No. 21-1550

In The
Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., ET AL.,

Petitioners,

v.

BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

BRIEF OF ATLANTIC LEGAL FOUNDATION & DRI CENTER FOR LAW AND PUBLIC POLICY AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE* [1]

Established in 1977, the **Atlantic Legal Foundation** (ALF) is a national, nonprofit, nonpartisan, public interest law firm whose mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

The **DRI Center for Law and Public Policy** is the public policy and advocacy voice of DRI, an international organization of approximately 14,000 attorneys involved in the defense of civil litigation. The Center addresses issues that not only are germane to defense attorneys and their clients, but also important to improvement of the civil justice

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[1] Petitioners' and Respondent's counsel were provided with timely notice in accordance with Supreme Court Rule 37.2(a) and have consented to the filing of this brief. *Amici* certify that no counsel for a party authored this brief in whole or part, and that no party or counsel other than *amici* and their counsel made a monetary contribution intended to fund preparation or submission of this brief.

system. DRI and the Center, through publications and the filing of *amicus curiae* briefs in the Supreme Court, federal courts of appeals, and state appellate courts, long have participated in the ongoing effort to make the civil justice system fairer, more consistent, and more efficient. The Center's Climate Change and Sustainability Task Force addresses issues that are important to the nation and the world, as well as to litigants. See centerforlawandpublicpolicy.org.

* * *

The Atlantic Legal Foundation, the nation's leading advocate for sound science in judicial proceedings, and the DRI Center for Law and Public Policy, are filing this brief in support of the Petitioners for two principal reasons:

First, the fundamental issue in this appeal is whether climate change liability suits brought by local or state governments against fossil fuel energy companies should be adjudicated by the federal judiciary rather than in 50 separate state-court systems. This question unavoidably implicates the scientific nature of climate change—an indisputably borderless, indeed nationwide and global, phenomenon that has multiple, far-flung, contributing causes.

Damages suits that attempt to isolate a single type of contributor to, or cause of, global climate change (e.g., the two Petitioner energy companies' production, marketing, and sale of fossil fuels in the United States)—and fragment their alleged liability for the newly minted *global* tort of altering the earth's climate into myriad politically demarcated pieces (e.g.,

Petitioners' alleged liability to the City of Boulder for causing or contributing to global climate change)—conflict with the scientific facts that climate change has no boundaries, and that there are a multitude of sources of greenhouse gas ("GHG") emissions both in the United States and abroad. This is why a city's, county's, or other political subdivision's claims for the alleged local effects of GHG-induced climate change, no matter how mundanely labeled or artfully drafted, necessarily implicate uniquely federal interests, and thus, for purposes of federal-question removal under 28 U.S.C. § 1441(a), arise under federal law.

Second, the important and recurring removal question involved in this appeal arises in the context of a large and growing number of widespread and essentially identical state-court damages suits that not only target the fossil fuel energy industry, *see* Pet. at 8 n.*, but also collectively threaten its existence. Destroying this innovative, socially beneficial, environmentally conscious, and highly regulated industry, which employs millions of Americans, undoubtedly would please the most ardent climate-change activists. But upending the fossil fuel industry would be devasting to the U.S. economy, and to hundreds of millions of Americans, whose everyday lives depend both directly and indirectly on fossil fuels in countless ways.

SUMMARY OF ARGUMENT

This litigation, along with at least two dozen similar damages suits that have or had been removed to federal court, is part of a concerted effort by "climate justice" advocates and the plaintiffs' bar to recruit

state and local governments "to blame climate change on energy producers—regardless of any wrongdoing, fault, or causation—and demand they pay for the local infrastructure projects to address the effects of climate change." *The Plaintiffs' Lawyer Quest* for *the Holy Grail — The Public Nuisance "Super Tort"* 8 (Am. Tort Reform Ass'n 2020).[2]

These climate change liability suits also have an ulterior objective: "to create political pressure on the oil and gas industry [to] agree to the public policies [environmental activists] want to see imposed." *Id.* at 7-8; *see also* Albert C. Lin & Michael Burger, *State Public Nuisance Claims and Climate Change Adaptation*, 36 Pace Envtl. L. Rev. 49, 51 (2018) ("Beyond the immediate outcomes of specific cases, these suits could spur direct federal action on the issue, encourage an industry shift away from fossil fuels, and shape the narrative on the reality of—and responsibility for—climate change."); Joshua K. Payne & Jess R. Niz, *Waking the Litigation Monster — The Misuse of Public Nuisance* 1 (U.S. Chamber Inst. for Legal Reform 2019) ("[S]tates and local governments have turned to courts using the tort of public nuisance in particular, to manage . . . public policy problems.").[3]

The Court should grant certiorari in this case to address the threshold issue of whether the expanding

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[2] https://www.atra.org/wp-content/uploads/2020/03/Public-Nuisance-Super-Tort.pdf.

[3] https://instituteforlegalreform.com/wp-content/uploads/2020/10/The-Misuse-of-Public-Nuisance-Actions-2019-Research.pdf.

number of climate change liability suits being brought by state and local governments should be adjudicated by federal courts rather than in 50 separate state court systems. As the Petition for a Writ of Certiorari explains, the Court urgently needs to address this issue and provide federal courts, current and future litigants, and attorneys, with concrete guidance about the removability of climate change liability suits.

Respondents, three Colorado local governments (the "municipalities"), each seek exorbitant, location-specific damages for the alleged "'substantial role'" that the Petitioner energy companies "'played and continue to play in causing, contributing to and exacerbating climate change'" by "producing, marketing, and selling fossil fuels." Pet. App. 3a, 60a (quoting Amen. Cmpl. (ECF No. 7) ¶ 2). Despite their artfully drafted claims for public and private nuisance and trespass, these three municipalities, in essence, hope to hold the Petitioner energy companies liable for committing what is tantamount to a *global* tort—"alteration of the climate." *Id.* 6a.

Because climate change is a borderless, world-wide phenomenon, the municipalities' damages claims, premised on allegations that the energy companies have caused or significantly contributed to global climate change, unavoidably implicate uniquely federal interests relating to interstate and international climate change mitigation and remediation. Regardless of their state-law labels, the municipalities' nuisance and trespass claims necessarily arise under federal common law, and therefore are removable to federal court under

§ 1441(a). The municipalities' opportunistic effort to obtain location-specific damages based on the Petitioners' alleged alteration of the earth's climate does not transform a borderless, global tort into a multitude of local, politically drawn snippets of liability. Nor does it take into account the many industrial and other sources of GHG emissions around the world that contribute to climate change.

The whole-earth nature of the municipalities' climate change liability claims, like the virtually identical claims in numerous other pending suits originally filed in various States' courts, beg for a federal rule of decision. They should not be subjected to the substantive or procedural vagaries of 50 state court systems. Instead, the unitary federal judiciary, and ultimately this Court, should establish the rule of decision for climate change liability claims.

Adjudicating the municipalities' claims in state court under state law, rather than in federal court under federal law, also would offend the principles of interstate federalism, under which each State is a co-equal sovereign. No State should be "more equal" than other States by imposing its own tort standards in a way that would affect energy companies' national and international operations.

ARGUMENT

Federal Courts Are The Proper Forum For Adjudicating Climate Change Liability Suits

A. Liability suits seeking redress for the alleged global tort of altering the earth's climate arise under federal common law

"[G]lobal warming – as its name suggests – is a global problem . . . ." It "presents a uniquely international problem of national concern [and] is therefore not well-suited to the application of state law." *City of New York v. Chevron Corp.*, 993 F.3d 81, 86, 88 (2d Cir. 2021).

1. Climate change is borderless

The U.S. Environmental Protection Agency (EPA) website highlights climate change's global nature:

> The earth's climate is changing. Multiple lines of evidence show changes in our weather, oceans, and ecosystems . . . . These changes are due to a buildup of greenhouse gases in our atmosphere and the warming of the planet due to the greenhouse effect.
>
> * * *
>
> "[G]reenhouse gases". . . act like a blanket, making the earth warmer than it otherwise would be. This process, commonly known as the "greenhouse effect," is natural and necessary to support life. However, the recent buildup of

> greenhouse gases in the atmosphere from human activities has changed the earth's climate . . . .

EPA, Basics of Climate Change (Feb. 23, 2022);[4] *see also Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 416 (2011) (describing the greenhouse effect); *Massachusetts v. EPA*, 549 U.S. 497, 504-05 (2007) (same).

According to a Presidential Executive Order, quoted in the municipalities' Amended Complaint, "[t]he impacts of climate change -- including an increase in prolonged periods of excessively high temperatures, more heavy downpours, an increase in wildfires, more severe droughts, permafrost thawing, ocean acidification, and sea-level rise -- are already affecting communities, natural resources, ecosystems, economies, and public health across the Nation." Amen. Cmpl. ¶ 139 (quoting Executive Order – Preparing the United States for the Impacts of Climate Change (Nov. 1, 2013)); *see also Juliana v. United States*, 947 F.3d 1159, 1166 (9th Cir. 2020) ("[A]tomospheric carbon dioxide has skyrocketed . . . and will wreak havoc on the Earth's climate if left unchecked"); U.S. Dep't of State, *The Climate Crisis: Working Together for Future Generations* ("The record-breaking heat, floods, storms, drought, and wildfires

[4] https://www.epa.gov/climatechange-science/basics-climate-change.

devastating communities around the world underscore the grave risks we already face.").[5]

EPA's website identifies both human and natural causes of global climate change.

> Since the Industrial Revolution, human activities have released large amounts of carbon dioxide and other greenhouse gases into the atmosphere, which has changed the earth's climate. Natural processes, such as changes in the sun's energy and volcanic eruptions, also affect the earth's climate.

EPA, Causes of Climate Change (Feb. 23, 2022).[6]

GHG emissions, however, are not limited to energy companies' production of fossil fuels: "Greenhouse gases come from a variety of human activities, including burning fossil fuels for heat and energy, clearing forests, fertilizing crops, storing waste in landfills, raising livestock, and producing some kinds of industrial products." EPA, Basics of Climate Change, *Key Greenhouse Gases* (Feb. 23, 2022);[7] *see, e.g.*, Daniel E. Walters, *Animal Agriculture Liability for Climatic Nuisance: A Path Forward for Climate*

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[5] https://www.state.gov/policy-issues/climate-crisis/ (last visited July 6, 2022).

[6] https://www.epa.gov/climatechange-science/causes-climate-change.

[7] https://www.epa.gov/climatechange-science/basics-climate-change#keygases.

Change Litigation?, 44 Colum. J. Env. L. 300, 303 (2019) ("The agriculture industry is responsible for a surprising amount of greenhouse gas emissions. . . . In the United States, the numbers are . . . stunning.").

According to EPA, "*[b]urning* fossil fuels changes the climate more than any other human activity." EPA, Causes of Climate Change, *supra* (emphasis added);[8] *see also West Virginia v. EPA*, No. 20-1530 (U.S. June 30, 2022), slip op. at 2 (Kagan, J., dissenting) ("Curbing" GHG emissions from "fossil-fuel-fired (mainly coal - and natural-gas-fired) power plants . . . is a necessary part of any effective approach for addressing climate change.") And since 2004, coal—not oil or gas—has been the world's largest emitter of carbon dioxide. Climate Watch, *Historical GHG Emissions* (chart).[9]

"Within the energy sector, the largest emitting sector is electricity and heat generation, followed by transportation and manufacturing." *Id.* For example, in Boulder County, Colorado, "commercial and residential building energy use accounts for 60% of [GHG] emissions and transportation accounts for 30% of emissions countywide. Emissions from industrial processes, oil wells, solid waste, and agriculture

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[8] https://www.epa.gov/climatechange-science/causes-climate-change.

[9] https://www.climatewatchdata.org/ghg-emissions?breakBy=sector&calculation=ABSOLUTE_VALUE&end_year=2020&regions=WORLD&source=GCP&start_year=1960 (last visited July 6, 2022).

account for the remaining 9% of emissions." Boulder Cnty., *Climate Action In Boulder County*;[10] *see also City of Boulder Community Greenhouse Gas Inventory Report* (2020) (Figure 2. Snapshot of Boulder's 2020 GHG Emissions).[11]

Further, GHG emissions are not limited to the United States. They are a global problem. "In 2019, China's emissions not only eclipsed that of the US—the world's second-largest emitter at 11% of the global total—but also, for the first time, surpassed the emissions of all developed countries combined." Kate Larsen, et al., *China's Greenhouse Gas Emissions Exceeded the Developed World for the First Time in 2019* (Rhodium Group Mar. 6, 2021);[12] *see also* Climate Watch, *supra* (chart indicating that since 2005, China has surpassed the United States in GHG emissions).[13]

Thus, as the City of Boulder has explained, "[t]he threat of climate change extends beyond Boulder's property lines." City of Boulder, News, *Action Beyond Boundaries: City's Proposed Climate Action Evolves to*

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[10] https://www.bouldercounty.org/climate-action-2/ (last visited July 6, 2022).

[11] https://bouldercolorado.gov/media/6429/download?inline.

[12] https://rhg.com/research/chinas-emissions-surpass-developed-countries/.

[13] https://www.climatewatchdata.org/ghg-emissions?chartType=percentage&end_year=2019&start_year=1990 (last visited July 6, 2022).

Attack Systemic Drivers of Climate Change (June 29, 2021);[14] *see also* Colo. Air. Qual. Cntrl. Comm'n, Press Release, *Air Quality Control Commission Votes to Strengthen Air & Climate Protections* (May 22, 2020) (quoting statement of Denver City Council President Jolon Clark) ("Carbon emissions have no boundaries . . . .").[15]

2. Climate change damages claims necessarily implicate federal law

The municipalities' state-court suit seeks to hold the Petitioner energy companies liable under Colorado law for an alleged *global* tort—"the substantial role that their production, promotion, refining, marketing and sale of fossil fuels played and continues to play in causing, contributing to and exacerbating *alteration of the climate*." Amen. Cmpl. ¶ 2 (emphasis added).

According to the municipalities' 124-page, 544-paragraph complaint, "Earth has a natural 'greenhouse' effect [that] has been altered and intensified by human greenhouse gas emissions caused and contributed to by the levels of Defendants' fossil fuel activities." *Id.* ¶¶ 125, 126.

The municipalities allege, for example, that

- "[a]s a result of the emissions caused and contributed to by the levels of Defendants' fossil fuel

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[14] https://bouldercolorado.gov/news/action-beyond-boundaries-citys-proposed-climate-action-evolves-attack-systemic-drivers-climate.

[15] https://assets.bouldercounty.org/wp-content/uploads/2020/05/AQCC-Rulemaking-Results.pdf.

activities, atmospheric CO_2 now stands at . . . a level which is unprecedented in human history" (*id.* ¶ 129);

- "Defendants' fossil fuel activities caused and contributed" to "[w]arming of the climate system," including an increase in "annual average temperatures over the contiguous United States," and warming of the "atmosphere and oceans" (internal quotation marks omitted) (*id.* ¶¶ 132, 133, 134); and

- Defendants "accelerated, aggravated and continue to accelerate and aggravate the impacts of climate change" (*id.* ¶ 326).

Masquerading as local, garden variety, state-law public and private nuisance and trespass claims, the whole-earth tortious conduct that the municipalities accuse the energy companies of committing necessarily implicates "uniquely federal interests" that "make[] it inappropriate for state law to control." *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640, 641 (1981) (citation omitted); *see also Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1987) (discussing "uniquely federal interests" that are "committed by the Constitution and laws of the United States to federal control").

As the certiorari petition discusses, this Court previously has recognized that there is a uniquely federal interest in claims seeking redress for interstate pollution, thus necessitating a uniform federal rule of decision supplied by federal common law. *See* Pet. at 7, 24. "Greenhouse gases . . . qualify as 'air pollutant[s].'" *Am. Elec. Power v. EPA*, 564 U.S. at 416 (quoting *Massachusetts v. EPA*, 549 U.S. at 528-

29). Therefore, damages claims seeking to impose liability for GHG emissions that allegedly cause climate change, no matter how labeled or drafted, arise under federal common law. *See generally Fry ex rel. E.F. v. Napoleon Cmty. Schools*, 137 S.Ct. 743, 755 (2017) ("What matters is the crux—or, in legal speak, the gravamen—of the plaintiff's complaint, setting aside any attempts at artful pleading."). Because the municipalities' claims arise under federal law, they fall within federal district courts' original jurisdiction and are removable under § 1441(a). *See* Pet. at 24-25.

The Tenth Circuit repeatedly recognized in its opinion here that the municipalities' suit—like the dozens of other state-court suits filed against fossil fuel energy companies by local or state governments—involves "transboundary pollution." Pet. App. 27a, 30a, 32a, 69a; *see generally* Henry N. Butler & Todd J. Zywicki, *Expansion of Liability under Public Nuisance*, 18 Sup. Ct. Econ. Rev. 1, 5 (2010) (referring to comments of David A. Dana at Searle Center Public Nuisance Roundtable) ("[G]lobal warming is a commons problem, and one that operates on a much larger scale than localized pollution."). Such a "sprawling case," based on "the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," is "simply beyond the limits of state law." *City of New York*, 993 F.3d at 92.

Rejecting the contention that "a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may proceed under New York law," the Second Circuit explained in *City of New York* that federal law applies "to disputes

involving interstate air or water pollution [because] such quarrels often implicate two federal interests that are incompatible with the application of state law: (i) the 'overriding . . . need for a uniform rule of decision' on matters influencing national energy and environmental policy, and (ii) 'basic interests of federalism.'" *Id.* at 91-92 (quoting *Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972)). The municipalities' claims, which are premised on what they assert is a "climate crisis," Amen. Cmpl. ¶ 124, fall into both of these categories.

By its very nature, the energy companies' alleged tortious conduct—worldwide in scope—was not, is not, and could not be, directed to any of the Respondent municipalities, or to any other particular locale in the United States or elsewhere. Even though the municipalities seek redress for the "substantial and rising costs to mitigate the impacts of Defendants' alteration of the climate ('climate change') on their property," Amen. Compl. ¶ 1, "[a]rtful pleading cannot transform [their] complaint into anything other than a suit over global greenhouse gas emissions." *City of New York*, 993 F.3d at 91. As in *City of New York*, this case is not "a local spat." *Id.*

Stated differently, liability for "alteration of the climate"—an alleged tort of interstate and worldwide dimensions—is indivisible. It cannot be divided into potentially tens of thousands of local bits and pieces of liability, each subject to the vagaries of one of 50 States' differing tort law standards. Instead, a uniform rule of decision regarding the merits of climate alteration claims is mandated by federal

common law. Along the same lines, the planetary scope of the energy companies' alleged tortious conduct for alteration of the climate cannot be converted into a parochial dispute merely by pointing to the damages that a local government (or a State) claims that it is owed for the impact of climate change. "Proximate cause and certainty of damages, while both related to the plaintiff's responsibility to prove that the amount of damages he seeks is fairly attributable to the defendant, are distinct requirements for recovery in tort." *Anza v. Ideal Steel Supply Co.*, 547 U.S. 451, 466 (2006) (Thomas, J., concurring in part and dissenting in part).

Furthermore, because climate change is a global phenomenon caused, in part, by GHG emissions attributable to innumerable industries, corporations, farms, and consumers around the world, alleged liability for the impacts of climate change in any particular locale cannot be limited to any particular industry, member of an industry, or other source of GHG emissions. Instead, insofar as *anyone* can be held liable for causing global climate change, then virtually *everyone* in the world must be held liable. This is another reason why climate change damages suits implicate uniquely federal interests, and therefore, are incompatible with state tort law.

B. Adjudication of climate change liability suits in federal courts would foster uniformity of decision and preserve interstate federalism

The Respondent municipalities are three of almost 40,000 general-purpose county or subcounty governments in the United States.[16] Colorado itself has 62 counties and 271 subcounty governments.[17] If any (or every) county, city, or town, or State, can pursue, in the comfortable surroundings of its own state courts, multi-million dollar damages litigation for the *same global tort* of altering the earth's climate, there would be an enormous potential for conflicting or inconsistent findings of fact, conclusions of law, judgments, and damages awards and/or other remedies imposed on the same group of fossil fuel energy companies for engaging in exactly the same commercial (and entirely lawful and socially beneficial) activities.

Instead, this case and similar suits—whose claims, despite their state-law labels, necessarily fall within the province of federal law—should be adjudicated in federal courts.

● Unlike the 50 state-court systems, the unitary federal judicial system requires federal trial judges and litigants to proceed in accordance with a single set

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[16] U.S. Census Bureau, 2017 Census of Governments – Organization, Table 3 (General-Purpose Local Governments By State), https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.

[17] *Id.*

of (i) trial court procedural rules, (ii) pretrial discovery requirements, (iii) standards governing motions to dismiss and for summary judgment, (iv) and rules of evidence.

● Cases pending in different federal districts but involving common questions of fact (such as the nature, causes, and effects of climate change) can be consolidated or coordinated for pretrial proceedings. *See* 28 U.S.C. § 1407 (Multidistrict litigation).

● Federal trial and appellate courts are far more competent (and objective) than state courts when addressing complex defenses based on federal law.

● Federal district courts are generally more experienced than state trial courts in managing cases that involve conflicting expert testimony on scientific subjects such as the greenhouse effect and climate change. Further, admissibility of expert testimony, including scientific testimony about causation, is subject to a uniform federal standard. *See* Fed. R. Evid. 702. And when performing their expert testimony gatekeeper role, federal judges are less apt to allow juries to be exposed to expert opinions that confuse sound science with environmental, social, or economic policy. *Cf.* A. Alan Moghissi et al., *Does Science Never Absolutely Prove Anything?*, 3 Voice of Science (2010) ("The scientific foundation of GCC [global climate change] includes proven, evolving and borderline science. Unfortunately, as currently

practiced . . . it also includes areas outside the purview of science, notably Societal Goals.").[18]

- Unlike the States' 50 separate judicial systems, Article III establishes only one Supreme Court to interpret and apply federal law.

Further, unlike federal judges, many state court judges must stand for election. "Campaign spending on state judicial elections continues to . . . increase the influence of special interest groups in states that elect their judges." *No Independence, No Justice* 26 (DRI Center for Law and Public Policy 2019).[19] Needless to say, "climate justice" is a subject of tremendous interest to many special interest groups. *See The Public Nuisance "Super Tort," supra* at 7, 8 ("In climate change litigation, public nuisance lawsuits are used as a political or regulatory shortcut. . . . [L]awyers and activists set about the country like traveling salesmen trying to convince local and state governments to file public nuisance lawsuits against the oil and gas industry."); *see, e.g.*, EarthRights International, *Climate Justice and Accountability*.[20]

On a more fundamental level, allowing state courts to adjudicate climate change liability suits under state-law tort theories imperils "the principles of

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[18] https://nars.org/wp-content/uploads/2018/02/Does-Sciences-Ever-Absolutely-Prove-Anything.pdf.

[19] https://www.dri.org/docs/default-source/dri-white-papers-and-reports/2019_no_independence-no-justice.pdf?sfvrsn=4.

[20] https://earthrights.org/what-we-do/climate-justice/ (last visited July 6, 2022).

interstate federalism embodied in the Constitution." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980). Under our federal system, the 50 States are "coequal sovereigns," and "[t]he sovereignty of each State, in turn, implied a limitation on the sovereignty of all its sister States—a limitation express or implicit in the original scheme of the Constitution and the Fourteenth Amendment." *Id.* at 292, 293.

Because climate change is a nationwide, and indeed global, phenomenon, any particular State, or political subdivision of a State, that uses its state court system to hold fossil fuel energy companies liable under state law for causing or contributing to climate change, would upset the balance of interstate federalism. Such a State or political subdivision would be using the State's tort law to exert its coercive power over the defendants—and by so doing, make itself "more equal" than other States with regard to those defendants. *See Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 918 (2011) ("A state court's assertion of jurisdiction exposes defendants to the State's coercive power. . . ."); *cf.* Butler & Zywicki, *supra* at 6 (state-court climate change litigation should not allow "state courts to impose political externalities on other states and the nation as a whole"). Insofar as the global tort of climate change alteration is viable,

> [a]ny actions the [energy companies] take to mitigate their liability, then, must undoubtedly take effect across every state (and country). And all without asking

> what the laws of those other states (or countries) require. Because it therefore implicat[es] the conflicting rights of [s]tates [and] our relations with foreign nations, this case poses the quintessential example of when federal common law is most needed.

City of New York, 993 F.3d at 92 (some alterations in original; internal quotation marks omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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