

No. 25-170

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IN THE  
**Supreme Court of the United States**

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SUNCOR ENERGY (U.S.A.) INC., *et al.*,

*Petitioners,*

*v.*

COUNTY COMMISSIONERS OF  
BOULDER COUNTY, *et al.*,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF COLORADO

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**BRIEF FOR THE PELICAN INSTITUTE FOR  
PUBLIC POLICY AND MICHAEL TOTH AS *AMICI  
CURIAE* IN SUPPORT OF PETITIONERS**

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

The Pelican Institute for Public Policy is a nonprofit, non-partisan research institute whose mission is to research and develop policy solutions that promote individual liberty, free enterprise, and equal opportunity. Based in New Orleans, Louisiana, the Institute is located near the epicenter of the American liquified natural gas (LNG) industry. The LNG terminals in the Gulf Coast are major suppliers of affordable energy to consumers around the globe. As an organization committed to constitutional governance, the Institute is concerned about the damage to national energy security and the rule of law that would result from the extraterritorial application of the law of all 50 states to the use of American energy products anywhere in the world. Amicus has a strong interest in this case because the issues presented are inextricably linked to the principles the Pelican Institute champions: constitutional federalism, regulatory predictability, and American energy dominance.

Michael Toth is the Director of Research at the Civitas Institute, University of Texas at Austin, and a former justice on the Texas Third District Court of Appeals. He maintains a unique interest and expertise in ensuring that courts preserve the proper allocation of authority between federal and state sovereignty essential to the American experiment in ordered liberty.

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1. Pursuant to Supreme Court Rule 37.6, amici curiae affirm that that no counsel for a party authored this brief in whole or in part, and that no person or entity, other than amicus curiae, made such a monetary contribution to the preparation or submission of the brief.

Amici seek to assist this Court by providing its research and policy analysis demonstrating the real-world economic and national security consequences that flow from permitting state and local governments to regulate global greenhouse gas emissions, particularly when states and localities undermine the Nation's energy diplomacy and restrict domestic producers from meeting global energy needs amid rising geopolitical instability.

### **SUMMARY OF ARGUMENT**

In today's global economy, oil and gas are akin to international currency. In constant use virtually everywhere, these energy sources are indispensable to global supply chain reliability, international commerce, and the balance of powers between nations. Yet Respondents seek to trample on the federal government's exclusive authority and set global standards for the worldwide use of American oil and gas.

While Amici agree with the numerous federal and state courts that have dismissed similar climate lawsuits (hereinafter, the "municipal climate cases") on the grounds that the Clean Air Act preempts the use of state laws to regulate global greenhouse gas emissions, *see, e.g., Bucks Cnty. v. BP p.l.c.*, No. 2024-01836, slip op. at 11 (Pa. Ct. Com. Pl. Bucks Cnty. May 16, 2025) (discussing "growing chorus" of such rulings), this brief advances a separate and equally compelling basis for rejecting Respondents' claims. They violate the Foreign Affairs Doctrine because they conflict with "express federal foreign policy," and "intrude[] on the field of foreign affairs without addressing a traditional state responsibility." *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1071-72 (9th Cir. 2012)

(en banc) (citing *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 421 (2003)).

Against a backdrop of mounting international conflict and geopolitical tension, Respondents' attempt to transform municipalities into worldwide emissions czars collides with the federal government's exclusive authority to "speak with one voice" in foreign affairs. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 381 (2000). The municipal climate cases stand to open the litigation floodgates, inviting thousands of local governments to wield the laws of all 50 states to regulate the worldwide consumption of fossil fuels—the opposite of a traditional state responsibility well-suited to the application of local law. Weaponizing the civil justice system in this manner threatens national energy security and risks straining diplomatic relations with countries that rely heavily on American energy. The resulting legal and compliance morass would drive up costs for U.S. oil and gas and, in turn, increase global dependence on energy from unstable petrostates in violation of standing federal foreign policy. For these reasons alone, Respondents' claims should be rejected under the Foreign Affairs Doctrine.

The sweeping extraterritorial reach of the municipal climate cases is evident from the often-overlooked fact that roughly 90% of global greenhouse gas emissions—and growing—originate *outside* the United States. *See, e.g.*, Int'l Energy Agency, *Global Energy Review 2025* 40 (2025), <https://iea.blob.core.windows.net/assets/5b169aa1-bc88-4c96-b828-aaa50406ba80/GlobalEnergyReview2025.pdf> (listing the U.S. share of total worldwide carbon emissions). The international share of global emissions has risen steadily for decades for two main reasons: the

shift to low carbon energy consumption inside the U.S. and surging demand for traditional fossil fuels outside the U.S. Editorial Board, *EPA Is Right to Reverse Obama Overreach*, Wash. Post (Feb. 10, 2026), <https://www.washingtonpost.com/opinions/2026/02/10/epa-is-right-reverse-obama-overreach/> (last visited Mar. 27, 2026). To meet rising global demand for oil and gas, American production of these essential commodities has soared to record levels in recent years, propelled by homegrown innovations such as shale fracking. U.S. Energy Information Administration, *Annual U.S. Crude Oil Exports Decrease for First Time Since 2021* (Mar. 10, 2026), <https://www.eia.gov/todayinenergy/detail.php?id=67324> (finding that American energy exports jumped by more than sevenfold from 2004 to 2024).

Ever-escalating global energy demand for American energy makes plain the ultimate effect of deep-sixing domestic oil and gas production under an unworkable patchwork of state-by-state liability standards. Foreign oil and gas producers, including those from unstable petrostates, will fill the supply gap. Given the robust expansion of artificial intelligence (AI), advanced manufacturing, and data centers, the worldwide mandate for traditional energy is too strong to fade away anytime soon. Despite the trillions of dollars funneled into renewable energy investment over decades, fossil fuels made up the same sizable share of global energy usage last year—87%—as they did in the 1970s. Brenda Shaffer, *‘Renewable’ Energy Gives Us a Crisis*, Wall St. J. (Mar. 26, 2026), [https://www.wsj.com/opinion/renewable-energy-gives-us-a-crisis-e8426cd8?mod=opinion\\_lead\\_pos8](https://www.wsj.com/opinion/renewable-energy-gives-us-a-crisis-e8426cd8?mod=opinion_lead_pos8) (last visited Mar. 26, 2026). As one former Clinton and Obama administration official recently acknowledged, “the post-

oil world remains far in the future.” Rebecca F. Elliott, *‘The Old Game Is Back’: Oil Is a Potent Geopolitical Tool Again*, The New York Times (Mar. 9, 2026), <https://www.nytimes.com/2026/03/09/business/energy-environment/oil-gas-iran-war.html> (last visited Mar. 26, 2026) (quoting David Sandalow).

Indeed, for billions across the developing world, fossil fuels remain the only viable pathway to industrialization. To put the global energy divide in perspective, 40% of the world’s population still uses less energy per capita than a citizen of 1860s Germany or France. Vaclav Smil, *How the World Really Works* 5 (2022). For much of humanity, energy demand isn’t merely about fuel for cars or light and heat for homes; it is about the physical substance of modern life. From the steel and cement of rising cities to the life-saving plastics of hospital wards and the fertilizers feeding the planet, these and other core infrastructural materials are currently impossible to produce at scale without a fossil fuel backbone. *Id.* at 78-100. To suppose that demand for the fundamental components needed to realize broad-based enhancements in living standards around the world will soon disappear is to operate in a parallel universe, not this one.

As global energy demand has increased, the world has become considerably more reliant on American oil and gas. Once an energy importer, America is now an energy superpower—the world’s largest exporter of liquefied natural gas (LNG) and its largest producer (and third largest exporter) of crude oil. U.S. Energy Info. Admin., *Ten Years After First Sabine Pass Cargo, U.S. LNG Exports Are Still on the Rise* (Feb. 24, 2026), <https://www.eia.gov/todayinenergy/detail.php?id=67224>; Libby

Hargreaves, *Which Country is the Largest Exporter of Oil?*, Supply Chain Digit. (Mar. 3, 2026), <https://supplychaindigital.com/news/which-country-largest-exporter-oil> (last visited Apr. 7, 2026). U.S. businesses generate more revenue from LNG exports than from corn and soybean exports and roughly twice as much as from movie and TV exports. Daniel Yergin et al., *Major New U.S. Industry at a Crossroads: A U.S. LNG Impact Study—Phase 1*, S&P Glob. (Dec. 17, 2024), <https://www.spglobal.com/en/research-insights/special-reports/major-new-us-industry-at-a-crossroads-us-lng-impact-study-phase-1> (last visited Apr. 4, 2026). Further, energy has become not just a key driver of domestic economic growth, but a critical component of federal foreign policy as well. The 2025 National Security Strategy identifies “energy dominance” as a “top strategic priority” and describes fuel exports as a tool for “deepen[ing] relationships with allies,” “curtailing the influence of adversaries,” and “project[ing] power” abroad. The White House, *National Security Strategy of the United States of America* 14 (Nov. 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/12/2025-National-Security-Strategy.pdf>.

The growing use of energy as an instrument federal foreign policy tool makes the municipal climate cases all the more problematic. The Framers designed the Constitution to vest the federal government with authority sufficient to prevent individual states from conducting their own foreign policy. As James Madison explained, “If we are to be one nation in any respect, it clearly ought to be in respect to other nations.” The Federalist No. 42. at 215 (Carey & McClellan eds., 2001) The municipal climate cases would instead deploy state law to constrain

a geopolitically vital industry based on parochial policy preferences.

Strategic alliances have only intensified global demand for American energy, further amplifying the federal government's foreign affairs interest in energy security. U.S. oil and gas sales to the European Union (EU), for example, soared in the wake of the Russian invasion of Ukraine in 2022. By early 2026, the U.S. solidified its position as the top supplier of LNG and crude oil to the bloc. America now accounts for 60 percent of the EU's LNG imports, providing the critical baseload once supplied by Russia, whose energy exports to Europe have fallen sharply since the Ukraine invasion. Eugene Chausovsky, *Europe Needs to Learn Its Lesson: Stop Relying on Imported Energy*, Wall St. J. (Mar. 24, 2026), <https://www.wsj.com/business/energy-oil/europe-needs-to-learn-its-lesson-stop-relying-on-imported-energy-63a7349e> (last visited Mar. 28, 2026); Eurostat, *EU Imports of Energy Products Decreased Again in 2025*, Eurostat News (Mar. 25, 2026), <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20260325-3> (last visited Apr. 7, 2026).

Subjecting American oil and gas companies to a barrage of municipal climate lawsuits risks a restoration of the pre-invasion, Russian-dominated energy order in Europe. On the eve of the Ukraine invasion, Russia supplied Germany with 55% of its natural gas. Magnus Henrekson et al. eds., *A Green Entrepreneurial State? Exploring the Pitfalls of Green Deals* 137 (Springer Cham 2026), <https://doi.org/10.1007/978-3-032-15512-2>. Europe's rapid shift away from Russian pipeline gas to American LNG would have been impossible without U.S.-

based companies like Cheniere Energy. A decade ago, it converted a facility in Cameron Parish, Louisiana, into the nation's first LNG export terminal. By 2023, Cheniere had become the top LNG producer in the United States and number two globally, accounting for roughly 11% of worldwide supply. In the early stages of the Russia-Ukraine war, the company shipped approximately 70% of its total production—1,000 cargoes in 2022–23—to Europe. Cheniere Energy, Inc., *2023 Corporate Responsibility Report* (2024), <https://www.cheniere.com/pdf/2023-CR-Report.pdf>. If Respondents and other municipal plaintiffs prevail, companies like Cheniere could face liability under the laws of all 50 states for providing U.S. allies with critical energy supplies. This would impair the Nation's ability to respond to international crises in the future.

The military conflict in Iran that began in February 2026 further underscores the close relationship between American energy abundance and geopolitical stability. In response to Operation Epic Fury, Iran attacked critical energy infrastructure across the Middle East in an effort to cripple the global economy. *See, e.g.*, Vali Nasr, *Iran Is Playing a Long Game*, *Financial Times* (Mar. 13, 2026) (describing Iranian strikes as part of the country's strategy of "waging war on the global economy"), <https://www.ft.com/content/93b7b65d-074b-4e8b-807f-5c27c7362213> (last visited Apr. 3, 2026). The strikes forced major LNG suppliers to halt production and caused global energy prices to soar. Claudia Assis, *The World's Largest Natural-Gas Complex Is Now Battered. Here's Who Will Benefit*, *MarketWatch* (Mar. 19, 2026), <https://www.morningstar.com/news/marketwatch/20260319214/the-worlds-largest-natural-gas-complex-is-now-battered->

heres-who-will-benefit (last visited Mar. 30, 2026). Global energy markets responded much as Europe did after Russia's invasion of Ukraine: they turned to the United States to fill the supply gap created by the Iranian strikes. Curtis Williams, *Cheniere Already Operating at Maximum Capacity, CEO Says, as Asia Calls for More LNG*, Reuters (Mar. 25, 2026), <https://www.reuters.com/business/energy/ceraweek-cheniere-already-operating-at-maximum-capacity-ceo-says-asia-calls-more-2026-03-25/> (last visited Mar. 30, 2026).

The lesson from these international conflicts is straightforward: traditional carbon-emitting energy sources remain critical to global supply chains and international commerce. Global consumption of oil, natural gas, and coal reached record highs last year. Shaffer, *supra*.

The real question is where the supply to meet the world's surging energy needs will come from. That depends in significant part on regulatory policy and the outcome of the municipal climate cases. California illustrates the regulatory point. After the state tightened restrictions on in-state fossil-fuel production, residents did not stop using oil and gas; they sourced it elsewhere. Despite its substantial reserves, California now imports roughly 60% of its crude oil from overseas, up from just 5% in 1992. Cal. Energy Comm'n, *Annual Oil Supply Sources to California Refineries*, <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/annual-oil-supply-sources-california> (last visited Apr. 1, 2026).

The municipal climate cases risk placing American oil and gas producers at a similar competitive disadvantage vis-à-vis foreign suppliers, including Russia, Saudi Arabia, Qatar, Iraq, and Iran. They would impose what amounts to a carbon tax on the global use of American energy to the detriment of the Nation's foreign policy goals and "carefully balanced scheme of international cooperation" on the topic of global warming. *City of New York v. Chevron Corp.*, 993 F.3d 81, 103 (2d Cir. 2021). By taking aim at global greenhouse gas emissions, the municipal climate cases reach beyond state law "into the field of foreign affairs which the Constitution entrusts to the President and the Congress." *Zschernig v. Miller*, 389 U.S. 429, 432 (1968). Such a blatant intrusion into the federal government's exclusive domain is incompatible with the Foreign Affairs Doctrine and must be preempted.

## ARGUMENT

### **I. Municipal climate cases encroach on the federal government's exclusive authority over national security and foreign policy.**

The municipal climate cases run afoul of the Foreign Affairs Doctrine for two reasons. They conflict with the federal government's express foreign policy and intrude on the federal government's exclusive domain without addressing a traditional concern reserved to state and local governments.

#### **A. The cases conflict with express federal foreign policy.**

The Constitution entrusts the conduct of foreign affairs to the "to the President and the Congress."

*Zschernig*, 389 U.S. at 432. The municipal climate cases conflict with the express policies of both.

Federal law on international emissions is directed toward reciprocity, multilateralism, and international cooperation on emissions controls. The municipal climate targets the global emissions from U.S. fossil fuel producers without seeking reciprocal obligations from foreign energy producers in violation of Congress’s express policies.

In the Clean Air Act, Congress authorizes the Environmental Protection Agency (“EPA”) to address domestic air pollutants that “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country.” 42 U.S.C. § 7415(a). Crucially, Congress limited the EPA’s authority to mitigate cross-border air pollution in a critical respect. The law prevents it from acting unless the affected foreign nation has afforded the United States “the same rights with respect to the prevention or control of air pollution occurring in that country.” *Id.* § 7415(c). Absent such reciprocity, the Clean Air Act’s regulatory reach is limited to domestic emissions only. *City of New York*, 993 F.3d at 95 n.7, 100-01 (concluding that the Clean Air Act “plainly” regulates only domestic emissions except when a foreign state provides reciprocity).

Enacted in 1987, the Global Climate Protection Act further reflects Congress’s judgment that climate policy should not be formulated in a local vacuum, but instead through a coordinated, multilateral process that accounts for the Nation’s interests in the international arena. *See* Pub. L. No. 100-204, Title XI, § 1103, 101 Stat. 1331, 1407–09 (1987) (reprinted at 15 U.S.C. § 2901 note). The Act

articulates a federal policy of international cooperation to understand and limit the adverse effects of greenhouse gas emissions. It provides that the Nation should endeavor to foster “cooperation among nations to develop more extensive and coordinated scientific research efforts,” identify technological solutions, and pursue “multilateral agreements” to address greenhouse gas emissions. *Id.* § 1103(a)(2)-(4), 101 Stat. at 1408. Congress divided the development of climate policy between the EPA and State Department, with the former taking the lead on “national policy” and the later spearheading international efforts relating to climate. *Id.* § 1103(b)-(c), 101 Stat. at 1408-1409; *Massachusetts v. EPA*, 549 U.S. 497, 534 (2007) (noting that Congress tasked “the State Department—not [the EPA]—to formulate United States foreign policy with reference to environmental matters relating to climate”).

Since the passage of the Act, the federal executive branch has been engaged in shaping foreign policy on climate. In 1992, the President ratified, after advice and consent from the Senate, the United Nations Framework Convention on Climate Change of 1992 (“UNFCCC”). S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107, <https://unfccc.int/resource/docs/convkp/conveng.pdf>. Consistent with the U.S. policy objectives set forth in the 1987 Act, the UNFCCC established a cooperative regime under which participating nations agreed to inventory their greenhouse gas emissions and develop measures to limit them. *Id.* art. 4. It likewise emphasized that climate policy should be balanced against broader social and economic objectives, rather than displacing other sound public policies. As the treaty explains, “economic development is essential for adopting measures to address climate change.” *Id.* art. 3. It further provides that climate

measures should not “constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.” *Id.*

The UNFCCC calls for developed countries to provide financial resources and technology to support climate mitigation measures in developing countries. UNFCCC, art 4.3. But the federal government has resisted “the idea of compensation and liability” for climate change impact. Todd Stern, Special Envoy for Climate Change (Oct. 28, 2015), <https://2009-2017.state.gov/s/climate/releases/2015/248980.htm>. In international climate-change negotiations, the federal government has maintained a longstanding position in opposition “to the establishment of liability and compensation schemes” in international climate-change negotiations. *City of New York*, 993 F.3d at 103 n.11.

The United States did not ratify the Kyoto Protocol of 1997 (the “Protocol”), which would have subjected it to legally binding greenhouse gas emission limits. Kyoto Protocol to the United Nations Framework Convention on Climate Change annex B, Dec. 11, 1997, 2303 U.N.T.S. 162, <https://unfccc.int/resource/docs/convkp/kpeng.pdf>. Instead, the Senate voted 95–0 to adopt a resolution rejecting the Protocol as an unfair and counterproductive approach to addressing global climate change. S. Res 98, 105th Cong. (1997). Known as the Byrd–Hagel Resolution after its cosponsors—West Virginia Democrat Robert Byrd and Nebraska Republican Chuck Hagel—the measure criticized the Kyoto Protocol for departing from the principles of international comity reflected in the Global Climate Protection Act and the Framework Convention. In particular, the Resolution objected that

the Protocol exempted “Developing Country Parties”—including major emerging economies such as China and India—even as their emissions were “rapidly increasing and expected to surpass” those of the United States and other developed nations. *Id.* The Resolution further declared that the United States should not enter into any future international climate agreement unless certain conditions were met. Any such agreement, it stated, must include “specific” emissions limitations for developing countries, avoid “serious harm to the economy of the United States,” and be accompanied by a “detailed” assessment of the financial costs and economic impacts of implementation. *Id.*

In 2016, Secretary of State John Kerry signed the Paris Agreement, which required developed economies such as the U.S. to “tak[e] the lead by undertaking economy-wide absolute emission reduction targets.” Paris Agreement, Dec. 12, 2015, T.I.A.S. No. 16-1104 art. IV. Participating countries could adjust their emissions limits but only in the direction of making them more strident. *Id.* (providing that parties may adjust their targets “with a view to enhancing [their] level of ambition”). The U.S. withdrew from the agreement during the first term of the Trump administration, then rejoined the agreement during the Biden administration, only to withdraw from it again during the Trump administration’s second term. Press Release, U.S. Dept. of State, On the U.S. Withdrawal from the Paris Agreement (Nov. 4, 2019); Press Release, U.S. Dept. of State, The United States Officially Rejoins the Paris Agreement (Feb. 19, 2021); Lisa Friedman, *America Officially Leaves the Paris Climate Agreement. For the Second Time*, N.Y. Times (Jan. 27, 2026), <https://www.nytimes.com/2026/01/27/>

[climate/paris-climate-agreement-withdrawal.html](#) (last visited Apr. 4, 2026).

Current U.S. foreign policy emphasizes the “strategic value” of the U.S. energy sector as a means of enhancing the nation’s international clout and limiting the influence of adversaries abroad. Nat’l Sec. Strategy, *supra*. Apart from withdrawing from the Paris Agreement, President Trump has declared an affordable and reliable energy supply “a fundamental requirement for the national and economic security of any nation” and “essential to the national and economic security of the United States, as well as our foreign policy.” Declaring a National Energy Emergency, Exec. Order 14156, § 1, 90 Fed. Reg. 8,433 (Jan. 20, 2025); Protecting American Energy from State Overreach, Exec. Order 14260, § 1, 90 Fed. Reg. 15515 (Apr. 8, 2025). The president has appointed the Secretary of State to the National Energy Dominance Council, a newly formed group tasked with highlighting the “national security concerns with removing reliable and affordable energy sources,” announced the administration’s opposition to state-level climate measures that “dictate interstate and international” air, water, and natural resource policies, and stressed that fossil fuels, including coal, are essential to protecting the electric grid and protecting the homeland. Establishing the National Energy Dominance Council, Exec. Order 14213, § 1, 90 Fed. Reg. 9,945 (Feb. 14, 2025); Exec. Order No. 14260, § 1, 90 Fed. Reg. at 15513; Strengthening United States National Defense with America’s Beautiful Clean Coal Power Generation Fleet, Exec. Order 14386 § 1, 91 Fed. Reg. 7,393 (Feb. 11, 2026).

The municipal climate cases are impossible to reconcile with the express foreign policy commitments from Congress and the Executive Branch. Congress opted against applying the Clean Air Act outside of the U.S. with a lone exception for instances where the cross-border pollution affects a country with a reciprocal protections for the U.S. The municipal climate cases seek recovery for international emissions without regard for the principles of reciprocity set forth in the Clean Air Act and “circumvent Congress’s own expectations and carefully balanced scheme of international cooperation on a topic of global concern.” *City of New York*, 993 F.3d at 103. The cases conflict with the Global Climate Protection Act’s stated goals for international climate policy, which commit the federal government to pursuing “cooperation among nations,” “multilateral agreements,” and “coordinated national policy” on greenhouse gas emissions. Pub. L. No. 100-204, § 1103(a)-(b), 101 Stat. at 1408–09. They ignore the Senate’s unanimous vote against the restrictive Kyoto Protocol and the Byrd-Hegel Resolution’s policy against international emissions controls that unfairly target the U.S. or threaten to cause serious harm on the Nation’s economy.

The conflict is even starker when the municipal climate cases are considered against the Executive Branch’s express foreign policy on energy under President Trump. While previous administrations opposed “liability and compensation schemes” to address international emissions, *City of New York*, 993 F.3d at 103 n.11, the Trump administration has elevated the strategic value of energy in U.S. foreign policy. The municipal climate cases undercut President Trump’s commitment to using the Nation’s fossil fuel supply to strengthen foreign alliances

and project U.S. power abroad. These suits attempt to hold American companies liable for worldwide usage of their products and, therefore, threaten to increase the cost of a resource that President Trump has deemed “essential to the national and economic security of the United States, as well as our foreign policy.” Exec. Order No. 14,156 § 1.

The Foreign Affairs Doctrine applies when there is a “likelihood” that the actions of state “will produce something more than incidental effect in conflict with express foreign policy.” *Garamendi*, 539 U.S. at 420. Here, there is a clear conflict that directly effects U.S. foreign policy. The municipal climate cases eschew the principles of international comity and multilateral cooperation that have animated U.S. foreign policy on climate for decades. Instead, they seek to regulate global emissions through litigation a state-by-state patchwork of conflicting emissions standards—the opposite of the “coordinated national policy” that Congress envisioned and the Executive Branch is actively implementing. *See* Pub. L. No. 100-204, § 1103(b).

**B. The cases intrude on the federal government’s exclusive domain without addressing a traditional state concern.**

The municipal climate cases also fail because they encroach on the federal government’s exclusive domain over foreign affairs while addressing no traditional state or local concern. The Framers assigned “foreign policy exclusively to the National Government.” *Garamendi*, 539 U.S. at 419 n.11; *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (providing that the federal government possesses “full and exclusive responsibility” over foreign

affairs). The municipal climate cases address “a uniquely international problem of national concern.” *City of New York*, 993 F.3d at 85. And the sweeping relief that they seek—damages for global emissions—is “simply beyond the limit of state law.” *Id.* at 92.

In the Clean Air Act, Congress vested the EPA with the authority to weigh the appropriate factors and set national pollution standards. *American Electric Power Co. (AEP) v. Connecticut*, 564 U.S. 410, 426 (2011) (explaining that the Act authorizes the EPA to determine “whether and how to regulate carbon-dioxide emissions”). The Act entrusts the “complex balancing” needed for sound emissions standards “to EPA in the first instance, in combination with state regulators.” *Id.* at 427. While states have a traditional role in implementing EPA standards, they have no role under the Act in regulating interstate or international emissions. Instead, state regulators are authorized under the Act to collaborate with federal regulators and adjust the generally applicable standards set by EPA to align with local circumstances. Thus, each state may “take the first cut at determining how best to achieve EPA emissions standards *within its domain.*” *AEP*, 564 U.S. at 438 (emphasis added).

Nor do the Act’s savings clauses permit the use of state statutory or common law to regulate global emissions. *See* 42 § 7604(e); *id.* § 7416. In *International Paper Co. v. Ouellette*, the Court addressed the scope of a similar savings clause in the context of an interstate pollution dispute under the Clean Water Act. *Ouellette* recognized a narrow exception to the Clean Air Act’s complete preemption of state law. The Court permitted state lawsuits under “the law of the [pollution]’s source [s]

tate,” allowing individuals injured by out-of-state pollution to bring a lawsuit under state law. *Ouellette*, 479 U.S. 481, 497 (1987); see also *AEP*, 564 U.S. at 429. But the state law invoked must be the law of the source state, not the state where the alleged injury occurred. *Id.*

The municipal climate cases try to recover under precisely the very type of state law claim that *Ouellette* forecloses. Rather than sue under the law in effect at the “source” of the carbon emissions—basically, every state and country in the world—they proceed under the law of their home states, the site of the alleged injuries occurred. But in *Ouellette*, the Court squarely rejected the use of the law where the alleged injury occurred on the grounds that it would subject a single out-of-state “discharge” that reached several states to multiple, potentially conflicting state laws, generating a an “irrational” and “chaotic” regulatory regime. *Ouellette*, U.S. 479 at 496-97. Further, *Ouellette* also rejected the application of the law of the site of the alleged injury because it allows that state to impose its laws on the entire rest of the country and therefore “do indirectly what [it] could not do directly—regulate the conduct of out-of-state sources.” *Id.* at 495. If the law from the state of the alleged injuries were used in the municipal climate cases, as the plaintiffs propose, the irrationality and chaos would be exponentially more extreme than in *Ouelette*. The same carbon emissions could face liability under the laws of all 50 states and individual states could impose their state laws on emissions from the rest of the Nation and world.

The municipal climate cases bear no resemblance to the small carve out of state law cases that *Ouellette* permitted under the Clean Air Act’s savings clause. Nor are there any other cases that remotely suggest that regulating “emissions emanating simultaneously from all 50 states and the nations of the world” is a responsibility traditionally exercised by the states. *City of New York*, 993 F.3d at 100. Accordingly, these cases must be preempted.

### CONCLUSION

For these reasons, this Court should reverse the Colorado Supreme Court’s decision and maintain the exclusive domain over foreign policy that the Constitution assigns to the federal government.

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