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.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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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.

STATEMENT OF COMPLIANCE WITH SUPREME COURT RULE 37.2

The counsel of record for all parties received timely notice of the United States' intent to file this amicus curiae brief on August 29, 2025. This brief is being filed earlier than ten days before the due date.

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INTEREST OF THE UNITED STATES

This case presents the question whether the Constitution or the Clean Air Act, 42 U.S.C. 7401 *et seq.*, precludes claims seeking to apply one State's law to the activities of energy companies around the world to hold those companies liable for injuries allegedly caused by global climate change. The United States has a substantial interest in the proper interpretation of the federal constitutional and statutory provisions involved. This Court has previously called for the views of the Solicitor General in cases involving similar state-law claims—including in this very case, on the issue of whether the claims could be removed to federal court. See *Alabama* v. *California*, 145 S. Ct. 130 (2024) (No. 158, Orig.); *Sunoco LP* v. *City & County of Honolulu*, 144 S. Ct. 2627 (2024) (No. 23-947); *Shell PLC* v. *City & County of Honolulu*, 144 S. Ct. 2627 (2024) (No. 23-952); *Suncor Energy*

(U.S.A.) Inc. v. *Board of County Comm'rs of Boulder County*, 143 S. Ct. 78 (2022) (No. 21-1550). And the United States has recently brought suit to block similar attempts by several States to impose state-law liability for what they identify as the effects of climate change. See *United States* v. *Michigan*, No. 25-cv-496 (W.D. Mich.); *United States* v. *Hawaii*, No. 25-cv-179 (D. Haw.); *United States* v. *New York*, No. 25-cv-3656 (S.D.N.Y.); *United States* v. *Vermont*, No. 25-cv-463 (D. Vt.).

INTRODUCTION

In this case, local governments in Colorado seek to hold various energy companies liable for the alleged consequences of global climate change by applying Colorado common law to the companies' production and marketing of fossil fuels around the world. But under the Constitution, "[s]tate sovereign authority is bounded by the States' respective borders." *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1, 14 (2025). Colorado therefore may not apply its law to the companies' conduct outside the State. And even if it could, allowing Colorado to deem the effects of the companies' worldwide conduct tortious "cannot be reconciled with the decisionmaking scheme Congress enacted" in the Clean Air Act, which precludes any such role for a single State. *American Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 429 (2011). Both the Constitution and the Clean Air Act thus bar the state-law claims in this case.

The Colorado Supreme Court nevertheless allowed the suit to proceed. That decision warrants this Court's review twice over. It is manifestly wrong on a question of vast nationwide significance. And it concededly conflicts with a decision of the Second Circuit, which held that the Clean Air Act bars similar claims brought by the City of New York. See Pet. App. 19a-20a (discussing

City of New York v. *Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021)). The need for this Court's review is especially pronounced because respondents' suit is just one of many that have been filed by States and local governments across the country, each proceeding on similar theories of state-law liability. If, as the Colorado Supreme Court held, those theories are consistent with federal law, then every locality in the country could sue essentially anyone in the world for contributing to global climate change. Because the decision below is contrary to the Constitution and to the Clean Air Act, and because it conflicts with the decision of a court of appeals on a frequently recurring issue of exceptional importance, the petition for a writ of certiorari should be granted.

STATEMENT

A. Boulder's State-Court Complaint

In April 2018, the City of Boulder, Colorado, and its surrounding county (together, Boulder) sued petitioners in Colorado state court. Pet. App. 49a-50a. Petitioners are various energy companies that engage in "fossil fuel activities"—namely, the production, promotion, refining, marketing, and sale of fossil fuels, such as coal, oil, and natural gas. Am. Compl. ¶ 14.[1]

Boulder alleges that petitioners' fossil-fuel activities around the world have caused others to "use" petitioners' fossil fuels. Am. Compl. ¶ 15; see *id.* ¶¶ 61, 81. And Boulder alleges that fossil-fuel use occurring throughout the world has caused the "emission[]" of greenhouse

[1] The plaintiffs originally included San Miguel County, but the trial court transferred that county's claims to a different venue. Pet. App. 49a n.1. The defendants originally included Suncor Energy, Inc., but the trial court dismissed Boulder's claims against that defendant for lack of personal jurisdiction. *Id.* at 75a-87a.

gases into the Earth's atmosphere. *Id.* ¶ 15. Through that chain of causation, Boulder asserts that petitioners are "responsible" for "billions of tons of [greenhouse-gas] emissions" globally—making petitioners among the "largest sources" of greenhouse-gas emissions in the world. *Id.* ¶¶ 62, 82.

Boulder further alleges that global greenhouse-gas emissions have injured Boulder's "property" and "the health, safety and welfare of [Boulder's] residents." Am. Compl. ¶ 1. The alleged mechanism of injury is global "[c]limate change": According to Boulder, the emission of greenhouse gases from fossil-fuel use has "increased the concentration of those gases in the atmosphere, trapping heat in the climate system, and warming the planet." *Id.* ¶ 123. Boulder alleges that global "climate change," in turn, has caused Boulder to experience "more (and more serious) heat waves, wildfires, droughts, and floods." *Id.* ¶ 3; see *id.* ¶ 4.

Boulder asserts five Colorado common-law claims against petitioners: public nuisance, private nuisance, trespass, unjust enrichment, and civil conspiracy. Am. Compl. ¶¶ 444-488, 501-530. Boulder seeks "past and future damages" for its injuries caused by global "climate change." *Id.* ¶ 532 (emphasis omitted). It also seeks "remediation" or "abatement of the hazards" of global climate change "by any other practical means." *Id.* ¶ 534.[2]

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[2] Boulder also asserted a statutory claim against petitioners under the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1) *et seq.* Am. Compl. ¶¶ 489-500. Unlike Boulder's common-law claims, that claim sought to hold petitioners liable only for conduct (namely, "deceptive trade practices") "in Colorado." *Id.* ¶ 490. The state trial court dismissed the statutory claim without preju-

B. Petitioners' Attempt To Remove To Federal Court

In June 2018, petitioners removed the case to federal court pursuant to the general removal statute, 28 U.S.C. 1441(a); the federal-officer removal statute, 28 U.S.C. 1442; and other statutes. See 405 F. Supp. 3d 947, 955, 975. The district court ordered the case remanded to state court. *Id.* at 954. The court of appeals affirmed, after concluding that it had jurisdiction to review only whether the case could be removed under the federal-officer removal statute. 965 F.3d 792.

Petitioners sought review from this Court, which granted a writ of certiorari, vacated the court of appeals' judgment, and remanded for further consideration in light of the intervening determination in *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230, 234 (2021), that a court of appeals may "review any issue in a district court order remanding a case to state court where the defendant premised removal in part on" the federal-officer-removal statute, *id.* at 1536. See 141 S. Ct. 2667.

On remand, the court of appeals again affirmed the district court's order remanding the case to state court, after reviewing "all grounds for removal addressed in [that] order." 25 F.4th 1238, 1246. Petitioners sought review of the removal issue, and this Court called for the views of the Solicitor General. 143 S. Ct. 78. The Solicitor General filed a brief taking the position that the case was not removable to federal court and that further review was unwarranted. U.S. Cert. Amicus Br. at 6-7, *Suncor Energy (U.S.A.) Inc.* v. *Board of County Comm'rs of Boulder County*, 143 S. Ct. 1795 (2023) (No. 21-1550). The brief explained that Boulder's claims did

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dice, on the ground that Boulder had not pleaded it with the requisite particularity. Pet. App. 133a-136a.

not present a federal question under the well-pleaded-complaint rule, *id.* at 7-11, and that they could not be recharacterized as claims arising under federal common law, *id.* at 11-16. The brief emphasized, however, that the removability question is distinct from the question whether the Clean Air Act preempts Boulder's claims, which was not presented. *Id.* at 13-15. This Court denied review. 143 S. Ct. 1795.

C. The State Trial Court's Denial Of The Motion To Dismiss

In state court, petitioners moved to dismiss Boulder's complaint for failure to state a claim. Mot. to Dismiss Am. Compl. for Failure to State a Claim (Dec. 9, 2019) (Mot.). As relevant here, petitioners contended that Boulder's claims are preempted by the Clean Air Act. Mot. 14-16. Petitioners also contended that Boulder's claims violate the Constitution. Mot. 16. Specifically, petitioners argued that "[b]y seeking to punish [petitioners'] worldwide production and sale of fossil fuels, [Boulder's] claims would have the 'practical effect' of controlling [petitioners'] 'conduct beyond the boundaries' of the State of Colorado,'" in violation of the Commerce Clause. Mot. 19 (citation omitted). Petitioners added that Boulder's efforts to punish petitioners' "worldwide" conduct impair the federal foreign-affairs power and violate due process. Mot. 16; see Mot. 19.

In June 2024, the trial court denied petitioners' motion to dismiss Boulder's common-law claims. Pet. App. 48a-139a. The court rejected petitioners' Clean Air Act preemption argument on the view that Boulder's claims are "not about regulating emissions." *Id.* at 105a; see *id.* at 99a-108a. The court also rejected petitioners' reliance on the Constitution. *Id.* at 108a-115a. The court took the view that neither the foreign-affairs power nor the Commerce Clause precludes Boulder from seeking

"damages for conduct causing in-state injuries." *Id.* at 112a; see *id.* at 108a-109a. The court also concluded that Boulder's claims "do not violate the Due Process Clause." *Id.* at 113a.

D. The Colorado Supreme Court's Exercise Of Original Jurisdiction

1. A month after the trial court's decision, petitioner Exxon Mobil Corp. filed a petition, which the other petitioners here later joined, invoking under Colorado Appellate Rule 21 the Supreme Court of Colorado's "original jurisdiction" to exercise "superintending authority" over the trial court. Colo. App. R. 21(a)(1); see Pet. for Order to Show Cause (July 16, 2024); Pet. 10; Pet. App. 7a. The petition sought an order to show cause why the trial court did not err in resolving two issues, including "[w]hether federal law precludes the application of state law to claims seeking redress for alleged in-state injuries from the effects of interstate and international [greenhouse-gas] emissions on the global climate." Pet. for Order to Show Cause 9; see *id.* at 16, 27-37. The Colorado Supreme Court issued an order to show cause as to "[w]hether the [trial] court erroneously concluded that [Boulder's] claims could proceed under state law." Order and Rule to Show Cause 2 (July 29, 2024).

2. After briefing and oral argument, the Colorado Supreme Court issued a decision in May 2025 concluding that "Boulder's claims are not preempted by federal law," discharging the order to show cause, and remanding the case to the trial court for further proceedings. Pet. App. 2a; see *id.* at 1a-47a.

The Colorado Supreme Court determined that "the preemptive effect of federal law" on Boulder's claims presented an issue warranting the exercise of the court's "original jurisdiction" under Colorado Appellate Rule 21.

Pet. App. 8a. The court explained that "[w]hether [Boulder's] claims may proceed against [petitioners] has important implications for Colorado and its citizens." *Ibid.* The Colorado Supreme Court also observed that "other courts that have addressed similar questions have reached differing conclusions." *Ibid.*

The Colorado Supreme Court then held that the Clean Air Act does not preempt Boulder's claims. Pet. App. 11a-16a. The court reasoned that "litigating Boulder's claims would not upset any balance set by Congress because Boulder's claims do not seek to impose liability for activities that the [Act] regulates." *Id.* at 15a. As the court saw it, Boulder's "claims do not seek compensation for any [greenhouse-gas emissions] by [petitioners] themselves but rather focus on [petitioners'] upstream production activities." *Id.* at 21a.

The Colorado Supreme Court also held that "federalism concerns arising from the United States Constitution" do not "bar Boulder's claims." Pet. App. 16a. The court found no support in *Franchise Tax Board* v. *Hyatt*, 587 U.S. 230 (2019), for the proposition that "the structure of the Constitution" precludes Colorado from applying its own law to petitioners' worldwide conduct. Pet. App. 17a; see *id.* at 18a (concluding that petitioners had "point[ed] to" no federal "constitutional text that preempts Boulder's state law claims"). The court was also "unpersuaded" that "the federal foreign affairs power bars Boulder's claims." *Id.* at 22a. The court reasoned that allowing Boulder's claims to proceed would not "impair the effective exercise of this country's foreign policy" because "Boulder's claims do not seek to regulate [greenhouse-gas] emissions." *Id.* at 24a.

Justice Samour, joined by Justice Boatright, dissented. Pet. App. 25a-47a. In their view, all of Boulder's

claims should be dismissed because the Clean Air Act preempts the claims' "interstate aspect" while "the federal government's primacy in foreign affairs" precludes the claims' "international aspect." *Id.* at 27a-28a.

ARGUMENT

The Colorado Supreme Court rejected petitioners' contention that federal law precludes Boulder's attempt to apply Colorado law to petitioners' fossil-fuel activities around the world. That decision is incorrect; it conflicts with the decision of a court of appeals on a frequently recurring issue of exceptional importance; and this case is a suitable vehicle for addressing whether the Constitution or the Clean Air Act precludes state-law suits like this one. Accordingly, this Court's review is warranted.

In an invitation brief filed last year in *Sunoco LP* v. *City & County of Honolulu*, 145 S. Ct. 1111 (2025), the United States addressed the validity of state-law claims seeking to hold energy companies liable for the alleged consequences of global climate change. That brief took no position on whether the Constitution precludes such claims. U.S. Cert. Amicus Br. at 6-7, *Honolulu*, *supra* (No. 23-947). The brief did, however, express the view that the Clean Air Act does not categorically preempt them. *Id.* at 17-18. After the change in Administration, the United States has reexamined its position on that statutory issue and has determined that state-law claims like those alleged here conflict with "the decisionmaking scheme Congress enacted" in the Clean Air Act. *American Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 429 (2011) (*AEP*).

A. This Court Has Jurisdiction To Review The Decision Below

This Court may review "[f]inal judgments or decrees rendered by the highest court of a State." 28 U.S.C. 1257(a). The Colorado Supreme Court's decision in this case is the "final determination of [an] original proceeding in the [state] supreme court." Colo. App. R. 21(h); see Colo. App. R. 21(*o*); Pet. App. 24a. The decision therefore qualifies as a final judgment under Section 1257(a), even though it contemplates further proceedings in the trial court on Boulder's common-law claims. See Pet. App. 24a-25a; *Fisher* v. *District Court*, 424 U.S. 382, 385 n.7 (1976) (per curiam).

This Court's decision in *Atlantic Richfield Co.* v. *Christian*, 590 U.S. 1 (2020), is directly on point. That case involved a suit brought in Montana state court. *Id.* at 9. The plaintiffs asserted trespass, nuisance, and strict-liability claims under state common law, and the defendant argued that a federal statute precluded the plaintiffs' claims for certain damages. *Ibid.* In ruling on the parties' summary-judgment motions, the state trial court rejected the defendant's reliance on the federal statute, thereby allowing the plaintiffs' claims to proceed to trial. *Id.* at 10. The defendant then invoked the Montana Supreme Court's original jurisdiction to issue writs of supervisory control. *Id.* at 10, 12. The Montana Supreme Court exercised original jurisdiction and affirmed the trial court's ruling. *Id.* at 10-11.

This Court held that the Montana Supreme Court's decision qualified as "final" under Section 1257(a). *Atlantic Richfield*, 590 U.S. at 12. This Court explained that "[u]nder Montana law, a supervisory writ proceeding is a self-contained case, not an interlocutory appeal." *Ibid.* (citing Mont. Const. Art. VII, § 2(1) and (2); Mont.

R. App. P. 14(1) and (3)). Accordingly, the Montana Supreme Court's resolution of that proceeding was "final," even though it "allowed the case to proceed to trial." *Ibid.*; see *ibid.* (emphasizing that "[i]t is the nature of the [state-court] proceeding, not the issues the state court reviewed," that determines finality).

This case is in the same posture as *Atlantic Richfield*. Like the Montana Constitution, the Colorado Constitution grants the state supreme court original jurisdiction to exercise supervisory control over lower state courts. Compare Mont. Const. Art. VII, § 2(1) and (2) (granting the state supreme court "original jurisdiction" and "general supervisory control"), with Colo. Const. Art. VI, §§ 2, 3 (granting the state supreme court "original" jurisdiction and "general superintending control"). Under Colorado law, as under Montana law, the state supreme court's exercise of that jurisdiction constitutes a self-contained proceeding, not an interlocutory appeal. Compare Mont. R. App. P. 14(1) and (3) (distinguishing the exercise of "original" jurisdiction from the "normal appeal process"), with Colo. App. R. 21(a)(1) and (2) (distinguishing the exercise of "original jurisdiction" from the "relief available by appeal"). And the Colorado Supreme Court's decision in this case—like the Montana Supreme Court's decision in *Atlantic Richfield*—terminates such a proceeding. See Pet. App. 24a (discharging the order to show cause). The decision in this case, like the one in *Atlantic Richfield*, is therefore a final judgment under Section 1257(a), even though it contemplates further proceedings on the plaintiffs' claims in the trial court.

Petitioners contend (Pet. 2, 10, 32-33) that the Colorado Supreme Court's decision is final for a different reason: because it is a ruling on interlocutory review

that should nevertheless be treated as final under *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). Regardless of whether the Colorado Supreme Court could be deemed to have conducted "interlocutory review" (Pet. 10) for purposes of a *Cox Broadcasting* analysis, Exxon Mobil successfully invoked the Colorado Supreme Court's "original jurisdiction" under Colorado Appellate Rule 21, Pet. App. 7a, and that court's decision is final because it terminated that original proceeding.

B. The Decision Below Is Incorrect

The Colorado Supreme Court erred in allowing Boulder's common-law claims to proceed. Under the Constitution, Colorado lacks authority to apply its common law to petitioners' out-of-state conduct. And even if it had such authority, the Clean Air Act would preempt Boulder's claims.

1. The Constitution precludes Boulder's state common-law clams

The Constitution "transform[ed]" the States "from a loose league of friendship into a perpetual Union based on the 'fundamental principle of *equal* sovereignty among the States.'" *Franchise Tax Bd.* v. *Hyatt*, 587 U.S. 230, 246 (2019) (citation omitted). "Each State's equal dignity and sovereignty under the Constitution implies certain constitutional 'limitations on the sovereignty of all of its sister States.'" *Id.* at 245 (brackets and citation omitted); see *Burnet* v. *Brooks*, 288 U.S. 378, 401 (1933) ("The limits of State power are defined in view of the relation of the States to each other in the Federal Union."). Some of those limitations find expression in specific constitutional provisions, like the Fourteenth Amendment's Due Process Clause. See, *e.g.*, *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286,

294 (1980) (recognizing that "the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest [a] State of its power to render a valid judgment").

Other limitations are "implicit in [the Constitution's] structure." *Hyatt*, 587 U.S. at 247. One of those limitations is the principle that "[s]tate sovereign authority is bounded by the States' respective borders." *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1, 14 (2025). Under the Constitution, each State retains "a residuary and inviolable sovereignty." *Alden* v. *Maine*, 527 U.S. 706, 715 (1999) (citation omitted). At the core of that sovereignty lies the power to prescribe rules governing conduct. See *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 422 (2003) ("A basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or prescribed within its borders."). But each State's equal dignity and sovereignty under the Constitution implies a limitation on that power: A State generally may not prescribe rules that govern conduct beyond its "territorial limits." *National Pork Producers Council* v. *Ross*, 598 U.S. 356, 376 n.1 (2023) (recognizing such limits "under the Constitution's horizontal separation of powers"); see, *e.g.*, *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 572 (1996) (explaining that "principles of state sovereignty and comity" mean "that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States").

Boulder's state common-law claims in this case far exceed the territorial limits on Colorado's authority. As the complaint states, Boulder "bring[s] this lawsuit against [petitioners] for the substantial role that their *production, promotion, refining, marketing and sale of*

fossil fuels played and continues to play in causing, contributing to and exacerbating alteration of the climate." Am. Compl. ¶ 2 (emphasis added). Petitioners, however, engage in those fossil-fuel activities across the globe, see, *e.g.*, *id.* ¶¶ 61-62, 77, 81-82, 397, and Boulder's common-law claims make no attempt to distinguish petitioners' activities in Colorado from their activities elsewhere, see *id.* ¶¶ 444-488, 501-530. To the contrary, Boulder's common-law claims seek to hold petitioners responsible for all of their fossil-fuel activities, anywhere in the world—extending the reach of Colorado common law well beyond Colorado's territorial limits.

The Constitution therefore precludes Boulder's state common-law claims, unless they fall within an exception to the principle that state law may not reach out-of-state conduct. They do not. In some circumstances, this Court has recognized that "a person acting outside the State may be held responsible according to the law of the State for injurious consequences within it." *Young* v. *Masci*, 289 U.S. 253, 259 (1933). But in such cases, there has been a direct and traceable connection from the out-of-state conduct to the in-state harm. See, *e.g.*, *id.* at 256 (owner of a car in one State allowed someone else to drive the car into another State, where the driver struck a man with the car); *Commonwealth* v. *Macloon*, 101 Mass. 1, 4 (1869) (out-of-state infliction of injuries caused a man to die from those injuries within the State); *State* v. *Lord*, 16 N.H. 357, 359 (1844) (out-of-state dam construction caused flooding of a road within the State); *Cameron* v. *Vandegriff*, 13 S.W. 1092, 1092-1093 (Ark. 1890) (out-of-state blasting of rock caused a rock to hit a man within the State); *MacPherson* v. *Buick Motor Co.*, 111 N.E. 1050, 1051 (N.Y. 1916) (defect in a car man-

ufactured out of state caused the car to break down within the State).

Here, no direct connection exists. Boulder alleges that petitioners' fossil-fuel activities all around the world have caused effects everywhere in the world and hence injured Boulder and its Colorado residents. Am. Compl. ¶¶ 1-4, 7-8, 13-15. The medium allegedly transmitting that injury is literally the Earth's entire atmosphere, where "[g]reenhouse gases once emitted 'become well mixed'"—making it impossible to trace any particular activity outside the State to any particular injury within it. *AEP*, 564 U.S. at 422 (citation omitted). Indeed, Boulder cannot trace its asserted injuries to any particular source of emissions—let alone to any particular conduct by petitioners, even further down the alleged causal chain. See *ibid.* (explaining that the mixing of greenhouse gases in the atmosphere means that "emissions in New Jersey may contribute no more to flooding in New York than emissions in China"). If such an indirect and untraceable chain of causation were enough to justify applying a State's laws extraterritorially, any State could reach virtually any out-of-state conduct. The Constitution precludes Boulder's reliance on such a theory to reach petitioners' fossil-fuel activities in other States.

The Constitution likewise precludes Boulder's attempt to reach petitioners' worldwide fossil-fuel activities. For the reasons above, Boulder cannot identify any direct connection between those activities and any in-state injury. Moreover, "[t]he Constitution confers upon the Federal Government—and it alone—both nationwide and extraterritorial authority." *Fuld*, 606 U.S. at 15; see *American Ins. Ass'n* v. *Garamendi*, 539 U.S. 394, 413 (2003) (emphasizing "the Constitution's allocation of the foreign relations power to the National Gov-

ernment"); *Zschernig* v. *Miller*, 389 U.S. 429, 432 (1968) (recognizing a "field of foreign relations which the Constitution entrusts to the President and the Congress").

2. The Clean Air Act preempts Boulder's state common-law claims

Even if Colorado had authority under the Constitution to apply its common law to petitioners' nationwide and worldwide conduct, the Clean Air Act would preempt Boulder's claims.

a. In *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), this Court addressed the preemptive scope of a similar federal statute—the Clean Water Act, 33 U.S.C. 1251 *et seq.* The Clean Water Act establishes a framework for addressing pollution in the Nation's waters. See *Ouellette*, 479 U.S. at 489. Under that framework, the amount of pollution that is acceptable is a matter for the U.S. Environmental Protection Agency (EPA) and the State in which the pollution originates (the source State) to decide. See *id.* at 489-490. *Ouellette* involved a suit brought under Vermont common law against a source of pollution in New York, seeking to deem the harm that the pollution caused in Vermont a "nuisance." *Id.* at 483. The Court held that the Clean Water Act preempted the suit because any attempt to apply one State's law to pollution originating from another State would conflict with the scheme that the statute establishes for who decides the amount of acceptable pollution. See *id.* at 495.

The same principles govern preemption under the Clean Air Act, which establishes a similar framework for addressing air pollution. See, *e.g.*, *Merrick* v. *Diageo Americas Supply, Inc.*, 805 F.3d 685, 692 (6th Cir. 2015) ("Clean Water Act precedents are persuasive with respect to the Clean Air Act because many provisions in

the Clean Water Act—including the savings clauses—were modeled on the Clean Air Act, so that the two acts are often *in pari materia*."). Under the Clean Air Act, as under the Clean Water Act, the amount of acceptable pollution is a matter for EPA and the source State to decide. See *AEP*, 564 U.S. at 424, 427-428. Thus, any attempt to apply Colorado law to emissions from out of State would conflict with "the decisionmaking scheme Congress enacted." *Id.* at 429.

b. Given those principles, there can be no dispute that if Boulder had brought the same common-law claims against out-of-state emitters (such as the power plants in *AEP*, see 564 U.S. at 418), the Clean Air Act would have preempted those claims. Here, instead of invoking Colorado law against out-of-state emitters, Boulder has sued the companies that supply the emitters with fossil fuels. Am. Compl. ¶ 2. The question is whether Boulder can evade the preemptive force of the Clean Air Act by targeting others within the supply chain. The answer is no.

Suing the suppliers instead of the emitters does not avoid the conflict with the Clean Air Act's decisionmaking scheme. Boulder's public and private nuisance claims illustrate the point. Am. Compl. ¶¶ 444-471. Those claims allege that emissions from around the world—nearly all of which originated out of State—have created a "nuisance" in Colorado. *Id.* ¶¶ 451, 460. But under the Clean Air Act, it is not for Colorado to say, through its courts' definition of "nuisance," whether emissions from outside Colorado have reached an unacceptable level; rather, the Clean Air Act reserves to EPA and source States the authority to determine the extent of appropriate regulation. See *City of Denver* v. *Mullen*, 3 P. 693, 699 (Colo. 1884) (defining public nui-

sance as an "unreasonable" interference); *Public Serv. Co.* v. *Van Wyk*, 27 P.3d 377, 391 (Colo. 2001) (same, for private nuisance). Any finding that petitioners' worldwide fossil-fuel activities have created a nuisance would thus entail a judgment about the degree of acceptable out-of-state greenhouse-gas emissions that the Clean Air Act precludes Colorado from making. For similar reasons, this Court has already concluded that a nuisance claim under *federal* common law could not "be reconciled with the decisionmaking scheme Congress enacted" because the claim would require that "individual federal judges determine, in the first instance, what amount of carbon-dioxide emissions is 'unreasonable.'" *AEP*, 564 U.S. at 428-429 (citation omitted). Because Boulder's nuisance claims would require state judges to make the same kinds of judgments, those claims cannot be reconciled with the Clean Air Act's decisionmaking scheme either.

Boulder's other common-law claims suffer from the same problem. Boulder's trespass claim alleges that emissions from around the world, including from outside Colorado, have caused a "trespass" in Colorado; that claim would allow Colorado to enforce, through its definition of "trespass," its own conception of the acceptable amount of out-of-state greenhouse-gas emissions. Am. Compl. ¶¶ 474-476; see *Hoery* v. *United States*, 64 P.3d 214, 217 (Colo. 2003) (defining trespass as "a physical intrusion upon the property of another without the proper permission"). Boulder's unjust-enrichment claim alleges that the combustion of fossil fuels around the world, including outside Colorado, has conferred on petitioners a "benefit" at Boulder's "expense"; that claim would allow Colorado to dictate, through its judgment on whether it would be "unconscionable" for petitioners

"to retain that benefit," what degree of out-of-state greenhouse-gas emissions is acceptable. Am. Compl. ¶ 488; see *Lewis* v. *Lewis*, 189 P.3d 1134, 1141 (Colo. 2008) ("A person is unjustly enriched when he benefits as a result of an unfair detriment to another."). And Boulder's civil-conspiracy claim suffers from the same problem, because it simply alleges a conspiracy to commit the other torts. Am. Compl. ¶¶ 501-530. The Clean Air Act thus preempts each of Boulder's common-law claims.

C. The Decision Below Warrants This Court's Review

1. As the Colorado Supreme Court acknowledged (Pet. App. 8a, 19a-20a), its decision conflicts with the Second Circuit's decision in *City of New York* v. *Chevron Corp.*, 993 F.3d 81 (2021). Like this case, *City of New York* involved a suit brought by a local government against various energy companies, including one of the petitioners here. *Id.* at 86. Like Boulder, the City of New York alleged that the companies' "production, promotion, and sale of fossil fuels" around the world had, through global climate change, caused injuries to the City and its residents. *Id.* at 88; see *id.* at 100. And the City sought to recover damages for those injuries by asserting claims for public nuisance, private nuisance, and trespass under New York common law. *Id.* at 88.

The Second Circuit affirmed the dismissal of the City's claims. *City of New York*, 993 F.3d at 86. As relevant here, the court observed that the Clean Air Act makes EPA "the 'primary regulator of domestic greenhouse gas emissions'" while reserving to States the power "to create and enforce their own emissions standards applicable to in-state polluters." *Id.* at 99 (brackets and citation omitted). But the City had not sought to "take advantage of th[at] slim reservoir of state common law." *Id.* at 100. "Rather," the court observed,

it sought "to impose New York nuisance standards on emissions emanating simultaneously from all 50 states and the nations of the world." *Ibid.* The court therefore held that the Clean Air Act did "not authorize the City's state-law claims, meaning that such claims concerning domestic emissions [we]re barred." *Ibid.*

Expressly disagreeing with the Second Circuit, Pet. App. 19a-20a, the Colorado Supreme Court concluded that the Clean Air Act does not bar state common-law claims seeking to hold energy companies liable for injuries allegedly caused by global climate change. *Id.* at 11a-16a. The two courts have thus reached contrary conclusions on whether such claims may proceed.

2. Whether federal law precludes state-law claims like those asserted here is a frequently recurring issue of exceptional importance, making this Court's resolution of the conflict appropriate. See Sup. Ct. R. 10(b). Boulder's suit is just one of many materially similar suits that have already been filed by States and local governments across the country.[3] That there are so many

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[3] See, *e.g.*, *In re Fuel Indus. Climate Cases*, No. S288664 (Cal.); *Delaware* v. *BP Am. Inc.*, No. N20C-09-97 (Del. Super. Ct.); *Hawaii* v. *BP p.l.c.*, No. 1CCV-25-717 (Haw. Cir. Ct.); *City & County of Honolulu* v. *Sunoco LP*, No. 1CCV-20-380 (Haw. Cir. Ct.); *County of Maui* v. *Sunoco LP*, No. 2CCV-20-283 (Haw. Cir. Ct.); *City of Chicago* v. *BP p.l.c.*, No. 2024CH1024 (Ill. Cir. Ct.); *Maine* v. *BP p.l.c.*, No. PORSC-CV24-442 (Me. Super. Ct.); *Mayor & City Council of Baltimore* v. *BP p.l.c.*, No. 24-C-18-4219 (Md. Cir. Ct.); *Anne Arundel County* v. *BP p.l.c.*, No. 02-CV-21-565 (Md. Cir. Ct.); *City of Annapolis* v. *BP p.l.c.*, No. 02-CV-21-250 (Md. Cir. Ct.); *Minnesota* v. *American Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct.); *Platkin* v. *Exxon Mobil Corp.*, No. MER-L-1797-22 (N.J. Super. Ct.); *City of Hoboken* v. *Exxon Mobil Corp.*, No. HUD-L-3179-20 (N.J. Super. Ct.); *City of New York* v. *BP p.l.c.*, No. 18-cv-182 (S.D.N.Y.); *Town of Carrboro* v. *Duke Energy Corp.*, No. 24CV3385-670 (N.C. Super. Ct.); *County of Multnomah* v. *Exxon Mobil Corp.*,

suits should come as no surprise, given that the theory underlying each suit is that every locality in the United States is entitled to recover damages for the localized consequences of climate change. And they can be expected to multiply if the decision below is allowed to stand.

The Colorado Supreme Court was therefore correct to recognize that "this case presents substantial issues of global import." Pet. App. 1a. Indeed, the "significant public importance" of the issues is what led the Colorado Supreme Court to exercise original jurisdiction in the first place. *Id.* at 8a; see *ibid.* (noting the "important implications for Colorado and its citizens"). And the implications of the decision below are profound: If, as the Colorado Supreme Court held, suits like this one may go forward, energy companies across the globe will be subject not only to billions of dollars in damages, but also to a multiplicity of rules governing their conduct in any given location, as one city after another seeks to hold the companies liable for fossil-fuel activities anywhere in the world. This Court's review is necessary to ensure that such an "irrational system of regulation" does not displace the framework established by the Constitution and the Clean Air Act. *Ouellette*, 479 U.S. at 496.

3. Finally, this case is a suitable vehicle for resolving the question presented. This Court recently denied petitions seeking review of a Hawaii Supreme Court deci-

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No. 23-cv-25164 (Or. Cir. Ct.); *Bucks County* v. *BP p.l.c.*, No. 2024-1836 (Pa. C.P.); *Rhode Island* v. *Shell Oil Prods. Co.*, No. PC-2018-4716 (R.I. Super. Ct.); *City of Charleston* v. *Brabham Oil Co.*, No. 2020-CP-10-3975 (S.C.C.P.); *King County* v. *BP p.l.c.*, No. 18-2-11859-0 (Wash. Super. Ct.); *Municipality of Bayamón* v. *Exxon Mobil Corp.*, No. 22-cv-1550 (D.P.R.); *Municipality of San Juan* v. *Exxon Mobil Corp.*, No. 23-cv-1608 (D.P.R.).

sion affirming the denial of a motion to dismiss climate-change-related state-law claims brought by Honolulu against energy companies. See *Sunoco LP* v. *City & County of Honolulu*, 145 S. Ct. 1111 (2025) (No. 23-947); *Shell PLC* v. *City & County of Honolulu*, 145 S. Ct. 1111 (2025) (No. 23-952). But, for two reasons, this petition is a better vehicle than either of those were.

First, the Colorado Supreme Court issued its decision in this case at the end of a self-contained original proceeding, eliminating any doubt that the decision satisfies Section 1257(a)'s final-judgment rule. See pp. 10-12, *supra*. In contrast, the Hawaii Supreme Court issued its decision on interlocutory review of the denial of a motion to dismiss, raising the more difficult issue of whether the decision was final under the fourth *Cox* category. See *City & County of Honolulu* v. *Sunoco LP*, 537 P.3d 1173, 1185 (2023), cert. denied, 145 S. Ct. 1111 (2025).

Second, the issue of whether the Constitution precludes the plaintiffs' state-law claims was raised and addressed below in this case. See pp. 6-8, *supra*. In contrast, that issue was not raised or addressed by the Hawaii Supreme Court in *Honolulu*. See 537 P.3d at 1181-1182, 1186-1187. This case therefore presents an opportunity to address both the constitutional and the Clean Air Act issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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* The Solicitor General is recused in this case.