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 WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED

1. 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.

2. Whether the Court has statutory and Article III jurisdiction to hear this case.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are Suncor Energy (U.S.A.) Inc.; Suncor Energy Sales Inc.; and Exxon Mobil Corporation. Respondents are the County Commissioners of Boulder County and the City of Boulder.

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

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

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

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OPINIONS BELOW

The opinion of the Colorado Supreme Court (Pet. App. 1a-47a) is reported at 586 P.3d 161. The opinion of the trial court (Pet. App. 48a-139a) is unreported but is available at 2024 WL 3204275.

JURISDICTION

The judgment of the Colorado Supreme Court was entered on May 12, 2025. The petition for a writ of certiorari was filed on August 8, 2025, and was granted on February 23, 2026. The jurisdiction of this Court rests on 28 U.S.C. 1257(a). See pp. 15-21, *infra*.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in an appendix to this brief. See App., *infra*, 1a-4a.

STATEMENT

Global climate change is one of the most complex public-policy challenges of our time. It results from the accumulation of greenhouse gases emitted from every State in the Nation and every nation in the world—emissions that cannot be unmixed and traced to their individual sources. Yet respondents—the city of Boulder, Colorado, and the surrounding county—are attempting to address that inherently interstate and international challenge by seeking to impose massive monetary liability through the mechanism of state tort law.

Respondents have brought suit against two of the world's countless fossil-fuel producers seeking to recover damages for past and future harms allegedly caused by global climate change. Respondents' claims are avowedly interstate and international in scope: they contend that petitioners' worldwide production and allegedly deceptive marketing of fossil fuels resulted in consumers' use of fossil fuels around the world, which released interstate and international greenhouse-gas emissions, which combined with all other greenhouse gases in the atmosphere to alter the global climate, which then resulted in localized physical harms in Boulder. According to respondents, state law is competent to regulate the inherently interstate and international issue of global climate change because the combined effect of all of humanity's emissions—only a tiny fraction of which resulted from petitioners' fossil-fuel products—allegedly caused in-state harm.

Respondents are not alone in pursuing that dubious theory. Scores of other state and local governments have brought similar suits, claiming that the production and allegedly deceptive marketing of fossil fuels violated state tort law. As a member of respondents' legal team openly avowed, this coordinated nationwide litigation aims to impose an enormous "carbon tax" that could "bankrupt[]" the energy industry. The requested damages in any one case could reach into the billions. And if claims such as Boulder's are allowed to proceed, every political jurisdiction in the Nation could bring a similar suit against any subset of the world's fossil-fuel producers (with the defendants carefully selected, as here, to keep the suit in state court).

The question presented in this case is whether state law is competent within our federal system to impose potentially crushing monetary liability on a subset of energy producers for localized harms allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate. The answer to that question is no.

Respondents' audacious attempt to use state tort law to address the effects of global climate change is incompatible with the structure of the Constitution. The States surrendered their ability to redress inherently transboundary issues such as global climate change when they agreed to enter the Union. As a consequence, for over a century, the Court fashioned federal rules of decision to resolve claims seeking relief from the effects of interstate air and water pollution, until Congress stepped in to address those issues by statute. The application of federal law to such claims stems from the principles that the States are coequal sovereigns with competing claims to regulate shared natural resources and that States lack the power to regulate conduct beyond their borders. As this

Court has consistently recognized, resorting to a single State's law to resolve an inherently interstate dispute contradicts the basic scheme of the Constitution.

Under the foregoing principles, respondents' state-law claims cannot proceed. Respondents concededly seek relief for injuries allegedly caused by interstate greenhouse-gas emissions. And although Congress displaced the federal common-law rules of decision that formerly governed interstate-pollution claims by enacting the Clean Air Act, that did not invite state law to apply in this area for the first time. Instead, the structure of our constitutional system continues to foreclose resort to state law unless Congress affirmatively authorizes its application. States have no residual or inherent power under our Constitution to regulate in this area, and no federal law authorizes state common-law claims for harms caused by diffuse interstate and international emissions. For those reasons, respondents' claims fail.

The Constitution further forecloses respondents' claims because they necessarily seek relief for harms allegedly caused by greenhouse-gas emissions occurring outside the United States. Claims seeking relief from the effects of international greenhouse-gas emissions interfere with the federal government's extensive diplomatic efforts, which balance the need to address climate change on the international level with other competing foreign and domestic interests. Under the Constitution, the federal government is the Nation's exclusive voice in foreign affairs. State tort law cannot stand in its way.

Finally, by its own force, the Clean Air Act also preempts respondents' claims. The Act establishes a comprehensive statutory scheme for the regulation of air quality across the United States. Respondents' state-law claims undermine that scheme by subverting the primacy

of federal regulation and aggrandizing the limited and defined role afforded to the States.

In short, the Colorado Supreme Court's decision allowing respondents' state-law claims to proceed is incompatible with the structure of our constitutional system, the Clean Air Act, and this Court's precedents. And if the rule in that decision were adopted on a national scale, it would authorize all fifty States, the tens of thousands of municipalities, and even the hundreds of millions of individuals in our country to ask local courts to establish countless, conflicting climate policies for the Nation. Giving even a single jury the power to impose ruinous liability on selected members of the energy industry is a recipe for chaos. Unleashing juries nationwide is a recipe for disaster.

This misuse of the legal system cannot stand. State tort law is not the solution to global climate change. The Colorado Supreme Court's decision should be reversed.

A. Background

1. Petitioner Exxon Mobil Corporation is the Nation's largest energy company; its primary business includes the production and sale of fossil fuels around the world. Petitioners Suncor Energy (U.S.A.) Inc. and Suncor Energy Sales Inc. are indirect subsidiaries of Suncor Energy Inc., a leading Canadian energy company; Suncor operates Colorado's only two oil refineries.

ExxonMobil and Suncor recognize that greenhouse-gas emissions contribute to global climate change; that global climate change is one of society's biggest challenges; and that comprehensive policy responses, balancing risk reduction with affordable energy, are necessary to address those risks. As ExxonMobil has stated, global climate change is "real," and "the challenge is more complex—and the range of solutions more broad—than most

conversations acknowledge." Exxon Mobil Corp., *2026 Advancing Climate Solutions Report* 2 <tinyurl.com/em-climatesolutions2026>. ExxonMobil thus aims to provide "reliable, affordable energy even as [it] lower[s] [greenhouse-gas] emissions." *Ibid.* To that end, ExxonMobil has supported legislation addressing the issue of global climate change, see *id.* at 15; has advocated for innovative, practical policies such as carbon-emissions accounting and product-level carbon-intensity standards, see *id.* at 9, 44-52; and is pursuing approximately $20 billion in lower-emission investments between 2025 and 2030, see Exxon Mobil Corp., *Corporate Plan Update* 18 (Dec. 9, 2025) <tinyurl.com/em-update>.

Like ExxonMobil, Suncor is "fully committed" to "environmental performance," "sustainable development," and "reduc[ing] greenhouse gas emissions." Suncor, *Response to Recent Changes to the Competition Act* (June 2024) <tinyurl.com/suncorresponse>. Suncor believes that it has a "key role to play in helping Canada reduce its greenhouse gas emissions and meet its climate ambitions, while also supporting a vibrant economy, improving environmental performance and providing Canadians with secure access to affordable energy." *Ibid.*

2. Dissatisfied with the climate policy set by the federal government, state and local governments have resorted to the courts in an effort to bring about reductions of greenhouse-gas emissions. They initially focused primarily on car manufacturers and electric-power producers, pursuing claims under federal law for public nuisance resulting from climate change; those claims were uniformly dismissed as not cognizable under federal law. See, *e.g.*, *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 429 (2011); *California* v. *General Motors Corp.*, Civ. No. 06-5755, 2007 WL 2726871, at *17 (N.D. Cal.

Sept. 17, 2007). In recent years, state and local governments have shifted their strategy. They are now targeting private fossil-fuel producers, and they are bringing their claims under state law (rather than federal law) for monetary relief for past and future harms allegedly caused by climate change. And rather than bringing suit in federal court, those governments are now doing so in state court instead, selecting their defendants carefully in a bid to avoid federal diversity jurisdiction. Nearly 60 state and local governments have filed lawsuits such as this one, and more are continuing to do so.

B. Procedural History

1. The plaintiffs in this case (respondents here) are the City of Boulder, Colorado, and the surrounding county. On April 27, 2018, they filed the underlying lawsuit against petitioners in Colorado state court. Respondents claim that petitioners' worldwide conduct has contributed to global climate change, which in turn has caused a variety of harms in Boulder. Specifically, respondents allege that petitioners have "supplied a substantial portion of all fossil fuels used worldwide" and are "the largest sources of [greenhouse-gas] emissions both globally and historically." J.A. 23, 98, 102. According to respondents, petitioners' "unchecked production, promotion, refining, marketing and sale of fossil fuels" throughout the world, "while concealing and/or misrepresenting the dangers associated with fossil fuels' intended use," has "led to unchecked fossil fuel use," resulting in an "unprecedented rapid rise in the concentration of [greenhouse gases] in the atmosphere." J.A. 3. Respondents further allege that petitioners are "continuing their efforts and increasing fossil fuel activities" instead of "bringing emissions under control." J.A. 97-98. The resulting increasing

concentration of greenhouse gases, according to respondents, leads to "warming [of] the atmosphere and oceans" and "alteration of the climate," including rising "global average temperatures." J.A. 3, 34-35, 37.

Respondents allege that the effects of global climate change manifest in "increases in extreme hot summer days and increases in minimum nighttime temperatures, precipitation changes, larger and more frequent wildfires, increased concentrations of ground-level ozone, higher transmission of viruses and disease from insects, altered streamflows, bark beetle outbreaks, ecosystem damage, forest die-off, reduced snowpack, and drought." J.A. 39. Respondents allege that, as a result of the effects of global climate change, they have incurred, and will incur, billions of dollars in property damage, in addition to costs related to mitigation measures and repairs, emergency services, and public-health measures. J.A. 53-83.

Respondents assert state-law claims for public nuisance, private nuisance, trespass, and unjust enrichment, as well as consumer deception in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1), and a derivative claim for civil conspiracy. J.A. 112-136. Each of respondents' claims is premised on the same basic theory of liability: petitioners "altered the climate by selling fossil fuels at levels [they] knew would bring numerous and catastrophic injuries to Colorado, and by misleading the public about the consequences of unfettered fossil fuel use to maintain demand for their products." Resp. Colo. S. Ct. Br. 1. Respondents seek to recoup "billions of dollars" from petitioners for past and future climate-change harms. J.A. 1-3, 114, 136-137.

2. Petitioners removed this case to federal court, but the district court granted respondents' motion to remand. 405 F. Supp. 3d 947 (D. Colo. 2019). On appeal, the Tenth Circuit initially affirmed. 965 F.3d 792 (2020). After this

Court's decision in *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230 (2021), the Court granted certiorari, vacated the Tenth Circuit's decision, and remanded for further consideration. 141 S. Ct. 2667 (2021). The Tenth Circuit again affirmed, 25 F.4th 1238 (2022), and this Court denied certiorari, 143 S. Ct. 1795 (2023).

3. Petitioners moved to dismiss the amended complaint, arguing in relevant part that federal law forecloses state-law claims seeking relief for injuries allegedly caused by the effects of global greenhouse-gas emissions on the global climate. The trial court denied petitioners' motion in relevant part, holding that federal law did not foreclose respondents' claims. Pet. App. 87a-115a. (The trial court did dismiss respondents' statutory consumer-deception claim for failure to state a claim, *id.* at 133a-136a, and that claim is no longer in the case.)

4. ExxonMobil then petitioned the Colorado Supreme Court for "an order to show cause," Pet. App. 7a, invoking that court's "original jurisdiction" to exercise "general superintending authority" over the trial court. Colo. App. R. 21(a)(1). Suncor joined that request.

The Colorado Supreme Court granted the petition and issued the order to show cause. J.A. 141-142. In the order, the Colorado Supreme Court directed respondents and the state trial court to answer "[w]hether the district court erroneously concluded that [Boulder's] claims could proceed under state law." *Ibid.* Respondents and the trial court answered the order to show cause independently and were represented by separate counsel.

5. Following briefing and oral argument, the Colorado Supreme Court discharged the order to show cause and remanded to the trial court for further proceedings, holding that federal law did not foreclose respondents' claims. Pet. App. 1a-25a.

a. The Colorado Supreme Court first concluded that, because the Clean Air Act displaced the federal common law that previously governed claims concerning interstate air pollution, federal common law played no role in assessing whether federal law forecloses respondents' claims. Pet. App. 9a-11a. The Colorado Supreme Court acknowledged this Court's holding that federal common law governs "interstate and international disputes implicating the conflicting rights of states or the United States's relations with foreign nations." *Id.* at 9a (citing *American Electric Power*, 564 U.S. at 421). But because the Clean Air Act displaced federal common law, the court conducted a more limited inquiry into "whether the [Clean Air Act] preempts [respondents'] claims." *Id.* at 11a.

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

The Colorado Supreme Court proceeded to hold that the Clean Air Act did not preempt respondents' claims. Pet. App. 11a-16a. Applying the presumption against preemption, the court reasoned that respondents' claims were not subject to either field preemption or conflict preemption. *Id.* at 13a-15a.

Finally, the Colorado Supreme Court concluded that respondents' claims could proceed despite their reliance on international emissions. Pet. App. 22a-24a. Because the court determined that respondents' claims "involve areas of traditional state responsibility" and do not seek

to regulate greenhouse-gas emissions, it held that respondents' claims did not intrude on or conflict with any federal power over foreign policy and accordingly were not preempted. *Id.* at 24a.

b. Justice Samour, joined by Justice Boatright, dissented. Pet. App. 25a-47a. In his view, before the Clean Air Act, "federal common law conflicted with[] and precluded state-law claims to redress interstate pollution," *id.* at 31a, and respondents' claims closely resembled those precluded claims, *id.* at 34a. As a result, rather than applying "ordinary statutory preemption," Justice Samour explained that "the appropriate inquiry with respect to the interstate aspect of [respondents'] claims is whether the [Clean Air Act] affirmatively authorizes them," which "it does not." *Id.* at 26a-27a. Finally, because respondents' claims implicate greenhouse-gas emissions occurring outside the United States, Justice Samour concluded that the claims were preempted under the doctrine of foreign-affairs preemption, because the claims would "imped[e]" the federal government's judgment on addressing air pollution "in the international sphere." *Id.* at 43a, 45a.

SUMMARY OF ARGUMENT

The question presented in the petition for certiorari is 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. When granting certiorari, the Court directed the parties to brief the additional question whether the Court has jurisdiction to hear this case. The answer to both questions is yes.

I. The Court has statutory and constitutional jurisdiction to hear this case.

A. The Colorado Supreme Court's decision constitutes a final judgment reviewable under 28 U.S.C. 1257(a) because it terminated a self-contained original proceeding in Colorado's court of last resort. In *Atlantic Richfield Co.* v. *Christian*, 590 U.S. 1 (2020), the Court held that such a self-contained proceeding is "final" for purposes of Section 1257(a). Colorado law makes clear that the show-cause proceeding before the Colorado Supreme Court was an original proceeding. In the alternative, the Colorado Supreme Court's decision should be treated as "final" for purposes of Section 1257(a) because it falls within the fourth category of cases identified in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975).

B. This Court also has Article III jurisdiction over the case because petitioners have Article III standing to invoke the Court's authority. The decision below rejected petitioners' federal defense and will constitute binding precedent in climate lawsuits pending in Colorado state courts; as a result, it finally determines petitioners' federal rights and subjects them to the risk of adverse consequences that would not occur if petitioners had prevailed. The decision below will also force petitioners to incur monetary costs as a result of being forced to continue defending these lawsuits. Such consequences, flowing from the adverse decision below and redressable by a favorable decision from this Court, easily provide petitioners with Article III standing to seek this Court's review.

II. On the merits, federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate greenhouse-gas emissions on the global climate.

A. As the Court has long recognized, there are certain areas in which state law cannot apply to resolve contro-

versies in our Nation's federal system. Claims seeking relief for the effects of global climate change fall within one of those areas.

The application of federal law to those claims results from our constitutional structure. Under the foundational principle of equal sovereignty, the Constitution limits the powers that the States previously enjoyed as independent sovereigns. As a result of that principle, States cannot apply their laws in certain areas. A closely related principle is that a State cannot extend its law to regulate conduct beyond its borders.

Consistent with those principles, this Court has long held that federal law governs disputes over the regulation of air and water in their ambient or interstate aspects. And the structure of the Constitution explains those decisions. Because air and water are shared natural resources that flow without concern for political borders, the States each have their own potentially conflicting interests. By joining the Union, the States surrendered their right to resolve those conflicts by resort to their own law in lieu of a neutral, uniform federal law. The need for uniform federal law is even greater in the context of global climate change, where any claim necessarily implicates emissions released from countless sources spread across every State in the Nation—and indeed every nation in the world.

B. The enactment of the Clean Air Act reinforces that federal-state balance. In the absence of an applicable act of Congress, this Court applied federal common law to disputes over interstate pollution. Congress's enactment of the Clean Air Act, which replaced that federal common law with a comprehensive statutory scheme, did not authorize state law to reach interstate emissions. Those controversies remain inherently federal. If state law could not constitutionally apply before the enactment of the Clean Air Act, it necessarily follows that state law remains

inapplicable unless Congress expressly authorizes it. But nothing in the Clean Air Act authorizes state common-law claims seeking relief for the effects of emissions emanating from other States.

C. Respondents seek to apply Colorado law to the inherently federal area of interstate emissions. Respondents' claims are premised on greenhouse-gas emissions occurring worldwide. The fact that the claims target producers of fossil fuels, rather than emitters of greenhouse gases, does not allow them to sidestep the application of federal law. Regardless of the choice of defendant, the gravamen of respondents' claims is that some marginal increase in global greenhouse-gas emissions attributable to petitioners' conduct caused them harm. Those claims thus fall squarely within the inherently federal area of interstate-pollution disputes and are presumptively foreclosed by federal law.

III. Respondents' state-law claims also cannot proceed for the independent reason that such claims would undermine the federal government's exclusive control over foreign affairs. For decades, the federal government has addressed climate change by carefully balancing mitigating the risks of climate change with satisfying domestic and global energy needs. Allowing state and local governments to seek liability for greenhouse-gas emissions released abroad would directly undermine the federal government's efforts to handle this quintessentially global challenge. Such lawsuits would create an end-run around the United States' existing diplomatic channels for addressing climate change in favor of innumerable state judicial ones. And the imposition of potentially devastating liability on fossil-fuel producers will undercut the government's pursuit of primacy in global energy production.

The Constitution's allocation of foreign-affairs powers exclusively to the federal government thus forecloses respondents' claims.

IV. Independent of the Constitution's structural division of powers between the state and federal governments, the Clean Air Act preempts respondents' state-law claims of its own accord. The Clean Air Act establishes a comprehensive statutory scheme for the regulation of air quality across the United States. That scheme directs the Environmental Protection Agency to be the first decider of the Nation's emissions standards and defines a circumscribed role for the States. Respondents' state-law claims thus intrude upon a field dominated by Congress and undermine the Act's regulatory structure and purpose by seeking to apply Colorado law to redress harms caused by out-of-state emissions.

The Colorado Supreme Court's determination that respondents' state-law claims could proceed was erroneous. Its judgment should be reversed.

ARGUMENT

I. THE COURT HAS STATUTORY AND CONSTITUTIONAL JURISDICTION OVER THIS CASE

A. The Court Has Jurisdiction Under 28 U.S.C. 1257(a)

Section 1257(a) provides that the Court may review by writ of certiorari "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had," where the state-court judgment sufficiently depends on the resolution of a question of federal law. See *Hawaii* v. *Office of Hawaiian Affairs*, 556 U.S. 163, 171-172 (2009). Respondents concede that the decision below was issued by Colorado's highest court on an issue of federal law. See Br. in Opp. 6-7. The only question is whether the decision below was "final" for purposes of Section 1257(a). It was, for two independent reasons.

First, this case arises from a final determination of the Colorado Supreme Court in an original proceeding. *Second*, this case falls within the fourth category of cases identified in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975).

1. The Colorado Supreme Court's decision was "final" for purposes of Section 1257(a) because it terminated a self-contained original proceeding in Colorado's court of last resort.

a. The Court's decision in *Atlantic Richfield Co.* v. *Christian*, 590 U.S. 1 (2020), is directly on point. In that case, the Montana Supreme Court granted a supervisory writ to review a trial court's order denying summary judgment; it ultimately affirmed the order and remanded for the case to continue. See *Atlantic Richfield Co.* v. *Montana Second Judicial District Court*, 408 P.3d 515, 517, 523 (Mont. 2017). This Court held that the Montana Supreme Court's decision was "final" for purposes of Section 1257(a) because, "[u]nder Montana law, a supervisory writ proceeding is a self-contained case, not an interlocutory appeal." *Atlantic Richfield*, 590 U.S. at 12. That was true even though the Montana Supreme Court conducted de novo review of the denial of summary judgment and disposed of the action by remanding to the trial court for further proceedings. See 408 P.3d at 518, 523. The Court emphasized that finality is determined by "the nature of the [state-court] proceeding, not the issues the state court reviewed." 590 U.S. at 12.

Atlantic Richfield does not stand alone. In numerous cases, the Court has held that, when a state's highest court entertains an original writ proceeding, the petition initiates a separate case, and the court's ensuing decision is final for purposes of this Court's review. See, *e.g.*, *Fisher* v. *District Court*, 424 U.S. 382, 385 n.7 (1976); *Detroit & Mackinac Railway Co.* v. *Michigan Railroad*

Commission, 240 U.S. 564, 570-571 (1916); Stephen M. Shapiro et al., *Supreme Court Practice* § 3.8 (11th ed. 2019) (collecting additional cases).

b. The foregoing precedents confirm the Court's statutory jurisdiction over this case. In the proceeding below, petitioners filed a petition in the Colorado Supreme Court for an order to show cause under Colorado Appellate Rule 21, seeking, as is relevant here, an order reversing the district court's determination that federal law did not foreclose respondents' claims. See Colo. S. Ct. Pet. 5. The Colorado Supreme Court issued an order and rule to show cause to respondents and the state trial court why the relief in the petition should not be granted. See J.A. 141-142. And after holding that federal law did not foreclose respondents' claims, the Colorado Supreme Court discharged the order to show cause. See Pet. App. 24a.

Under Colorado law, a proceeding under Colorado Appellate Rule 21 constitutes a self-contained original proceeding before the Colorado Supreme Court. Rule 21 is entitled "Original Proceedings in the Supreme Court," and the filing of a petition under Rule 21 "[i]nitiat[es] an original proceeding" in the Colorado Supreme Court. Colo. App. R. 21(b). The rule applies where the Colorado Supreme Court is exercising its constitutional authority to issue "original and remedial writs," such as writs of mandamus, and its "general superintending control over all inferior courts" in Colorado. Colo. Const. Art. VI, §§ 2-3; see Colo. App. R. 21(a)(1).

Other aspects of Rule 21 support the conclusion that a proceeding under that rule is a self-contained original proceeding. The trial court itself may be named as a respondent—as occurred here. Colo. App. R. 21(e)(1); see J.A. 141-142. Upon the issuance of an order to show cause, any related proceedings are stayed "until final determination of the original proceeding in the supreme court." Colo.

App. R. 21(h)(2). And at the end of a Rule 21 proceeding, the Colorado Supreme Court "in its discretion may discharge the order or make it absolute, in whole or in part." Colo. App. R. 21(*o*). An order to show cause is thus "extraordinary in nature," Colo. App. R. 21(a)(2); is available only when an "appeal" is not, *ibid.*; and, "if granted, takes the form of a special mandate from the court," Anne Whalen Gill, *Colorado Appellate Law & Practice* § 15:1, at 246 (3d ed. 2018).

Unsurprisingly, the Colorado Supreme Court has repeatedly characterized proceedings under Rule 21 as "original proceedings"—including in the decision below. See, *e.g.*, Pet. App. 7a; *People ex rel. T.T.*, 442 P.3d 851, 853, 855-856 (2019); *Fognani* v. *Young*, 115 P.3d 1268, 1271 (2005); *People* v. *District Court*, 664 P.2d 247, 251 (1983). And it has explained that it can properly invoke "its supervisory powers by means of [its] original jurisdiction" even where "an error by the trial court, acting within its jurisdiction, may later be corrected on appeal." *Cameron* v. *District Court*, 565 P.2d 925, 928 (Colo. 1977).

It is well settled that this Court will not "second-guess" a state court's "characterization of state law" regarding the nature of a state-court proceeding. *McKinney* v. *Arizona*, 589 U.S. 139, 146 (2020); see *Atlantic Richfield*, 590 U.S. at 12; *Bandini Petroleum Co.* v. *Superior Court*, 284 U.S. 8, 14-15 (1931). There is no question under Colorado law that a Rule 21 proceeding is a self-contained original proceeding before the Colorado Supreme Court. Accordingly, the decision below discharging the order to show cause constitutes a "final judgment" reviewable by this Court under Section 1257(a). See *Atlantic Richfield*, 590 U.S. at 12.

2. In the alternative, the Colorado Supreme Court's decision should be treated as "final" for purposes of Section 1257(a) because it falls within the fourth category of

cases identified in *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975). The Colorado Supreme Court finally decided the question of federal preclusion; reversal of that decision would terminate the underlying litigation; and the failure to review the decision now would seriously erode federal policies. See *id.* at 482-483. Indeed, the Court has routinely exercised its statutory jurisdiction to review cases arising in a similar posture presenting ordinary questions of federal preemption. See, *e.g.*, *Coventry Health Care of Missouri, Inc.* v. *Nevils*, 581 U.S. 87, 92-94 (2017); *Dan's City Used Cars, Inc.* v. *Pelkey*, 569 U.S. 251, 259 (2013).

Jurisdiction under *Cox* is appropriate even though petitioners raised additional federal defenses below. This Court has never treated the possibility of additional *federal* defenses as a bar to jurisdiction under *Cox*'s fourth category. See *Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 54-57 (1989); *id.* at 69 (O'Connor, J., concurring in part and dissenting in part). Instead, the Court requires that the petitioner "might prevail on the merits on *non-federal* grounds," such that future review of the federal issue by the Court would be "render[ed] unnecessary." *Cox*, 420 U.S. at 482 (emphasis added). That is the case here, and jurisdiction thus exists under *Cox* as well.

B. The Court Has Jurisdiction Under Article III Of The Constitution

When a party seeks this Court's review of a lower court's decision, the Court's Article III jurisdiction depends on the petitioner's standing to invoke the Court's authority. See, *e.g.*, *Food Marketing Institute* v. *Argus Leader Media*, 588 U.S. 427, 432-433 (2019). The Court can thus review a lower court's judgment whenever the petitioner suffered an "actual or imminent injury" that is

"fairly traceable" to the judgment and that could be "redress[ed] by a favorable ruling." *Ibid.* (citation omitted). That remains true even in a case arising from state court in which the *plaintiff* would have lacked Article III standing to file suit in federal court in the first instance. See *ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 618 (1989).

Here, petitioners plainly have Article III standing to invoke the Court's jurisdiction. In the original proceeding below, the Colorado Supreme Court issued a decision holding that federal law did not foreclose state-law claims against petitioners seeking redress for injuries allegedly caused by global climate change. See Pet. App. 24a. That decision constitutes binding precedent in Colorado state court that will preclude petitioners' federal defense both in the underlying case and in other climate lawsuits pending in Colorado. See *Board of County Commissioners of San Miguel County* v. *Suncor Energy (U.S.A.) Inc.*, No. 21-CV-150 (Colo. Dist. Ct. Denver Cnty.). The decision below thus finally determines petitioners' federal rights and subjects petitioners to adverse consequences that would not occur if petitioners had prevailed. Such an adverse "adjudication of legal rights" constitutes the "kind of injury cognizable in this Court." *ASARCO*, 490 U.S. at 618; see *Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176, 182 (2019); *Camreta* v. *Greene*, 563 U.S. 692, 701-702 (2011).

The decision below will also force petitioners to incur monetary costs that would not have arisen if petitioners had prevailed. As a result of the decision below, petitioners will be forced to continue litigating in Colorado state court, rather than having those lawsuits dismissed. That will cause petitioners to suffer a classic pocketbook injury. See *Tyler* v. *Hennepin County*, 598 U.S. 631, 636 (2023).

Those forms of injury explain why this Court has routinely heard cases to decide a purely legal question on an interlocutory basis where the losing party could still have

prevailed on some other ground later in litigation. See, *e.g.*, *Warner Chappell Music, Inc.* v. *Nealy*, 601 U.S. 366, 370-371 (2024); *Health & Hospital Corp. of Marion County* v. *Talevski*, 599 U.S. 166, 174 (2023); *Houston Community College System* v. *Wilson*, 595 U.S. 468, 473 (2022). The litigation consequences that flow from an adverse ruling on a legal question constitute an injury sufficient for the losing party to seek appellate review.

The causation and redressability requirements for Article III standing are readily satisfied as well. Petitioners' injuries were caused by the Colorado Supreme Court's adverse decision. And because that decision is what petitioners "challenge on appeal," petitioners' injuries "would be redressed by a favorable ruling from this Court." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 150 (2010). Petitioners thus have Article III standing to seek the Court's review.

II. THE CONSTITUTION PRECLUDES STATE-LAW CLAIMS SEEKING RELIEF FOR INJURIES ALLEGEDLY CAUSED BY INTERSTATE GREENHOUSE-GAS EMISSIONS

Respondents are attempting to impose liability on petitioners under state law for injuries allegedly caused by the effects of interstate greenhouse-gas emissions on the global climate. State law is not competent to govern those claims. The Court has long held that interstate pollution is an inherently federal area in which state law cannot govern. That rule arises from the fundamental structure of the Constitution, which limits a State's ability to regulate air and water in their ambient aspects. Although the Clean Air Act displaced the federal common law that formerly governed claims seeking relief for injuries from interstate emissions, Congress did not thereby authorize state law to provide relief in its place. Respondents' state-law claims thus cannot proceed.

A. The Structure Of The Constitution Does Not Allow The Law Of A Single State To Govern Claims Concerning Interstate Emissions

Although state law is presumptively competent to govern most issues in our federal system, there are certain areas in which "our federal system does not permit the controversy to be resolved under state law." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). For more than a century, this Court has recognized that disputes arising from injuries caused by interstate pollution are "meet for federal law governance" and that applying "the law of a particular State would be inappropriate." *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 422 (2011). That rule follows from "the Constitution's structure and the principles of sovereignty and comity it embraces." *National Pork Producers Council* v. *Ross*, 598 U.S. 356, 376 (2023) (internal quotation marks and citation omitted).

1. On July 4, 1776, the Colonies declared themselves to be "Free and Independent States." Declaration of Independence ¶ 4. And after independence, the States initially "considered themselves fully sovereign nations." *Franchise Tax Board* v. *Hyatt*, 587 U.S. 230, 237 (2019). Under international law, the States were "entitled" to "all the rights and powers of sovereign states," *id.* at 328 (citation omitted), including the powers to "declare war, make peace, [and] contract alliances" to resolve disputes among themselves and with foreign nations, *Rhode Island* v. *Massachusetts*, 37 U.S. (12 Pet.) 657, 737, 743 (1838).

Upon ratification of the Constitution, however, the States were "no longer fully independent nations" and "no longer relate[d] to each other solely as foreign sovereigns." *Hyatt*, 587 U.S. at 245-246. Instead, the Framers created a new "perpetual Union," *id.* at 246, in which the States operated within a single federal system governed

by a "new National Government," *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779, 803 (1995). The Constitution was intended to provide a framework for the maintenance of good relations among the various states of the Union and their competing interests—a framework the Articles of Confederation did not supply. See 1 Joseph Story, *Commentaries on the Constitution of the United States* 179-180 (4th ed. 1873).

2. Under the structure of the Constitution, the States surrendered certain powers that they previously enjoyed as independent sovereigns. For example, the Constitution limited state power to enter into treaties, coin money, or engage in war. See U.S. Const. Art. I, § 10. The Constitution also expressly mandated that federal law would reign supreme over state law in the event of a conflict. See U.S. Const. Art. VI, cl. 2; *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 82 (1824).

Other limitations were "not spelled out in the Constitution" but were "nevertheless implicit in its structure." *Hyatt*, 587 U.S. at 247. Many of those limits arise from the "fundamental principle of equal sovereignty among the States." *Id.* at 246 (quoting *Shelby County* v. *Holder*, 570 U.S. 529, 544 (2013)) (emphasis omitted). As the Court has explained, our Nation "was and is a union of States, equal in power, dignity and authority." *Coyle* v. *Smith*, 221 U.S. 559, 567 (1911). "The Constitution affirmatively altered the relationships between the States," *Hyatt*, 587 U.S. at 245, ensuring that each State would "stand[] on the same level with all the rest," *Kansas* v. *Colorado*, 206 U.S. 46, 97 (1907), with no State having more sovereign power than another, see *Coyle*, 221 U.S. at 573.

Flowing from each State's equal sovereignty are "certain constitutional limitations on the sovereignty of all of

its sister States." *Hyatt*, 587 U.S. at 245 (internal quotation marks and citation omitted). Put differently, the "relation of the [S]tates to each other in the Federal Union" creates certain "limits" on "state power." *Burnet* v. *Brooks*, 288 U.S. 378, 401 (1933). Recently, for example, the Court has held that, as a matter of "constitutional design," every State is shielded from private suits not only in its own courts but also in the courts of other States. *Hyatt*, 587 U.S. at 245, 249.

Closely related to the principle of equal sovereignty is the principle that a State is "without power to exercise 'extra territorial jurisdiction,' that is, to regulate and control activities wholly beyond its boundaries." *Watson* v. *Employers Liability Assurance Corp.*, 348 U.S. 66, 70 (1954); see *Bonaparte* v. *Tax Court*, 104 U.S. 592, 594 (1882); *United States* v. *Bevans*, 16 U.S. (3 Wheat.) 336, 387 (1818). While each State has "exclusive jurisdiction and sovereignty over persons and property within its territory," *Brown* v. *Fletcher's Estate*, 210 U.S. 82, 89 (1908), that authority is "bounded by the States' respective borders," *Fuld* v. *Palestine Liberation Organization*, 606 U.S. 1, 14 (2025). Under the extraterritoriality principle, "each State alone" can determine what conduct to permit or punish within its borders. *State Farm Mutual Automobile Insurance Co.* v. *Campbell*, 538 U.S. 408, 422 (2003). And no State can "impose its own policy choice[s] on other States." *BMW of North America, Inc.* v. *Gore*, 517 U.S. 559, 571 & n.16 (1996).

3. For over a century, this Court has applied federal rules of decision to disputes concerning injuries allegedly caused by interstate air and water pollution.

The first such case was *Missouri* v. *Illinois*, 200 U.S. 496 (1906). There, the Court considered an action against the State of Illinois to enjoin the City of Chicago from discharging untreated sewage into an interstate river. See

id. at 519. Since Congress had not created law to govern such claims, the Court concluded that it must craft a federal rule of decision, explaining that it "must follow and apply [federal] rules even if legislation of one or both of the states seems to stand in the way." *Id.* at 520.

Shortly after *Missouri*, the Court applied federal common law to a claim seeking abatement of the discharge of noxious gases in Tennessee that were causing damage in Georgia. See *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 236 (1907). Other early cases concerning harms from interstate pollution followed the same pattern. See *New York* v. *New Jersey*, 256 U.S. 296, 301-302 (1921); *North Dakota* v. *Minnesota*, 263 U.S. 365, 373-374 (1923); *New Jersey* v. *New York*, 283 U.S. 473, 483 (1931).

The Court again addressed the source of law governing interstate-pollution disputes—and made clear that the principle extended beyond original-jurisdiction disputes between States—in *Illinois* v. *City of Milwaukee*, 406 U.S. 91 (1972) (*Milwaukee I*). There, the Court held that an action to abate the discharge of the City of Milwaukee's sewage into Lake Michigan arose under the "laws of the United States" within the meaning of a federal district court's jurisdiction under 28 U.S.C. 1331(a). See *id.* at 99-100. Relying on *Tennessee Copper*, the Court explained that federal law applies because "the States by their union made the forcible abatement of outside nuisances impossible to each." *Id.* at 104 (quoting 206 U.S. at 237). Consistent with that constitutional design, federal common law applied not because any act of Congress governed the issue, but because there was "an overriding federal interest in the need for a uniform rule of decision" and "the controversy touche[d] basic interests of federalism." *Id.* at 105 n.6. The Court reiterated the point nearly a decade later, stating that the only reason the federal common law of interstate pollution existed after *Erie Railroad Co.* v.

Tompkins, 304 U.S. 64 (1938), was "because state law cannot be used." *City of Milwaukee* v. *Illinois*, 451 U.S. 304 313 n.7 (1981). As the Court stated in *International Paper Co.* v. *Ouellette*, 479 U.S. 481 (1987), "the regulation of interstate water pollution is a matter of federal, not state law." *Id.* at 488. Applying varying state laws would result in "an irrational system of regulation" and "lead to chaotic confrontation between sovereign states." *Id.* at 496-497 (citation omitted).

Most recently, in *American Electric Power*, the Court reaffirmed the principle that federal law applies to disputes involving interstate pollution. There, the plaintiffs asserted nuisance claims under federal common law seeking the abatement of carbon-dioxide emissions by fossil-fuel-fired powerplants located in other States. See 564 U.S. at 418. In deciding whether those claims could proceed, the Court reiterated that "borrowing the law of a particular State" to govern climate-change disputes concerning interstate air pollution would be "inappropriate." *Id.* at 422. Instead, "air and water in their ambient or interstate aspects" are "meet for federal law governance." *Id.* at 421-422 (citation omitted). In the absence of a federal statutory rule of decision, the Court explained, the "specialized federal common law" that remains after *Erie* governs such disputes. *Id.* at 421. That "'new' federal common law addresses 'subjects within national legislative power where Congress has so directed' or where the basic scheme of the Constitution so demands." *Ibid.* (quoting Henry J. Friendly, *In Praise of 'Erie'—And of the New Federal Common Law*, 39 N.Y.U. L. Rev. 383, 408 n.119, 421-422 (1964)).

4. The structure of the Constitution explains why the Court has long held that federal law necessarily and exclusively governs interstate-pollution disputes.

Air and water are "ambient," *American Electric Power*, 564 U.S. at 422, in the sense that they exist in nature and flow based on natural forces, without human intervention and without concern for political boundaries. As a result, pollution from a single source can readily flow from one State to another. See *EPA* v. *EME Homer City Generation, L.P.*, 572 U.S. 489, 495 (2014).

The ambient nature of air and water gives rise to equal-sovereignty and extraterritoriality problems if one particular State's law is allowed to govern disputes concerning injuries from interstate air and water pollution. In the context of air pollution, the "downwind" State—the one where the alleged injury occurred—cannot apply its law beyond its borders to regulate a source of pollution in the "upwind" State. The emitting source is simply releasing emissions inside the upwind State that are naturally carried downwind; it does not engage in any conduct in, or directed toward, the second State. At the same time, it is "fair and reasonable" for the downwind State to demand that "the air over its territory should not be polluted on a great scale." *Tennessee Copper*, 206 U.S. at 238. To allow the upwind State's law to dictate the downwind State's remedy would infringe the downwind State's legitimate sovereign interest.

Considered in light of the constitutional principles discussed above, the cases applying federal law to disputes concerning harms from interstate air and water pollution make perfect sense. By joining the Union, the States surrendered many of their traditional tools to address the problem of interstate pollution. The Constitution prohibits a State from applying its law beyond its borders, and federal law provides a neutral source of law under which to resolve the controversy. Under the Constitution, therefore, States have always lacked the authority to regulate interstate pollution.

5. The need for the application of uniform federal law is especially acute in the context of global climate change. As the Court has explained, "[g]reenhouse gases once emitted become well mixed in the atmosphere," such that "emissions in New Jersey may contribute no more to [climate-related effects] in New York than emissions in China." *American Electric Power*, 564 U.S. at 422 (internal quotation marks and citation omitted). As a result, any claim seeking relief for injuries allegedly caused by the effects of greenhouse-gas emissions on the global climate necessarily implicates emissions released from countless sources spread across every State and indeed every jurisdiction around the world. Greenhouse gases in the atmosphere cannot be unmixed and traced to their sources in particular States or countries. And if all fifty States were permitted to apply their divergent laws to global greenhouse-gas emissions and their concentration in the atmosphere, "[t]he confusion resulting from such a practice would be endless." *Sturges* v. *Crowninshield*, 17 U.S. (4 Wheat.) 122, 193 (1819). Indeed, this confusion is already occurring: while some States and municipalities (like respondents) are seeking to use state law to pursue climate-change claims, other States are seeking to protect fossil-fuel producers from those claims. See, *e.g.*, Iowa Code § 673B.2 (2026); Okla. S.B. 1439, § 1(C)(1), (D)(1) (2026 Reg. Sess.); Utah H.B. 222, § 1(2)(a) (2026 Gen. Sess.).

In disputes stemming from climate change, where States have "conflicting rights," no State is permitted to "supply [the] rules of decision." *Hyatt*, 587 U.S. at 246 (citation omitted). Put simply, "our federal system does not permit the controversy to be resolved under state law," because "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Industries*, 451 U.S. at 641. Instead,

"[f]ederal rules of law" must govern. *Hyatt*, 587 U.S. at 246 (internal quotation marks and citation omitted). The "need for a uniform rule of decision" is all the greater because climate change affects *every* State—not just an "upwind" and a "downwind" State, as in a classic case of interstate pollution. *Milwaukee I*, 406 U.S. at 105 n.6.

B. The Clean Air Act Reinforces The Constitutional Rule That States Lack Authority To Regulate Out-Of-State Emissions

In *American Electric Power*, the Court held that Congress's enactment of the Clean Air Act displaced the federal common-law rules of decision that formerly governed disputes concerning harm from interstate air pollution. See 564 U.S. at 424. The Clean Air Act does not authorize the application of state law to disputes concerning interstate pollution. It is a comprehensive statutory scheme that is consistent with the allocation of federal-state authority under the structure of the Constitution.

1. By displacing the federal common law of interstate pollution, Congress did not authorize state law to apply in its place.

a. As just explained, the Court's precedents applying federal common law to interstate-pollution disputes are rooted in structural constitutional principles. See pp. 22-29, *supra*. Even where Congress has acted to displace the federal-common-law rules of decision that previously applied to those disputes, those controversies remain interstate conflicts to which the application of an affected State's law would be inappropriate. Put simply, congressional displacement of federal common law "does nothing to undermine" the "reasons * * * for resorting to federal common law" in the first place. *Illinois* v. *City of Milwaukee*, 731 F.2d 403, 410 (7th Cir. 1984).

If state law could not be applied before the enactment of the Clean Air Act, it thus follows that state law remains

inapplicable unless the Clean Air Act affirmatively authorizes it. Both before and after the Clean Air Act's enactment, the Constitution rendered state law inapplicable to interstate air-pollution disputes.

That conclusion is not a novel one. The Court has repeatedly recognized that there is no need to apply the presumption against preemption when state law seeks to operate in areas of inherent federal authority. See *Parker Drilling Management Services, Ltd.* v. *Newton*, 587 U.S. 601, 610 (2019); *Buckman Co.* v. *Plaintiffs' Legal Committee*, 531 U.S. 341, 347-348 (2001); *United States* v. *Locke*, 529 U.S. 89, 108 (2000). A traditional preemption analysis—one that looks for affirmative congressional intent to preempt state law, rather than affirmative congressional intent to authorize it—is applicable "only where the overlapping, dual jurisdiction of the [f]ederal and [s]tate [g]overnments makes it necessary to decide which law takes precedence." *Parker Drilling*, 587 U.S. at 610. But where the issue is "distinctively federal in character," there is no need for "affirmative action" from Congress to foreclose the application of state law. *United States* v. *Standard Oil Co.*, 332 U.S. 301, 305-306, 306 n.8 (1947). Such matters are "neither primarily one of state interest nor exclusively for determination by state law," "quite apart from any positive action by Congress." *Id.* at 307.

If Congress wishes to disturb the application of federal law to interstate-pollution disputes, it must clearly express its intention to do so. As this Court has repeatedly reiterated, when Congress "significantly alter[s] the balance between federal and state power," it must do so with "exceedingly clear language." *United States Forest Service* v. *Cowpasture River Preservation Association*, 590 U.S. 604, 621-622 (2020); see *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 180 (1988); *Williams* v. *Lee*, 358

U.S. 217, 220-221 (1959). The lack of any affirmative action to preempt state law reflects the settled principle that States already lacked the authority to apply their laws to interstate-pollution disputes. See *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 387-388 (2000).

A contrary rule would make little sense. Before the enactment of the Clean Air Act, Colorado had no power to regulate interstate emissions. In the Clean Air Act, Congress decided to fill the void by enacting a scheme that places exclusive responsibility with EPA and upwind States to control sources of emissions. Respondents' position is that, because Congress stepped in to fill that void, every State and municipality in the country suddenly obtained power that they never previously possessed to regulate interstate emissions—even though Congress took no affirmative action to authorize state law to govern. As one court has aptly put it, that result is "too strange to seriously contemplate." *City of New York* v. *Chevron*, 993 F.3d 81, 98-99 (2d Cir. 2021).

b. This Court's decisions in *Ouellette* and *American Electric Power* confirm that state-law claims seeking relief for injuries allegedly caused by interstate emissions are available only to the extent authorized by Congress.

Ouellette demonstrates that, to the extent state law can apply in an area formerly governed by federal common law, it is only to the extent affirmatively authorized by Congress. There, a group of lakefront property owners in Vermont sued a paper mill operating on the opposite side of Lake Champlain in New York. See 479 U.S. at 483-484. The property owners asserted a nuisance claim under Vermont law for the alleged effects of pollution dumped into the lake by the New York paper mill. See *id.* at 484. In light of the "pervasive regulation" of the Clean Water Act and "the fact that the control of interstate pollution is primarily a matter of federal law," the Court held

that the only permissible state-law actions seeking relief for interstate water pollution are "those specifically preserved by the [Clean Water] Act." *Id.* at 492 (citation omitted). The Court proceeded to analyze the Clean Water Act and concluded that it did not authorize resort to any State's law except the law of the State in which the source of the pollution was located. See *id.* at 487-498. The Vermont plaintiffs thus could not seek relief under Vermont law for alleged harms caused by the New York mill.

American Electric Power confirms that the same framework should apply under the Clean Air Act. There, the Court addressed the effect of the Clean Air Act on preexisting federal common law governing air pollution. The Court held that the Act displaced those claims, because the Act authorized EPA to regulate carbon-dioxide emissions from stationary sources such as powerplants. See 564 U.S. at 424-425. Critically, the Court then remanded the case for consideration of the remaining state-law claims not before the Court, which were based on the law of the source State. See *id.* at 429. The Court stated that "the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal act." *Ibid.* In so stating, the Court cited *Ouellette*, confirming that the same analysis should apply under the Clean Air Act. See *ibid.*

2. The Clean Air Act does not authorize state common-law claims seeking relief for the effects of emissions emanating from every State in the Nation. To the contrary, the Act provides "disclosure of a purpose" by Congress to prevent a State from applying its common law to claims arising from emissions in another State. *Hencely* v. *Fluor Corp.*, 146 S. Ct. 1086, 1099 (2026) (citation omitted).

The Clean Air Act grants EPA authority to regulate emissions from stationary sources, see 42 U.S.C. 7411(b), (d), and to set emissions standards for cars, trains, airplanes, and other equipment, see 42 U.S.C. 7521(a)(1)-(2), (a)(3)(E), 7547(a)(1), (a)(5), 7571(a)(2)(A).[*] States are responsible for regulating emissions within their own borders in accordance with federally approved plans, but they "lack authority to control" any "out-of-state pollution." *EME Homer City Generation*, 572 U.S. at 495. In particular, the Act's "Good Neighbor Provision" directly addresses the problem of interstate pollution by vesting regulatory responsibility exclusively with EPA and upwind States and limiting downwind States to petition EPA to intervene if that regulation is insufficient. See 42 U.S.C. 7426(b). Nowhere does the Act authorize States to regulate—through tort law or otherwise—emissions emanating from other States.

The Clean Air Act contains two saving clauses, but neither authorizes state common-law claims for harms allegedly caused by out-of-state emissions. The saving clauses preserve a State's right to adopt and enforce emissions standards that are stricter than national requirements, see 42 U.S.C. 7416, and any person's right to seek enforcement of any emission standard or limitation or to seek any other relief, see 42 U.S.C. 7604(e). Those provisions are materially identical to provisions in the Clean Water Act,

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[*] EPA recently determined that it would no longer regulate emissions of greenhouse gases from new motor vehicles and rescinded its existing regulations. See 91 Fed. Reg. 7,723 (Feb. 18, 2026). Petitioners' argument here—that the Constitution forecloses the application of state law to claims for injuries allegedly caused by interstate emissions—does not depend on whether EPA believes the pollutant at issue meets the standard for regulation under a particular provision of the Clean Air Act. The salient point is that the Clean Air Act does not authorize the application of state law to control out-of-state sources of emissions under any circumstances.

see pp. 31-32, *supra*, which the Court has held not to permit state-law claims seeking to "regulate the conduct of out-of-state sources," but instead to permit only claims brought "pursuant to the law of the *source* State." *Ouellette*, 479 U.S. at 495, 497.

The Clean Air Act thus does not authorize state-law tort claims seeking relief from harms allegedly caused by out-of-state emissions—including greenhouse-gas emissions. Indeed, the Act codifies the constitutional limits on state authority and evinces a congressional purpose to prevent such claims from proceeding. Federal law thus forecloses respondents' state-law claims.

C. Respondents' State-Law Claims Seek Relief For Injuries Allegedly Caused By Interstate Emissions

Respondents' state-law tort claims, which seek relief for the alleged effects of global climate change in Boulder, Colorado, are premised on greenhouse-gas emissions occurring worldwide. Those claims fall within the exclusively federal area of interstate pollution and "far exceed the territorial limits on Colorado's authority." U.S. Cert. Br. 13.

1. Respondents assert state-law claims against petitioners for public nuisance, private nuisance, trespass, and unjust enrichment. Respondents' theory of liability is that petitioners have "caused billions of tons of excess CO_2 emissions" by "producing, promoting, refining, marketing and selling fossil fuels at levels that have caused and continue to cause climate change, while concealing and/or misrepresenting the dangers associated with fossil fuels' intended use." J.A. 3, 97.

Respondents allege that petitioners' worldwide conduct is responsible for a "substantial percentage of *all* the fossil fuels" that further the effects of climate change. J.A. 5-6; Pet. App. 135a. As respondents have explained,

"fossil fuels sold and burned outside Colorado are part of the chain of causation linking [petitioners'] tortious conduct to [respondents'] injuries." Resp. Colo. S. Ct. Br. 25. Respondents' claims are thus "based on [petitioners'] *total* fossil fuel sales," Resp. C.A. Br. 16 (No. 19-1330). And based on petitioners' challenged conduct, respondents are seeking "[m]onetary relief to compensate" for "past and future damages and costs to mitigate the impacts of climate change," including wildfires, pests, droughts, extreme heat, and flooding. J.A. 116, 136.

Given the nature of climate change, respondents' claims necessarily implicate not only emissions traceable to petitioners, but also emissions released by every emitter of greenhouse gases worldwide. Indeed, respondents admit that their claims are based in part on "fossil fuel use by non-parties and the resulting emissions." Resp. C.A. Supp. Br. 7 (No. 19-1330).

The thrust of respondents' complaint is thus that petitioners' global conduct increased the global use of fossil fuels, resulting in increased global greenhouse-gas emissions, which accumulated with emissions from countless other sources worldwide and contributed to global climate change and resulted in global harms—including harms in Boulder, Colorado, for which respondents seek to recover. See *City of New York*, 993 F.3d at 91. Respondents' claims thus necessarily seek to regulate activities outside Colorado that are contributing to global climate change.

Resolution of respondents' claims also inherently involves interstate emissions. In particular, to prove the element of causation for its tort claims, respondents must show that, absent petitioners' production and marketing of their products, fewer fossil fuels would have been used, which would have resulted in decreased global greenhouse-gas emissions, which would have minimized the ef-

fects of global climate change enough to alleviate the alleged harms. Interstate emissions are thus a critical step in the causal chain between petitioners' alleged conduct and respondents' alleged injuries.

What is more, each of respondents' claims also requires a policy determination of the appropriate level of greenhouse-gas emissions. The nuisance claims would require a jury to determine whether the level of emissions petitioners allegedly caused in other States was "reasonable" relative to that baseline. See *Public Service Co.* v. *Van Wyk*, 27 P.3d 377, 391 (Colo. 2001); *Saint John's Church in Wilderness* v. *Scott*, 194 P.3d 475, 479 (Colo. App. 2008). The unjust-enrichment claim would similarly require a determination of whether petitioners' emissions-causing conduct outside Colorado was "unjust." See *Robinson* v. *Colorado State Lottery Division*, 179 P.3d 998, 1007 (Colo. 2008). And the trespass claim would permit a Colorado court to decide on the level of acceptable global emissions in order to assess whether a "physical intrusion" has occurred. *Hoery* v. *United States*, 64 P.3d 214, 217 (Colo. 2003). There is thus no escaping the fact that respondents' claims seek relief for injuries allegedly caused by interstate emissions resulting from conduct outside Colorado—making it inappropriate to apply one State's law to resolve them.

To be sure, respondents contend that the alleged out-of-state conduct caused injury in Colorado. But to put it mildly, the chain of causation between that conduct and the asserted in-state injuries here is attenuated. Specifically, respondents contend that their in-state injuries occurred because petitioners' production and allegedly deceptive marketing of fossil fuels resulted in the combustion of fossil fuels by countless entities around the world, which resulted in the release of molecules of greenhouse

gases around the world, which then mixed with other molecules of greenhouse gases in the atmosphere from other human and natural causes, which combined to create a warming effect on the global climate, which then altered local weather patterns, which then caused harmful effects in respondents' jurisdictions. See J.A. 1-6, 34-53, 58-84, 97-105, 112-123. Respondents' claims thus comfortably fall within the exclusively federal area of interstate pollution and cannot be justified as a permissible regulation of conduct in, or directed toward, Colorado.

2. In an effort to avoid foreclosure, respondents' state-law claims target fossil-fuel producers, rather than the emitters of greenhouse gases. But the source of the injury indisputably remains interstate (and international) emissions. Respondents allege harms only from the effects of increased greenhouse-gas emissions on the global climate.

Respondents cannot avoid foreclosure simply by moving one step up the causal chain. Regardless of their choice of defendant, respondents are still seeking relief for injuries allegedly caused by interstate emissions. And resolution of the elements of respondents' claims inherently requires the consideration of interstate emissions. Indeed, there can be no serious dispute that the relief respondents are seeking here constitutes an effort to limit interstate greenhouse-gas emissions. The complaint targets not just past conduct, but also future conduct: specifically, petitioners' "continuing their efforts and increasing their fossil fuel activities." J.A. 97. Respondents are seeking relief because petitioners allegedly are not "bringing emissions under control" or "helping to mitigate the impacts of climate change." J.A. 98.

Should respondents' claims succeed, a Colorado jury, applying Colorado law, will set a legal standard to which

petitioners (and other fossil-fuel producers) must conform. As a member of respondents' legal team has freely admitted, the liability being sought here is designed to serve as a nationwide "carbon tax" on fossil-fuel producers, in order to "bankrupt[]" the energy industry. See Federalist Society, *Can State Courts Set Global Climate Policy?*, at 32:55-35:05 (Oct. 8, 2025) (Federalist Society Panel) <tinyurl.com/federalistsocietypanel> (comments of David Bookbinder). The stated intent and obvious effect of respondents' claims are to impose respondents' preferred policy of limiting emissions across the Nation. Respondents cannot plead around the application of federal law simply by limiting their claimed recovery to localized harms.

Notably, the Court rejected a similar attempt at artful pleading to avoid federal preemption in *Kurns* v. *Railroad Friction Products Corp.*, 565 U.S. 625 (2012). There, a railroad worker and his wife brought state-law claims alleging that the equipment he had worked on was defectively designed because it contained asbestos and that the defendants had failed to warn about the dangers of asbestos or to provide instructions about its safe use. See *id.* at 628-629. The Court first held that the Locomotive Inspection Act "occup[ies] the entire field of regulating locomotive equipment" and thus preempted state-law claims that the equipment was defectively designed. *Id.* at 634. The plaintiffs argued, however, that their failure-to-warn claims could still survive because they did not target the "design or manufacture" of locomotive equipment. *Id.* at 635.

The Court rejected that argument. Because the "gravamen" of the plaintiffs' failure-to-warn claim was still that the railroad worker "suffered harmful consequences as a result of his exposure to asbestos contained in locomotive parts and appurtenances," the claim was "directed

at the equipment of locomotives" and fell within the preempted field. *Kurns*, 565 U.S. at 635. As the Court explained, the state-law duty would "inevitably influence a manufacturer's choice whether to use [a] particular design" for locomotive equipment. *Id.* at 635 n.4.

The same reasoning applies here. Respondents seek to escape the federal field of interstate emissions by moving up the causal chain to assert a theory of liability based on the excessive production or deceptive marketing of fossil fuels. But no matter the theory of liability, the "gravamen" of their claims is that some marginal increase in global greenhouse-gas emissions attributable to petitioners' conduct caused them harm. The claims are inherently premised on the notion that fewer greenhouse-gas emissions should have occurred. And the threat of liability is designed to force petitioners to reduce the sale of fossil fuels and thereby limit global greenhouse-gas emissions. Cf. *Ouellette*, 479 U.S. at 495 (explaining that the "threat of ongoing liability" can cause a source of emissions to "change its methods of doing business and controlling pollution"). Respondents' state-law claims thus fall squarely within the inherently federal area of interstate-pollution disputes that are foreclosed by the Constitution.

III. THE CONSTITUTION PRECLUDES STATE-LAW CLAIMS SEEKING RELIEF FOR INJURIES ALLEGEDLY CAUSED BY INTERNATIONAL GREENHOUSE-GAS EMISSIONS

Respondents' claims fail for the additional reason that, by seeking redress for the effects of international emissions, they infringe on the federal government's exclusive authority over foreign affairs.

Petitioners consist of energy companies that sell fossil-fuel products within the United States and around the world. See J.A. 14-24. And international emissions dwarf domestic emissions. See, *e.g.*, European Commission,

GHG Emissions of All World Countries (2025) <tinyurl.com/worldemissions>. Respondents have thus never disputed that, under their theory of liability, their harms for which they are seeking relief were allegedly caused in large part by greenhouse-gas emissions occurring outside the United States.

Because States lack constitutional authority over interstate emissions, it necessarily follows that they also lack authority over international emissions. Indeed, the case for state authority over international emissions is especially weak, because "the [S]tates severally *never* possessed international powers." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 316 (1936) (emphasis added). The Constitution insists that the "supremacy of the national power in the general field of foreign affairs" is absolute and "entirely free from local interference." *Hines* v. *Davidowitz*, 312 U.S. 52, 62-63 (1941). In other words, "[p]ower over external affairs is not shared by the States; it is vested in the national government exclusively." *United States* v. *Pink*, 315 U.S. 203, 233 (1942); see *Fuld*, 606 U.S. at 15; *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 427 n.25 (1964).

As a corollary to that rule, state laws "give way" if they "impair the effective exercise of the Nation's foreign policy." *Zschernig* v. *Miller*, 389 U.S. 429, 440 (1968). The "likelihood" that "state [action] will produce something more than incidental effect in conflict with express foreign policy of the National Government" is sufficient for the Constitution to foreclose the application of state law. *American Insurance Association* v. *Garamendi*, 539 U.S. 396, 420 (2003) (citation omitted). Such a rule ensures "uniformity in this country's dealings with foreign nations," *id.* at 413, and prevents a single State from "embroil[ing] us in disastrous quarrels with other nations," *Chy Lung* v. *Freeman*, 92 U.S. 275, 280 (1875).

Climate change poses a "global problem" that the United States "cannot confront alone." *City of New York*, 993 F.3d at 88. And for decades, the federal government has coordinated and refined its foreign-policy strategy with respect to climate change. In 1987, Congress directed the executive branch to develop a "coordinated national policy on global climate change." Global Climate Protection Act, Pub. L. No. 100-204, tit. 11, § 1103, 101 Stat. 1407-1409 (1987). The United States has since entered into numerous multilateral treaties addressing climate change. See, *e.g.*, United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107; Kigali Amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer, Oct. 15, 2016, S. Treaty Doc. No. 117-1, C.N. 730.2017. And through the Clean Air Act, Congress authorized EPA to require an individual State to address emissions within its borders which harm another nation on the condition of reciprocity from the foreign nation. See 42 U.S.C. 7415; see also 42 U.S.C. 7410(a)(2)(H)(ii).

The federal government has also made strategic decisions to participate (and not to participate) in international protocols and restrictions on greenhouse-gas emissions. See, *e.g.*, Exec. Order 14,162 (Jan. 20, 2025). And across administrations, the United States has consistently "oppose[d] the establishment of liability and compensation schemes at the international level." *City of New York*, 993 F.3d at 103 n.11 (citation omitted).

Addressing international greenhouse-gas emissions implicates the complex balance of risk reduction with energy needs. For example, affordable energy is a linchpin of this Administration's geopolitical strategy, underpinning its objective to be "the world's leading energy producer and exporter." The White House, *American Energy Dominance Is Back Under President Trump* (Feb.

24, 2026) <tinyurl.com/americanenergydominance>. Supplying the world with affordable energy generates significant revenue for the United States and its energy producers. It also ensures continued global demand for the United States dollar (which is used to trade oil), bolstering the dollar as a key tool of American foreign policy. And it is critical to the Nation's national security.

Allowing state and local governments to seek liability for greenhouse-gas emissions released abroad would interfere with the United States' foreign policy on climate and energy issues and thus undermine the federal government's "exclusive authority in international relations." *Fuld*, 606 U.S. at 15 (internal quotation marks, alterations, and citation omitted). State and local governments seeking liability for injuries caused by international emissions would "bypass the various diplomatic channels that the United States uses to address" climate change. *City of New York*, 993 F.3d at 103. And although the claims here involve the liability of private companies, the "legitimate scope of the Executive's international negotiations" can encompass "private acts." *Garamendi*, 539 U.S. at 416.

Worse yet, such claims could foment hostility between nations whose fossil-fuel producers are targeted or that will suffer from higher energy prices. Notably, two of the three petitioners here are subsidiaries of a Canadian energy company. State-law climate-change actions have also been brought against foreign fossil-fuel producers such as BP and Shell (British companies), and Total Energies (a French company), and those actions could spark tit-for-tat litigation by foreign governments against American producers. See *Pink*, 315 U.S. at 232.

The specter of state and local governments seeking exorbitant awards for harms allegedly caused by interna-

tional emissions would also undermine the Administration's foreign-policy goal of affordable energy by substantially "affect[ing] the price and production of fossil fuels abroad." *City of New York*, 993 F.3d at 103. To defend against such lawsuits, fossil-fuel producers may have to increase prices, raising costs for both American and global consumers. That would impede the Administration's pursuit of global leadership in energy production.

No State can "rewrite our foreign policy to conform to its own domestic policies," even through "judicial decrees." *Pink*, 315 U.S. at 233. Yet the climate tort suits "risk[] impeding our federal government's judgment as to how to approach air pollution in the international sphere." Pet. App. 45a (Samour, J., dissenting). It is inconceivable that state courts and juries would be entrusted with that authority. Even in the federal courts, "[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention." *Egbert* v. *Boule*, 596 U.S. 482, 494 (2022) (citation omitted); see *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948). Because they are based in part on international emissions, respondents' claims cannot proceed under Colorado law for this independent reason.

IV. THE CLEAN AIR ACT PREEMPTS STATE-LAW CLAIMS SEEKING RELIEF FOR INJURIES ALLEGEDLY CAUSED BY EMISSIONS FROM ANOTHER STATE

In the decision below, the Colorado Supreme Court applied a statutory preemption framework to determine that respondents' claims could proceed under state law. See Pet. App. 11a-16a. That decision was incorrect on its own terms: even if the Constitution did not already foreclose respondents' claims, the Clean Air Act would preempt them as well.

Under a statutory preemption framework, no presumption against preemption applies, because the regulation of interstate emissions is an inherently federal area. See p. 30, *supra*. The question should instead be whether the state law at issue is "consistent with the federal statutory structure." *Locke*, 529 U.S. at 108. And the "conflict with federal policy need not be as sharp as that which must exist for ordinary pre-emption" in areas of traditional state authority. *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 507 (1988). But even applying a presumption against preemption, respondents' state-law claims would still fail. That presumption is overcome where, as here, Congress has occupied the entire relevant field of regulation or state law conflicts with the text, structure, or objectives of federal law. See *Arizona* v. *United States*, 567 U.S. 387, 399 (2012).

A. As already explained, the Clean Air Act establishes a comprehensive statutory scheme for the regulation of air quality across the United States. See pp. 32-34, *supra*. The Act comprehensively directs EPA to set emissions standards for stationary sources and vehicles, and it more broadly authorizes the promulgation of national ambient air quality standards. See *American Electric Power*, 564 U.S. at 424-428. The Act includes "multiple avenues for enforcement," and it authorizes States and private parties to petition for rulemaking if EPA does not set appropriate emissions limits. *Id.* at 425. The Clean Air Act thus sets forth a pervasive statutory scheme clearly intended to "dominate the field" of interstate pollution regulation. *Ouellette*, 479 U.S. at 492. Application of state tort law in that area would thus "exert an extraneous pull on the scheme established by Congress" and thus be inconsistent with the Act. *Buckman*, 531 U.S. at 353. And the same result would obtain even if a presumption against preemption applied. See *Arizona*, 567 U.S. at 401-402.

B. In addition, respondents' state-law claims "interfere[] with the methods by which the federal statute"—here, the Clean Air Act—"was designed to reach [its] goal[s]." *Ouellette*, 479 U.S. at 494. Under the Clean Air Act, the "first decider" is EPA. *American Electric Power*, 564 U.S. at 427. EPA is tasked with establishing nationwide air quality standards, and States play circumscribed roles enforcing standards "within [their] domain[s]" subject to EPA oversight. *Id.* at 428. For example, Congress has delegated to EPA authority to decide "whether and how to regulate" particular air pollutants from various categories of sources. *Id.* at 426. And EPA, in turn, "may delegate implementation and enforcement authority to the States," but it "retains the power to inspect and monitor regulated sources, to impose administrative penalties for noncompliance, and to commence civil actions against polluters in federal court." *Id.* at 425-426. And as just noted, if States disagree with the standards established by EPA, their remedy is to petition EPA for rulemaking and, ultimately, seek review in court. See *ibid.* When enacting this statutory scheme, Congress provided downwind States with limited avenues to voice their concerns over upwind sources of pollution and placed primary responsibility for controlling interstate pollution with EPA and the upwind States. See *ibid.*

In *Ouellette*, the Court addressed the analogous scheme of regulation under the Clean Water Act and held that state-law nuisance claims seeking relief for emissions from another State would "circumvent" the Clean Water Act's statutory framework, "thereby upsetting the balance of public and private interests so carefully addressed by the Act." 479 U.S. at 494-496. Any contrary interpretation of the Act, the Court explained, would "subject [regulated entities] to an indeterminate number of poten-

tial regulations"; "undermine the important goals of efficiency and predictability in the permit system"; and "undermine" the statute's comprehensive "regulatory structure." *Id.* at 496-497, 499.

So too here. Respondents' claims conflict with the Clean Air Act's decisionmaking scheme and undermine the Act's regulatory structure and purpose by seeking to apply Colorado law to redress harms caused by out-of-state emissions. The Clean Air Act broadly contains the same statutory features highlighted in *Ouellette* and, as noted above, directly addresses the "complex problem" of interstate pollution. *EME Homer City Generation*, 572 U.S. at 495. If respondents' claims are allowed to proceed, every State and municipality across the country will be able to set and enforce its own emissions standards against anyone emitting or causing another to emit greenhouse gases—which is to say, virtually every company and person in the Nation. See *American Electric Power*, 564 U.S. at 428-429. That would eviscerate the federal government's discretion in setting national standards for air quality and pollution control, as well as other States' authority over emissions within their own borders, ultimately disrupting the entire system of cooperative federalism established by the Clean Air Act. See pp. 32-34, *supra*. Indeed, if the delegation of this discretion to *federal* judges "cannot be reconciled with the decisionmaking scheme Congress enacted," *American Electric Power*, 564 U.S. at 429, it is implausible that Congress intended state common-law claims to proceed. Respondents' claims are therefore not "consistent with the federal statutory structure." *Locke*, 529 U.S. at 108. And even with a presumption against preemption, they are a "sufficient obstacle" to the Act to mandate preemption. *Crosby*, 530 U.S. at 373.

* * * * *

The Constitution and the Clean Air Act independently prohibit state law from governing claims seeking relief for the effects of interstate and international greenhouse-gas emissions. That outcome leaves the political branches on the federal level in charge of the Nation's climate-change policy and avoids the prospect of each State, and each of the country's tens of thousands of local governments, imposing its own standard for what constitutes a "reasonable" amount of greenhouse-gas emissions. Only the federal government has the power, capability, and institutional expertise to effectuate meaningful, long-lasting change across the United States and the world on the issue of global climate change.

Our Nation's climate policy should not be left in the hands of six jurors in Boulder, Colorado. The Colorado Supreme Court's decision to allow Boulder's claims to proceed should be reversed.

CONCLUSION

The judgment of the Colorado Supreme Court should be reversed.

Respectfully submitted.

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1. U.S. Const. Art. VI, cl. 2, provides:

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

2. 28 U.S.C. 1257(a) provides:

   Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

3. Colo. Const. Art. VI, § 2, provides in relevant part:

   The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law. * * *

4. Colo. Const. Art. VI, § 3, provides in relevant part:

   The supreme court shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and such other original and remedial writs as may be provided by rule of court with authority to hear and determine the same; and each judge of the supreme court shall have like power and authority as to writs of habeas corpus. * * *

5. Colo. App. R. 21 provides in relevant part:

   (a) In General.

   (1) *Original Jurisdiction Under the Constitution.* This rule applies only to the original jurisdiction of the supreme court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the supreme court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution.

   (2) *Extraordinary Nature and Availability of Relief.* Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the supreme court. Such relief will be granted only when no other adequate remedy is available, including relief available by appeal, under C.R.C.P. 106, or under Crim. P. 35.

   (3) *Forms of Writs Subject to This Rule.* Petitions for writs of habeas corpus, mandamus, quo warranto, injunction, prohibition, and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a

specific form of writ when seeking relief under this rule.

(b) Initiating an Original Proceeding. The petitioner must file a petition for an order to show cause specifying the relief sought and requesting the court to issue to one or more proposed respondents, as set forth in subsection (e)(1), an order to show cause why the relief requested should not be granted.

* * *

(e) Contents of the Petition. The petitioner has the burden of showing that the court should issue an order to show cause. To enable the court to determine whether to issue an order to show cause, the petition must set forth in sufficient detail the following:

(1) the identity of the petitioner and of the proposed respondent(s), together with, if applicable, their party status in the underlying proceeding (e.g., plaintiff, defendant, etc.). The proposed respondent(s) must be the real party (or parties) in interest against whom relief is sought. When a petition seeks a writ of mandamus or prohibition directed to a court or tribunal, the proposed respondents must be the lower court or tribunal, if appropriate, and all parties to the underlying proceeding other than the petitioner[.]

* * *

(h) Stay.

* * *

(2) *Upon Issuance of an Order to Show Cause.* Issuance of an order to show cause by the supreme court automatically stays all underlying proceed-

ings until final determination of the original proceeding in the supreme court unless the court, acting on its own, or upon motion, lifts the stay in whole or in part.

* * *

(j) Ruling on the Petition.

(1) *Denial.* The court may deny the petition without explanation and without an answer by any respondent.

(2) *Issuance of an Order to Show Cause.* The court may issue an order to show cause. The clerk will serve the order on all persons ordered or invited by the court to respond and on the lower court or tribunal in the underlying proceeding.

* * *

(*o*) Disposition of an Order to Show Cause. The court in its discretion may discharge the order or make it absolute, in whole or in part, with or without opinion. * * *