

No. 25-170

In the Supreme Court of the United States

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

Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, ET AL.,

Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Colorado

**BRIEF OF *AMICI CURIAE* GENERAL
(RETIRED) RICHARD B. MYERS and
ADMIRAL (RETIRED) MICHAEL G.
MULLEN, IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

United States Air Force General (Retired) Richard B. Myers was appointed Vice Chairman of the Joint Chiefs of Staff by President William J. Clinton in 2000 and was appointed by President George W. Bush in 2001 to become the 15th Chairman of the Joint Chiefs of Staff. In that capacity, he served as the principal military advisor to the United States President, Secretary of Defense, and the National Security Council. He served in that role until 2005. General Myers joined the Air Force in 1965 through the ROTC program at Kansas State University. He served in the Vietnam War and had over 600 combat flying hours in Vietnam. He has held numerous commands and served in significant staff positions in the Air Force. General Myers has received numerous awards and decorations for his service, including the Legion of Merit, the French Legion of Honor, and the Presidential Medal of Freedom. He received his fourth-star in 1997 and retired from active duty in 2005, after more than forty years of active service. General Myers began serving as the Interim President of Kansas State University in late April 2016, and was announced as the permanent President on November 15, 2016. General Myers served as the 14th President of Kansas State University until his retirement on February 11, 2022.

¹ Pursuant to Rule 37.6, counsel for *amici curiae* affirm that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amici curiae*, or its counsel, made a monetary contribution to the preparation or submission of the brief. Counsel of record for all parties received timely notice of the intention to file this brief.

United States Navy Admiral (Retired) Michael G. Mullen, served as the 17th Chairman of the Joint Chiefs of Staff from 2007-2011 under both President George W. Bush and President Obama. A graduate of the United States Naval Academy in 1968, Admiral Mullen served in the Vietnam War and commanded his first ship, the USS Noxubee, from 1973-1975. He earned a Master's Degree in Operations Research in 1985 and, later that year, took command of the guided-missile destroyer USS Goldsborough. In 1991, Admiral Mullen participated in Harvard University's Advanced Executive Management graduate program. He was promoted to Rear Admiral in 1997 and, in 1998, was named Director of Surface Warfare in the office of the Chief of Naval Operations (CNO). Admiral Mullen is one of only four naval officers who has the distinction of receiving four, 4-Star assignments. In 2003, Admiral Mullen was named Vice Chief of Naval Operations and was tapped to head the United States Naval Forces in Europe and NATO's Joint Force Command in Naples. He then was appointed Chief of Naval Operations in 2005, and, in 2007, he was nominated by George W. Bush to be the 17th Chairman of the Joint Chiefs of Staff. Admiral Mullen retired from this position in 2011 after serving for four years under both a Republican and a Democratic president.

The focus of this brief is not on climate change policy. *Amici* express no view, and take no position, on climate change policy. They strongly believe these important national and international policy issues should be addressed to Congress and the Executive Branch, not adjudicated piecemeal across the country in a multitude of state courts. Instead, this brief provides a history of the Federal Government's role in

the production and sale of gasoline and diesel to ensure that the military is “deployment-ready.” For more than a century, petroleum products have been, and currently are, essential for fueling the United States military around the world. In *amici*’s view, the use of fossil fuels was crucial to the success of the armed forces when *amici* served as Chairmen of the Joint Chiefs of Staff, and it remains crucial today.

In light of that concern, *amici* believe this extensive history and their practical experience demonstrate that these cases do not involve localized, intra-state interests. Rather, the causation and damages theories in these cases inextricably involve worldwide impacts and core federal interests. *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) (Plaintiffs seek to hold petitioners liable “for the effects of emissions made around the globe over the past several hundred years.”); App.25a-26a, Samour, J. Dissenting (“Boulder’s damages claims ... are based on harms the State of Colorado has allegedly suffered as a result of *global* climate change. According to Boulder, by producing, promoting, refining, marketing, and selling fossil fuels in the United States and globally, the energy companies have played and continue to play a substantial role in increasing the concentration of greenhouse gases (“GHGs”) in the atmosphere, thereby inducing changes to the climate worldwide.”).

To be clear, it is not as though we believe anything having to do with climate change presents a national security concern. There are thousands of lawsuits filed that may relate in some way to greenhouse gases, and we do not feel the need to weigh in on the vast majority of those lawsuits. But these climate change

cases are different. This subset of cases causes us concern because of both its sheer scope and its transparent attempt to substitute parochial judgments for those of the national, elected and appointed actors, to whom the Constitution commits domestic and international policy-making for this complex, multi-faceted world-wide issue. Therefore, to assist the Court in understanding the importance of granting review and why these cases cause significant national security concerns, this brief first discusses the Federal Government's—particularly the military's—historical control and direction of Petitioners' production and sale of petroleum products.

The brief concludes with our perspective on the practical realities presented by these cases and the reasons we believe the writs of certiorari should be granted. As former Chairmen of the Joint Chiefs of Staff serving under both Democratic and Republican administrations and with over 80 years of combined service in the military, we can personally attest that petroleum products produced by companies like Petitioners have been critical to national security, military preparedness, and combat missions. We are not alone in this belief. Military commanders, like General David Petraeus, universally emphasize that “[e]nergy is the lifeblood of our warfighting capabilities.”² To ensure the military has a dependable, abundant supply of the energy indispensable to our Nation's warfighting capacity,

² Quoted in Department of Energy, “Energy for the Warfighter: The Department of Defense Operational Energy Strategy,” June 14, 2011, <https://www.energy.gov/articles/energy-war-fighter-department-defense-operational-energy-strategy>.

this brief explains why, in our view, the climate change issues at the heart of these civil damages suits is a matter for Federal law, not state law.

While it is important to continue to look for “greener” ways to fuel the military, the reality is the U.S. military must always take into account its enemies’ own fossil-fuel uses and potential superior deployment abilities because of those uses. The United States could go it alone and unilaterally strip itself of higher-performing fossil fuels, but that risks putting the Nation at a significant disadvantage. It would weaken our armed forces while relatively strengthening those of our adversaries. Stated differently, achieving energy security is a prerequisite for national security. As a result, reduction in fossil-fuel use can be accomplished only through comprehensive international, multi-lateral negotiations and treaties led by the Legislative and Executive branches. This is how reduction of nuclear weapons was achieved during and following the Cold War.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case centers on the global sale and consumption of oil and gas products that are used by virtually every person on the planet every single day. Respondent seeks to impose ruinous liability on Petitioners’ production and sale of these essential products through claims brought under state law around the country. Due to the extensive Federal Government involvement in the development and growth of the domestic oil and gas industry,

Respondent's claims implicate uniquely federal interests that are necessarily governed by federal law.

Oil and gas products are critical to national security, economic stability and military preparedness. For more than 100 years, the Federal Government has actively encouraged – indeed it has compelled – domestic exploration, production and sale of oil and gas. As federal courts have recognized, petroleum products have been “*crucial* to the national defense,” including but by no means limited to “fuel and diesel oil used in the Navy’s ships; and lubricating oils used for various military machines.” *Exxon Mobil Corp. v. United States*, 2020 WL 5573048, at *31 (S.D. Tex. Sept. 16, 2020) (emphasis added); *see also id.* at *47 (noting the “value of [the] petroleum industry’s contribution to the nation’s military success”). The Federal Government has incentivized and contracted with Petitioners to obtain oil and gas products to ensure a dependable, abundant supply of oil and gas for the nation’s economic and military security.

In contrast to the Colorado Supreme Court, the United States Second Circuit Court of Appeals 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.’” 993 F.3d at 91, 97. “Consequently, though the City’s lawsuit would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless.” *Id.* at 93. Therefore, the court concluded that the city’s “sprawling” claims, which – like plaintiffs’ claims here – sought “damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction

on the planet” – were “simply beyond the limits of state law.” *Id.* at 92.

We share the Second Circuit’s concerns. The specter of huge and inconsistent damages awards across the country is likely to trigger cascading effects, gravely imperiling our military preparedness. *Id.* at 93-94 (citing *Am. Elec. Power Co. v. Conn.*, 564 U.S. 410 (2011) at 427) (explaining that “[t]o permit this suit to proceed under state law would further 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.” (emphasis added)). Because “states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the [energy companies’] global operations to a welter of different states’ laws could undermine important federal policy choices.” *Id.* The court concluded that “[t]o hold the [energy company defendants] accountable ... would ... bypass the various diplomatic channels that the United States uses to address this issue.” *Id.* at 103.

In contrast, the Colorado Supreme Court did not address at all the “foreign policy concerns” that the Second Circuit determined “foreclose” claims “targeting emissions emanating from beyond our national borders.” *Id.* at 101. It did not address those foreign affairs concerns because that court concluded plaintiffs “do not seek to regulate emissions” because respondents have not “brought an action against a pollution emitter to abate pollution” but instead “seek

damages from the production and sale of fossil fuels.” App. 17a, 21a. But from our perspective, this conclusion blinks reality. As Colorado Supreme Court Justice Samour said in his well-reasoned dissent, which was joined by Justice Boatright, “that distinction is neither here nor there—the bottom line is that this suit is about the *alleged GHG emissions from the energy companies*, even if the energy companies are actually a few steps removed from the physical release of the pollutants.” App. 33a (emphasis in original). Similarly, the Second Circuit explained “regulation can be effectively exerted through an award of damages.” Although “the City’s lawsuit would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless.” 993 F.3d at 92-93. As Justice Samour warned “Make no mistake: Boulder looks to curb the energy companies’ conduct by hitting them where it hurts—their wallets.” App. 34a.

It is precisely this “indirect and roundabout” *de facto* regulation of available fuel sources that concerns us. State tort damages and abatement cases unduly risk constricting the availability of oil and gas to the detriment of national security interests, at a critical juncture in our Nation’s history, when geopolitical forces and energy security are especially vulnerable to belligerent nations. As the dissenting Justices recognized, “Boulder’s requested relief will inevitably impose a limitation on GHG emissions.” App. 33a. This at a time when the availability of Petitioners’ fuel products remains crucial to the success of our armed forces. As Admiral Mullen once put it, “[e]nergy security needs to be one of the first things we think about, before we deploy another soldier, before we build another ship or plane, and before we buy or fill

another rucksack.”³ The Second Circuit correctly recognized,

[t]o hold the [energy companies] accountable for purely foreign activity ... would require them to internalize the costs of climate change and would presumably affect the price and production of fossil fuels abroad. It would also bypass the various diplomatic channels that the United States uses to address this issue, such as the U.N. Framework and the Paris Agreement. Such an outcome would obviously sow confusion and needlessly complicate the nation’s foreign policy, while clearly infringing on the prerogatives of the political branches.

City of New York, 993 F.3d at 103; *American Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413 (2003) (quoting *Banco National de Cuba v. Sabbatino*, 376 U.S. 398 (1964), at 427 n.25) (“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, given the ‘concern for uniformity in this country’s dealings with foreign nations’ that animated the Constitution’s allocation of the foreign relations power to the National Government in the first place.”); App. 44a, Samour, J. Dissenting (“Because our federal government has clearly balanced many different interests in formulating its foreign policy on air pollution, it makes little sense to allow international regulation through the types of state claims Boulder has brought. By giving Boulder the nod to proceed with it is claims, the majority risks

³ Energy Security Forum, Washington, D.C., 13 October 2010, <https://www.dvidshub.net/news/58040/mullen-military-has-strategic-imperative-save-resources>.

impeding our federal government’s judgment as to how to approach air pollution in the international sphere.”).

And while Respondents may argue that their case is not about regulating emissions, that they do not seek to enjoin the sale or use of fossil fuels, and their claims are merely tort claims for damages— the reality is their theory of causation and the relief they seek is not so limited. As Justice Samour explained, “[w]hile Boulder’s state-law claims masquerade as tort claims for damages, a closer look at the substance of those claims’ allegations reveals that Boulder seeks to effectively abate or regulate interstate emissions.” App. 32a. Indeed, “regulation can be effectively exerted through an award of damages,” *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (cleaned up), and “[s]tate power” can be wielded as much by the “application of a state rule of law in a civil lawsuit as by a statute,” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 n.17 (1996). Environmental tort claims force defendants “to change [their] methods of doing business.” *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, at 495 (1987). Allowing Respondent to obtain its requested sweeping relief, therefore, “would encourage courts to use vague public nuisance standards to scuttle the nation’s carefully created system for accommodating the need for energy production and the need for clean air. The result would be a balkanization of clean air regulations and a confused patchwork of standards, to the detriment of industry and the environment alike.” *N. Car., ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 301 (4th Cir. 2010) *see also United States v. Standard Oil Co. of Cal.*, 332 U.S. 301, 311 (1947).

Because Respondent's Complaint seeks to penalize Petitioners for their lawful past, present and future production and sale of oil and gas, it risks making oil and gas prohibitively costly and scarce. Their claims, therefore, necessarily cause national security concerns. This *amicus* brief provides an historical background of the Federal Government's oversight and control of the oil and gas industry, and an explanation of how these state court damages and abatement suits imperil our nation's ability to be "deployment-ready."

ARGUMENT

For more than a century, and to this day, the Federal Government has incentivized, compelled and controlled aspects of United States oil and gas sales and has reserved rights to take additional control for the benefit of the nation's defense, security, and economy. The Federal Government has required and otherwise been inextricably involved in the development of the nation's oil resources both for governmental use and the use of billions of consumers. Respondent's claims arising from the production and sale of oil and gas necessarily implicate the Federal Government's actions and policy choices, including the extensive history of federal laws, contracts and leases that supported and controlled significant portions of our nation's fuel supply.

I. The Important National Security Interests in the Crosshairs of These Cases: An Historical Overview of the Federal Government's Role in the Production and Sale of Oil and Gas.

More than a century ago, in 1910, President Taft implored Congress to develop domestic oil sources: "As not only the largest owner of oil lands, but as a prospective large consumer of oil by reason of the increasing use of fuel oil by the Navy, the Federal Government is directly concerned both in encouraging 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 (1915).

Within two years, on September 2, 1912, President Taft established by Executive Order the first "Naval Petroleum Reserve" at Elk Hills, California, taking the extraordinary step of withdrawing large portions of land from eligibility for private ownership and designating them for the development of fuel resources to ensure the United States Navy would remain deployment-ready in the event of war. See U.S. Gov't Accountability Off., GAO/RCED-87-75FS, Naval Petroleum Reserves: Oil Sales Procedures and Prices at Elk Hills, April Through December 1986, at 3 (1987) ("GAO Fact Sheet").⁴

The defining characteristic of World War I was mechanization (*i.e.*, the emergence of tanks, aircraft, and submarines), and accordingly "oil and its products

⁴ <http://www.gao.gov/assets/90/87497.pdf>

began to rank as among the principal agents by which the Allies would conduct war and by which they could win it.” Ian O. Lessor, *Resources and Strategy: Vital Materials in International Conflict 1600 – The Present* (1989) at 42. The necessity was echoed among the Allies, as British Cabinet Minister Walter Long expressed in an address to the House of Commons in 1917:

Oil is probably more important at this moment than anything else. You may have men, munitions, and money, but if you do not have oil, ... all your other advantages would be of comparatively little value.

Yergin, *THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER* (1991) at 177.

By 1917, American oil was vital for war efforts. As the Admiralty Director of Stores stated, “[W]ithout the aid of oil from America our modern oil-burning fleet cannot keep the sea.” Lessor, *Resources and Strategy* at 43. In response to the Allies’ cry for help, the United States provided over 80 percent of the Allied requirements for petroleum products and greatly influenced the outcome of the war. *Id.* (explaining that “petrol ... is as necessary as blood in the battles of tomorrow”) (quoting Clemenceau’s letter to President Wilson)).

World War II confirmed petroleum’s role as a key American resource and underscored the government’s interest in maintaining and managing it. Statement of Ralph K. Davies, Deputy Petroleum Administrator of War, Special Committee Investigating Petroleum Resources, S. Res. 36, at 4 (Nov. 28, 1945) (“Our overseas forces required nearly twice as many tons of

oil as arms and armament, ammunition, transportation and construction equipment, food, clothing, shelter, medical supplies, and all other materials together. In both essentiality and quantity, oil has become the greatest of all munitions.”); National Petroleum Council, *A National Oil Policy for the United States* at 1 (1949) (“A prime weapon of victory in two world wars, [oil] is a bulwark of our national security.”).

In 1941, as the United States prepared to enter World War II, its need for large quantities of oil and gas to produce high-octane fuel for planes (“avgas”), oil for ships, lubricants, and synthetic rubber far outstripped the nation’s capacity. Given the role played by strategic bombers, small attack bombers, fighters, and search and rescue aircraft, Avgas was particularly essential to the war effort in both Europe and the Pacific. It is fair to describe it as the most critically needed petroleum product during the War. And it has continued being essential up to today. To insure its supply, the Federal Government created agencies to control petroleum production and distribution; it directed the production of certain petroleum products; and it managed resources.

In 1942, President Roosevelt established several agencies to oversee wartime petroleum production, including the War Production Board (“WPB”) and the Petroleum Administration for War (“PAW”). The PAW centralized the government’s petroleum-related activities. The PAW dictated products, quantity and quality to America’s oil refiners. See John W. Frey & H. Chandler Ide, *A History of the Petroleum Administration for War, 1941-1945*, at 219 (1946)).

At the direction of the Federal Government, the oil companies increased avgas production “over twelve-fold from approximately 40,000 barrels per day in December 1941 to 514,000 barrels per day in 1945, [which] was crucial to Allied success in the war.” *Shell Oil Co. v. United States*, 751 F.3d 1282, 1285 (Fed. Cir. 2014). “No one who knows even the slightest bit about what the petroleum industry contributed ... can fail to understand that it was, without the slightest doubt, one of the most effective arms of this Government” in fulfilling the government’s core defense functions. Statement of Senator O’Mahoney, Chairman, Special Committee Investigating Petroleum Resources, S. Res. 36, at 1 (Nov. 28, 1945) (emphasis added).

In 1950, President Truman, established the Petroleum Administration for Defense (“PAD”) under authority of the Defense Production Act of 1950, Pub. L. No. 81–774 (“DPA”). The PAD ordered production of oil and gas to ensure adequate quantities of avgas for military use. *Exxon*, 2020 WL 5573048, at *28; *see also id.* at *15 (detailing the government’s use of the Defense Production Act of 1950 to “force” the petroleum industry to “increase [its] production of wartime . . . petroleum products”).

To further promote domestic oil and gas production in 1953, Congress passed the Outer Continental Shelf Lands Act (“OCSLA”), directing the U.S. Department of the Interior to make nearly 27 million acres of the OCS available for “expeditious and orderly development” of fossil fuel production. 43 U.S.C. §1332(3).

During the Cold War, the U.S. military commanded the development of more innovative military fuels and continued its role as the driving

force behind domestic production. During the 1960s, U.S. energy consumption increased 51%, compared to only 36% during the previous decade. Jay Hakes, *A Declaration of Energy Independence* at 17 (2008). As demand continued to climb into the early 1970s, the Nation faced a precarious shortage of oil and gas.

To avert a national energy crisis, in 1973, President Nixon ordered a dramatic increase in development for ready-production from the OCS:

Approximately half of the oil and gas resources in this country are located on public lands, primarily on the Outer Continental Shelf [OCS]. The speed at which we can increase our domestic energy production will depend in large measure on how rapidly these resources can be developed. I am therefore directing the Secretary of the Interior to take steps which would triple the annual acreage leased on the Outer Continental Shelf by 1979

Nixon Message, *N.Y. Times*, Apr. 19, 1973.⁵

The following year, President Nixon announced a goal of *energy independence* by 1980. Annual Message to the Congress on the State of the Union, 1 Pub. Papers 59 (Jan. 23, 1974).⁶ “Project Independence 1980” ordered, among other things, that the Secretary of the Interior “increase the acreage leased on the [OCS] to 10 million acres beginning in 1975, more than tripling what had originally been planned.”

⁵ <https://www.nytimes.com/1973/04/19/archives/excerpts-from-nixon-message-developing-our-domestic-energy.html>.

⁶ <https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/99?view=image&size=100>

Special Message to the Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).⁷

Congress passed the Trans-Alaska Pipeline Authorization Act of 1973, determining that it was in the “national interest” to deliver oil and gas from Alaska’s North Slope “to domestic markets ... because of growing domestic shortages and increasing dependence upon insecure foreign sources.” Trans-Alaska Pipeline Authorization Act, Pub. L. No. 93-153, § 202(a), 87 Stat. 576, 584 (1973), Pub. L. No. 93-153, at <https://www.govinfo.gov/content/pkg/STATUTE-87/pdf/STATUTE-87-Pg576.pdf>.

To address “immediate and critical” petroleum shortages in the military brought by the 1973 OPEC Oil Embargo, the Federal Government invoked the DPA to bolster its reserves with additional petroleum from domestic oil and gas companies. Twenty-Fourth Annual Report of the Activities of the Joint Committee on Defense Production, S. Rep. No. 94-1, Pt. 1, at 442 (Jan. 17, 1975, 1st Sess.).

In 1974, responding to President Nixon’s direction to “increase the acreage leased on the Outer Continental Shelf”, Congress amended OCSLA. This amendment increased federal control over lessees “to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade.” *California ex rel. Brown v. Watt*, 668 F.2d 1290, 1296 (D.C. Cir. 1981) (quoting 43 U.S.C. § 1802); *see also* Special Message to the

⁷ <https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/69>

Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).⁸

In 1978, as part of amendments to OCSLA, the Congressional Ad Hoc Select Committee on the OCS concluded again that “alternative sources of energy will not be commercially practical for years to come,” H.R. Rep. No. 94-1084, at 254 (1976) and “[d]evelopment of our OCS resources will afford us needed time—as much as a generation—within which to develop alternative sources of energy.” H.R. Rep. No. 95-590, at 53 (1977).

II. The Federal Government’s Efforts to Ensure a Dependable, Abundant Supply of Oil and Gas Continue to be Essential to Its Conduct of Foreign Affairs and Military Preparedness.

In 1995, Congress and President Bill Clinton amended OCSLA to permit the Secretary of the Interior to “unlock an estimated 15 billion barrels of oil in the central and western Gulf of Mexico” for exploration, production and sale. Press Secretary, White House Office of Communications, Statement on North Slope Oil Bill Signing (Nov. 28, 1995), 1995 WL 699656, at *1.

Federal promotion and use of domestic oil continued to grow in the 2000s. In 2006, the Bush administration opened leases of approximately 8 million additional acres of OCS lands in the Gulf of Mexico to “address *high energy prices, protect American jobs, and reduce our dependence on foreign oil.*” *Statement*

⁸<https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001?rgn=main;view=fulltext>.

*By President George W. Bush Upon Signing [H.R. 6111], 2 Pub. Papers 2217 (Dec. 20, 2006) (emphasis added).*⁹

In 2010, President Obama “announc[ed] the expansion of offshore oil and gas exploration,” explaining “in order to sustain economic growth, produce jobs, and keep our businesses competitive, *we are going to need to harness traditional sources of fuel* even as we ramp up production of new sources of renewable, homegrown energy.” President Barack Obama, Remarks on Energy at Andrews Air Force Base, Maryland (Mar. 31, 2010) (emphasis added).¹⁰

In 2019, the United States became a net total energy exporter for the first time since 1952. U.S. Energy Info. Admin., U.S. energy facts explained (Apr. 27, 2020), <https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php>. The Department of Defense alone purchased 94.2 million barrels of military-spec compliant fuel products, totaling \$12.1 billion in procurement actions.¹¹ And even today, as former Vice Admiral Robert Harward reports, “energy manufacturers are answering President Biden’s directive to export natural gas to our allies in Europe. For example, the U.S. has been able to respond to Russia’s chokehold of the European energy market by increasing shipments of liquefied

⁹ <https://books.google.com/books?id=o2ei8yOphboC&printsec=frontcover#v=onepage&q&f=false>.

¹⁰ <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-energy-security-andrews-air-force-base-3312010>

¹¹ Def. Logistics Agency Energy, Fiscal Year 2019 Fact Book (2019) at 4, 27, https://www.dla.mil/Portals/104/Documents/Energy/Publications/FactBookFiscalYear2019_highres.pdf?ver=2020-01-21-103755-473.

natural gas and crude oil by 137 percent and 38 percent, respectively.”¹²

When Respondent’s Complaint is viewed within the historical context of the Federal Government’s pervasive control and direction of oil and gas production, it is clear Respondent’s state law claims seek to undercut these national and international policies and actions governing the sale of oil and gas and trigger national security concerns for a reliable and stable energy supply.

III. Our Nation’s Vital Interests in Fuel Security and Managing Climate Change Cannot be Regulated by a Patchwork of State-Court Actions.

At the end of the day, we are concerned that the upshot of this litigation and the broad relief it seeks would negatively impact strong national interests in fuel security and military readiness. Fuel security is a crucial national interest and is especially critical to the U.S. military, in times of both war and peace, to power ships, tanks, and aircraft, provide energy to run bases, stations, and detachments, and enable numerous operations. It should thus come as no surprise that the US military is the single largest purchaser and consumer of fuel in the United States.

Climate change is likewise an issue of critical national (indeed, global) importance. Greenhouse-gas emissions are a form of transboundary air pollution

¹² U.S. Climate Lawsuits Endanger Military and U.S. National Security Interests by Robert Harward, Vice Admiral, U.S. Navy Retired, *American Military News* (April 20, 2023) at <https://americanmilitarynews.com/2023/04/u-s-climate-lawsuits-endanger-military-and-u-s-national-security-interests/>

and thus present a matter of uniquely federal concern, rather than a State or local matter. *See City of New York*, 993 F.3d at 85-86 (2d Cir. 2021) (“Global warming presents a uniquely international problem of national concern. It is therefore not well-suited to the application of state law.”). Because national security issues and climate change concerns are both uniquely federal interests, they must be addressed and solved by the federal government and the political branches, not through bread-and-butter state law tort claims. *See Torres v. Texas Dep’t of Pub. Safety*, 597 U.S. 580, 590 (2022) (“[T]he Constitution’s text, across several Articles, strongly suggests a complete delegation of authority to the Federal Government to provide for the common defense . . . [Therefore] [t]hese substantial limitations on state authority, together with the assignment of sweeping power to the Federal Government, provide strong evidence that the structure of the Constitution prevents States from frustrating national objectives in this field.”); *American Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413 (2003) (quoting *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 n.25 (1964) (“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, given the ‘concern for uniformity in this country’s dealings with foreign nations’ that animated the Constitution’s allocation of the foreign relations power to the National Government in the first place.”)).

Litigating Plaintiff’s claims against Defendants in a decentralized way under various states’ laws will undermine these vital national interests and undermine a reliable domestic fuel supply. It would subject Defendants to potential liability and

injunctions under a patchwork of state laws, without a uniform guide. Courts have recognized that this 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.” *City of New York*, 993 F.3d at 93; *see also id.* (“And as states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the Producers’ global operations to a welter of different states’ laws could undermine important federal policy choices.”). “The federal government’s interest in avoiding regulatory chaos through a uniform standard is why federal common law existed in the first place, and that interest is even more prominent today.” App. 46a, Samour, J. Dissenting.

To be sure, the United States Military continues to look for “greener” ways to fuel the military, and we support ameliorating climate change risks at our bases, but the reality is the U.S. military must always take into account its enemies’ own fossil-fuel uses and potential superior deployment abilities because of those uses. The United States could go it alone and unilaterally strip itself of higher-performing fossil fuels, but that risks putting the Nation at a significant competitive disadvantage, militarily and otherwise. The ruinous damages these cases seek risk knee-capping this country while empowering others who seek to exploit just such vulnerabilities. Stated differently, energy security and national security go hand-in-hand; we cannot achieve national security without first accomplishing energy security.

At bottom, our experience has taught us that private-sector production and sale of oil and gas are essential to our military operations and thus our national security. Our Constitutional oath includes our commitment to “support and defend the Constitution of the United States against all enemies, foreign and domestic,” which necessarily includes a commitment to ensure the military has sufficient fuel to accomplish its missions. In order to adhere to that oath, it is the duty of military officers to enable a plentiful supply of fuel to operate vehicles, ships, and planes. Because energy is essential to protect our Nation, its people, and the world at large, the decision of how much is appropriate must be left with the Federal Government and the branches of the Federal Government tasked with our foreign policy and national security.

CONCLUSION

In concluding his dissent in the underlying case, Justice Samour, joined by Justice Boatright, explained that if allowed to stand the decision would “contribute to a patchwork of inconsistent local standards that will beget regulatory chaos.” Appx. At 47a. We share this exact concern and note that, as set forth above, this resulting regulatory chaos will directly impair national security. Having committed our lives to the defense of this nation, we view this outcome as very problematic and completely inconsistent with the Constitution’s delegation of power, as Justice Samour succinctly put it “[i]n our individual nation, that just can’t be right[.]” *Id.*

Justice Samour concluded his dissent by stating “[g]iven the number of local municipalities ... 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, I respectfully urge the Supreme Court to take up this issue—whether in this case or another one.” App. 46a. We too urge this Court to take up this issue and submit that this case is the perfect vehicle to do so. Accordingly, we urge this Court to grant the petition for certiorari.

Respectfully submitted,

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Dated: September 5, 2025