No.

In the Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC.; SUNCOR ENERGY SALES INC.; EXXON MOBIL CORPORATION,
PETITIONERS

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY; CITY OF BOULDER

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate.

CORPORATE DISCLOSURE STATEMENT

Petitioner Suncor Energy (U.S.A.) Inc. is a wholly owned indirect subsidiary of Suncor Energy Inc. Suncor Energy Inc. has no parent corporation, and no publicly traded company owns 10% or more of its stock.

Petitioner Suncor Energy Sales Inc. is a wholly owned subsidiary of Suncor Energy (U.S.A.) Inc.

Petitioner Exxon Mobil Corporation has no parent corporation, and no publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

United States District Court (D. Colo.):

Board of County Commissioners of Boulder County, et al. v. *Suncor Energy (U.S.A.) Inc., et al.*, Civ. No. 18-1672 (Sept. 5, 2019)

United States Court of Appeals (10th Cir.):

Board of County Commissioners of Boulder County, et al. v. *Suncor Energy (U.S.A.) Inc., et al.*, No. 19-1330 (July 7, 2020)

Board of County Commissioners of Boulder County, et al. v. *Suncor Energy (U.S.A.) Inc., et al.*, No. 19-1330 (Feb. 8, 2022)

United States Supreme Court:

Suncor Energy (U.S.A.) Inc., et al. v. *Board of County Commissioners of Boulder County, et al.*, No. 20-783 (May 24, 2021)

Suncor Energy (U.S.A.) Inc., et al. v. *Board of County Commissioners of Boulder County, et al.*, No. 21-1550 (Apr. 24, 2023)

Colorado District Court (Boulder County):

Board of County Commissioners of Boulder County, et al. v. *Suncor Energy (U.S.A.) Inc., et al.*, No. 2018CV30349 (June 21, 2024)

Colorado Supreme Court:

County Commissioners of Boulder County, et al. v. *Suncor Energy USA, Inc., et al.*, No. 24SA206 (May 12, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., and Exxon Mobil Corporation respectfully petition for a writ of certiorari to review the judgment of the Colorado Supreme Court in this case.

OPINIONS BELOW

The opinion of the Colorado Supreme Court (App., *infra*, 1a-47a) is not yet reported but is available at 2025 WL 1363355. The opinion of the trial court (App., *infra*, 48a-139a) is unreported but is available at 2024 WL 3204275.

JURISDICTION

The judgment of the Colorado Supreme Court was entered on May 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). See *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 178-180 (1988); *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 482-483 (1975).

CONSTITUTIONAL PROVISION INVOLVED

Article VI, clause 2, of the United States Constitution provides:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

STATEMENT

This case provides the Court with its best opportunity yet to resolve one of the most important questions currently pending in the lower courts. Energy companies that produce and sell fossil fuels are facing numerous lawsuits in state courts across the Nation seeking billions of dollars in damages for injuries allegedly caused by the contribution of greenhouse-gas emissions to global climate change. But as the Court has recognized for over a century, the structure of our constitutional system does not permit a State to provide relief under state law for injuries allegedly caused by pollution emanating from outside the State. This case presents the question whether that longstanding principle precludes the state-law claims in the nationwide climate-change litigation. The answer to that question is surely yes.

This Court has already recognized the importance of the question presented by calling for the views of the Solicitor General in *Sunoco LP* v. *City & County of Honolulu*, No. 23-947. Since the previous Administration filed its brief in that case, the new Administration has filed a brief in another climate-change case arguing that federal law precludes state-law claims seeking relief for similar climate-change claims. See U.S. Br. at 8-27, *Mayor & City Council of Baltimore* v. *BP p.l.c.*, No. 11, Sept. Term 2025 (Md.) (July 15, 2025). The Colorado Supreme Court's divided decision below deepens a clear conflict on that question. Only this Court can resolve it.

Petitioners are energy companies that produce and sell fossil fuels; respondents are the city of Boulder, Colorado, and the surrounding county. Like numerous other state and local governments nationwide, respondents filed this action against petitioners in state court, asserting claims purportedly arising under state law to recover for alleged harms caused by the effects of global climate change.

The trial court denied petitioners' motion to dismiss, and a divided Colorado Supreme Court affirmed. The majority acknowledged this Court's precedents holding that claims seeking relief for injuries allegedly caused by interstate pollution constitute an inherently federal area exclusively governed by federal law. But the court concluded that, because Congress had displaced the preexisting federal common law in this area by enacting the Clean Air Act, state tort law presumptively could regulate interstate emissions. In so holding, the court expressly declined to follow the Second Circuit's decision in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021), which held that it was "too strange to seriously contemplate" that

Congress's enactment of legislation in an inherently federal area would "suddenly" make state law "presumptively competent" to apply. *Id.* at 99.

The dissenting justices agreed with the Second Circuit's analysis. And in so doing, they expressed concern that the majority's decision gave Boulder and other Colorado municipalities "the green light to act as [their] own republic" by regulating on an interstate and international level. App., *infra*, 25a. That result could "interfere" with the federal government's policies and "contribute to a patchwork of inconsistent local standards that will beget regulatory chaos." *Id.* at 47a. The dissenting justices "respectfully urge[d]" this Court to "take up this issue." *Id.* at 46a.

There are few, if any, more consequential questions pending in the lower courts concerning the relationship between state and federal law. The Colorado Supreme Court's decision was incorrect, and it provides this Court with the opportunity definitively to address whether the state-law claims asserted by dozens of States and municipalities can even proceed—and to do so before the energy industry is threatened with potentially enormous judgments.

Boulder, Colorado, cannot make energy policy for the entire country. The Court should grant review and clarify that state law cannot impose the costs of global climate change on a subset of the world's energy producers chosen by a single municipality. At a minimum, the Court may wish to call for the views of the Solicitor General in order to receive the perspective of the new Administration on whether certiorari should be granted.

A. Background

1. As this Court has long explained, there are certain areas in which "our federal system does not permit the

controversy to be resolved under state law." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640-641 (1981). Among those areas are ones where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Ibid.* (citation omitted). In those areas, "the Constitution implicitly forbids" States from "apply[ing] their own law," and disputes in those inherently federal areas must "turn on federal rules of law." *Franchise Tax Board* v. *Hyatt*, 587 U.S. 230, 247 (2019) (internal quotation marks and citation omitted). Put another way, "the basic scheme of the Constitution" "demands" a federal rule of decision in such inherently federal areas. *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 421 (2011).

When Congress has not created a rule of decision for a particular question arising in an inherently federal area, federal courts have the power to prescribe a rule as a matter of federal common law. See, *e.g.*, *Texas Industries*, 451 U.S. at 640-641. Those court-created rules are subject to displacement by statute, however, because "it is primarily the office of Congress, not the federal courts, to prescribe national policy in areas of special federal interest." *American Electric Power*, 564 U.S. at 423-424.

2. One established category of claims requiring a federal rule of decision is those seeking relief for injuries allegedly caused by interstate pollution. For more than a century, "a mostly unbroken string of cases has applied federal law to disputes involving" such claims. *City of New York*, 993 F.3d at 91 (collecting cases). As this Court has stated, federal law must govern such claims because they "touch[] basic interests of federalism" and implicate the "overriding federal interest in the need for a uniform rule of decision." *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 105 n.6 (1972).

In the absence of an applicable federal statute, courts previously applied federal common law to claims seeking relief for interstate air and water pollution. See, *e.g.*, *Milwaukee I*, 406 U.S. at 103; *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 237 (1907). But Congress later enacted comprehensive legislation governing interstate air and water pollution—the Clean Air Act and the Clean Water Act.

This Court addressed the effect of the Clean Water Act on the preexisting federal common law in *City of Milwaukee* v. *Illinois* (*Milwaukee II*), 451 U.S. 304 (1981). There, the Court held that the Clean Water Act precluded federal-common-law claims seeking to abate a nuisance created by water pollution commencing in another State. *Id.* at 317. Then, in *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), the Court addressed the role of state law in the wake of the Clean Water Act's enactment. The Court held that, in light of the Clean Water Act's "pervasive regulation" and "the fact that the control of interstate pollution is primarily a matter of federal law," the only permissible state-law actions seeking relief for interstate water pollution are "those specifically preserved by the Act." *Id.* at 492 (citation omitted). The Court then held that the Clean Water Act preserved only suits under the law of the State in which the source of pollution at issue was located. See *id.* at 487-498.

In *American Electric Power*, *supra*, the Court addressed the effect of the Clean Air Act on the federal common law governing air pollution. The Court held that the Act displaced nuisance claims under federal common law seeking the abatement of greenhouse-gas emissions from another State. See 564 U.S. at 424. The Court left open the question whether "the law of each State where the defendants operate powerplants" could be applied. *Id.* at 429.

3. Another established category of claims requiring a federal rule of decision is those that threaten to "impair the effective exercise of the Nation's foreign policy." *Zschernig* v. *Miller*, 389 U.S. 429, 440 (1968). As the Court has explained, numerous constitutional and statutory provisions "reflect[] a concern for uniformity" and "a desire to give matters of international significance to the jurisdiction of federal institutions." *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 427 n.25 (1964). The federal government accordingly has "exclusive authority in international relations," *Fuld* v. *Palestine Liberation Organization*, 145 S. Ct. 2090, 2104 (2025) (internal quotation marks and citation omitted), and "at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy," *American Insurance Association* v. *Garamendi*, 539 U.S. 396, 413 (2003) (citation omitted).

B. Facts And Procedural History

1. Since 2017, state and local governments across the country have filed lawsuits against private energy companies, alleging that the companies' worldwide production, promotion, and sale of fossil fuels have contributed to global climate change and thereby caused injury. Nearly 60 state and local governments have brought such suits, and more continue to be filed.

In 2021, the Second Circuit unanimously held in *City of New York* that federal law precludes state-law claims seeking relief for injuries allegedly caused by global climate change. The claims had to be brought under federal common law, the court explained, but the Clean Air Act displaced any such claims with respect to emissions in the United States, and "foreign policy concerns foreclose[d]" such claims with respect to international emissions. 993

F.3d at 101. The court rejected the notion that the displacement of federal common law allowed state-law claims to proceed, except to the extent a plaintiff is seeking relief for injuries caused by in-state emissions. See *id.* at 99-100. But the plaintiff in *City of New York* was "not seek[ing] to take advantage of this slim reservoir of state common law." *Id.* at 100. After the Second Circuit's decision, the plaintiff did not seek this Court's review.

Following that defeat in federal court, state and local governments are now bringing these cases in state court. Each case seeks billions of dollars in damages from the defendant energy companies.

2. Petitioners in this case are leading energy companies; their primary business is the production and sale of fossil fuels around the world. Respondents are the city of Boulder, Colorado, and the surrounding county.

On April 17, 2018, respondents brought this case in Colorado state court, alleging that petitioners' worldwide conduct has contributed to global climate change, which in turn has caused a variety of harms in Colorado. Respondents allege that "unchecked production, promotion, refining, marketing, and sale of fossil fuels" throughout the world has "led to unchecked fossil fuel use," resulting in an "unprecedented rapid rise in the concentration of [greenhouse gases] in the atmosphere." Am. Compl. 2. That increasing concentration of greenhouse gases, respondents allege, results in "warming [of] the atmosphere and oceans" and "alteration of the climate," including rising "global average temperatures." *Id.* at 2, 30-33. According to respondents, the effects of climate change manifest in "increases in extreme hot summer days and increases in minimum nighttime temperatures, precipitation changes, larger and more frequent wildfires, increased concentrations of ground-level ozone, higher transmission of viruses and disease from insects, altered streamflows, bark beetle outbreaks, ecosystem damage, forest die-off, reduced snowpack, and drought." *Id.* at 34-35.

Respondents asserted state-law claims for public nuisance; private nuisance; trespass; unjust enrichment; violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1); and civil conspiracy. Am. Compl. 101-121. Each claim was premised on the same basic theory of liability: namely, that petitioners "altered the climate by selling fossil fuels at levels [it] knew would bring numerous and catastrophic injuries to Colorado." Resp. Colo. S. Ct. Br. 1. Respondents sought to recoup past and future projected climate-change costs from petitioners. Am Compl. 1-2, 121-122.[*]

3. Petitioners removed this case to federal court, and the district court granted a motion to remand. 405 F. Supp. 3d 947 (D. Colo. 2019). On appeal, the Tenth Circuit initially affirmed. 965 F.3d 792 (2020). After this Court's decision in *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021), the Court granted certiorari, vacated the Tenth Circuit's decision, and remanded for further consideration of the jurisdictional question. 141 S. Ct. 2667 (2021). The Tenth Circuit again affirmed. 25 F.4th 1238 (2022). Petitioners sought review from this Court; the Court called for the views of the Solicitor General and then denied certiorari, with Justice Kavanaugh dissenting. 143 S. Ct. 78 (2022); 143 S. Ct. 1795 (2023).

4. Petitioners then moved to dismiss the amended complaint in state court, arguing in relevant part that federal law precludes state-law claims seeking relief for inju-

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[*] Respondents also asserted claims against Suncor Energy Inc.; those claims were dismissed for lack of personal jurisdiction, and that entity is not a party before this Court. See App., *infra*, 75a-87a.

ries allegedly caused by the effects of interstate greenhouse-gas emissions on the global climate. The district court denied petitioners' motion, holding that federal law did not preclude respondents' claims. App., *infra*, 87a-115a.

5. Petitioner Exxon Mobil Corporation petitioned the Colorado Supreme Court for interlocutory review; the Suncor petitioners later joined in that request; and the court granted review. App., *infra*, 7a. Following briefing and oral argument, the court affirmed the district court's order by a 5-2 vote. *Id.* at 1a-47a.

a. The Colorado Supreme Court first concluded that, because the Clean Air Act displaced the federal common law that previously governed claims concerning interstate air pollution, federal common law played no role in assessing whether federal law precludes respondents' claims. App., *infra*, 9a-11a. The court acknowledged this Court's holding that federal common law governs disputes concerning "interstate and international disputes implicating the conflicting rights of states or the United States's relations with foreign nations." *Id.* at 9a (citing *American Electric Power*, 564 U.S. at 421). But it reasoned that the Clean Air Act displaced the federal common law of nuisance, and it thus "look[ed] to whether the [Clean Air Act] preempts [respondents'] claims." *Id.* at 11a. The Colorado Supreme Court thereby expressly departed from the decisions in *City of New York*, *supra*, and *Illinois* v. *City of Milwaukee*, 731 F.2d 403, 411 (7th Cir. 1984), in which federal courts of appeals held that the displacement of federal common law does not "resuscitate" state-law claims. App., *infra*, 18a-20a.

The Colorado Supreme Court further concluded that federal common law would not have applied even if it were not displaced. App., *infra*, 18a. The court reasoned that respondents have not "brought an action against a pollution emitter to abate pollution" and instead "seek[] damages from upstream producers for harms stemming from the production and sale of fossil fuels." *Id.* at 17a. The court thus determined that respondents' claims "do not seek to regulate [greenhouse-gas] emissions." *Id.* at 21a.

After reasoning that ordinary preemption analysis applied, the Colorado Supreme Court concluded that the Clean Air Act did not alone preempt respondents' claims. App., *infra*, 11a-16a. Applying the presumption against preemption, the court concluded that respondents' claims were not subject to either field preemption or conflict preemption. *Id.* at 13a-15a.

Finally, the Colorado Supreme Court concluded that respondents' claims for injuries based on international emissions could also proceed. App., *infra*, 22a-24a. Because the court determined that respondents' claims "involve areas of traditional state responsibility" and do not seek to regulate greenhouse-gas emissions, it held that respondents' claims do not intrude on or conflict with any federal power over foreign policy and are accordingly not subject to foreign-affairs preemption. *Id.* at 24a.

b. Justice Samour, joined by Justice Boatright, dissented. App., *infra*, 25a-47a. In his view, the "majority arrive[d] at the wrong result because it applie[d] the wrong test." *Id.* at 27a. Rather than applying "ordinary statutory preemption," Justice Samour contended that "the appropriate inquiry with respect to the interstate aspect of [respondents'] claims is whether the [Clean Air Act] affirmatively authorize[d] them," which "it does not." *Id.* at 26a-27a. He rejected the majority's position that the presumption against preemption applied, explaining that "Congress's decision to displace federal common law and to take control of this area did not suddenly render state law competent to regulate interstate and international air pollution." *Id.* at 26a. Justice Samour concluded by "urg[ing] [this Court] to take up this issue," "[g]iven the number of local municipalities throughout the country that have already brought claims like those advanced by Boulder, given that more and more municipalities are joining this trend, and given further that a number of courts have now ruled that such claims may be prosecuted." *Id.* at 46a.

6. The Colorado Supreme Court subsequently stayed its mandate in order to allow petitioners to seek review in this Court. App., *infra*, 140a-141a.

REASONS FOR GRANTING THE PETITION

This case presents a case-dispositive and recurring question of extraordinary importance to the energy industry, which is facing dozens of lawsuits seeking billions of dollars in damages for the alleged effects of global climate change. That question is whether federal law precludes the application of state law to claims seeking relief for injuries allegedly caused by interstate and international greenhouse-gas emissions. By allowing respondents' state-law claims to proceed, the Colorado Supreme Court's decision squarely conflicts with the Second Circuit's decision in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021), and is inconsistent with the decisions of two other federal courts of appeals. The Colorado Supreme Court's decision also conflicts with this Court's precedents: regulation of interstate pollution is an inherently federal area necessarily governed by federal law, and Congress has not permitted, and indeed has preempted, resort to state law except for claims seeking relief for harms caused by in-state emissions.

In these cases, state and local governments are attempting to assert control over the Nation's energy policies by holding energy companies liable for worldwide conduct in ways that starkly conflict with our constitutional structure, as well as the policies and priorities of the federal government. That flouts the Court's precedents and basic principles of federalism. The petition for a writ of certiorari should be granted. At a minimum, the Court may wish to call for the views of the Solicitor General to obtain the perspective of the new Administration.

A. The Decision Below Deepens A Conflict On The Question Presented And Is At Odds With The Views of the United States

As the Colorado Supreme Court recognized, its decision squarely conflicts with the Second Circuit's decision in *City of New York*, which held that federal law precluded materially identical state-law claims. The decision below joins the Hawaii Supreme Court in a growing conflict, and it is also inconsistent with decisions of the Fourth and Seventh Circuits. As a result of that conflict, trial courts across the country are reaching divergent outcomes. This Court's review is warranted.

1. *City of New York* involved a suit brought by a municipal government against a group of energy companies in federal court, alleging that the defendants (including petitioner ExxonMobil) were liable for injuries allegedly caused by the contribution of interstate and international greenhouse-gas emissions to global climate change. As here, the plaintiff municipality asserted claims for public nuisance, private nuisance, and trespass, and sought relief in the form of damages. See 993 F.3d at 88. As here, the complaint alleged that the defendants had "known for decades that their fossil fuel products pose a severe risk to the planet's climate" but had "downplayed the risks and continued to sell massive quantities of fossil fuels, which

has caused and will continue to cause significant changes to the * * * climate." *Id.* at 86-87.

The question before the Second Circuit was "whether municipalities may utilize state tort law to hold multinational oil companies liable for the damages caused by global greenhouse gas emissions." 993 F.3d at 85. The court unanimously held that "the answer is 'no.'" *Id.* at 85, 91.

The Second Circuit explained that, "[f]or over a century, a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." 993 F.3d at 91. "[S]uch quarrels," the court continued, "often implicate two federal interests that are incompatible with the application of state law": the "overriding need for a uniform rule of decision" on matters influencing national energy and environmental policy, and "basic interests of federalism." *Id.* at 91-92 (alterations omitted) (quoting *Illinois* v. *City of Milwaukee* (*Milwaukee I*), 406 U.S. 91, 105 n.6 (1972)).

To the Second Circuit, claims seeking to hold defendants liable for injuries arising from "the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet" are far too "sprawling" for state law to govern. 993 F.3d at 92. The court reasoned that application of state law to the plaintiff's claims would "risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other." *Id.* at 93.

The Second Circuit rejected the plaintiff's argument that displacement by the Clean Air Act of any remedy under federal common law allows state law to govern. See 993 F.3d at 98. "[That] position is difficult to square with the fact that federal common law governed this issue in the first place," the court reasoned, because "where 'federal common law exists, it is because state law cannot be used.'" *Ibid.* (quoting *City of Milwaukee* v. *Illinois* (*Milwaukee II*), 451 U.S. 304, 313 n.7 (1981)). The court thus concluded that "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *Ibid.* Such an outcome, the Second Circuit reasoned, is "too strange to seriously contemplate." *Id.* at 98-99.

The Second Circuit understood Congress to have the power to "grant [S]tates the authority to operate in an area of national concern," but "resorting to state law on a question previously governed by federal common law is permissible only to the extent authorized by federal statute." 993 F.3d at 99 (internal quotation marks, citations, and alterations omitted). The court concluded that the Clean Air Act "does not authorize the type of state-law claims" the plaintiff was pursuing. *Ibid.* In the Second Circuit's view, the Act permitted only actions brought under "the law of the [pollution's] *source* [S]tate," and the plaintiff was not proceeding under that "slim reservoir of state common law." *Id.* at 100 (first alteration in original) (citation omitted).

The Second Circuit further explained that the Clean Air Act did not displace federal common law with respect to claims for harms caused by international emissions, because the Act "does not regulate foreign emissions." 993 F.3d at 95 n.7, 101. But the court concluded that "condoning an extraterritorial nuisance action" for global climate change "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." *Id.* at 103.

2. The decision in *City of New York* squarely conflicts with the Colorado Supreme Court's decision in this case, as well as the Hawaii Supreme Court's decision in *City & County of Honolulu* v. *Sunoco LP*, 537 P.3d 1173 (2023), cert. denied, 145 S. Ct. 1111 (2025). Each of those cases involves tort claims asserted under state law seeking to hold fossil-fuel producers liable for injuries resulting from the cumulative effect of interstate and international greenhouse-gas emissions caused by the producers' worldwide production, sale, and promotion of fossil fuels. But unlike the Second Circuit, the Colorado Supreme Court and the Hawaii Supreme Court held that such claims could proceed under state law.

a. Like the Second Circuit, the Colorado Supreme Court recognized that the Clean Air Act displaced any "federal common law concerning air pollution." App., *infra*, 10a. But the court proceeded to hold that, after that displacement, state law was presumptively competent to govern such actions concerning interstate and international pollution, unless the Clean Air Act demonstrated Congress's "clear and manifest purpose" to "supersede[]" state law. *Id.* at 11a. The court acknowledged that the Second Circuit had reached a contrary result, but it expressly declined to follow the Second Circuit's decision, criticizing that court's analysis as "backwards reasoning." *Id.* at 19a (citation omitted).

Further disagreeing with the Second Circuit, the Colorado Supreme Court rejected the contention that claims like respondents' represent a de facto attempt to regulate greenhouse-gas emissions. App., *infra*, 20a-21a. The court instead distinguished between "claims against the pollution emitters themselves," which "implicat[e] the regulation of interstate pollution," and claims "seek[ing] damages from upstream producers for harms stemming from the production and sale of fossil fuels." *Id.* at 17a. The Second Circuit had rejected that distinction, explaining that "[a]rtful pleading cannot transform the [plaintiff's] complaint into anything other than a suit over global greenhouse gas emissions." 993 F.3d at 91. In the Second Circuit's view, the plaintiff was seeking relief "precisely *because* fossil fuels emit greenhouse gases" and thereby exacerbate climate change, and it thus declined to allow the plaintiff to "disavow[] any intent to address emissions" while "identifying such emissions" as the source of its harm. *Ibid.*

Because the Colorado Supreme Court determined that respondents' claims do not implicate a federal interest but instead "involve areas of traditional state responsibility," it concluded that they do not conflict with any express foreign policy of the federal government or intrude on any power over foreign policy reserved to the federal government. App., *infra*, 23a-24a. By contrast, the Second Circuit had concluded that condoning materially similar claims "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." 993 F.3d at 103.

b. Like the Colorado Supreme Court, the Hawaii Supreme Court held that state law was presumptively competent to govern actions concerning interstate and international pollution. See *City & County of Honolulu*, 537 P.3d at 1195-1202. The court reasoned that, because federal common law "no longer exists," the fact that it once governed could "play[] no part in th[e] court's preemption analysis." *Id.* at 1199 (citation omitted). Instead, the court concluded that the "correct preemption analysis requires an examination *only* of the [Clean Air Act]'s preemptive effect." *Id.* at 1200. The court acknowledged that its decision conflicted with the Second Circuit's, which it said "rel[ied] on flawed reasoning." *Id.* at 1196, 1200.

The Hawaii Supreme Court additionally concluded that the plaintiffs' claims did not arise in an inherently federal area. See 537 F.3d at 1201. In the court's view, the inherently federal area of interstate pollution covers only claims where "the source of the injury * * * is pollution traveling from one state to another." *Ibid.* But the claims before it, the court continued, concerned only "allegedly tortious marketing conduct." *Ibid.* The court did not attempt to reconcile that characterization with its earlier recognition that the plaintiffs' theory of liability depended upon the defendant energy companies' conduct allegedly "dr[iving] consumption [of fossil fuels], and thus greenhouse gas pollution, and thus climate change," resulting in alleged physical and economic effects in Honolulu. *Id.* at 1187 (citation omitted). The court also drew no distinction between interstate and international emissions, holding that the plaintiffs' state-law claims could proceed as to both. See *id.* at 1195-1202. The Hawaii Supreme Court's decision, like the Colorado Supreme Court's decision in this case, is thus hopelessly irreconcilable with the Second Circuit's decision in *City of New York*.

3. The decision below is also inconsistent with the decisions of two other federal courts of appeals that have held that the law of one State cannot govern claims seeking relief for injuries emanating from pollution emitted in another state.

a. In *Illinois* v. *City of Milwaukee* (*Milwaukee III*), 731 F.2d 403 (7th Cir. 1984), cert. denied, 469 U.S. 1196 (1985), the State of Illinois filed nuisance claims under federal and state common law against a municipality for allegedly polluting Lake Michigan. While the action was pending, Congress enacted comprehensive amendments to the Clean Water Act, and this Court held that those amendments had displaced the remedy previously available under federal common law. See *Milwaukee II*, 451 U.S. at 317-319.

On remand, the Seventh Circuit addressed whether Illinois's state-law claims could proceed in light of the displacement of federal common law. The Seventh Circuit held that they could not. See 731 F.2d at 406. As the Seventh Circuit explained, this Court's precedents provide that "the basic interests of federalism and the federal interest in a uniform rule of decision in interstate pollution disputes required the application of federal law." *Id.* at 407. Although Congress had displaced the federal common law, the court reasoned that the displacement "did nothing to undermine" the "reasons why the [S]tate claiming injury cannot apply its own state law to out-of-state discharges." *Id.* at 410. The court thus held that "federal law must govern * * * except to the extent that the [Clean Water Act] authorizes resort to state law." *Id.* at 411. Because Congress had not preserved state-law claims related to out-of-state sources, the Seventh Circuit determined that federal law precluded Illinois's claims. See *id.* at 413.

b. The Fourth Circuit reached a similar result in *North Carolina ex rel. Cooper* v. *Tennessee Valley Authority*, 615 F.3d 291 (2010). There, the State of North Carolina sued the Tennessee Valley Authority (TVA) over emissions from TVA plants in Alabama and Tennessee. See *id.* at 296. The district court found that the emissions created a public nuisance under North Carolina law and entered an injunction in the State's favor. See *ibid.*

The Fourth Circuit reversed. It reasoned that the "comprehensive" system of federal statutes and regulations governing air pollution left little room for nuisance actions under state law, and it concluded that North Carolina was improperly seeking to "appl[y] home state law extraterritorially." 615 F.3d at 296, 298. Applying this Court's decision in *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), the Fourth Circuit concluded that the claims could proceed only under the law of the States in which the TVA plants were located. See 615 F.3d at 308-309; see also *Merrick* v. *Diageo Americas Supply, Inc.*, 805 F.3d 685, 692 (6th Cir. 2015) (agreeing that *Ouellette*'s interpretation of the Clean Water Act's saving clauses applies to the Clean Air Act's saving clauses); *Bell* v. *Cheswick Generating Station*, 734 F.3d 188, 196-197 (3d Cir. 2013) (same), cert. denied, 572 U.S. 1149 (2014); *Freeman* v. *Grain Processing Corp.*, 848 N.W.2d 58, 80 (Iowa) (same), cert. denied, 574 U.S. 1026 (2014); *Brown-Forman Corp.* v. *Miller*, 528 S.W.3d 886, 892-893 (Ky. 2017) (same).

c. Both *Milwaukee III* and *Cooper* reflect the broader principle that state law can govern claims seeking relief for interstate pollution only to the extent permitted by federal statute. Notably, the Colorado Supreme Court explicitly rejected petitioners' reliance on *Milwaukee III*, concluding instead that, when federal common law is displaced by statute, a court should look only to whether the statute affirmatively preempts state-law claims. App., *infra*, 20a.

4. The Colorado Supreme Court's decision is also contrary to the views of the United States. In an amicus brief recently submitted to the Maryland Supreme Court, the United States expressed the view that, "[u]nder our constitutional system, regulation of interstate pollution has always been primarily 'a matter of federal, not state

law.'" U.S. Br. at 1, *Mayor & City Council of Baltimore* v. *BP p.l.c.*, No. 11, Sept. Term 2025 (Md.) (citation omitted). The United States thus argued that "[S]tates lack authority to decide how much greenhouse gas emissions in a neighboring state or foreign country are too much," and that "[a]ny attempt to do so would be preempted by federal law." *Ibid.*

The Administration has elsewhere made clear its view that claims seeking relief from energy companies for the effects of global climate change cannot proceed under state law. In an executive order, the President has criticized these lawsuits for attempting to "regulate energy beyond [the plaintiffs'] constitutional or statutory authorities," which "undermine[s] [f]ederalism by projecting the regulatory preferences of a few States into all States." Exec. Order No. 14,260 (Apr. 8, 2025). The United States has gone so far as to sue the States of Hawaii and Michigan to prevent additional climate-change actions from being filed. See *United States* v. *Michigan*, Civ. No. 25-496 (W.D. Mich. Apr. 30, 2025); *United States* v. *Hawaii*, Civ. No. 25-179 (D. Haw. Apr. 30, 2025).

This Administration may be more vocal than its predecessors, but the federal government's disquiet with the climate-change litigation is nothing new. In December 2024, the Biden Administration told the Court that the defendants in these suits "may ultimately prevail on their contention that respondents' claims are barred by the Constitution." U.S. Br. at 12, *Sunoco LP* v. *City & County of Honolulu*, 145 S. Ct. 1111 (2025) (No. 23-947). And the first Trump Administration argued that "[i]nterstate pollution claims" fall within "an inherently federal area in which state law does not apply." U.S. En Banc Br. at 4, *City of Oakland* v. *BP p.l.c.*, 969 F.3d 895 (9th Cir. 2020) (No. 18-16663).

The Colorado Supreme Court's decision thus not only deepens an existing conflict, but is contrary to the position of the United States. This Court's review is badly needed to resolve the conflict and to prevent dozens of climate-change cases from improperly barreling ahead in state court.

B. The Decision Below Is Incorrect

Respondents seek to impose damages on petitioners for injuries allegedly caused by the effect of interstate and international greenhouse-gas emissions on global climate change. As a result, respondents' claims fall squarely within the inherently federal areas of interstate pollution and foreign affairs. The Constitution precludes those claims from proceeding under state law. The Colorado Supreme Court's contrary holding was incorrect and conflicts with this Court's precedents.

1. Although state law is presumptively competent to govern a wide variety of issues in our federal system, there are certain areas in which "our federal system does not permit the controversy to be resolved under state law." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). In such areas, "there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers." *United States* v. *Locke*, 529 U.S. 89, 108 (2000); see *Buckman Co.* v. *Plaintiffs' Legal Committee*, 531 U.S. 341, 348 (2001).

For over a century, this Court has held that interstate pollution is an inherently federal area necessarily governed by federal law. For example, in *Ouellette*, the Court stated that "the regulation of interstate water pollution is a matter of federal, not state, law." 479 U.S. at 488 (citation omitted); see *id.* at 492. And in *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410 (2011), the Court reiterated that "air and water in their ambient or interstate aspects" are "meet for federal law governance." *Id.* at 421, 422; see *City of New York*, 993 F.3d at 91 (citing additional cases).

That rule emanates from "the Constitution's structure and the principles of sovereignty and comity it embraces." *National Pork Producers Council* v. *Ross*, 143 S. Ct. 1142, 1156 (2023) (internal quotation marks and citation omitted). As this Court has explained, each State's "equal dignity and sovereignty" under the Constitution implies "certain constitutional limitations on the sovereignty of all of its sister States." *Franchise Tax Board* v. *Hyatt*, 587 U.S. 230, 245 (2019) (internal quotation marks, alterations, and citation omitted); see *Fuld* v. *Palestine Liberation Organization*, 145 S. Ct. 2090, 2104 (2025). One such limitation is that "[s]tate sovereign authority is bounded by the States' respective borders." *Fuld*, 145 S. Ct. at 2104; see *Bonaparte* v. *Tax Court*, 104 U.S. 592, 594 (1882); *United States* v. *Bevans*, 16 U.S. (3 Wheat.) 336, 387 (1818). The equality of the States "implicitly forbids" States from applying their own laws to resolve "disputes implicating their conflicting rights." *Hyatt*, 587 U.S. at 246 (alteration and citations omitted).

Allowing the law of one State to govern disputes regarding pollution emanating from another would violate the "cardinal" principle that "[e]ach [S]tate stands on the same level with all the rest," by permitting one State to impose its law on another State and its citizens. *Kansas* v. *Colorado*, 206 U.S. 46, 97 (1907). Federal law must govern such controversies because they "touch[] basic interests of federalism" and implicate the "overriding federal interest in the need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at 105 n.6. And because "borrowing the law of a particular State would be inappropriate" to resolve such interstate disputes, federal law must govern. *American Electric Power*, 564 U.S. at 422.

2. In the absence of federal legislation governing issues of interstate pollution, this Court held that rules developed by the federal courts—federal common law—would govern lawsuits seeking relief for injuries allegedly caused by interstate pollution. See, *e.g.*, *American Electric Power*, 564 U.S. at 420-423; *Milwaukee I*, 406 U.S. at 103. But in the wake of the enactment of the Clean Air Act and Clean Water Act, this Court held that Congress has displaced any previously available causes of action under federal common law. See *American Electric Power*, 564 U.S. at 424; *Milwaukee II*, 451 U.S. at 313-314.

This Court's decision in *Ouellette* explains the limited role of state law after the displacement of federal common law by a comprehensive statutory scheme in an inherently federal area of regulation. There, the Court held that, in light of the "pervasive regulation" of the Clean Water Act and "the fact that the control of interstate pollution is primarily a matter of federal law," the only permissible state-law actions seeking relief for interstate water pollution are "those specifically preserved by the Act." 479 U.S. at 492 (citation omitted). The Court proceeded to conclude that the Clean Water Act preempts claims under any State's law other than the law of the State in which the source of the pollution was located. See *id.* at 487-498.

3. The foregoing precedents lead to a straightforward result here: federal law, including our constitutional structure and the Clean Air Act, precludes respondents' state-law claims seeking relief for interstate emissions.

Respondents' theory of liability is that petitioners have "caused billions of tons of excess CO_2 emissions" throughout the world by "producing, promoting, refining, marketing and selling fossil fuels at levels that have caused and continue to cause climate change." Am.

Compl. 2, 87. Respondents are seeking "monetary relief to compensate" for "past and future damages and costs to mitigate the impacts of climate change," including wildfires, pests, droughts, extreme heat, and flooding. *Id.* at 104, 121-122. The "gravamen" of respondents' complaint, see *Kurns* v. *Railroad Friction Products Corp.*, 565 U.S. 625, 635 (2012) (citation omitted), is thus that petitioners' conduct increased the global use of fossil fuels, resulting in increased global greenhouse-gas emissions, which contributed to global climate change and resulted in localized physical effects in Boulder, Colorado. See *City of New York*, 993 F.3d at 91.

Those claims fall squarely within the principle that federal law governs claims seeking relief for interstate air and water pollution. Respondents allege that their injuries are caused by the interstate and international emissions of greenhouse gases over many decades. See Am. Compl. 2. Respondents' requested relief—including damages, see, *e.g.*, *Kurns*, 565 U.S. at 637—would have the effect of remedying injuries allegedly caused by emissions outside Colorado. Respondents are simply attempting to recover by moving up one step in the causal chain and suing the fuel producers rather than the emitters themselves.

The congressional displacement of federal common law does not open the door to state-law claims unless the Clean Air Act permits them. And the Clean Air Act does not permit state-law claims based on emissions emanating from another State. Instead, the Act provides the Environmental Protection Agency with authority to regulate greenhouse-gas emissions from stationary sources, see *American Electric Power*, 564 U.S. at 424-425; 42 U.S.C. 7411(b), (d), and to set greenhouse-gas emissions standards for cars, trains, airplanes, and other equipment. See 42 U.S.C. 7521(a)(1)-(2), (a)(3)(E), 7547(a)(1), (a)(5), 7571 (a)(2)(A). Accordingly, in light of the breadth of the Clean Air Act's governance of greenhouse-gas emissions, respondents' state-law claims would be foreclosed even if a presumption against preemption applied. Contra App., *infra*, 11a-16a.

4. Respondents' claims based on international emissions cannot proceed under state law either. The federal government has "exclusive authority in international relations." *Fuld*, 145 S. Ct. at 2104 (internal quotation marks, alterations, and citation omitted). There is "no question" that "at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy." *American Insurance Association* v. *Garamendi*, 539 U.S. 396, 413 (2003). State laws must therefore "give way if they impair the effective exercise of the Nation's foreign policy." *Zschernig* v. *Miller*, 389 U.S. 429, 440 (1968).

Because respondents seek relief for climate-change-related harms, international emissions—which dwarf domestic emissions—are the primary causal mechanism underlying their alleged injuries. Foreign-policy principles thus preclude the application of state law to regulate international emissions. As the Second Circuit explained in *City of New York*, holding fuel producers such as petitioners liable for such emissions would "affect the price and production of fossil fuels abroad"; "bypass the various diplomatic channels that the United States uses to address this issue"; override "the United States' longstanding position" of "oppos[ing] the establishment of liability and compensation schemes at the international level"; and "sow confusion and needlessly complicate the nation's foreign policy, while clearly infringing on the prerogatives of the political branches." 993 F.3d at 103 & n.11. Accordingly, respondents can no more seek relief under state law for injuries allegedly caused by international emissions than for those allegedly caused by interstate emissions.

5. In the decision below, the Colorado Supreme Court fundamentally misunderstood both the ability of state law to operate in inherently federal areas and the nature of respondents' theory of liability.

The central premise of the decision below is that, when Congress enacts a statute that displaces federal common law, state law presumptively governs the issues previously governed by federal common law. See App., *infra*, 20a. But that logic ignores the reason why federal common law governed in the first place. In cases that involve "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations," only federal law can apply, because "our federal system does not permit the controversy to be resolved under state law" at all. *Texas Industries*, 451 U.S. at 641. In other words, where federal common law applies, it is precisely because "state law cannot be used." *Milwaukee II*, 451 U.S. at 313 n.7.

The displacement of federal common law by federal statutory law does "nothing to undermine" the "reasons why the [S]tate claiming injury cannot apply its own state law to out-of-state discharges." *Milwaukee III*, 731 F.2d at 410. State law could not govern interstate and international emissions before Congress acted, and the application of state law to such claims remains inconsistent with our constitutional structure after statutory displacement, even if federal law provides no remedy for the particular claim alleged. Were it otherwise, Congress's decision to address an inherently federal issue directly by statute, so as to displace *federal* common-law remedies, would result in *state* common-law remedies suddenly becoming available. As the Second Circuit put it, that result is "too strange to seriously contemplate." *City of New York*, 993 F.3d at 98-99.

The Colorado Supreme Court concluded that this Court's instructions for the remand in *American Electric Power* supported its analysis. See App., *infra*, 10a-11a. That is exactly backwards. After holding that the Clean Air Act displaced any federal common-law claim seeking abatement of defendants' greenhouse-gas emissions, the Court remanded for the lower courts to consider the plaintiffs' parallel claims brought under the law of the state in which each defendant power plant was located. *American Electric Power*, 564 U.S. at 429. In so doing, the Court directed that, "[i]n light of [its] holding that the Clean Air Act displaces federal common law, the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act." *Ibid.* The Court cited *Ouellette* for the proposition that "the Clean Water Act does not preclude aggrieved individuals from bringing a nuisance claim pursuant to the law of the *source* State." *Ibid.* (citation omitted).

Those instructions support petitioners' position, not respondents'. As explained above, see p. 24, this Court held in *Ouellette* that, because the Clean Water Act is comprehensive in nature and "control of interstate pollution is primarily a matter of federal law," "the only state suits that remain available are those specifically preserved by the Act": namely, suits under the law of the source State. 479 U.S. at 492. In *American Electric Power*, the Court was thus directing the lower courts to apply the same analysis as in *Ouellette*—the same analysis petitioners are advancing here.

The Colorado Supreme Court separately concluded that respondents' claims did not fall within the inherently federal area of interstate pollution because respondents have "not brought an action against a pollution emitter to abate pollution" but instead "seek[] damages from upstream producers for harms stemming from the production and sale of fossil fuels." App., *infra*, 17a. According to the court, therefore, respondents' claims "do not seek to regulate [greenhouse-gas] emissions." *Id.* at 21a. That is a false dichotomy. While respondents' theory of tort liability may attack upstream conduct, the source of injury is most certainly interstate and international emissions. As one judge has put it, "there is no hiding the obvious" that climate-change claims such as respondents' present "a clash over regulating worldwide greenhouse gas emissions and slowing global climate change." *Minnesota* v. *American Petroleum Institute*, 63 F.4th 703, 717 (8th Cir. 2023) (Stras, J., concurring) (citation omitted), cert. denied, 144 S. Ct. 620 (2024).

The complaint is candid on this point. Respondents repeatedly allege that defendants' conduct led to increased greenhouse-gas emissions worldwide, which caused or exacerbated global climate change and thereby caused localized harms in Colorado. See Am. Compl. 1-4, 30. Respondents nowhere allege harm from petitioners' conduct other than through the mechanisms of increased emissions and global climate change. When faced with the same argument, the Second Circuit rightly held that a plaintiff cannot "have it both ways" by "disavowing any intent to address emissions" while simultaneously "identifying such emissions as the singular source of the [alleged] harm." *City of New York*, 993 F.3d at 91.

The Colorado Supreme Court also erred by concluding that respondents' claims based on international emissions could proceed. The federal government has "exclusive authority in international relations and with respect to foreign intercourse and trade." *Fuld*, 145 S. Ct. at 2104 (internal quotation marks, alterations, and citation omitted). The court disregarded that principle and, in so doing, "risk[ed] impeding our federal government's judgment as to how to approach air pollution in the international sphere." App., *infra*, 45a (Samour, J., dissenting). The Colorado Supreme Court erred by holding that respondents' claims, seeking relief for interstate and international greenhouse-gas emissions, could proceed under Colorado law.

The decision below paves the way for "all other Colorado municipalities" to bring such claims. App., *infra*, 25a (Samour, J., dissenting). Allowing those claims to proceed under state law will result in a "patchwork of standards formulated by local governments throughout the country" that is "not capable of effectively addressing interstate air pollution." *Id.* at 45a.

C. The Question Presented Is Important And Warrants The Court's Review In This Case

This case presents a question of enormous legal and practical importance. The decision below perpetuates an unsustainable and chaotic patchwork of regulation of interstate and international emissions. And in doing so, it threatens one of this Nation's most critical industries. This case is an excellent vehicle to review the question presented in this case. The Court should therefore grant review.

1. The stakes in this case could not be higher. The Colorado Supreme Court itself explained that "this case presents substantial issues of global import." App., *infra*, 1a. And this is just one of over two dozen pending climate-tort cases brought by States and municipalities across the country seeking to impose untold damages on energy companies for the physical and economic effects of climate change. As more time passes, more governments are filing cases of their own. See, *e.g.*, *Hawaii* v. *BP p.l.c.*, No. 1CCV-25-717 (Haw. Cir. Ct. May 1, 2025); *Maine* v. *BP*

p.l.c., No. PORSC-CV-24-442 (Me. Super. Ct. Nov. 26, 2024). Individuals are now bringing their own cases. See *Leon* v. *Exxon Mobil Corp.*, No. 25-2-15986-8 (Wash. Super. Ct. May 29, 2025). And state legislatures are passing laws to create so-called "climate superfunds" based on the same theory of liability as the tort cases. See *United States* v. *New York*, Civ. No. 25-3656 (S.D.N.Y. May 1, 2025) (challenging New York's Climate Change Superfund Act); *Chamber of Commerce* v. *Moore*, Civ. No. 24-1513 (D. Vt. Dec. 30, 2024) (challenging Vermont's Climate Superfund Act).

This is complete chaos. And without this Court's intervention, the Nation will be left with a "patchwork of standards formulated by local governments throughout the country to regulate [greenhouse-gas] emissions," which will invite further disorder and will "not [be] capable of effectively addressing interstate air pollution." App., *infra*, 45a (Samour, J., dissenting). As the federal government explained in its brief in *American Electric Power*, "virtually every person, organization, company, or government across the globe * * * emits greenhouse gases, and virtually everyone will also sustain climate-change-related injuries," giving rise to claims from "almost unimaginably broad categories of both potential plaintiffs and potential defendants." TVA Br. at 11, 15 (No. 10-174).

The use of state law to address global climate change represents a serious threat to one of our Nation's most critical sectors. The current Administration has made clear that "American energy dominance is threatened when State and local governments seek to regulate energy beyond their constitutional and statutory authorities," and that the climate-change litigation in particular "weaken[s] our national security and devastate[s] Americans by driving up energy costs for families." Exec. Order

No. 14,260. The Administration has even gone so far as to sue States contemplating filing additional actions. See *United States* v. *Michigan*, *supra*; *United States* v. *Hawaii*, *supra*; *United States* v. *New York*, *supra*. Indeed, as the federal government previously stated in another climate-change case, "federal law and policy 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." U.S. En Banc Br. at 10, *City of Oakland*, *supra* (internal quotation marks and citation omitted).

2. This case is a suitable vehicle for reviewing the question presented. The question was fully briefed in, and passed on by, the Colorado Supreme Court. And respondents' claims are representative of the claims being brought in parallel suits across the country, meaning that resolution of the question presented here will have immediate impact elsewhere.

Although this petition arises from a decision affirming the denial of a motion to dismiss in State court, this Court's jurisdiction over the decision is firmly established under 28 U.S.C. 1257(a) and the fourth category recognized in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). The question presented has been finally decided by the Colorado Supreme Court; this Court's review of the question would be prevented if petitioners prevail on the merits on nonfederal grounds; reversal of the decision below would terminate the litigation; and declining review now would seriously erode significant federal policies, as evidenced by the current Administration's stance on the climate litigation. See *Cox Broadcasting*, 420 U.S. at 482-483. This Court has routinely granted certiorari in a similar posture in cases presenting questions of federal preemption. See, *e.g.*, *Coventry Health Care of Missouri,* *Inc.* v. *Nevils*, 581 U.S. 87, 92-94 (2017); *Dan's City Used Cars, Inc.* v. *Pelkey*, 569 U.S. 251, 259 (2013); *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U.S. 354, 370 n.11 (1988).

This Court's guidance is urgently needed. The arguments on both sides of the question presented have been fully ventilated in lower-court opinions, including the dueling opinions below. Meanwhile, state courts and parties are devoting enormous resources to the litigation of these cases, and the energy industry is facing the threat of damages awards that could run into the billions of dollars. The Court should grant certiorari here and resolve whether climate-change claims are viable and may proceed on the merits in state courts across the country. At a minimum, in light of the substantial federal interest in the question presented and the change in Administration since the Court last considered the question presented, the Court may wish to call for the views of the Solicitor General.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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