Nos. 23-947 & 23-952

In the Supreme Court of the United States

SUNOCO LP, ET AL., PETITIONERS

v.

CITY AND COUNTY OF HONOLULU, ET AL.

SHELL PLC, ET AL., PETITIONERS

v.

CITY AND COUNTY OF HONOLULU, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF HAWAII

BRIEF FOR THE AMERICAN PETROLEUM INSTITUTE, TEXAS OIL & GAS ASSOCIATION, WESTERN STATES PETROLEUM ASSOCIATION, AND AMERICAN EXPLORATION & PRODUCTION COUNCIL AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

The American Petroleum Institute ("API") is a nationwide, non-profit trade association that represents approximately 600 companies involved in every aspect

[1] This *amicus* brief supports the petitioners in Nos. 23-947 & 23-952. Counsel for all parties were provided timely notice in accordance with S. Ct. Rule 37.2. No counsel for a party authored this brief in whole or in part and no person or entity other than *amici*, their members, or counsel made a monetary contribution to its preparation or submission.

of the petroleum and natural-gas industry. Its members range from the largest integrated companies to the smallest independent oil and gas producers. API's members include producers, refiners, suppliers, marketers, pipeline operators, and marine transporters, as well as service and supply companies that support the industry. API is also the worldwide leading body for establishing standards that govern the oil and natural-gas industry.

Texas Oil & Gas Association ("TXOGA") is a statewide trade association representing every facet of the Texas oil and gas industry. Collectively, the membership of TXOGA produces approximately 90% of Texas' crude oil and natural gas, and operates the vast majority of the state's refineries and pipelines. In fiscal year 2023, the Texas oil and natural gas industry supported over 480,000 direct jobs and paid $26.3 billion in state and local taxes and state royalties, funding the state's schools, roads, and first responders.

Western States Petroleum Association ("WSPA") is a non-profit trade association that represents a large portion of the petroleum exploration, production, refining, transportation, and marketing companies in Arizona, California, Nevada, Oregon, and Washington. Founded in 1907, WSPA is dedicated to ensuring that Americans continue to have reliable access to petroleum and petroleum products through policies that are socially, economically, and environmentally responsible.

American Exploration & Production Council ("AXPC") is a trade association representing 34 of the largest independent oil and natural gas exploration and production companies in the U.S. AXPC companies are world leaders in the cleanest and safest onshore production of oil and natural gas, while supporting millions of American jobs. Its members strive to deliver affordable,

reliable energy while improving the economy and our communities.

This case is one of many lawsuits that have been brought against the petroleum and natural-gas industry by state and local governments, seeking to hold defendants liable for emissions of "greenhouse gasses" and global climate change. Contrary to the decision below, these claims are governed exclusively by federal law, notwithstanding respondents' creative labelling under state law.

The application and supremacy of federal law is especially important here. Policies that can have a meaningful impact on climate change must come from the national government, and in particular Congress and the Executive Branch. Ad hoc and unpredictable decisions of state courts, seeking to govern the worldwide conduct of a handful of individual defendants, are not a sensible way to address issues of such scope and magnitude. To the contrary, these lawsuits are counterproductive and harmful to the national interest, particularly when *amici* and their members are making great investments in and strides toward a cleaner energy future.

Amici have a concrete stake in ensuring that these claims are properly governed by federal law. This would ensure better policy that addresses climate change while also meeting the world's growing energy needs. *Amici* have familiarity with the issues that this litigation implicates, and are well-suited to explain the potentially disastrous effects that these lawsuits will have, not just on the petroleum industry, but on the entire American economy.

SUMMARY OF ARGUMENT

For years, state and local officials have attempted to impose crippling tort liability on major energy companies, in a quixotic effort to shape national energy policy and combat climate change. Climate change is a complex, global challenge that demands serious and unified solutions at the national stage. It cannot be resolved by a patchwork of state lawsuits, brought by politically or financially motivated officials with no expertise in this area. This Court recognized as much in *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 422, 428 (2011) ("*AEP*"), when it explained that Congress "designated an expert agency, [the Environmental Protection Agency], as best suited to serve as primary regulator of greenhouse gas emissions," and that the "subject" of climate change "is meet for federal law governance."

Notwithstanding this Court's teaching, respondents and other localities still intend to usurp the authority of the federal government. So, to circumvent the preclusive effect of federal law on their cross-border emissions lawsuits, these plaintiffs have creatively rebranded federal climate-change claims as state-law causes of action like trespass, failure to warn, and deceptive marketing. Regardless, the essence of their claims remains the same: respondents are seeking redress for alleged injuries related to *global* climate change and caused by greenhouse gases intermixed in the Earth's atmosphere. These claims necessarily present "an interstate matter raising significant federalism concerns." *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021).

Nonetheless, the Hawaii Supreme Court held that respondents' claims are not governed by federal law, in

part because the "suit does not seek to regulate emissions and does not seek damages for interstate emissions." Sunoco App.3a. That underlying premise is simply wrong. It is refuted by respondents' own allegations that emissions are the cause of their alleged harms. But the Hawaii Supreme Court did not try to evaluate the allegations to understand their gravamen or essence. It accepted respondents' state-law labels, and is now letting these claims go forward, though they are clearly precluded by federal law.

This Court should grant certiorari to make clear that federal law—not state law—exclusively governs claims concerning cross-border emissions. The Supremacy Clause demands that federal law preempt state law where there is a conflict, as there is here; but it also prevents plaintiffs from simply pleading around the strictures of federal law. This Court has repeatedly held that in addressing the preemptive force of federal law, courts must consider the gravamen or essence of the plaintiff's claim, not the label—which is what the Hawaii Supreme Court refused to do here. In reducing the question to empty formalism, the decision below allows respondents—and encourages future plaintiffs—to nullify federal law and render the Supremacy Clause impotent. This outcome is contrary to this Court's precedent and the Framers' intentions.

This issue is worthy of this Court's review, and it is absolutely critical right now. Without this Court's intervention, plaintiffs around the country will take a wrecking ball to the petroleum industry—and, in turn, to the entire economy—in a misguided effort to control cross-border emissions and set national energy policy using a variety of state-law tort standards. Those who are serious about addressing climate change recognize that the

federal government is best situated to assess the complex, cross-border problems that climate change poses and to strike the delicate balance that policy in this area demands. In reality, local officials (and their outside counsel) have their own incentives—to reap windfall damages, to make headlines, and to obtain political victories that will please their constituents. Their interests depart from the national public interest, and their efforts will harm many Americans.

The stakes in this litigation are enormous. The Court should grant the petitions for writs of certiorari.

ARGUMENT

I. This Court should clarify that claimants cannot avoid federal preemption through strategic pleading

A. The Hawaii Supreme Court erred in holding that federal law does not exclusively govern claims challenging interstate and international greenhouse-gas emissions. See Sunoco App.45a-49a, 55a; Sunoco Pet.17-18; Shell App.47a-51a; Shell Pet.8. But it also erred in holding that, even if federal law governed these types of claims, it would not here because respondents' "alleged injury is [petitioners'] allegedly tortious marketing conduct, not pollution traveling from one state to another." Sunoco App.49a-51a.

The Hawaii Supreme Court's conclusion cannot be squared with respondents' own allegations. Respondents are obviously—and admittedly—seeking to hold petitioners liable for international greenhouse-gas emissions and the consequences of global climate change. Respondents do not try to hide that fact. By their own admission, they seek to hold respondents "directly responsible for the substantial increase in all CO2 emissions between 1965 and the present," and "for a substantial portion of the climate crisis-related impacts

on Plaintiffs." Shell App.104a (¶ 9). Respondents allege that, "[a]s a direct and proximate consequence of [respondents'] wrongful conduct, the average sea level will rise substantially along the County's coastline," causing environmental harms. Shell App.104a (¶ 10).

Respondents say they want to "ensure that the parties who have profited from externalizing the consequences and costs of dealing with global warming and its physical, environmental, social, and economic consequences, bear the costs of those impacts." Shell App.106a (¶ 15); *see also* Shell App.204a, 210a, 215a, 216a (¶¶ 149-50, 151-154). In addition to seeking damages, respondents ask for "equitable relief, including abatement" of emissions moving forward—which has nothing to do with alleged tortious marketing. Shell App.232a. In short, there is no doubt that the essence of respondents' claims (however labeled) is to seek redress for alleged injuries arising from global climate change.

B. The Hawaii Supreme Court's deference to respondents' labels conflicts with this Court's precedent, which has repeatedly rejected strategic pleading using state law claims as a means to evade the limitations imposed by federal law.

In *Kurns* v. *Railroad Friction Products Corp.*, 565 U.S. 625 (2012), this Court addressed whether the Locomotive Inspection Act ("LIA"), preempted the plaintiff's state-law tort claims. The LIA allows railroad carriers to use locomotive parts only when they are in safe condition and have been inspected according to the statutory requirements. *Id.* at 629-30. The plaintiff sued various companies that produced locomotive equipment, raising state-law claims that their products were defective because they contained asbestos, which injured him during his employment as a railroad worker. *Id.* at 628-

29. Among his state-law claims, the plaintiff alleged the defendants failed to warn him of the dangers posed by asbestos. *Id.* at 629.

As in this case, the plaintiff in *Kurns* argued that his failure-to-warn claims were not preempted by the LIA because the basis of liability was not the defendants' locomotive equipment but the "failure to provide adequate warnings regarding the product's risks." *Id.* at 634. But this Court rejected the plaintiff's attempt to plead around the preemptive force of the LIA. It recognized that the "gravamen" of the state-law claim was to seek redress for the faulty equipment, which is governed by the LIA. *Id.* at 635. In so holding, the Court noted that a state-law "duty to warn" claim and "the accompanying threat of liability will inevitably influence a manufacturer's choice whether to use that particular design." *Id.* at 635 n.4. In other words, a plaintiff cannot manufacture a duty-to-warn theory to circumvent the LIA's preemptive effect and use state law to regulate conduct that federal law already governs.

The Court employed similar reasoning in the context of the Foreign Sovereign Immunities Act ("FSIA"), which shields foreign states and their agencies from suit in United States courts. In *OBB Personenverkehr AG* v. *Sachs*, 577 U.S. 27 (2015), a United States citizen purchased a Eurail pass in the United States and was injured during travel in Austria. *Id.* at 29. The plaintiff sued an Austrian railway in federal district court, arguing that FSIA did not bar her claim because she was suing based on the sale of the Eurail pass. *Id.* According to the plaintiff, that theory of liability fit within FSIA's exception to sovereign immunity for actions "based upon a commercial activity carried on in the United States by the foreign state." *Id.* at 31.

This Court disagreed. It held that a court's jurisdiction under FSIA turns on the "gravamen," or "essentials," of the lawsuit. *Id.* at 35-36. "[A]ny other approach," the Court explained, "would allow plaintiffs to evade [FSIA's] restrictions through artful pleading." *Id.* at 36. There, the "gravamen" of the suit "plainly occurred abroad," as the claims "turn[ed] on the same tragic episode in Austria, allegedly caused by wrongful conduct and dangerous conditions in Austria, which led to injuries suffered in Austria." *Id.* at 35.

This Court employs similar analysis in other areas to determine the effect of federal law on claims. For example, in addressing the exhaustion requirement for claims brought under the Individuals with Disabilities Education Act, this Court held that courts must look to the "gravamen" of the complaint and "set[] aside any attempts at artful pleading." *Fry* v. *Napoleon Cmty. Sch.*, 580 U.S. 154, 169 (2017). What matters is "substance, not surface": "[t]he use (or nonuse) of particular labels and terms is not what matters." *Id.* Focusing on the "gravamen" of a complaint ensures that a plaintiff cannot manipulate federal jurisdiction "through artful pleading." *Id.* at 170.

Likewise, in the context of state sovereign immunity and the *Ex parte Young* exception for federal suits to enjoin state officers, this Court does not "adhere to an empty formalism" with respect to the relief sought. *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997). Because the *Ex parte Young* exception must "reflect a proper understanding of its role in our federal system," the "real interests" served by sovereign immunity cannot be "sacrificed to elementary mechanics of captions and pleading." *Id.* To determine "when a suit is in fact against the sovereign," courts must look to the

actual "*effect* of the relief sought." *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 107 (1984).

C. The Second Circuit recently confronted the same issue here—creatively pleaded climate-change allegations. In line with this Court's precedent, the Second Circuit correctly recognized that a plaintiff's attempt to repackage federal climate-change claims as state-law tortious misrepresentation was merely "[a]rtful pleading." *City of New York*, 993 F.3d at 91.

In *City of New York*, the court saw through the plaintiff's ploy to avoid the issue of global "emissions" by instead focusing on "earlier moment[s]" in the causal chain leading to the alleged injuries, including the "promotion[ ] and sale of fossil fuels." *Id.* at 91, 97. The court recognized that "[i]t [wa]s precisely *because* fossil fuels emit greenhouse gases—which collectively 'exacerbate global warming'—that the [plaintiff] [wa]s seeking damages." *Id.* at 91. "[T]hough the City's lawsuit would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless." *Id.* at 93. Thus, the court held that federal law preempted the plaintiff's state law claims.

City of New York is directly on point. But the Hawaii Supreme Court declined to follow it. It instead followed a series of climate-change cases addressing a defendant's right of *removal*, not the substantive conflict between state claims and federal law. See Sunoco App.51a-52a (relying on *Mayor & City Council of Baltimore* v. *BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022); *Bd. of Cnty. Commissioners of Boulder Cnty.* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022); and *Connecticut* v. *Exxon Mobil Corp.*, No. 20-CV-1555, 2021 WL 2389739 (D. Conn. June 2, 2021)).

The state court's decision to follow those cases was clearly wrong. As the Fourth Circuit explained in *Mayor & City Council of Baltimore* (a removal case), there is a "heightened standard unique to the removability inquiry"—which is the reason the court did not follow *City of New York*. See 31 F.4th at 203. Outside of removal, there are several defenses under the Supremacy Clause—but, according to the court, those do not apply in the removal context because the well-pleaded complaint rule for removal can be overcome only by "complete" statutory preemption. *Id.* at 199 n.2. Accordingly, "[b]ecause [the court] is only concerned with removal jurisdiction and complete preemption's application, [it] need not [] delve into these defenses at Defendants' disposal." *Id.*

Thus, in the removal context, the court simply took "Baltimore at its word" that the defendants' alleged "misinformation campaign … contributed to [plaintiff's] injuries." *Id.* at 217. And, in the other removal case, the court accepted that the plaintiffs' claims "do not concern [Clean Air Act] emissions standards or limitations" because they "are premised on … misrepresenting the dangers" of producing and selling fossil fuels. *Bd. of Cnty. Commissioners of Boulder Cnty.*, 25 F.4th at 1264; see also *Connecticut*, 2021 WL 2389739, at *12 (deferring to "the claims Connecticut has chosen to bring" rather than determining the gravamen of those claims).

Assuming *dubitante* that was the correct standard for removal, it is not the correct standard here. As in *City of New York*, the full scope of preemption *is* squarely presented on the merits because this case is outside of the removal context. See 993 F.3d at 94 ("We are … free to consider the [defendants'] preemption de-

fense on its own terms, not under the heightened standard unique to the removability inquiry"). And because preemption was squarely presented on the merits of petitioners' motion to dismiss, this Court's decisions mandated that the Hawaii Supreme Court assess the "gravamen" or "essence" of respondents' claims. Its failure to do so was erroneous, and allowed respondents to improperly circumvent federal law.

D. The Hawaii Supreme Court's error in accepting respondents' strategically pleaded claims presents an important issue, and is another reason for this Court to grant review. This is not a minor or technical error. If state plaintiffs can easily avoid the substantive effects of federal law in state court by re-packaging claims under state law, they would be able to circumvent federal law at will and nullify the Supremacy Clause.

That is because a plaintiff who is allegedly harmed by certain conduct can almost always try to manufacture an elongated chain of causation, and argue that he is "really" challenging a *preceding* failure to warn about the conduct. See *City of New York*, 993 F.3d at 91; see also *Saudi Arabia* v. *Nelson,* 507 U.S. 349, 363 (1993) (under FSIA, "a plaintiff could recast virtually any claim of intentional tort committed by sovereign act as a claim of failure to warn, simply by charging the defendant with an obligation to announce its own tortious propensity before indulging it"). But that artificial chain of causation does not alter the actual, underlying substance of the claim, nor that the *effect* of the lawsuit is to control the primary conduct. See *Kurns*, 565 U.S. at 637. If state courts were given leeway to accept self-serving labels, then countless local plaintiffs could supersede *any* federal law and use tort law to regulate national issues.

This is what the Supremacy Clause was intended to prevent: a patchwork of *de facto* state regulation over national issues. Without the Supremacy Clause (or with a toothless version of it) Congress would be "reduced to the same impotent condition with [the Articles of Confederation]." The Federalist No. 44 (James Madison). In other words, the federal government would be weak and ineffectual in areas that demand national, unified solutions. See *id.* (in the absence of the Clause, there would be "an inversion of the fundamental principles of all government; … [with] the authority of the whole society everywhere subordinate to the authority of the parts").

II. Respondents are using state tort law to regulate in an area where the federal government has exclusive control

Here, respondents are trying to supersede the federal government in an area of quintessential federal interest and domain: national energy policy and the regulation of cross-border emissions. If allowed to move forward, respondents' claims—and the patchwork of similar lawsuits—would hinder the ongoing and successful efforts to curb emissions and address climate change. Respondents' litigation success would render the national government "impotent" to administer effective policy.

A. Federal law has long declared that fossil fuels "are strategically important domestic resources that should be developed to reduce the growing dependence of the United States on politically and economically unstable sources of foreign oil imports." 42 U.S.C. 15927(b)(1). For over a century, the federal government has actively encouraged domestic exploration and production of oil and gas. President Taft, in 1910, implored Congress to develop domestic oil sources: The federal government, he told Congress, "is directly concerned both in encour-

aging rational development and at the same time insuring the longest possible life to the oil supply." *Hearings Before Committee on Naval Affairs of the House of Representatives on Estimates Submitted by the Secretary of the Navy*, 64th Cong. 761 (1910).

During World War II, petroleum emerged as a critical resource for the Allies. As the United States prepared to enter the war, the demand for petroleum products, especially aviation fuel, surged. There was a heightened need for high-octane fuel for aircraft, as well as oil for ships, lubricants, and synthetic rubber—all vital for the war effort. For this reason, petroleum products were described as "[a] prime weapon of victory in two world wars" and "a bulwark of our national security." Nat'l Petroleum Council, *A National Oil Policy for the United States* 1 (1949).

Not only is there a strong federal interest in the production of fossil fuels, but the federal government is best suited to regulate its cross-border emissions. Emissions from energy use around the world intermix in the atmosphere, and the potential effects are felt nationwide (indeed, worldwide). Accordingly, the regulation of such conduct, as well as the conduct-altering ramifications of emissions lawsuits, create externalities for other states and countries that use energy—i.e., increase their costs of production or consumption.

For these reasons, "a mostly unbroken string of cases" dating back 100 years "has applied federal law to disputes involving" claims arising out of interstate emissions. *City of New York*, 993 F.3d at 91 (collecting cases); see *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 103 (1972). This Court has recognized that emissions claims "touch[] basic interests of federalism" and implicate the "overriding federal interest in the need for a uniform

rule of decision." *Milwaukee*, 406 U.S. at 105 n.6. So, even in the absence of federal legislation, federal common law was traditionally the exclusive mechanism by which parties could sue for interstate air pollution. State law had no role. See *AEP*, 564 U.S. at 420-23.

B. Although the Clean Air Act eventually displaced the federal common law remedy for interstate emissions, it in no way "undermine[d]" the "reasons why the [S]tate claiming injury cannot apply its own state law to out-of-state discharges." *Illinois* v. *City of Milwaukee*, 731 F.2d 403, 410 (7th Cir. 1984), *cert. denied*, 469 U.S. 1196 (1985); see also Sunoco Pet.19, 28-29; Shell Pet.11-12.

If anything, the Clean Air Act confirmed that global climate change should be addressed only at a national level, not by a patchwork of state tort lawsuits. For that reason, the Second Circuit held that such claims are "clearly barred by the Clean Air Act." *City of New York*, 993 F.3d at 96. The Hawaii Supreme Court's circumvention of the Clean Air Act warrants this Court's review. See Shell Pet.29-31. As this Court recently held, a policy that causes "a nationwide transition" on energy use—a decision of "magnitude and consequence"—necessarily "rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." *West Virginia* v. *EPA*, 597 U.S. 697, 735 (2022).

Today, smart and coordinated federal policy on emissions is as important as ever. Meeting energy demand with reliable, accessible energy while reducing greenhouse gas emissions is the challenge of our time. See *AEP,* 564 U.S. 427 ("As with other questions of national or international policy, informed assessment of competing interests is required. Along with the environmental benefit potentially achievable, our Nation's energy

needs and the possibility of economic disruption must weigh in the balance.").

In part because of uniform and relatively predictable federal regulation under the Clean Air Act, America has made substantial progress toward that goal. It has seen a *significant* decline in greenhouse emissions—despite a simultaneous increase in energy demand. See Am. Petroleum Inst., *Key Investments in Greenhouse Gas Mitigation Technologies from 2000 Through 2016 by Oil and Gas Companies, Other Industry and the Federal Government*, at 2-3 (Apr. 2018).[2] The American natural gas and oil industry has made substantial investment in emissions-reducing technologies with great success (*id.* at 8-11, 24-25), in part because it has not been subjected to chaotic state tort lawsuits. And, today, *amici*'s members continue to invest in industry-based solutions that reduce the risks of climate change while also meeting society's growing energy needs. See Am. Petroleum Inst., *Climate Action Framework* (Apr. 2021).[3]

C. While industry members, the federal government, and foreign partners continue working carefully toward pragmatic, supply-side solutions to energy demands, respondents and other localities are trying to impose billions of dollars in damages for the supply of petroleum products. The result will be counterproductive.

For one, the salvo of state-court lawsuits will undermine the progress that *amici*'s members are currently making in cleaner energy. The intended effect of imposing massive damages in these cases is to control behavior prospectively and deter future petroleum sales. See

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[2] https://www.api.org/~/media/Files/News/2018/18-May/2017_API_GHG_Investment_Study.pdf

[3] https://www.api.org/climate#%20technology

Kurns, 565 U.S. at 637 ("[R]egulation can be … effectively exerted through an award of damages.") (citation omitted). The claims asserted by respondents (and other plaintiffs) will force defendants "to change [their] methods of doing business and controlling pollution to avoid the threat of ongoing liability." *Int'l Paper Co.* v. *Ouellette*, 479 U.S. 481, 495 (1987). That means *amici*'s members will be hamstrung in ongoing efforts to develop and perfect emissions-reduction technology. In turn, the world's energy needs—which are consistently growing—will be filled by foreign emitters.

The state-court lawsuits will also undermine the federal government's ability to increase exports to European partners and enter executive agreements to that effect. As this Court recognized, "[t]he exercise of the federal executive authority"—particularly in foreign affairs—"means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two." *Am. Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 421 (2003). Respondents' suit "would not only risk jeopardizing our [N]ation's foreign policy goals but would also seem to circumvent Congress's own expectations and carefully balanced scheme of international cooperation on a topic of global concern." *City of New York*, 993 F.3d at 103.

For these reasons, the questions presented by both petitions will have a substantial and immediate impact on global energy policy. Respondents' lawsuit—if allowed to proceed—will not only undermine near-term policy goals, but will frustrate the federal government's and the American natural gas and oil industry's longer-term efforts to reduce emissions.

III. The consequences of allowing respondents' claims to continue are tremendous

Not only will the results of these creatively pleaded lawsuits be counterproductive to climate and energy goals, they will be disastrous to the American economy. But respondents are not responsive to those costs or concerns, which will likely be externalized to Americans around the country. The individuals behind these lawsuits are responsive to local interests and should not make major, national political determinations. The Federalist No. 81 (Alexander Hamilton) (the "prevalency of a local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes"). As observers have recognized, these "[s]tate officials who file such suits get the political benefits of appearing to take action against climate change, without having to bear the costs of imposing economic burdens on in-state firms." Jonathan H. Adler, *Hothouse Flowers: The Vices and Virtues of Climate Federalism*, 17 Temp. Pol. & Civ. Rts. L. Rev. 443, 449 (2008). And the costs they will impose cannot be understated: Allowing states to pursue global climate-change lawsuits under the guise of state torts would have disastrous consequences for the petroleum industry and the national economy.

A. Without this Court's intervention, local elected officials and their outside counsel will pursue these high-profile suits in state courts across the country. As far as *amici* are aware, there are nearly two dozen pending lawsuits filed by local and state governments in their respective home courts.[4]

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[4] *City of Chicago* v. *BP p.l.c.*, No. 2024CH01024 (Ill. Cir. Ct.); *Cnty. of Multnomah* v. *Exxon Mobil Corp.*, No. 23CV25164 (Or. Cir. Ct.); *California* v. *Exxon Mobil Corp.*, No. CGC23609134 (Cal. Super. Ct.); *Makah Indian Tribe* v. *Exxon Mobil Corp.* No. 23-2-25216-1

The damages requested in these suits are astronomical. The California Attorney General has said that his state alone will seek "tens of billions to hundreds of billions in ongoing damages going forward." PBS News Hour, *California Sues Oil Companies for Exacerbating Climate Change* (Sept. 20, 2023).[5] Multnomah, Oregon is seeking over $1.5 billion in damages and an abatement fund of over $50 billion paid for by the defendants. Compl. at 174-75, *Cnty. of Multnomah*, No. 23CV25164 (Or. Cir. Ct. June 22, 2023).

While the pending cases are massive in their own right, there is a serious risk of follow-on litigation. If this Court denies review, it will send a signal that any state

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(Wash. Super. Ct.); *Platkin* v. *Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct.); *City of Annapolis* v. *BP p.l.c.*, No. C-02-CV-21-000250 (Md. Cir. Ct.); *Anne Arundel Cty.* v. *BP p.l.c.*, No. C-02-CV-21-000565 (Md. Cir. Ct.); *Connecticut* v. *Exxon Mobil Corp.*, No. HHDCV206132568S (Conn. Super. Ct.); *City of Hoboken* v. *Exxon Mobil Corp.*, No. HUD-L-003179-20 (N.J. Super.); *Delaware* v. *BP America Inc.*, No. N20C-09-097 (Del. Super. Ct.); *City of Charleston* v. *Brabham Oil Co.*, No. 2020CP1003975 (S.C. Ct. Com.); *Minnesota* v. *American Petroleum Institute*, No. 62-CV-20-3837 (Minn. Dist. Ct.); *Rhode Island* v. *Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.); *Bd. of Cnty. Comm'rs of Boulder Cnty.* v. *Suncor Energy (U.S.A.) Inc.*, No. 2018CV030349 (Colo. Dist. Ct.); *City of Richmond* v. *Chevron Corp.*, No. C18-00055 (Cal. Super. Ct.); *Mayor & City Council of Balt.* v. *BP p.l.c.*, No. 24-C-18-004219 (Md. Cir. Ct.); *City of Imperial Beach* v. *Chevron Corp.*, No. C17-01227 (Cal. Super. Ct.); *Cnty. of Marin* v. *Chevron Corp.*, No. CIV1702586 (Cal. Super. Ct.); *Cnty. of San Mateo* v. *Chevron Corp.*, No. 17CIV03222 (Cal. Super. Ct.); *City of Santa Cruz* v. *Chevron Corp.*, No. 17CV03243 (Cal. Super. Ct.); *Cnty. of Santa Cruz* v. *Chevron Corp.*, No. 17CV03242 (Cal. Super. Ct.); *Cal. ex rel. Herrera* v. *BP p.l.c.*, No. CGC-17-561370 (Cal. Super. Ct.); *Cal. ex rel. Oakland City Att'y* v. *BP p.l.c.*, No. RG17875889 (Cal. Super. Ct.).

[5] https://www.pbs.org/newshour/amp/show/california-sues-oil-companies-for-exacerbating-climate-change

or locality can plead around federal law and seek any amount of damages they want for the effects of global climate change. That would prompt a cascade of similar claims from private plaintiffs and elected officials, looking to capitalize on the financial and political windfall. See Margaret H. Lemos & Max Minzner, *For-Profit Public Enforcement*, 127 Harv. L. Rev. 854, 854 (2014) ("[P]ublic enforcers often seek large monetary awards for self-interested reasons divorced from the public interest in deterrence"); Margaret H. Lemos & Ernest A. Young, *State Public-Law Litigation in an Age of Polarization*, 97 Tex. L. Rev. 43, 44 (2018) ("[S]tate litigation efforts may not always account well for divergent preferences and interests within the broad publics that the states represent"). This phenomenon would create a domino effect, and open the floodgates for a multitude of "piggyback" lawsuits that lead to unfair and counterproductive over-enforcement. See generally Elysa M. Dishman, *Enforcement Piggybacking and Multistate Actions*, 2019 B.Y.U. L. Rev. 421 (2019).

The follow-on litigation is daunting. Respondents represent only two of almost 40,000 general-purpose county or sub-county governments in the United States. See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 3 (General-Purpose Local Governments by State).[6] If any (or every) county, city, town, or State can pursue similar claims and astronomical damages—in the comfortable surroundings of their home courts—the results could be devastating. Even a few outsized and unsupported verdicts could escalate into a full-blown crisis for the petroleum industry.

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[6] https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html

B. But the ramifications of climate-change litigation could extend far beyond penalties for petitioners. The entire economy and the American way of life depend on low-cost energy—namely, oil and natural gas. If respondents succeed in imposing such massive damages on petitioners and other companies, they could cause a substantial increase in energy costs and severely damage the U.S. economy.

Indeed, natural gas is the most important energy source for our daily lives. About 60% of U.S. households use natural gas for space and water heating, cooking, and drying clothes. U.S. Energy Info. Admin., *Natural gas explained*.[7] Natural gas is also the leading fuel for power generation, accounting for 43.1% of the electricity Americans used in 2023. U.S. Energy Info. Admin., *What is U.S. electricity generation by energy source?*[8] Natural gas not only powers America, its increased use in electricity production is a key reason that U.S. CO_2 emissions have fallen to generational lows, accounting for more than 60% of CO_2 emission reductions in that sector since 2005. Am. Petroleum Inst., *State of American Energy* (2023).[9]

Further, almost every sector depends on petroleum-based products, which could be made substantially more costly by these lawsuits. The transportation industry, for example, depends on gasoline, diesel fuel, and jet fuel to fuel cars, trucks, airplanes, ships, and trains.

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[7] https://www.eia.gov/energyexplained/natural-gas/use-of-natural-gas.php#:~:text=About%2060%25%20of%20U.S.%20homes,sector%20end%2Duse%20energy%20consumption (last updated Apr. 28, 2023)

[8] https://www.eia.gov/tools/faqs/faq.php?id=427&t=3

[9] https://events.api.org/wp-content/uploads/2023/01/API-SOAE23-Printed-Report.pdf

U.S. Energy Info. Admin., *Use of energy explained.*[10] Gasoline and diesel thus facilitate the movement of goods and people across vast distances, necessary for the economic cycle. *Id.* Even slightly increased transportation costs could have a rippling effect, increasing the costs of goods and services, and causing price inflation that impacts consumers. U.S. Dep't of Transp., Bureau of Transp. Stats., *Inflation and Transportation.*[11]

The agricultural sector also relies heavily on petroleum-derived inputs—for crop production, transportation, and food processing. U.S. Dep't of Agric., *Impacts of Higher Energy Prices on Agriculture and Rural Economies* 8 (August 2011).[12] Fertilizers, derived from petroleum, enhance soil fertility, protect crops, and increase agricultural yields. *Id.* And machinery used in farming, like tractors, harvesters, and irrigation systems, are powered predominantly by petroleum fuels. *Id.* Increased energy-related production costs could decrease agricultural output and raise prices of food products.

Petroleum-based materials also play a pivotal role in products and manufacturing. U.S. Energy Info. Admin., *Use of energy explained*.[13] Plastics are ubiquitous in consumer products, from packaging materials and household goods to electronics. *Id.* Petroleum-based products are essential for machinery and product assembly in manufacturing. *Id.* Petroleum-derived products are also

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[10] https://www.eia.gov/energyexplained/use-of-energy/transportation.php (last updated Aug. 16, 2023)

[11] https://data.bts.gov/stories/s/Transportation-and-Inflation/f9jm-cqwe/

[12] https://www.ers.usda.gov/webdocs/publications/44894/6814_err123_1_.pdf

[13] https://www.eia.gov/energyexplained/use-of-energy/industry.php (last updated July 13, 2023)

indispensable to the healthcare sector, as they are used in medical equipment, pharmaceuticals, and protective gear. U.S. Dep't of Energy, *U.S. Oil and Natural Gas: Providing Energy Security and Supporting Our Quality of Life* (Sept. 2020).[14] Increased prices in petroleum could inflate consumer prices and medical costs, which would likely hit poor and working class communities the hardest. See Raymond Kluender, et al., *Medical Debt in the US, 2009-2020*, 326 J. Am. Med. Assoc. 250 (2021).

Petroleum-derived materials are also integral to construction and infrastructure. Terence S. Arnold, U.S. Dep't of Transportation, *What's in Your Asphalt?*.[15] Plastics and synthetic materials from petroleum are used in building insulation, pipes, roofing materials, and wiring, enhancing energy efficiency and structural integrity. U.S. Dep't of Energy, *supra.* Increased construction costs could lead to housing shortages, especially in public housing. See U.S. Gov't Accountability Off., *The Affordable Housing Crisis Grows While Efforts to Increase Supply Fall Short* (Oct. 12, 2023).[16]

Last, the petroleum industry is one of the country's largest employers, supporting 9.8 million jobs. Am. Petroleum Inst., *Economic Impacts of the Oil and Natural Gas Industry on the US Economy in 2011* (July 2013).[17] And public pension and retirement funds have signifi-

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[14] https://www.energy.gov/sites/prod/files/2020/10/f79/Natural%20Gas%20Benefits%20Report.pdf

[15] https://highways.dot.gov/public-roads/september-2017/whats-your-asphalt

[16] https://www.gao.gov/blog/affordable-housing-crisis-grows-while-efforts-increase-supply-fall-short

[17] https://www.api.org/~/media/files/policy/jobs/economic_impacts_ong_2011.pdf

cant holdings in petitioners and similar companies. Robert J. Shapiro and Nam D. Pham, *The Distribution of Ownership of U.S. Oil and Natural Gas Companies* (Sept. 2007).[18] Taking the petroleum industry out at the knees would harm the American workforce and family, killing jobs and devastating retirement plans.

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Respondents' lawsuit—and many like it—could be disastrous. American energy is vital, now more than ever, for prosperity and security in uncertain times. Ensuring that Americans have energy to meet their daily needs, while also combatting climate change, is a complex endeavor. It requires serious policy at the national level. But respondents would circumvent that process, in a deeply misguided attempt to solve the problem on their own (and reap the financial and political rewards along the way). This is what the Supremacy Clause was designed to prevent. The Hawaii Supreme Court's legal errors therefore have profound ramifications, and are worthy of this Court's review.

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[18] https://www.api.org/-/media/files/news/2011/shapiro_pham_study_final_9_17_07.pdf/

CONCLUSION

The petitions for writs of certiorari should be granted.

Respectfully submitted.

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