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 FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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INTEREST OF THE AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a strong interest in the legal and policy issues that underlie this case, including issues relating to climate change. The global climate is changing, and human activities contribute to these changes. There is much common ground on which all sides could come together to address climate change with policies that are practical, flexible, predictable, and durable, maintaining the national and international competitiveness of U.S. industry and ensuring consistency with free enterprise and free trade principles. *See* U.S. Chamber of Commerce, *Our Approach to Climate Change* (Apr. 19, 2020), https://www.uschamber.com/climate-change/our-approach-to-climate-change. Durable climate policy must be made by the federal government, which should encourage innovation and investment to reduce emissions and improve economic resilience and clean

[1] Amicus curiae timely provided notice of intent to file this brief to all parties. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

energy deployment across the globe. Governmental policies aimed at achieving these goals should not be made by the courts, much less by a patchwork of actions under state law that would do more harm than good.

Climate change is an interstate and international challenge, and putative state-law claims that would impose liability for climate change must necessarily be resolved by federal law. The cross-border nature of climate change implicates "uniquely federal interests" for which a uniform federal policy and the application of federal law are essential.

In the limited range of circumstances in which such uniquely federal interests arise, the relevant legal questions often intersect with the interests of many of the Chamber's members, who rely on the predictability and uniformity of federal policy. This case falls within that limited range: the Chamber and its members have a strong interest in ensuring that claims for which a uniform federal standard is necessary are governed by federal law, and not by a patchwork of state laws applied in piecemeal fashion.

SUMMARY OF ARGUMENT

I. In a case implicating "uniquely federal interests," there is no room for state law to apply. This is such a case. Respondents' lawsuit is fundamentally about *global* climate change. A phenomenon of this nature, which affects (and is affected by) not just every State but every nation in the world, requires a solution that the best efforts of individual States simply cannot provide. The law of a single State, or an order from a single state court, simply cannot address the effects on every State and every nation from greenhouse gas emissions emanating from all States and all nations, which routinely cross interstate and international borders.

Any possible solution to climate change can be achieved only on a national and international basis—which, within the United States, means through federal law and the federal government acting on behalf of the country as a whole. That is a consequence of our constitutional structure, which ensures that only federal law governs interstate disputes where the law of a single State cannot apply. Reinforcing that limitation, the Due Process Clause prohibits States from regulating transactions or behavior with which they have insufficient contact to support legislative jurisdiction.

The need for a uniform federal standard in cases concerning cross-border emissions is why this Court has long recognized that state law cannot supply a rule of decision for disputes about "air and water in their ambient or interstate aspects." *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972) (*Milwaukee I*) (citation omitted). Those disputes must be resolved by federal law; indeed, where there is no federal statute,

federal common law has governed such disputes. Congress may displace federal common law by statute, which then serves as the exclusive source of remedies for the claim; if Congress displaces federal common law but provides no private remedy, then there is none. Whether the federal law governing these matters is common law or statutory law, federal law governs. Displacement of federal common law remedies does not mean that federal law disappears from the field—much less that it allows fifty States and their associated municipalities to rush into a uniquely federal arena.

The Second Circuit recognized as much in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2021), holding that congressional displacement of federal common law through the Clean Air Act (CAA) does not open the door to state law rules, since this federal area demands a uniform solution. And the Seventh Circuit has long held the same regarding displacement through the Clean Water Act. Yet the Colorado Supreme Court explicitly disagreed with both the Second and Seventh Circuits on this crucial point, opting instead to follow the contrary reasoning of the Hawaii Supreme Court. This Court should grant certiorari to resolve this split.

II. Unless the Court intervenes now, a patchwork of disparate state law decisions will quickly grow. Disagreeing with the Second Circuit, the highest courts of two States, Colorado and Hawaii, have now held that municipalities may bring claims under state law imposing liability for climate change. Those two cases are just the tip of the iceberg: there are approximately 30 similar lawsuits currently making their way through state courts. Companies like petitioners thus face potentially overlapping and conflicting decisions in dozens of state courts regarding the same fundamental conduct—with possible remedies ranging from

injunctions of various stripes to many millions or billions in damages. Compliance with such a regime emanating from dozens of county courthouses would be expensive, uncertain, and quite likely impossible. Similar problems arise from the so-called "superfund" laws that New York and Vermont have already enacted based on the same impermissible and preempted theory of liability as these cases. Even more fundamentally, the emergence of these disparate regimes of liability and regulation will disrupt the federal government's own efforts to direct and implement uniform national policies on climate change, as the United States itself has emphasized. The Court should return this interstate and international issue to the *national* government's domain, where it belongs under our constitutional system.

For these reasons, and those set forth below, this Court should grant the petition.

ARGUMENT

I. Under our federal structure and the Clean Air Act, state law may not impose liability for the global climate effects of emissions that originate all over the world.

The question presented is whether federal law precludes state law claims for relief for harm to the Earth's climate that is attributed to interstate and international greenhouse-gas emissions. The answer is yes: federal law alone controls. Because greenhouse gas emissions originate all over the world, intermix in the global atmosphere, and cross state and national borders, the laws of a single state cannot possibly resolve a dispute like this one.

The Colorado Supreme Court incorrectly held that respondents can pursue state-law claims arising from harms to the world's climate that are allegedly caused by global greenhouse gas emissions. To the extent that federal law would ordinarily control in this area, the court reasoned, the Clean Air Act displaced federal common law without providing any federal statutory cause of action, and thus somehow opened the door for state law to apply.

As the court recognized, its holding deepens a binary disagreement in the lower courts, and that disagreement concerns an issue of fundamental national importance—one threatening the federal government's authority and ability to respond to a global challenge on behalf of the nation. In a very similar case brought by New York City, the Second Circuit held that federal law preempts such state law claims, and that the Clean Air Act does not authorize them. And the Seventh Circuit confirmed that a similar federal antipollution statute, the Clean Water Act, displaces common-law remedies but does not authorize *state* remedies, because it does not make the interstate dispute any less uniquely *federal* in nature.

This Court should grant certiorari to resolve the conflict and reverse the deeply flawed decision below.

A. Only federal law can govern disputes like this one, which implicates interstate and international interests.

There are certain controversies that "our federal system does not permit … to be resolved under state law," where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). Disputes over interstate air

pollution or air quality are exactly that type of controversy. The state supreme court erred in refusing to recognize that it was therefore "inappropriate for state law to control."

1. This Court has made clear that federal common law, in its modern form, "addresses 'subjects within national legislative power where Congress has so directed' or where the basic scheme of the Constitution so demands." *Am. Elec. Power Co. v. Connecticut* (*AEP*), 564 U.S. 410, 421 (2011) (quoting Henry J. Friendly, *In Praise of* Erie—*and of the New Federal Common Law*, 39 N.Y.U. L. Rev. 383, 408, 421-22 (1964)). In particular, this Court has held that federal law must govern when "there is an overriding federal interest in the need for a uniform rule of decision or where the controversy touches basic interests of federalism." *Milwaukee I*, 406 U.S. at 105 n.6. Federal common law can supply such a "uniform rule of decision" in those areas; state law cannot.

Courts have applied federal common law in cases involving interstate water disputes,[2] tribal land rights,[3] interstate air carrier liability,[4] and foreign relations.[5] In such cases, federal law must govern be-

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[2] *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 109-10 (1938); *Kansas v. Colorado*, 206 U.S. 46, 95-96 (1907).

[3] *Cnty. of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 235-36 (1985).

[4] *Treiber & Straub, Inc. v. UPS, Inc.*, 474 F.3d 379, 384 (7th Cir. 2007) (discussing the Fifth Circuit's "extensive analysis of the history of federal common law liability of common carriers" in *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 925-29 (1997)).

cause "local law will not be sufficiently sensitive to federal concerns, it is not likely to be uniform across state lines, and it will develop at various rates of speed in different states." 19 Wright & Miller, Fed. Prac. & Proc., Juris. § 4514 (4th ed. 2022). Moreover, the structure of the Constitution does not allow States to engage in such cross-border regulation. *See Tex. Indus.*, 451 U.S. at 641.

One archetypal area in which the basic scheme of the Constitution requires a federal rule concerns "the environmental rights of a State against improper impairment by sources outside its domain." *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted). In such cases, "[f]ederal common law and not the varying common law of the individual States is . . . necessary" to provide a "uniform standard" for such disputes. *Id.* (citation omitted). Accordingly, this Court has held that "[w]hen we deal with air and water in their ambient or interstate aspects, there is a federal common law." *AEP*, 564 U.S. at 421 (quoting *Milwaukee I*, 406 U.S. at 103).

Claims regarding transboundary emissions implicate "uniquely federal interests." Accordingly, when *Milwaukee I* held that cases regarding interstate air and water emissions "should be resolved by reference to federal common law[,] the implicit corollary of this ruling was that state common law was preempted." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 488 (1987); *see Milwaukee I*, 406 U.S. at 107 n.9.

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[5] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425-27 (1964); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1088-89 (9th Cir. 2009); *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1233 (11th Cir. 2004).

2. Climate change is an international and interstate phenomenon. Greenhouse gas emissions are released into the Earth's atmosphere, where they intermix, from all over the world, and their effects are just as global.

The Amended Complaint in this case does not mince words about the scope of its allegations. It repeatedly states that it seeks to hold the oil companies responsible for their worldwide "fossil fuel products" that "release CO2 and other GHGs into the *atmosphere*, and contribute to changes in the *planet's climate*." Am. Compl. ¶¶ 70, 85 (emphases added); *id.* ¶ 123 (alleging that "the emission of GHGs into the atmosphere … has increased the concentration of those gases in the atmosphere, trapping heat in the climate system, and warming the planet"); *id.* ¶ 383 ("Exxon is one of the largest sources of GHG emissions both globally and historically."); *id.* ¶ 399 ("Suncor is one of the largest sources of GHG emissions both globally and historically."). By respondents' own admissions, both the emissions and the harms alleged (and the atmospheric phenomena that are indispensable causal links between the emissions and the harms), as set forth in the Amended Complaint, span the entire globe.

Respondents' claims thus implicate uniquely federal interests, in multiple respects. It would be sufficient that they concern "air and water in their ambient or interstate aspects," which "undoubtedly" calls for a federal rule of decision, *AEP*, 564 U.S. at 421 (citation omitted); *Milwaukee I*, 406 U.S. at 103. But there is more: they also implicate foreign policy and the United States' sovereign interests. The "international nature of the controversy" is another reason why it is "inap-

propriate for state law to control." *Tex. Indus.*, 451 U.S. at 641.

The Second Circuit correctly held that federal, *not* state, law must control cases like this one. In *City of New York v. Chevron Corp.*, the Second Circuit confronted the question "whether a nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions may proceed under New York law." 993 F.3d at 91. The court's "answer is simple: 'no.'" *Id.* The Second Circuit reasoned that federal law governs in this area, leaving no role for state law, because this "is an interstate matter raising significant federalism concerns," in no small part since "a substantial damages award like the one requested by the City would effectively regulate the [defendants'] behavior far beyond New York's borders." *Id.* at 92. "Such a sprawling case is simply beyond the limits of state law." *Id.*

3. The necessity of a uniform federal approach in mitigating climate change is accentuated by the difficult policy choices inherent in balancing the United States' environmental and energy needs. There are important trade-offs to consider, all of which have enormous consequences. As this Court has explained, "[t]he appropriate amount of regulation in any particular greenhouse gas-producing sector" requires "informed assessment of competing interests": "Along with the environmental benefit potentially achievable, our Nation's energy needs and the possibility of economic disruption must weigh in the balance." *AEP*, 564 U.S. at 427.

The federal government has been grappling with this dilemma for decades. Congress undoubtedly takes

national energy needs very seriously, including by providing for oil and gas production. *E.g.*, 43 U.S.C. § 1802(1) ("establish[ing] policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf … 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"). In 1992, the United States joined the United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107. In that treaty, the signatories agreed that they "shall … [t]ake climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods … *formulated and determined nationally*, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change." *Id*. art. 4(1)(f) (emphasis added).

Indeed, by enacting the Clean Air Act, Congress has designated the Environmental Protection Agency (EPA) "as primary regulator of greenhouse gas emissions." *AEP*, 564 U.S. at 428. And since *AEP*, Congress has repeatedly taken legislative action in this area. In the Inflation Reduction Act of 2022, for example, the term "greenhouse gas" appears no fewer than 147 times. Pub. L. No. 117-169, 136 Stat. 1818. That term appears another 39 times in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021). And Congress recently recalibrated its climate policy with the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025), which "makes signif-

icant alterations to public incentives for climate and energy-related investments." Mia Beams & Akkshath Subrahmanian, Council on Foreign Relations, *Congress's "One Big Beautiful Bill" Will Shrink Renewable Energy Investments—Yet Some Technologies Are Preserved* (Aug. 4, 2025), https://www.cfr.org/article/congresss-one-big-beautiful-bill-will-shrink-renewable-energy-investments-yet-some.

To allow each of the fifty States—let alone each of the thousands of municipalities, suing in hundreds of state trial courts—to impose their own preferred policy solutions to this complex global challenge, with each of these governments naturally focused on local rather than national benefit, would create a plainly "irrational system of regulation" that "would lead to chaotic confrontation between sovereign states." *Ouellette*, 479 U.S. at 496-97 (citation omitted). As the Second Circuit correctly concluded, allowing state-law suits in this area to proceed, thereby "subjecting" companies' "global operations to a welter of different states' laws," "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." *City of New York*, 993 F.3d at 93.

In short, this is a case in which "there is an overriding federal interest in the need for a uniform rule of decision or where the controversy touches basic interests of federalism." *Milwaukee I*, 406 U.S. at 105 n.6. Federal law must therefore control.

4. The structural limitations that the Constitution imposes on the application of state law to quintessentially national issues are reinforced by the Due Process Clause. That Clause likewise limits the authority of States to regulate matters that are insufficiently connected to the State. *See Gerling Glob. Reins. Corp. v. Gallagher*, 267 F.3d 1228, 1237-38 (11th Cir. 2001); *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025); *Home Ins. Co. v. Dick*, 281 U.S. 397, 407-08 (1930); *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881) (State may not legislate "except with reference to its own jurisdiction"). This Court has referred to these "territorial limits on state authority" as "the Constitution's horizontal separation of powers." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 & n.1 (2023).

Respondents seek to regulate transactions far beyond their municipal borders (and even Colorado's), demanding that business practices and communications that occur elsewhere conform to their preferred standards—or be penalized. In doing so, they seek to control lawful activities in other States and effectively override the energy policies of sister States, as well as of the federal government. Respondents' theory is in serious tension with the due process limits on any one State's authority to prescribe legal rules beyond its own borders.

B. Respondents' packaging of their claims makes no difference to the conclusion that the claims are preempted by federal law.

Regardless of whether respondents seek to enjoin greenhouse gas emissions directly, they certainly do seek to regulate such emissions. As the Tenth Circuit

recognized in an earlier phase of this litigation, this suit is, at least in part, a suit "for damages allegedly caused by climate change." *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1248 (2022). The Amended Complaint demands that petitioners "pay[] their share of the costs Plaintiffs have incurred and will incur because of Defendants' contribution to alteration of the climate." Am. Compl. ¶ 6. It is a truism that "'regulation can be effectively exerted through an award of damages,' and '[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.'" *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)) (brackets in original); *see also City of New York*, 993 F.3d at 92 (same conclusion in similar climate suit); *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 719 (8th Cir. 2023) (Stras, J., concurring) (recognizing that similar climate suit sought to "change the companies' behavior on a global scale").

It makes no difference that respondents have framed this dispute as arising, in part, from misleading marketing relating to climate change, just as it would make no difference if a dispute between two States regarding interstate air or water pollution also happened to involve allegations of misleading statements, breach of contract, or any other alleged violation of federal or state law. It is "the interstate or international *nature of the controversy* [that] makes it inappropriate for state law to control," *Tex. Indus.*, 451 U.S. at 641 (emphasis added), not the precise causes of action pleaded. Here, the gravamen of the dispute is the oil companies' alleged responsibility for climate change impacts at-

tributed to greenhouse gas emissions. That dispute must be governed by federal law, for the reasons given above. *See* pp. 6-13, *supra*.

As the Second Circuit held in rejecting a similar argument in a parallel climate suit by New York City, "[a]rtful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions." *City of New York*, 993 F.3d at 91. Such a suit must be governed by federal law.

C. The displacement of federal common law by federal statute does not authorize state law to regulate a uniquely federal area.

1. The Colorado Supreme Court's principal reason for concluding that respondents' state law claims are not preempted is that federal common law related to greenhouse gas emissions has been "displaced by the federal legislation authorizing EPA to regulate carbon-dioxide emissions," *AEP*, 564 U.S. at 423, and therefore "that common law no longer exists." Pet. App. 17a. The majority below echoed the Hawaii Supreme Court's reasoning that "displaced federal common law plays no part in this court's preemption analysis." Pet. App. 20a (quoting *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1199 (Haw. 2023)).

As the decision below acknowledged, that reasoning directly conflicts with the Second Circuit's holding in *City of New York*. *See* Pet. App. 19a-20a. There, the Second Circuit explained "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." 993 F.3d at 98. "Such

an outcome is too strange to seriously contemplate." *Id.* at 98-99. The Second Circuit embraced the reasoning of the Seventh Circuit in *Illinois v. City of Milwaukee (Milwaukee III)* that, despite *Milwaukee II*'s holding that the federal common law recognized in *Milwaukee I* was displaced, "[t]he very reasons … for resorting to federal common law in *Milwaukee I* are the same reasons why the state claiming injury cannot apply its own state law to out-of-state discharges now." 731 F.2d 403, 410 (7th Cir. 1984).

The Colorado Supreme Court conceded that its reasoning directly conflicts with the holdings of both the Second and Seventh Circuits. Pet. App. 19a-20a. Yet it rejected the "preemption analysis" in those decisions as "'backwards reasoning.'" Pet. App. 19a (quoting *Honolulu*, 537 P.3d at 1199). This Court should grant certiorari to resolve that acknowledged split.

2. There is nothing "backwards" about the Second and Seventh Circuit's preemption analyses. Those circuits correctly apply the basic rule that "if federal common law exists, it is because state law cannot be used." *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) *(Milwaukee II)*; *see Tex. Indus.*, 451 U.S. at 641 & n.13 (federal law governs where the nature of the claim "makes it inappropriate for state law to control"). That Congress displaced federal common law simply means that the federal *courts* are no longer in the business of formulating federal standards. *See AEP*, 564 U.S. at 423-24 (explaining that "it is primarily the office of Congress, not the federal courts, to prescribe national policy in areas of special federal interest"). Displacement in no way eliminates or undermines the overriding federal interest in the dispute, much less throws open the door for the courts of the

fifty different States to engage in their own piecemeal resolution of these distinctly federal issues under a variety of competing and conflicting state and local laws. State law was incompetent to address the issue before congressional action, and it remains so after it. The court below wrongly treats congressional displacement of federal common law as though it were Dr. Frankenstein—"infus[ing] a spark of being into the lifeless thing" that is state law. Mary Shelley, Frankenstein 58 (Penguin Classics rev. ed. 2003).

Precisely because of the need for uniformity—the reason why federal common law was necessary in the first place—a displacing federal statutory scheme must provide the authoritative answer on what remedies are available, even if the answer is "none." Thus, "'resorting to state law' on a question previously governed by federal common law is permissible only to the extent 'authorized' by federal statute." *City of New York*, 993 F.3d at 99 (brackets omitted) (quoting *Milwaukee III*, 731 F.2d at 411). Under the reasoning of the Colorado and Hawaii Supreme Courts, however, congressional attempts to supply a *uniform* federal standard by statute would bring to life the very same *disuniform* state-law rules that were, and remain, incompetent to address this national problem. That would be so even if that federal legislation were to "adopt[] verbatim a judge-made common law rule." *Id.* at 98-99. Congress could enact statutes codifying the very same court-supplied rules governing interstate water rights, interstate air carrier liability, and interstate disputes over intangible property, *see* p. 7, *supra*, and according to the Colorado and Hawaii Supreme Courts (and respondents), state law claims on those subjects would suddenly become viable, triggering the very same prob-

lems that initially prompted the formulation of a federal rule.

That makes no sense. Federal problems remain federal problems, regardless of whether the necessary uniform, federal standard to deal with them is supplied by federal courts or federal statute. In the (few) areas where federal common law would apply but for displacement by Congress, "the implicit corollary" is that "state common law [is] preempted." *Ouellette*, 479 U.S. at 488.

D. The CAA also preempts respondents' state law claims.

Respondents' claims also conflict with, and are preempted by, the CAA itself. The CAA "delegate[s]" authority to EPA to "deci[de] whether and how to regulate" greenhouse gas emissions, and "entrusts" to EPA the "complex balancing" of "competing interests." *AEP*, 564 U.S. at 426-27. For example, Title II of the CAA gives EPA authority to determine whether to establish emissions standards for the transportation sector, including vehicles, aircraft, locomotives, motorcycles, and nonroad engines and equipment. 42 U.S.C. §§ 7521(a)(1)-(2), (a)(3)(E), 7571(a)(2)(A), 7547(a)(1), (a)(5). The CAA also provides EPA with authority to determine whether emissions of a pollutant from "stationary sources," such as power plants, refineries, and oil and gas wells, should be regulated and at what levels. *AEP*, 564 U.S. at 426; *see* 42 U.S.C. § 7411(b)(1)(A)-(B), (d). "If EPA does not set emissions limits for a particular pollutant or source of pollution, States and private parties may petition [EPA] for a

rulemaking on the matter … [but there is] no room for a parallel track." *AEP*, 564 U.S. at 425.[6]

The citizen-suit savings clause of the CAA, 42 U.S.C. § 7604(e), preserves a "slim reservoir of state common law" for suits brought under the law of the State that is the *source* of the emissions. *City of New York*, 993 F.3d at 99-100. But that narrow carveout underscores that the CAA leaves *no other* avenue for state law claims with respect to air pollution for which the authority to regulate has been delegated to EPA. In *Ouellette*, this Court analyzed parallel provisions of the Clean Water Act and held that the statute "precludes a court from applying the law of an affected State against an out-of-state source" but permits "a nuisance claim pursuant to the law of the *source* State." 479 U.S. at 494-497. The same is true of the CAA. *See City of New York*, 993 F.3d at 100.

Respondents complain of emissions from all over the planet, not emissions originating in Colorado—yet

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[6] EPA has proposed to rescind its GHG emissions standards for new motor vehicles and engines and has described a number of alternative rationales and pathways for doing so. These include the proposed rescission of EPA's 2009 "endangerment finding," which concluded that GHG emissions from new motor vehicles and engines contribute to air pollution which may endanger public health or welfare within the meaning of section 202 of the Clean Air Act. *See* 90 Fed. Reg. 36,288 (Aug. 1, 2025). Regardless of whether EPA finalizes the proposed rule, and regardless of which rationale or rationales EPA relies on if EPA does so, that potential future action would not affect the points made in this brief. Matters of interstate air quality are not matters on which a single State can apply its own law; and whatever specific rules the federal government may apply in that area, a federal decision *not* to regulate is not an authorization for States to impose their own regulation.

they seek to hold petitioners liable under Colorado law. Such claims are preempted by the CAA's comprehensive regulatory scheme.

II. This Court should grant certiorari now.

This case is one of at least *31* lawsuits filed by state, local, and tribal governments since 2017 that seek competing remedies for overlapping claims alleging harm arising from emissions outside the borders of the plaintiff governments' respective jurisdictions.[7] And

[7] *Cnty. of San Mateo v. Chevron Corp.*, No. 17CIV03222 (Cal. Super. Ct. July 17, 2017); *City of Oakland v. BP p.l.c.*, No. RG17875889 (Cal. Super. Ct. Sept. 19, 2017); *City of Santa Cruz v. Chevron Corp.*, No. 17CV03243 (Cal. Super. Ct. Dec. 20, 2017); *Cnty. of Santa Cruz v. Chevron Corp.*, No. 17CV03242 (Cal. Super. Ct. Dec. 20, 2017); *City of New York v. BP p.l.c.*, No. 18-cv-182 (S.D.N.Y. Jan. 9, 2018); *City of Richmond v. Chevron Corp.*, No. C18-00055 (Cal. Super. Ct. Jan. 22, 2018); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.), Inc.*, No. 2018CV30349 (Colo. Dist. Ct. Apr. 17, 2018); *King Cnty. v. BP p.l.c.*, No. 18-2-11859-0 (Wash. Super. Ct. May 9, 2018); *Rhode Island v. Shell Oil Prods. Co.*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018); *Mayor & City Council of Balt. v. BP p.l.c.*, No. 24-C-18-004219 (Md. Cir. Ct. July 20, 2018); *Massachusetts v. ExxonMobil Corp.*, No. 1984-CV-3333 (Mass. Super. Ct. Oct. 24, 2019); *City & Cnty. of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (Haw. Cir. Ct. Mar. 9, 2020); *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct. June 24, 2020); *Dist. of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 002892 B (D.C. Super. Ct. June 25, 2020); *City of Hoboken v. Exxon Mobil Corp.*, No. HUD-L-003179-20 (N.J. Super. Ct. Sept. 2, 2020); *City of Charleston v. Brabham Oil Co.*, No. 2020-CP-10-03975 (S.C. Ct. Comm. Pleas Sept. 9, 2020); *Connecticut v. Exxon Mobil Corp.*, No. HHDCV206132568S (Conn. Super. Ct. Sept. 14, 2020); *Cnty. of Maui v. Sunoco LP*, No. 2CCV-20-000283 (Haw. Cir. Ct. Oct. 12, 2020); *City of Annapolis v. BP p.l.c.*, No. C-02-CV-21-000250 (Md. Cir. Ct. Feb. 22, 2021); *Anne Arundel Cnty. v. BP p.l.c.*, No. C-02-CV-21-000565 (Md. Cir. Ct. Apr. 26, 2021); *Vermont v. Exxon Mobil Corp.*, No. 21-CV-02778 (Vt. Super. Ct. Sept. 14, 2021); *Municipality of Bayamon v. Exxon Mobil*

two States have now enacted so-called "superfund" statutes that likewise seek to impose liability on energy producers for global greenhouse gas emissions, prompting suits by the Chamber, the United States, and other parties to declare those statutes preempted and unlawful. *See Chamber of Commerce of the U.S.A. v. Moore*, No. 24-cv-1513 (D. Vt.); *Chamber of Commerce of the U.S.A. v. James*, No. 25-cv-1307 (N.D.N.Y.); *United States v. Vermont*, No. 25-cv-463 (D. Vt.); *United States v. New York*, No. 25-cv-3656 (S.D.N.Y.); *West Virginia v. James*, No. 25-cv-168 (N.D.N.Y.).

The collision of state law decisions, and the growth of "conflicting disputes, increasing assertions[,] and proliferating contentions would seem to be inevitable" if these 30-plus actions (and counting) proceed with States and municipalities applying their laws to claims of cross-border pollution originating all over the world. *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted).

The array of state law actions seeking relief under "vague and indeterminate" standards (*Milwaukee II*, 451 U.S. at 317) threatens to seriously (and perhaps

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Corp., No. 22-cv-1550 (D.P.R. Nov. 22, 2022); *Cnty. of Multnomah v. Exxon Mobil Corp.*, No. 23CV25164 (Or. Cir. Ct. June 22, 2023); *People v. Exxon Mobil Corp.*, No. CGC23609134 (Cal. Super. Ct. Sept. 15, 2023); *Municipality of San Juan v. Exxon Mobil Corp.*, No. 23-cv-01608 (D.P.R. Dec. 13, 2023); *Shoalwater Bay Indian Tribe v. Exxon Mobil Corp.*, No. 23-2-25215-2 (Wash. Super. Ct. Dec. 20, 2023); *Makah Indian Tribe v. Exxon Mobil Corp.*, No. 23-2-25216-1 (Wash. Super. Ct. Dec. 20, 2023); *City of Chicago v. BP p.l.c.*, No. 2024CH01024 (Ill. Cir. Ct. Feb. 20, 2024); *Bucks Cnty. v. BP p.l.c.*, No. 2024-01836-0000 (Pa. Comm. Pleas Ct. Mar. 25, 2024); *Maine v. BP p.l.c.*, No. PORSC-CV-24-442 (Me. Super. Ct. Nov. 26, 2024); *Hawaii v. BP p.l.c.*, No. 1CCV-25-717 (Haw. Cir. Ct. May 1, 2025).

irreversibly) undermine the federal government's ability to respond to global climate change. And although the claims thus far have been brought against companies in the energy industry, there seems to be no clear reason why the plaintiffs could not try to sue *any* alleged contributor to global climate change on the same or similar theory, in any state court with personal jurisdiction.

This Court should grant certiorari now to restore the supremacy of federal law, before state courts begin accepting the remedial demands of aggressive local-government plaintiffs and imposing their own professed solutions. Attempts to regulate the entire global climate from local courthouses will only hinder a uniform federal response. If the Court does not act now, the Court may be forced to deal with the issue in a more urgent fashion, potentially on the emergency docket. The Court should resolve this important matter now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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