No. 25-170

IN THE

Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., ET AL.,
Petitioners,
v.

COUNTY COMMISSIONERS OF BOULDER COUNTY,
ET AL.,
Respondents.

On Writ of Certiorari to the
Supreme Court of Colorado

BRIEF OF *AMICI CURIAE* AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION AND REINSURANCE ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONERS

Laura A. Foggan
Counsel of Record
LAVIN RINDNER DUFFIELD LLC
1717 K St., NW, Ste 900
Washington, DC 20006
(202) 759-6767
lfoggan@lrd.law
Counsel for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Constitution & Statutes:

Other Authorities:

INTEREST OF AMICI CURIAE

The American Property Casualty Insurance Association ("APCIA"), Complex Insurance Claims Litigation Association ("CICLA"), and Reinsurance Association of America ("RAA") (collectively, "Amici") are trade associations of property and casualty insurance and reinsurance companies. Together, Amici represent most of the commercial and personal lines insurance and reinsurance companies in the United States. Amici help courts resolve important insurance and reinsurance cases, regularly appearing as *amicus curiae* in state and federal courts around the country.[1]

APCIA is the primary national trade association for home, automobile, and business insurers. With a legacy dating back 150 years, APCIA promotes and protects the viability of private competition to benefit consumers and insurers. APCIA's member companies represent 66 percent of the U.S. property-casualty insurance market, including 74 percent of the commercial insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases before federal and state courts.

---

[1] No part of this brief was authored in whole or in part by counsel for any party, and no person or entity has made any monetary contribution to the preparation or submission of this brief other than *amici curiae* and their counsel.

CICLA is a trade association of major property and casualty insurance companies. Through *amicus curiae* briefs, CICLA seeks to help courts understand and resolve the core insurance coverage issues of greatest importance to insurers today. CICLA has participated as *amicus curiae* in many insurance cases in state and federal appellate courts across the United States.

RAA is the leading trade association of property and casualty reinsurers doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross-border basis. The RAA also has life reinsurance affiliates and insurance-linked securities (ILS) fund managers and market participants that are engaged in the assumption of property/casualty risks. The RAA represents its members before state, federal and international bodies and participates as amicus curiae in various state and federal courts in insurance and reinsurance cases on behalf of its members.

Many courts, including this Court, have found APCIA, CICLA, and RAA's amicus submissions helpful in evaluating and resolving important issues of significance to insurers and the insurance market. *See, e.g., Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 281-282 (2024) (Citing APCIA and CICLA amicus brief explaining insurer interests in bankruptcy standing).

SUMMARY OF ARGUMENT

The Court is asked to decide whether state and local government entities may bring state law tort claims against fossil fuel companies for injuries allegedly caused by greenhouse-gas (GHG) emissions, which are inter-state and global in nature and effect. These claims are preempted by federal law. Through these claims, state and local governments impermissibly attempt to regulate air emissions beyond their jurisdictional boundaries and to impose energy policies that differ from those set by the federal government.

Local governments' pursuit of state law claims for tort recovery for GHG emissions do not respect limits of traditional tort claims. By imposing liability based on fossil fuel production and use across the globe and across generations, these state law claims for harms from GHG emissions create a chaotic liability landscape and with it, difficulty in underwriting and insuring (and in procuring insurance for) climate change-related risks.

The procurement problem is especially acute for the energy sector, which already struggles to obtain liability insurance for climate and other environmental risks. Energy companies face unique hazards that require specialized risk management strategies to address exposures, including climate risks that fall outside commercial general liability (CGL) insurance. CGL policies require an accident or occurrence, as well as bodily injury or property damage, to trigger coverage and are subject to other terms, conditions, and exclusions (such as pollution exclusion clauses) that bar coverage for damage

caused by GHG emissions. Energy companies typically manage risk through a variety of insurance products and other strategies, including captive insurance and specialty policies such as Pollution Liability, Environmental Impairment Liability, and Oil and Gas Policies.

Clear and predictable rules governing climate-related liability are important to insurers and the energy sector, and to society as it balances a reliable energy system with environmental protection.

ARGUMENT

I. LOCALIZED CLIMATE CHANGE TORT CLAIMS, WHICH PRODUCE FRAGMENTED, INCONSISTENT AND EXTRATERRITORIAL EXPOSURES, ARE PREEMPTED BY FEDERAL LAW.

The city and county of Boulder, Colorado (collectively, "Boulder"), as well as dozens of other state and local government entities across the United States, seek to use local tort law to address a global problem. Climate change stems from decades of worldwide GHG emissions from many sources, including energy generation, transportation, and industrial activity. States and municipalities like Boulder seek redress for the local impact of GHG emissions by imposing on targeted defendants liability for the cumulative, cross-border conduct of many actors occurring over many years and many

generations, far beyond the borders of any single state or nation.[2]

This Court repeatedly has held that federal law governs disputes involving interstate air or water pollution. *Am. Electric Power Co. v. Connecticut ("AEP")*, 564 U.S. 410, 421 (2011); *Int'l Paper Co. v. Ouellette*, 479 U.S. 481 (1987). The federal Constitution and federal law preclude and preempt states from using their own local law to remedy harm caused by out-of-state and worldwide emissions.

Climate change is driven by countless individual and industrial activities across the world: energy production, transportation, manufacturing,

---

[2] *E.g., Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.) (claims include public nuisance, strict liability for failure to warn, impairment of public trust resources, and violations of State Environmental Rights Act); *State of Maine v. BP p.l.c.*, PORSC-CV-24-442 (Me. Super. Ct. filed Nov. 26, 2024); *In re Fuel Indus. Climate Case*s, No. S288664 (Cal.); *City & Cty. of Honolulu v. Sunoco LP*, No. 1CCV-20-380 (Haw. Cir. Ct.); *Cty. of Maui v. Sunoco LP*, No. 2CCV-20283 (Haw. Cir. Ct.); *City of Chicago v. BP p.l.c.*, No. 2024CH1024 (Ill. Cir. Ct.); *Platkin v. Exxon Mobil Corp.*, No. MER-L-1797-22 (N.J. Super. Ct.); *City of Hoboken v. Exxon Mobil Corp.*, No. HUD-L-3179-20 (N.J. Super. Ct.); *City of New York v. BP p.l.c.*, No. 18-cv-182 (S.D.N.Y.); *Cty. of Multnomah v. Exxon Mobil Corp.*, No. 23-cv-25164 (Or. Cir. Ct.); *Bucks Cty. v. BP p.l.c.*, No. 2024-1836 (Pa. Ct. Com. Pl.); *City of Charleston v. Brabham Oil Co.*, No. 2020 CP-10-3975 (S.C. Ct. Com. Pl.); *King Cty. v. BP p.l.c.*, No. 18-2-11859-0 (Wash. Super. Ct., King Cty.); *Mun. of Bayamón v. Exxon Mobil Corp.*, No. 22-cv-1550 (D.P.R.); *Mun. of San Juan v. Exxon Mobil Corp.*, No. 23-cv-1608 (D.P.R.).

agriculture, and land-use practices.[3] No single source or location can be said to "own" the problem. Instead, climate change results from the cumulative effect of emissions over time and across jurisdictions.[4]

This cumulative nature means that even if a particular locality were to eliminate emissions within its borders entirely, it would still experience climate-related impacts caused by emissions originating elsewhere, as the Maryland Supreme Court observed in holding that federal law preempted local climate change tort claims. *Mayor & City Council of Baltimore v. B.P. P.L.C.*, 353 A.3d 1142, 1175 (Md. 2026) ("Given that Maryland accounts for only a fraction of global carbon dioxide emissions, Maryland's emissions alone cannot possibly be responsible for causing the local governments' alleged injuries.")

Further, permitting states and municipalities across the country to use local tort law to address

---

[3] U.S. Env't Prot. Agency, *Sources of Greenhouse Gas Emissions: Overview*, https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions (last visited May 20, 2026); Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis (Working Group I Contribution to the Sixth Assessment Report)*, https://www.ipcc.ch/report/ar6/wg1/ (last visited May 20, 2026).

[4] *Cf. Greenhouse Gas Emissions by Country,* https://www.worldometers.info/greenhouse-gas-emissions/greenhouse-gas-emissions-by-country/ (last visited May 20, 2026) (stating China emits more greenhouse gases than the United States, India, and Russia combined).

interstate conflicts would create a disordered mosaic of competing and inconsistent standards applicable to the very same conduct, injecting instability into the assessment of exposure and risk – a problem this Court recognized in *Ouellette*. 479 U.S. at 496 (if such claims were permitted, the targeted source "would be subject to a variety of common law rules established by the different states along the interstate waterways. These nuisance standards often are 'vague' and 'indeterminate.' The application of numerous states' laws would only exacerbate the vagueness and resulting uncertainty.")[5] *See also Illinois v. City of Milwaukee*, 731 F.2d 403, 414 (7th Cir. 1984) ("For a number of different states to have independent and plenary regulatory authority over a single discharge would lead to chaotic confrontation between sovereign states…. It would be virtually impossible to predict the standard for a lawful discharge into an interstate body of water…").

As the Court has recognized, certain disputes, by their very nature, cannot be resolved through the application of state law. Where a controversy is interstate or international in character, or involves

---

[5] In *Oulette*, the Court stated that Vermont's public nuisance tort has the effect of regulating out-of-state conduct because, by permitting the state to seek recovery of damages and injunctive relief, the defendant would "have to change its methods of doing business and controlling pollution to avoid the threat of ongoing liability." 479 U.S. at 496. *See also Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) ("regulation can be effectively exerted through an award of damages" and "[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." (*quoting San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)).

issues of national importance, domestic security or foreign relations, the Constitution requires the application of federal law to ensure uniformity and prevent undesirable conflict among sovereigns. *See* U.S. Const. Art. VI, cl. 2. In such areas, the Constitution calls for a federal rule of decision rather than an inconsistent mix of individual state standards. *Id.*

Cross-border air pollution has long been understood to fall squarely within this category. *See* 42 U.S.C. 7401-7675; U.S. Const. Art. I, § 8, cl. 3. Disputes involving emissions that flow across state lines—or affect foreign nations—implicate uniquely federal concerns, including the allocation of authority among states, the Nation's foreign relations, and the sovereignty of foreign nations. Allowing each state to impose its own regime in this area would create a fragmented and incoherent state-level regulatory system, spark conflicts among sovereigns, and leave parties facing significant uncertainty when forced to comply with potentially conflicting state and local laws.

Consistent with these principles, the Constitution demands a uniform federal approach to controversies involving interstate emissions. Before Congress acted, federal common law supplied the governing rules. *AEP,* 564 U.S. at 410-11. Congress later displaced that common law by enacting the Clean Air Act and subsequently expanding it into a comprehensive nationwide framework for regulating

air pollution.[6] *See* 42 U.S.C. § 7401 *et seq*. The federal government is charged with advancing a coordinated national strategy addressing environmental pollution and the maintenance of an affordable and reliable domestic energy supply. *Id.*

The federal government has also addressed GHG emissions by joining global, multilateral climate agreements. At the same time, the United States has chosen not to adopt some binding international commitments, reflecting the national judgment that stricter regulations do not always serve broader U.S. interests.

Together, this constitutional, statutory, and diplomatic framework shows that regulating GHG emissions, which necessarily are interstate and global in nature, is an exclusively federal matter—one that requires balancing environmental protection with economic, energy, security, and foreign policy interests on a national and international scale. Federal preemption of localized climate torts prevents conflicting state rules from undermining federal policy and establishes a uniform, predictable standard for climate change liability. It ensures uniform national regulation of problems that are interstate and international in scope.

---

[6] *See also* U.S. Env't Prot. Agency, *Clean Air Act Requirements and History*, https://www.epa.gov/clean-air-act-overview/clean-air-act-requirements-and-history (last visited May 20, 2026).

II. EXCESSIVE UNCERTAINTY CREATED BY LOCALIZED STATE CLIMATE CHANGE TORTS MAKES CLIMATE RISK FAR MORE DIFFICULT TO INSURE.

A. Uncertainty in Exposure and Risk Undermines the Insurance Market for All Interested Parties.

Uniform standards governing GHG emissions under federal preemption would also enable a favorable environment for insurance of those risks. A viable insurance system involves the spreading of actuarially predictable risks across a large pool of insureds. Reasonable confidence as to the scope and nature of the risk assumed is essential to the risk-spreading function. Only with that certainty can an insurer accurately price coverage and ensure the availability of adequate reserves to pay future claims. By evaluating and distributing risks in this fashion, insurance allows individuals and businesses to engage in socially useful activities.

To preserve solvency, insurers must spread the costs of uncertainty across the insurance-buying public. When, as would be the case in the absence of preemption, uncertainty expands from specific, defined risks to entire categories of potentially limitless liability, rational underwriting becomes virtually impossible. An insurer cannot rationally set a premium for an insurance policy that could encompass an unbounded and indeterminate collection of risks arising from penalties or liabilities that states and municipalities across the country may seek to impose for climate change. Insurers cannot insure against the consequences of generations of

conduct occurring nationwide and worldwide without any limiting principle.

B. A Viable Insurance Market Depends on Consistent Standards of Liability for GHG Emissions.

Available and affordable liability insurance for the energy sector and other sources of GHG emissions depends critically on the existence of consistent, stable tort liability standards governing the conduct of insureds. Liability insurance functions by allowing insurers to evaluate the probability and magnitude of legally imposed losses based on established legal rules. When the scope of potential liability is knowable and constrained, insurers can price coverage, allocate capital, and maintain reserves in a manner that supports both solvency and availability of coverage across the market.

The energy sector, by its nature, involves large-scale, capital-intensive, and long-duration activities that operate within dense regulatory frameworks and span multiple jurisdictions.[7] Insurers underwriting liability risks for energy producers must assess not only operational hazards but also the legal standards by which harm is evaluated and liability imposed. Consistent, traditional tort doctrines provide the essential framework within which insurers can model risk. When courts apply settled principles of tort law in a

---

[7] *See, e.g., World Energy Investment 2025*, International Energy Agency, OECD, Infrastructure at https://www.iea.org/reports/world-energy-investment-2025 (last visited on May 20, 2026).

predictable manner, it enables insurers to estimate expected losses and spread those risks across a broad pool of policyholders. *See Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC,* 601 U.S. 65, 73 (2024) (applying a predictable legal standard allows insurers to better assess risk and "therefore can lower the price and expand the availability of [ ] insurance").

By contrast, if energy producers are subject to varying and novel standards for climate change liability across the country, the risk from GHG emissions becomes fundamentally indeterminate. This uncertainty undermines core insurance functions such as actuarial pricing, reserving and aggregation of risk, because insurers cannot reliably predict when liability may attach, how courts will allocate fault among defendants, or whether losses will be considered fortuitous rather than systemic. The problem is compounded where multiple states or municipalities bring parallel or sequential suits premised on the same conduct, creating correlated losses that defeat the basic premise of risk pooling. As a result, insurers face strong incentives to sharply limit coverage, exclude climate-related liabilities in policies where they might otherwise be covered, and possibly even withdraw from affected lines altogether. Expansive local climate litigation does not merely raise premiums but hinders the insurability of climate risk itself.

In the energy sector, where insurance is often required by contract or regulation, the erosion of affordable coverage can constrain investment, impede infrastructure development, and distort markets without any corresponding improvement in safety or

accountability. This uncertainty is not confined to the insureds whose conduct is challenged; it extends to the entire class of energy-sector risks, making actuarial predictions unreliable and undermining the economic foundations of liability insurance.

Moreover, predictable liability standards promote competition and efficiency in insurance markets. A common understanding of the legal environment in which claims will be adjudicated underpins insurers' ability to compete on price, coverage terms, and service quality. Fragmented or rapidly shifting liability theories distort this competition, favoring short-term retrenchment over long-term underwriting and discouraging market participation. The resulting reduction in available capacity disproportionately affects sectors like energy, where risks are already complex and capital requirements are high.

In sum, the availability and affordability of liability insurance for the energy sector are inextricably intertwined and dependent on stable, predictable tort principles governing liability exposure. Consistent standards are critical for insurers to price risk rationally, maintain adequate reserves, and provide coverage that supports lawful, socially necessary economic activity. When those standards erode, insurance markets are pressured to respond not by absorbing limitless uncertainty, but by contracting—shifting costs, narrowing coverage, and ultimately limiting access to insurance in ways that ripple far beyond the courtroom.

C. Insurance is Necessary and Supports Efforts to Balance a Reliable Energy System and Environmental Protection.

The nation is best served when energy is the most affordable and reliable, and energy is made more affordable and reliable by a diverse portfolio of energy sources, consistent with any constraints that may be imposed by federal policies on energy and the environment. This in turn is made possible by a robust insurance market that supports the energy industry, while encouraging environmental risk avoidance by pricing coverage commensurate with risk. But the level of unpredictability and uncertainty created by localized state climate tort litigation impairs the ability to assess risk and therefore is constraining the insurance market for industries contributing to GHG emissions.

Significant challenges in the energy sector insurance market already exist. As one commentator recently explained:

> The insurance industry is facing significant capacity challenges in the energy sector. There is a substantial protection gap between global economic losses and insured losses, with a gap of around $60 billion. Severe convective storms, flooding, wildfires, windstorms, and earthquakes are driving substantial losses, with the United States being the region experiencing the highest insured losses.

> Reportedly, many insurers are reluctant to deploy capacity for certain industries, such as oil and gas, due to climate change concerns and the risk of litigation. Major insurance companies that previously offered substantial limits, often exceeding $100 million, have significantly reduced their capacity. Some have even capped their offerings at $20 million or less. [8]

A healthy insurance marketplace contributes to both promoting a reliable energy system and enabling society to respond constructively to climate change. By pooling and pricing risk through actuarial methods, insurers enable long-term investments in infrastructure, energy systems, and technology that would otherwise be prohibitively risky. This function is especially critical in the context of climate change, where solutions require large-scale, capital-intensive projects with long planning horizons.

Energy transition projects—such as renewable generation, grid modernization, carbon capture, and climate-resilient infrastructure—depend on the availability of liability, property, and specialty insurance. Insurers assess risks associated with these projects and translate them into premiums, coverage conditions, and incentives for loss prevention. To evaluate risk, insurers rely on defined legal rules and

---

[8] *See, e.g.,* "Navigating insurance coverage challenges in the energy sector," https://kpmg.com/us/en/articles/2025/navigating-insurance-coverage-challenges-energy-sector.html (last visited on May 20, 2026).

credible data, requirements that are necessary for insurers to support investment in new technologies and adaptive strategies that expand energy production options and reduce climate-related vulnerability over time.[9] A functioning climate risk insurance market can internalize environmental costs into economic decision-making while preserving socially valuable energy production, aligning environmental protection with long term energy stability rather than forcing society to sacrifice one for the other.

CONCLUSION

Responsibility for interstate air emissions rests with the federal government, and federal law bars state and local tort claims from overriding those decisions. Allowing such claims is unlawful and counterproductive, creates intolerable uncertainty for the energy and insurance sectors and, in turn, harms society.

---

[9] Congress and state legislatures repeatedly have recognized that without insurance or insurance-equivalent financial mechanisms, clean energy and climate adaptation projects cannot attract the private capital necessary for development. *E.g.*, 42 U.S.C. §§ 16511–16516 (the Energy Policy Act of 2005) (authorizes the Department of Energy to guarantee up to 80% of loans for such projects to reduce emissions of greenhouse gasses); *XP Vehicles, Inc. v. United States*, 121 Fed. Cl. 770 (2015) (the purpose of the loan guarantee program under the Energy Policy Act of 2005 is to "support innovative clean energy projects that are typically unable to obtain conventional private financing due to high technology risks"). *See also Minnesota Energy and Econ. Dev. Auth. v. Printy*, 351 N.W.2d 319, 343 (Minn.1984) (recognizing cost constraints on investment in new technologies aimed at "energy conservation and development of alternative energy resources").

Respectfully submitted,

Laura A. Foggan
Counsel of Record
LAVIN RINDNER DUFFIELD, LLC
1717 K St., NW, Ste 900
Washington, DC 20006
(202) 759-6767
lfoggan@lrd.law

Counsel for *Amici Curiae,* the American Property Casualty Insurance Association, Complex Insurance Claims Litigation Association, and Reinsurance Association of America