to establish that the Northern District is substantially more convenient for any parties or witnesses.

Convenience for parties. "When analyzing the convenience to the parties, courts often look to the parties' principal places of business and the location of their offices." *Royal & Sun All. Ins., PLC v. Nippon Express USA, Inc.*, 202 F. Supp. 3d 399, 407 (S.D.N.Y. 2016) (collecting cases). This factor weighs against transfer as the Southern District is more convenient for all parties and

witnesses. At a minimum, this factor is neutral, as Defendants have failed to prove that the Northern District is *substantially* more convenient for all parties.

For Plaintiffs, as noted above, BCNYS is at home in New York, including in the Southern District where it has an office that serves as its "official NYC headquarters" and where several of its employees work to serve BCNYS's approximately 248 members located in this District. *See supra* p. 6-7; Mulligan Decl. ¶¶ 6-10. Moreover, although the remaining Plaintiffs are not at home in any New York federal court, the U.S. Chamber maintains a physical office space with full-time staff in this District and regularly conducts business here. *See supra* p. 6-7; Quaadman Decl. ¶ 5-7. And, when combined with the other convenience factors, this District is the better and more convenient forum for purposes of travel for Plaintiffs the U.S. Chamber, API, and NMA and their members. *See* Quaadman Decl. ¶ 8; ECF 30 at 2.

As for Defendants, one of Defendant James's principal offices is located here, Defendant James describes this as her "home forum," and Defendants regularly litigate cases in this District. *See* Plaintiff's Memorandum in Opposition to Defendants' Motion to Transfer, *New York v. Amazon.com Inc.*, No. 21-cv-01417, 2021 WL 12185065 (S.D.N.Y. Mar. 10, 2021) (Defendant James arguing in favor of venue in the Southern District of New York and against transfer to the Eastern District of New York because "[t]he Southern District is the Attorney General's 'home forum,'" and "[t]herefore venue is proper in New York County because plaintiff maintains one of its principal offices in Manhattan"). Though Defendant Lefton's principal office is in Albany, she too has an office in the Southern District, and in any event, is represented by Defendant James. *See* Dep't of Env't Conservation, *DEC Statewide Offices: Contact Information By Location*, https://perma.cc/FHZ7-ND43. And New York's Attorney General and Commissioner of the Department of Environmental Conservation are often sued in the Southern District without

objection. *See, e.g.*, *Ass'n of Am. R.R. v. Seggos*, No. 24-CV-135, 2025 WL 833850, at *1 (Mar. 17, 2025 S.D.N.Y.) (ruling on a lawsuit in the Southern District challenging a subdivision of the New York Environmental Conservation Law where New York's Attorney General and Commissioner of the Department of Environmental Conservation General are the only defendants, and the defendants did not contest the Court's jurisdiction or move to transfer).

Further, *all* of Defendants' counsel of record in this case are located *in this District*, as reflected by their notices of appearance. Although the location of counsel is not a determining factor, it is a relevant consideration here. Defendant James, who is sued in her official capacity, operates regularly out of this District and is likely to do the same in enforcing the provisions of the Act. Thus the Southern District is equally if not more convenient for Defendant James and her office than the Northern District.

Notably, if this case were to be transferred to the Northern District and consolidated with the *West Virginia* matter, that matter has been assigned to a District Judge who sits in Syracuse. Syracuse is approximately 145 miles from Albany, and Manhattan is about the same distance from Albany. Thus, to the extent the *West Virginia* case is heard in Syracuse, each district is equally convenient for Defendant Lefton and her office. Moreover, Syracuse is approximately 256 miles from Manhattan, which means that transferring this case to the Northern District to be consolidated with *West Virginia* would be *less convenient* for Defendant James, her principal office, and Defendants' counsel of record in this case for any hearings or trial in Syracuse.

Convenience for witnesses. Defendants do not meet their burden to show that the convenience of witnesses supports transfer. For this factor, the movant "must clearly specify the key witnesses to be called and must make a general statement of what their testimony will cover." *Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215, 218 (2d Cir. 1978). "[I]f the moving

party makes vague generalizations about the witnesses it intends to call, it will not have met its burden and its motion will be denied." *In re Bennett Funding Grp., Inc.*, 259 B.R. 243, 248 (N.D.N.Y. 2001) (citing *Orb Factory Ltd. v. Design Sci. Toys, Ltd.,* 6 F. Supp. 2d 203, 208-09 (S.D.N.Y. 1998)). Defendants do not make such a showing. Indeed, for the reasons noted above, any hypothetical, as-yet-unspecified Albany-based witness would have to travel an equal distance for proceedings in Syracuse as they would for proceedings before this Court.

Defendants' failure to meet their burden for this factor is no surprise because it is unlikely that *any* witnesses will be called in this matter. This challenge to the constitutionality of a state statute raises purely legal questions that can be decided at summary judgment. Thus, the convenience of Defendants' unnamed, hypothetical witnesses is not relevant to the analysis here. *See Bank v. N.Y. State Dep't of Agric. & Mkts.*, No. 20-CV-6191, 2021 WL 2012405, at *4 (E.D.N.Y. May 20, 2021) (cited by Mem. 13) (holding that the "convenience of witnesses and the ability to compel attendance of witnesses are neutral because [plaintiff] raises a purely legal question and it is unlikely that witnesses will need to testify" and defendants had "not identified any witnesses that [they] intended to call"); *cf. Cont'l Ins. Cos. v. Wickes Cos., Inc.*, No. 90 CIV. 8215 (KMW), 1991 WL 183771, at *3 (S.D.N.Y. Sept. 6, 1991) (holding convenience of witness factor neutral where the "case is not one that is likely to turn on witness credibility determinations" and "the issues involved in the case are primarily legal in nature, making live testimony unnecessary to their resolution").

Moreover, even if witnesses *were* likely to be called here, Defendants neither "clearly specify" relevant witnesses nor "make a general statement of what their testimony will cover." *Factors Etc., Inc.*, 579 F.2d at 218. All Defendants can muster is that "any relevant witnesses for the State are likely to be [Department of Environmental Conservation] employees in Albany who

are responsible for implementing the Climate Superfund Act." Mem. 13. They do not suggest why these witnesses will be called or what information they could provide to help resolve these claims. That showing is insufficient to meet their burden for transfer. *See Bank*, 2021 WL 2012405, at *4; *Orb Factory*, 6 F. Supp. 2d at 208-09; *see also Am. All. Ins. Co. v. Sunbeam Corp.*, No. 98 CIV. 4703 (LMM), 1999 WL 38183, at *6 (S.D.N.Y. Jan. 28, 1999) ("[A] transfer based on the convenience and availability of witnesses cannot be granted unless the movant identifies the key witnesses to be called and makes a general statement of what their testimony will cover.").

In any event, although it seems unlikely there will be a need for witnesses in this case, the sponsors of the bill in the New York Senate and Assembly, Senator Liz Krueger and Assemblyman Jeffrey Dinowitz, actually reside in and represent legislative districts within the Southern District. *See* Assemblyman Jeffery Dinowitz, *District Map,* https://perma.cc/VG3M-ABTJ; New York State Senator Liz Kreuger, *Our District*, https://perma.cc/9HKH-9NBE. They would have the most knowledge about the Act and have both made statements about the Act, which are cited in the complaint. *See* Compl. ¶ 19. And to the extent that Plaintiffs the U.S. Chamber, API, or NMA present witnesses from their headquarters to testify as to their missions, it would be substantially more convenient for those witnesses to travel to New York City as compared to Syracuse or Albany. *See* Quaadman Dec. ¶ 8 (U.S. Chamber).

* * *

Defendants do not explain how the Northern District would be more convenient for the parties. To the contrary, moving the case to the Northern District would be *less* convenient for all stakeholders and for resolving this dispute. None of these factors justify transfer.

IV. The remaining factors are neutral and thus do not support Defendants' Motion to Transfer.

The remaining factors are neutral and do not weigh for or against transfer. In light of the factors above that weigh against transfer, Defendants have failed to meet their burden to justify transfer.

First, Defendants have not met their burden to show that the locus of operative facts are in the Northern District. Here, there are multiple loci of operative facts. But none of them is in the Northern District. It makes no difference at all to the constitutional issues in this case whether the Legislature sits in Albany or anywhere else in New York. Because the Act imposes penalties for actions and on energy producers far beyond New York's borders, the loci of operative facts, if anywhere, are in Texas, Oklahoma, Pennsylvania, Alaska, North Dakota, and other energy producing States where energy producers that are Plaintiffs' members will receive cost recovery demands. And even if the Department of Environmental Conservation is headquartered in the Northern District (while maintaining a permanent office in the Southern District), the Attorney General has a "principal office" in this District and is likely to enforce the Act in this District. Therefore, this factor is neutral in the analysis. *See Atl. Recording Corp*, 603 F. Supp. 2d at 697.

Second, the location of documents and ease of access to proof is "not a compelling consideration" and presumptively a neutral factor in today's technological age. *See Flowserve Corp. v. BMCE, Inc.*, No. 05 Civ. 8075, 2006 WL 2927176, at *4 (S.D.N.Y. Oct. 12, 2006); *EasyWeb Innovations, LLC v. Facebook, Inc.*, 888 F. Supp. 2d 342, 352 (E.D.N.Y. 2012) (collecting cases). That is especially true here where the case is to be decided on questions of law. As such, this factor is neutral.

Third, the availability of process to compel the attendance of unwilling witnesses is neutral here as both parties agree there are unlikely to be witnesses or a trial in either the Northern District

or the Southern District. *See, e.g.*, *See Flood v. Carlson Rests. Inc.*, 94 F. Supp. 3d 572, 580 (S.D.N.Y. 2015) (cited by Mem. 15-16) (denying motion to transfer, noting that availability of process to compel attendance factor was neutral).

Fourth, the relative means of the parties factor is also neutral here as both sides of this dispute involve sophisticated parties. And, in any event, "this factor has 'rarely been a dispositive reason to grant or deny a transfer motion' . . . ." *SEC v. Comm. on Ways & Means of the U.S. House of Reps.*, 161 F. Supp. 3d 199, 228 (S.D.N.Y. 2015).

Finally, the forum's familiarity with the governing law is given little weight, particularly where the claims in this case all concern federal constitutional law. *See Freeplay Music, LLC*, 195 F. Supp. 3d at 620 (finding that "this factor weights against transfer" when both courts are familiar with the federal law and the factor is neutral).

Conclusion

For these reasons, the Court should deny Defendants' Motion to Transfer.

Dated: April 25, 2025

Respectfully submitted,

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***pro hac vice motion forthcoming*
****pro hac vice motion pending*

Certificate of Compliance

I, Steven P. Lehotsky, certify that this response contains 5,968 words, which complies with the word limit of Local Rule 7.1.

/s/ Steven P. Lehotsky

Steven P. Lehotsky

Certificate of Service

I, Steven P. Lehotsky, certify that on April 25, 2025, the foregoing was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.

/s/ Steven P. Lehotsky

Steven P. Lehotsky