No. 25-170

IN THE

Supreme Court of the United States

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

Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY; CITY OF BOULDER,

Respondents.

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

BRIEF FOR THE AMERICAN PETROLEUM INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

MARK A. PERRY
Counsel of Record
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Suite 600
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

Counsel for Amicus Curiae American Petroleum Institute

September 15, 2025

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES

INTERESTS OF THE *AMICUS CURIAE*[1]

The American Petroleum Institute ("API") is a nationwide, non-profit trade association that represents approximately 600 companies involved in every aspect of the petroleum and natural-gas industry. Its members range from the largest integrated companies to the smallest independent oil and gas producers. API's members include producers, refiners, suppliers, marketers, pipeline operators, and marine transporters, as well as service and supply companies that support the industry. API is also the worldwide leading body for establishing standards that govern the oil and natural-gas industry.

This case is one of many that have been brought against petroleum and natural-gas companies at the state and local level. Many of the plaintiffs are represented by the same counsel. Although API is not a party to this case, state and local plaintiffs are pursuing API as a defendant in other cases, contending that API's exercise of its First Amendment rights to advocate for its members and petition the government is a basis for tort liability. See, *e.g., Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837, 2025 WL 562630 (Minn. Dist. Ct. Feb. 14, 2025), appeal docketed on other grounds, No. A25-0407 (Minn. Ct. App.); *Delaware ex rel. Jennings v. BP Am. Inc.*, No. N20C-09-097, 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024), appeal refused, No. 54, 2024 (Del. May 8, 2024).

---

[1] Pursuant to Supreme Court Rule 37.2, ten days before this brief was due, *amicus* notified counsel of record for the parties of its intention to file this brief. Pursuant to Supreme Court Rule 37.6, *amicus* state that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, their members, or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

This case will have broad implications for the entire petroleum and natural-gas industry, and thus API has a concrete stake in ensuring that plaintiffs are not permitted to misuse state tort law to target its members.

Broadly speaking, these suits are an attempt to remedy the effects of global climate change at the state and local level. Although Respondents' complaint purportedly focuses only on the marketing, sale, and production of fossil fuels, there is no doubt that this case necessarily revolves around the effects of interstate greenhouse gas emissions. Interstate emissions have long been governed exclusively by federal law because they occupy an inherently federal domain that states do not have the authority to regulate. The strained reasoning of the decision below that held Respondents could advance state-law claims is contrary to a century of this Court's precedent, and it should be rejected.

Furthermore, if Respondents' claims were to succeed, the results would be disastrous, both for the energy industry and for any serious effort to address climate change. API has advocated for considered and evidence-based policies at the national level that support research and the ongoing transition to cleaner energy sources. API knows well that to execute this transition, policymakers must strike a delicate balance between reducing greenhouse gas emissions and maintaining the consistent energy supply on which the world economy depends.

Respondents' suit strikes no such balance; to the contrary, it merely seeks to recover monetary damages for a city and the surrounding county, while leaving the work of reducing greenhouse gas emissions to others. Indeed, Respondents' suit will make it more difficult to address climate change at the national level, because it will invite a patchwork of conflicting judgments in 50 states, rather than one uniform standard for the nation.

This suit and similar litigation would also have impacts beyond the law. Ad hoc sanctioning and regulation of energy companies will destabilize the whole sector. API is uniquely situated to explain the likely effects on the energy sector and the world economy if billion-dollar judgments pile up and the threat of future liability under varying state-court judgments undercuts American energy production. As API explains below, even small changes to costs and prices in the energy industry can have ripple effects throughout the world economy. This Court should stop these suits in their tracks and allow national policymakers to address the nationwide issue of greenhouse gas emissions.

SUMMARY OF ARGUMENT

The Colorado Supreme Court erred in ruling that Respondents could bring state tort claims to remedy alleged injuries caused by global climate change. For over a century, this Court has held that interstate air and water pollution are inherently federal domains. Claims alleging that out-of-state emissions caused injury within a state have always been governed by federal law. Yet the decision below found that the Clean Air Act ("CAA") somehow revived state law claims that never existed. This was error, and the overwhelming weight of this Court's precedent precludes Respondents' claims. Furthermore, if Respondents were to succeed on their claims, they would impair federal efforts to address climate change by creating a patchwork of different standards and inconsistent judgments regulating the same underlying conduct. Respondents' suit is not a workable means by which to address climate change, and it would instead unleash chaos in sectors vital to the American economy.

As an initial matter, Respondents' framing of their claims as related only to the marketing, sale, and production of fossil fuels—rather than the emission of the greenhouse gases itself—should be rejected. Respondents' framing is an attempt to plead around the exclusivity of federal law. Respondents know that matters related to air emissions are exclusively governed by federal law, and that they cannot openly base their claims on the emission of greenhouse gases. But all of Respondents' alleged injuries were manifestly caused by global climate change, which is itself caused largely by the emission of greenhouse gases. To the extent Petitioners' "upstream" marketing, sale, and production of fossil fuels are causal at all, they are twice-removed from Respondents' alleged injury. The complaint's focus on a narrow set of remote activities is not credible, and it is clear the Respondents seek to recover for the effects of interstate greenhouse gas emissions. As the Second Circuit held in *City of New York v. Chevron Corp*., 993 F.3d 81, 91 (2d Cir. 2021), "[a]rtful pleading cannot transform the . . . complaint into anything other than a suit over global greenhouse gas emissions."

The regulation of interstate emissions is an inherently federal domain. *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 421, 422 (2011) ("air and water in their ambient or interstate aspects" are "meet for federal law governance"). For decades, this Court applied federal common law to disputes arising from interstate emissions. See *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972) (hereinafter "*Milwaukee I*"); see also *City of New York*, 993 F.3d at 91 (collecting cases). After the CAA was enacted, this

Court held that the statute had displaced federal common law in the realm of interstate emissions. *City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 313-14 (1981) (hereinafter "*Milwaukee II*"). Disputes arising from interstate emissions were thereafter governed by the CAA. *Id.*

The common thread through all of these cases and changes to the law is that federal law has always applied to disputes arising from interstate emissions. Yet the Colorado Supreme Court found that Respondents' state tort claims were viable because (1) the tortious conduct was not the emission of greenhouse gases, and (2) federal common law no longer precludes state-law claims. Pet. App'x at 18a, 20a. As discussed above, Respondents do in fact necessarily allege that the tortious conduct at issue is the emission of greenhouse gases, and the decision below incorrectly credited Respondents' pleading gimmick. As to (2), the decision below erroneously assumed that when federal common law is displaced, state-law claims become available. State-law claims have never been available for disputes arising from interstate emissions, because interstate emissions are an inherently federal domain. Federal common law was displaced, but this bedrock principle remains.

If Respondents' claims were to succeed, many other judgments in many other states would surely follow. Petitioners and other participants in the energy industry would be subject to an impossible web of disparate judgments and billion-dollar awards for the same conduct. This would do nothing to advance a solution to global climate change and would in fact impair any federal effort toward a nationwide solution. The resulting deluge of fines, damages awards, and conflicting decisions would also unleash chaos in the energy industry and the world economy more broadly.

Respondents fail to recognize that combatting climate change requires a concerted effort among businesses, governments, and nations. Currently, fossil fuels provide the majority of the world's energy, and there is not yet a viable replacement at scale. A solution to global climate change involves balancing the world's energy needs with the need to reduce greenhouse gas emissions. Regulation must be carefully targeted to avoid destabilizing the energy supply that underlies the world economy. Congress and the agencies to which it has delegated authority can perform this balancing act, taking the interests of the whole nation into account. In contrast, Respondents' suit blindly targets fossil fuel companies and attempts to recover for injuries in their locality, without any regard to the effects on the rest of the country or the world.

Combatting climate change requires serious federal and international action. Respondents' suit is not a serious attempt to address climate change, and it would impair federal action by inviting a complex and inconsistent web of state-court rules.

In addition to powering the world economy, fossil fuels are a strategically important resource and a long-standing pillar of U.S. national security. The United States' ability to produce and export fossil fuels has long been used as both a negotiating tool in diplomatic relations and an instrument of war. The Constitution is clear that the federal government has exclusive control over matters related to foreign affairs, and that state law should not interfere with this exclusive federal domain. Respondents' suit threatens to interfere with the United States' ability to conduct foreign affairs, because it would shift regulatory power over a strategically important industry from the federal government to the states. Furthermore, Respondents' suit and the likely follow-on suits, if successful, would destabilize the energy sector and reduce its capacity to respond to national security imperatives like the war in Ukraine.

ARGUMENT

This case exemplifies the President's recent pronouncement that "States have . . . sued energy companies for supposed 'climate change' harm under nuisance or other tort regimes that could result in crippling damages. . . . These State laws and policies try to dictate interstate and international disputes over air, water, and natural resources; unduly discriminate against out-of-State businesses; contravene the equality of States; and retroactively impose arbitrary and excessive fines without legitimate justification. . . . *They should not stand*." Exec. Order No. 14,260 at 1 (Apr. 8, 2025) (emphasis added).

I. The essence of Respondents' action is to seek redress for alleged injuries arising from global climate change and to regulate emissions.

A threshold matter is whether Respondents' claims are premised only on the marketing, sale, and production of fossil fuels—purportedly bringing their claims within the ambit of state law—or if Respondents' claims seek to remedy alleged injuries from interstate greenhouse gas emissions—bringing them within an inherently federal domain. The Colorado Supreme Court accepted Respondents' claims at face value. Finding that the complaint's allegations had everything to do with "tortious conduct that [federal law] does not address," and nothing to do with "[greenhouse gas] emissions by defendants themselves," the court held that Respondents' claims did not implicate the regulation of interstate emissions.

Respondents' assertion that their claims relate only to the marketing, sale, and production of fossil fuels does not withstand scrutiny, and the Court should not indulge their sleight of hand pleading. As the Second Circuit held in *City of New York*, 993 F.3d at 91, "[a]rtful pleading cannot transform the . . . complaint into anything other than a suit over global greenhouse gas emissions."

The majority below reasoned that "[Respondents'] claims do not seek compensation for any GHG emissions by defendants themselves but rather focus on [Petitioners'] upstream production activities." Pet. App'x at 20a. But the distinction between greenhouse gas emissions and "upstream activities" is illusory. Whether Respondents style their complaint as targeting upstream activities or the emissions themselves, the result is the same: Respondents are demanding compensation from Petitioners for the effects of worldwide greenhouse gas emissions. The "upstream activities" Respondents identify are only relevant to the extent they allegedly caused the emission of greenhouse gases. See, *e.g.*, Amended Compl. ¶¶ 127-29 (production of fossil fuels resulted in higher levels of CO_2). There is no question that all of Respondents' injuries are alleged to have been directly caused by the accumulation of greenhouse gas emissions. See, *e.g.*, *id.* ¶ 129. Despite Respondents' superficial focus on upstream activities, the emissions themselves are a necessary causal link without which Respondents' claims fall apart. Respondents would have difficulty establishing, for example, that the Petitioners' marketing, sale, and production of fossil fuels was an actual or proximate cause of injuries in Colorado. Greenhouse gases have been emitted from many different sources since the beginning of the industrial revolution. The "upstream activities" of Petitioners are far too remote to support Respondents' claims. To say that this case does not involve the regulation of interstate greenhouse gas emissions is to ignore that these emissions are alleged to be the direct cause of Respondents' alleged injuries and are a necessary element of Respondents' claims.

The decision below, however, elided the central issue in the complaint by concluding that Respondents' claims do not "involve uniquely federal areas of regulation" because "nuisance abatement issues and the other torts that Boulder has alleged in this case have been deemed traditional state law matters implicating important state interests." Pet. App'x at 15a (emphasis omitted). The court failed to acknowledge, however, that the "nuisance abatement issues" are not the typical local disputes that these terms imply, but in fact arise from atmospheric changes of planetary proportions. Putting state-law labels on plainly interstate activities does not suffice to sustain state-law claims in the inherently federal domain of interstate emissions.

II. The regulation of interstate emissions is an inherently federal domain.

This Court has recognized that "air and water in their ambient or interstate aspects" are "meet for federal law governance." *American Electric Power*, 564 U.S. at 421, 422. "[A] mostly unbroken string of cases" going back more than a century "has applied federal law to disputes involving" claims arising out of interstate emissions. *City of New York*, 993 F.3d at 91 (collecting cases); see *Milwaukee I*, 406 U.S. at 103.

It is because of the inherently federal nature of interstate emissions and discharges that this Court long held that suits related to air and water pollution were governed by federal common law. See *American Electric Power*, 564 U.S. at 420-23; *Milwaukee I*, 406 U.S. at 103. After the enactment of the CAA and Clean Water Act ("CWA"), this Court held that the federal statutory schemes had displaced federal common law. *Milwaukee II*, 451 U.S. at 313-14; *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987). In holding that the CWA preempted most state-law claims, this Court relied not only on the statute itself, but also on "the fact that the control of interstate pollution is primarily a matter of federal law." *Ouellette*, 479 U.S. at 492.

Although the federal common law of air and water pollution has been displaced, the reasons that it was first applied remain. In a 1972 case, this Court explained that interstate pollution required the application of federal common law because it "touches basic interests of federalism" and implicates an "overriding federal interest in the need for a uniform rule of decision" in the field of interstate emissions. *Milwaukee I*, 406 U.S. at 105 n.6. This Court agreed with a Tenth Circuit decision elaborating on the reasons that "[f]ederal common law and not the varying common law of the individual States" must apply when a controversy invokes "the environmental rights of a State against improper impairment by sources outside its domain." *Id*. at 107 n.9 (citing *State of Tex. v. Pankey*, 441 F.2d 236 (10th Cir. 1971)). The Tenth Circuit had explained that if state law was permitted to resolve such disputes, "more conflicting disputes, increasing assertions and proliferating contentions would seem to be inevitable." *Pankey*, 441 F.2d at 241.

The justifications for precluding state-law claims in emissions cases were not "undermine[d]" by the CAA or the CWA, *Illinois v. City of Milwaukee*, 731 F.2d 403, 410 (7th Cir. 1984), cert. denied, 469 U.S. 1196 (1985), and they are certainly no less applicable to the emissions that cause global climate change. In fact, that global climate change inherently requires a federal solution is perhaps more evident than with respect to the other forms of pollution that this Court has previously addressed. In particular, this Court's decisions emphasize that the location of the source of an emission or discharge is a dispositive factor in determining whether federal law provides the exclusive remedy. See *e.g.*, *Milwaukee I*, 406 U.S. at 93 (federal common law applied to pollution in Wisconsin caused by sewage discharge originating in Illinois); *Ouellette*, 479 U.S. at 488-89 (state-law claims permitted only where water pollution is caused by an in-state source). Although Respondents carefully avoid admitting it in their complaint, it cannot be seriously disputed that climate change is caused by emissions throughout the United States and the world, and that CO_2, methane, and other greenhouse gases from countless sources intermix in the atmosphere. *See What are the trends in greenhouse gas emissions and concentrations and their impacts on human health and the environment?*, U.S. Environmental Protection Agency.[2] Importantly, not all of these emissions originate in petroleum products,

[2] https://www.epa.gov/report-environment/greenhouse-gases#:~:text=Greenhouse%20gases%2C%20such%20as%20carbon%20dioxide%2C%20methane%2C,received%20from%20the%20sun%20and%20emitted%20from (last visited September 3, 2025).

or indeed from energy consumption at all. *Sources of Greenhouse Gas Emissions*, U.S. Environmental Protection Agency.[3] Given the breadth and scale of the causes of climate change, any solutions that are to be effective must be uniform and comprehensive, necessarily making them solutions that only federal policymakers can provide.

State-law tort claims that aim to regulate emissions not only violate the "overriding federal interest in the need for a uniform rule of decision," *Milwaukee I*, 406 U.S. at 105 n.6, they also impinge on the rights of other states by making determinations that will have an impact well beyond the borders of the state in which the claims are brought. By asking a Colorado court to determine whether fossil fuel production "unreasonably interfere[s]" with a public right such that it amounts to a public nuisance, Restatement (Second) of Torts § 821B (1979), Respondents are necessarily asking the court to determine whether fuel producers' conduct was reasonable. Making that determination requires considering not only the risks of fossil fuel use to the planet, but also how well those risks have been weighed against the world's gargantuan need for energy and the difficulty of developing an alternative at scale. Furthermore, the Colorado court would need to apportion blame for climate change as a whole, not merely alleged harms felt in Colorado, which cannot possibly be traced to a single source. The court would thus take on the role of quantifying the contribution of whole industries to global climate change, including the many fuel producers and unrelated industries not before the court. Other states, then, would also make these same sweeping determinations for claims

---

[3] https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions (last visited September 3, 2025).

brought under their own laws. In this untenable contest between state courts over global emissions, "more conflicting disputes, increasing assertions and proliferating contentions would seem to be inevitable," *Pankey*, 441 F.2d at 241.

This Court has affirmed on multiple occasions that weighty determinations affecting the entire nation must be made by Congress or its designated federal agency. *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697 (2022) ("Capping carbon dioxide emissions at a level that will force a nationwide transition . . . . [but] [a] decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body."); *American Electric Power*, 564 U.S. at 428 (noting that Congress "designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions").

In an attempt to distinguish the repeated declarations of this Court regarding the inherently federal nature of claims premised on interstate emissions, the decision below asserted that the enactment of the CAA rendered the Court's prior holdings inapplicable. Specifically, the Colorado Supreme Court reasoned that "the CAA displaced federal common law governing interstate pollution damages suits and, thereafter, federal common law did not preempt state law." Pet. App'x at 16a. The court thus appeared to posit that if federal common law no longer applies, state law must apply.

As an initial matter, the decision below rests on the dubious suggestion that the enactment of a broad federal air pollution and emissions scheme *reduced* the scope of federal authority in that very field. The decision below noted that Petitioners had cited "no applicable authority supporting the proposition that once federal common law exists, the structure of the Constitution precludes the application of state law even when that common law no longer exists." *Id.* at 17a. However, in the cases in which this Court has considered the CWA's or CAA's displacement of federal common law, it has held that the statutes leave no room for the types of state-law claims at issue here. See *e.g.*, *Ouellette*, 479 U.S. at 488-89. Furthermore, even assuming that the displacement of federal common law by a federal statute could theoretically resurrect state-law claims, the court's reasoning would nevertheless run up against the basic fact that interstate emissions have never been governed by state law. Thus, the CAA's displacement of federal common law could not have resurrected state-law claims that never existed.

III. Allowing Respondents' claims to proceed would interfere with federal regulation of emissions and set back the energy transition.

The inherently federal nature of emissions regulation is grounded not only in abstract Constitutional principles of federalism, but also in the practical impossibility of effectively regulating nationwide environmental matters at the state level. Allowing state law to regulate interstate emissions would compromise any attempt at a uniform scheme or concerted effort toward combatting climate change. It would also risk serious disruption to the national economy and undermine the United States' ability to conduct foreign affairs.

A. This practical reality is well known to API and its members, who operate across the world and comply with the laws of many different jurisdictions. Because of the need to standardize fuel production methods, changes in the law of one jurisdiction affect API's members' behavior in other jurisdictions. Furthermore, climate change is undisputedly a global phenomenon that requires a coordinated response at the national and international level. It is widely understood that combatting climate change is one of the great challenges of our age, and the solutions require significant research, scientific innovation, and carefully targeted regulation. Any solution also requires coordination with other sovereign nations. Federal authorities—the President, Congress, and the expert agency to which it has delegated authority (the EPA)—are the bodies capable of undertaking this task.

In contrast, state courts are not in a position to effectively regulate global greenhouse gas emissions and would in fact harm any effort to do so. Regulating greenhouse gas emissions via a litany of state-law tort actions would create a sprawling patchwork of regulations across all 50 states that would undermine any attempt at uniform, federal regulation. If Respondents' state-law claims are allowed to proceed, many will follow in other states. Dozens of lawsuits bringing state-law tort claims have already been filed in different state jurisdictions.[4] Inevitably, different

[4] *Leon v. Exxon Mobil Corp.*, No. 25-2-15986-8 (Wash. Super. Ct.); *City of Chicago v. BP p.l.c.*, No. 2024CH01024 (Ill. Cir. Ct.); *Cnty. of Multnomah v. Exxon Mobil Corp.*, No. 23CV25164 (Or. Cir. Ct.); *California v. Exxon Mobil Corp.*, No. CGC23609134 (Cal. Super. Ct.); *Makah Indian Tribe v. Exxon Mobil Corp.*, No. 23-2-25216-1 (Wash. Super. Ct.); *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct.); *City of Annapolis v. BP p.l.c.*, No. C-02-CV-21-000250 (Md. Cir. Ct.); *Anne Arundel Cty. v. BP p.l.c.*, No. C-02-CV-21-000565 (Md. Cir. Ct.); *Connecticut v. Exxon Mobil Corp.*, No. HHDCV206132568S (Conn. Super. Ct.); *City of Hoboken v. Exxon Mobil Corp.*, No. HUD-L-003179-20 (N.J.

states' courts will come to different decisions, and API's members could well be subject to inconsistent laws and judgments. *Ouellette*, 479 U.S. at 496 (allowing "a number of different states to have independent and plenary regulatory authority over a single discharge would lead to chaotic confrontation between sovereign states." (citation omitted)).

In sum, the use of tort law to regulate emissions takes a hammer to a problem that requires a scalpel. Respondents seek to short-circuit the ongoing energy transition to their exclusive benefit, at the expense of every other state and locality in the nation—all of which are affected by climate change.

Furthermore, the damages requested by Respondents and other plaintiffs across the country are enough to cripple the energy industry and cause ripple effects throughout the American economy. Respondents seek

---

Super.); *Delaware v. BP America Inc.*, No. N20C-09-097 (Del. Super. Ct.); *City of Charleston v. Brabham Oil Co.*, No. 2020CP1003975 (S.C. Ct. *Com.); Minnesota v. American Petroleum Institute*, No. 62-CV-20-3837 (Minn. Dist. Ct.); *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.); *City of Richmond v. Chevron Corp.*, No. C18-00055 (Cal. Super. Ct.); *Mayor & City Council of Balt. v. BP p.l.c*., No. 24-C-18-004219 (Md. Cir. Ct.); *City of Imperial Beach v. Chevron Corp.*, No. C17-01227 (Cal. Super. Ct.); *Cnty. of Marin v. Chevron Corp.*, No. CIV1702586 (Cal. Super. Ct.); *Cnty. of San Mateo v. Chevron Corp*., No. 17CIV03222 (Cal. Super. Ct.); *City of Santa Cruz v. Chevron Corp.*, No. 17CV03243 (Cal. Super. Ct.); *Cnty. of Santa Cruz v. Chevron Corp.*, No. 17CV03242 (Cal. Super. Ct.); Cal. ex rel. *Herrera v. BP p.l.c.*, No. CGC-17-561370 (Cal. Super. Ct.); Cal. ex rel. *Oakland City Att'y v. BP p.l.c.*, No. RG17875889 (Cal. Super. Ct.); *City and County of Honolulu v. Sunoco LP*, et al, No. CAAP-22-0000429 (Haw. Ct. App.); *City and County of Honolulu v. Chevron Corp. et al*, No. CAAP-22-0000135 (Haw. Ct. App.); *Bucks County v. BP p.l.c.*, No. 2024-01836-0000 (Pa. Commw. Ct.); *Estado Libre Asociado de Puerto Rico v. Exxon Mobil Corp. et al*, No. SJ2024CV06512 (P.R. TPI).

extensive monetary relief to compensate for alleged property damage and to maintain basic municipal functions, such as repairing bridges and containing wildfires. Amended Compl. ¶ 532. Other states have signaled that they will seek damages on an even larger scale. For example, California is seeking "tens of billions to hundreds of billions in ongoing damages going forward." *PBS News Hour, California Sues Oil Companies for Exacerbating Climate Change* (Sept. 20, 2023).[5] Multnomah, Oregon is seeking over $1.5 billion in damages and an abatement fund of over $50 billion paid for by the defendants. Compl. at 174-75, Cnty. of Multnomah, No. 23CV25164 (Or. Cir. Ct. June 22, 2023).

In these self-interested suits, states and municipalities disregard the national interest in maintaining the supply of low-cost energy that powers the American economy. If these suits succeed in obtaining billion-dollar judgments for particular states and localities, the costs will inevitably impact the energy supply chain. The inflationary effect of increased energy costs could have sweeping effects on the U.S. economy and international trade. About 60% of U.S. households rely on natural gas as their primary source of energy. U.S. Dep't Energy Info. Admin., *Natural gas explained*[6]; U.S. Dep't Energy Info. Admin., *Use of energy explained*.[7] Nearly the entire transportation sector depends on energy derived from fossil fuels. This affects not only the cost of gas for individuals, but

5 https://www.pbs.org/video/suing-big-oil-1695235855/ (last visited September 3, 2025).

6 https://www.eia.gov/energyexplained/natural-gas/ (last visited September 3, 2025).

7 https://www.eia.gov/energyexplained/use-of-energy/ (last visited September 10, 2025).

also the cost of logistics and shipping. U.S. Dep't Energy Info. Admin., *Use of energy explained*.[8] Studies have shown that, because these sectors are so vital, even modest increases in core energy prices can have ripple effects that disrupt the entire economy. Dep't of Transp., Bureau of Transp. Stats., *Inflation and Transportation*.[9]

The value of petroleum to the economy also extends well beyond fuel. Petroleum-based products such as plastic are ubiquitous in basic consumer products and essential to nearly every major industry. For example, an increase in the cost of petroleum-based products would be immediately felt in the agricultural industry, U.S. Dep't of Agric., *Impacts of Higher Energy Prices on Agriculture and Rural Economies* (Aug. 18, 2011),[10] the manufacturing industry, U.S. Dep't Energy Info. Admin., *Use of energy explained*,[11] and the healthcare industry, U.S. Dep't of Energy, *U.S. Oil and Natural Gas: Providing Energy Security and Supporting Our Quality of Life* (Sept. 2020).[12]

The potential consequences of Respondents' suit have serious implications for the national economy. It

---

[8] https://www.eia.gov/energyexplained/use-of-energy/ (last visited September 10, 2025).

[9] https://data.bts.gov/stories/s/Transportation-and-Inflation/f9jm-cqwe/ (last visited September 3, 2025).

[10] https://ers.usda.gov/sites/default/files/_laserfiche/publications/44894/6806_err123_reportsummary.pdf (last visited September 3, 2025).

[11] https://www.eia.gov/energyexplained/use-of-energy/ (last visited September 10, 2025).

[12] https://www.energy.gov/fecm/articles/us-oil-and-natural-gas-providing-energy-security-and-supporting-our-quality-life (last visited September 3, 2025).

is for that reason that federal policymakers, and not individual states, have the exclusive authority to regulate nationwide emissions. Allowing states to bypass federal supremacy would impose ad hoc, localized solutions on a problem that requires a broad and careful review in which all interested parties are represented.

B. Allowing state tort law to govern emissions would also intrude on the federal government's exclusive control over foreign affairs. *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 421 (2003) ("[t]he exercise of the federal executive authority," particularly in the area of foreign affairs, "means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two"). As noted above, no solution to the climate crisis is possible without international cooperation. The federal government must be able to negotiate on behalf of the nation as a whole and make agreements regarding greenhouse gas emissions with other sovereign nations. The federal government cannot effectively do so if the states have already imposed their own standards that may conflict with those under negotiation. In essence, the federal government cannot negotiate the regulation of nationwide emissions if it does not have the exclusive authority to regulate such emissions. *City of New York*, 993 F.3d at 103 (State-law tort suit "would not only risk jeopardizing our nation'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.").

More generally, the strategic importance of fossil fuels means that they have always played a crucial role in foreign affairs. During World War II, the United States' reserves of oil became "[a] prime weapon of victory in two world wars" and "a bulwark of our national security." Nat'l Petroleum Council, *A National Oil Policy for the United States* 1 (1949).[13] At the time the United States entered the war, it had more petroleum reserves than any other country in the world, and President Franklin Roosevelt wielded the industry as an instrument of foreign affairs. *Energy's Vital Role in World War II Offers Lessons For Today*, Am. Oil & Gas Rptr. (Oct. 2023).[14] In 1941, the United States embargoed oil shipments to Japan, dramatically altering the course of the war in the Pacific. *Id.* On the other hand, President Roosevelt accelerated shipments of high-octane fuel for aircraft, as well as oil for ships, lubricants, and synthetic rubber to the Allies. *Id.* During the span of the conflict, the oil industry increased production by nearly 30% to meet the enormous demand. *Id.* U.S. oil and petroleum-based products were necessary for the Allies to continue fighting, and the United States' wealth of petroleum resources emerged as one of its most powerful tools in foreign affairs. *Id.*; Nat'l Petroleum Council, *A National Oil Policy for the United States* 1.[15]

The petroleum industry is no less a part of foreign affairs today. In 2022, following Russia's invasion of Ukraine, the European Union sought to reduce its dependence on natural gas from Russia. President Joe

---

[13] https://www.energy.gov/sites/default/files/2022-11/1949-National_Oil_Policy_for_United_States.pdf (last visited September 3, 2025).

[14] https://www.aogr.com/web-exclusives/exclusive-story/energys-vital-role-in-world-war-ii-offers-lessons-for-today (last visited September 3, 2025).

[15] https://www.energy.gov/sites/default/files/2022-11/1949-National_Oil_Policy_for_United_States.pdf (last visited September 3, 2025).

Biden agreed to increase shipments of natural gas and dramatically increase the United States' export capacity. *Europe and the U.S. Make Ambitious Plans to Reduce Reliance on Russian Gas*, The New York Times, March 22, 2022.[16] The agreement envisions the United States increasing its exports to the EU from 15 billion cubic meters of liquefied natural gas to 50 billion cubic meters by 2030. *Id*. The executive agreement called on the energy industry to respond with massive investments to increase production of fossil fuels. *Id*.

Given the vital role that fossil fuels continue to play in foreign affairs and national security, the need to reduce emissions and combat climate change must be carefully weighed against the need to increase production when it is in the interest of national security. State courts are clearly not the proper authority to conduct this balancing of environmental and national security interests, and their attempt to do so would violate the federal government's exclusive control over foreign affairs. State-court suits like Respondents' and their attendant risk of future liability for climate-related damages could well impact fuel production. This would severely hinder the federal government's ability to use the United States' natural resources as a tool to advance the nation's strategic interests. State interference with any of these interests is untenable and only reinforces why the conduct at issue in this case falls within an inherently federal domain.

* * *

[16] https://www.nytimes.com/2022/03/25/business/energy-environment/biden-eu-liquefied-natural-gas-deal-russia.html (last visited September 2, 2025).

Global climate change is a serious issue that deserves serious action. API firmly believes that the only viable solutions to climate change exist at the national level and as a uniform, nationwide standard. Americans depend on a stable energy supply and the economy that it powers, and these energy needs must be carefully balanced against the need to reduce greenhouse gas emissions. However, policymakers representing the interests of all 50 states must address this issue. The basic principles of federalism hold that it is improper for one state court addressing one county's claims to render decisions that affect the citizens of every other state.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MARK A. PERRY
Counsel of Record
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Suite 600
Washington, DC 20036
(202) 682-7000
mark.perry@weil.com

Counsel for Amicus Curiae
American Petroleum Institute

September 15, 2025