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 FOR AMICI CURIAE ASSOCIATED GOVERNMENTS OF NORTHWEST COLORADO, ARCHULETA COUNTY, DELTA COUNTY, GRAND COUNTY, GARFIELD COUNTY, MESA COUNTY, MONTEZUMA COUNTY, MONTROSE COUNTY, AND RIO BLANCO COUNTY IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE

Amicus Curiae[1] Associated Governments of Northwest Colorado ("AGNC") is a statutory local government organized as the Council of Governments and federally designated Economic Development District serving counties in northwest Colorado, with associate-member counties in Colorado's Western Slope. AGNC's mission is to advocate, inform, and reflect the needs of its members and promote the values, industries, and economies of Northwest Colorado. AGNC serves as a regional convener and nonpartisan advocate for rural local governments whose communities depend on a stable energy economy, and whose budgets, public services, and residents are directly affected when disruptions in regional energy markets increase costs or erode local tax revenues. AGNC has a direct interest in ensuring that state tort law claims premised on the cumulative effects of global greenhouse-gas emissions do not expose that economic foundation to open-ended, multi-jurisdictional liability that would threaten the stability of member county economies. AGNC's interest is specific to the unique legal context presented in this case and does not extend to any argument that state tort remedies should be limited in cases involving direct and identifiable sources of harm.

Archuleta, Delta, Garfield, Mesa, Montrose,

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[1] Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Montezuma, and Rio Blanco Counties are statutory counties located in Colorado's Western Slope whose tax bases and economies depend substantially on energy production and related industries. These Counties and their residents rely on that sector for significant financial support, including severance tax distributions, federal mineral lease and royalty revenues, property taxes on energy infrastructure, and energy-sector employment. Garfield County, for instance, is Colorado's second-leading natural gas producer and sits atop the second-largest producible shale basin in North America. And in Montezuma County, between 40 and 50 percent of county tax revenue has historically come from oil and gas production.

These Counties have a direct interest in the legal framework governing liability for the cumulative effects of greenhouse-gas emissions and in ensuring that the voices reaching this Court from Colorado's political subdivisions reflect the State's full geographic and economic diversity. The potential impacts of this litigation on these Counties are staggering, particularly compared to Respondents Boulder County and the City of Boulder, which are located half a state away on Colorado's Front Range. Respondents' litigation tactics discourage continued domestic energy production and investment, threatening these Counties' rural economies and their ability to fund roads, schools, emergency services, and other critical public functions. At bottom, Respondents' political and economic priorities differ substantially from those of these Counties, and Respondents do not speak for Delta, Garfield, Mesa, Montrose, Montezuma, and Rio

Blanco Counties on the questions presented here.

Grand County is a statutory county located in Colorado's North Central mountains. It is home to the headwaters of the Colorado River, whose streams and rivers provide water to communities and agricultural operations throughout the West. Situated at the west entrance to Rocky Mountain National Park, Grand County's economy is built on tourism and year-round outdoor recreation, including skiing, boating and fishing on its many lakes, and rafting and fly-fishing on the Colorado River. These attractions draw over 7.7 million visitors a year.

Grand County has a direct governmental interest in the legal framework governing liability for the cumulative effects of greenhouse-gas emissions, and in ensuring that the political subdivisions whose voices reach this Court reflect Colorado's full geographic and economic diversity. Colorado's system of local government rests on the principle that each county and municipality governs according to the needs and priorities of its own residents—not those of its neighbors. Whatever policy choices Boulder County and the City of Boulder have made for their own communities, those choices do not bind Grand County. Respondents have no authority to pursue litigation that would effectively impose their political and economic preferences on other Colorado jurisdictions. Boulder County and the City of Boulder do not speak for Grand County on the questions presented here.

INTRODUCTION AND SUMMARY OF ARGUMENT

Respondents seek to impose their energy policy preferences not only across the nation and the globe, but also upon sister counties in the State of Colorado. Along with the interstate and foreign-affairs concerns Petitioners have raised, this intrastate conflict only strengthens the conclusion that the Colorado Supreme Court erred in allowing this case to proceed. Amici write separately to draw this Court's attention to this intrastate dimension: Respondents are attempting to wield the adjudicatory process as a regulatory instrument, not merely against out-of-state and international actors, but against the interests of sister counties in Colorado.

Along with Boulder County, Amici are statutory counties that are political subdivisions of the same sovereign—Colorado—whose law Respondents invoke in this litigation. *See Colo. Mining Ass'n v. Bd. of Cnty. Comm'rs*, 199 P.3d 718, 729 (Colo. 2009) (en banc). But while Boulder County and Amici stand on equal footing within Colorado's political structure, they have different constituencies and possess vastly different economic interests.

Relevant here, there is a striking contrast between Respondents' and Amici's economic reliance upon the fossil fuel industry. Boulder County is one of Colorado's most populous jurisdictions, with approximately 330,000 residents concentrated in an urban core anchored by a major research university.[2] Its

[2] *See* U.S. Census Bureau, *Quick Facts: Boulder County, Colorado*, https://perma.cc/4YX2-PQ8W.

economy is driven by technology, aerospace, and higher education.[3] Amici's counties are different not only in the density of their population but in the very nature of their industries. For instance, Garfield County, with roughly 60,000 residents spread across the Colorado River corridor, hosts 12,027 active oil and gas wells and produced over 307 million thousand-cubic feet ("MCF") of natural gas in 2025 alone, with taxable oil and gas assets valued at more than $1.3 billion.[4] Rio Blanco County—home to fewer than 7,000 people—produced over 3.2 million barrels of oil and more than 85 million MCF of natural gas in 2025, with assessed oil and gas valuation exceeding $405 million.[5] Similarly, Archuleta County, in southwestern Colorado, is home to just over 14,000 residents, and produced over 21 million MCF of natural gas in 2025,

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[3] *See* Boulder Chamber Economic Council, *Key Industries and Companies*, https://perma.cc/8LZW-B2Y8.

[4] *See* U.S. Census Bureau, *Quick Facts: Garfield County, Colorado*, https://perma.cc/2WGA-4GYN; Colo. Energy & Carbon Mgmt. Comm'n, *Active Well Count by County and Year Report*, https://perma.cc/3YLM-H5RN ("Well Report"); Colo. Energy & Carbon Mgmt. Comm'n, *Production by County*, https://perma.cc/A58E-3Q25 ("2025 Production Report"); Colo. Dep't of Local Affairs, *Fifty-Fourth Annual Report of the Division of Property Taxation* at 196-97, https://perma.cc/5WGE-5HYK ("Property Taxation Report").

[5] *See* U.S. Census Bureau, *Quick Facts: Rio Blanco County, Colorado*, https://perma.cc/82B7-BL3D; 2025 Production Report; Property Taxation Report at 196-97.

with oil and gas valuations of in excess of $36 million.[6] Mesa County, the regional hub of western Colorado, operates 1,178 active wells and carries oil and gas valuations of approximately $140 million.[7] And Delta County is home to many of the employees of the West Elk Mine—the state's largest coal operation—and therefore derives a primary share of its employment and tax base from coal mining.[8] These are not abstract statistics. They represent the basis for tax revenues that fund county roads, schools, emergency services, and public health infrastructure across communities. If Respondents' regulatory tactics lead to a contraction of the fossil fuel economy, critical public funds will diminish too.

A damages award of the magnitude Respondents seek would depress investment, constrain production, and reduce the assessed valuations upon which Amici and their neighbors rely to fund the basic functions of local government. Respondents, with their minimal fossil fuel footprint and diversified urban economy, bear virtually none of that exposure. The Amici bear nearly all of it.

A single county, acting through litigation and

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[6] U.S. Census Bureau, *Quick Facts: Archuleta County, Colorado*, https://perma.cc/4NE8-E23U; 2025 Production Report; Property Taxation Report at 196-97.

[7] *See* Well Report; 2025 Production Report; Property Taxation Report at 196-97.

[8] *See* Delta County, *Largest Employers in Delta County*, https://perma.cc/L9VN-NM7S; Colo. Geological Survey, *IS-88 Colorado Mineral and Energy Industry Activities 2024-2025* at 14, https://perma.cc/CX92-EP2H.

insulated from the costs it seeks to impose, should not be permitted to set energy policy for the communities most directly affected by that policy. Along with the interstate and foreign-affairs concerns raised by Petitioners, this intrastate dimension only strengthens the case for reversal of the Colorado Supreme Court's decision.

ARGUMENT

Respondents seek to use state tort claims to regulate a fundamentally global phenomenon: greenhouse-gas emissions and their alleged effects on the earth's climate. As Petitioners explain, the Constitution does not permit a single locality to impose tort liability for harms allegedly caused by the worldwide production and use of fossil fuel activity generating emissions arising across the globe. Such claims intrude upon an area reserved to federal law because greenhouse-gas emissions transcend borders of any kind, implicate competing sovereign interests, and require nationally uniform rules.

This Court's precedents have long recognized interstate pollution disputes as matters governed exclusively by federal law. Although Congress displaced federal common law through enactment of the Clean Air Act, Congress did not authorize local counties to impose their own claimed solution to a global phenomenon by invocation of state tort regimes. This approach is impermissibly extraterritorial. Respondents seek damages for injuries that cannot be confined to city or county borders as the activities and attendant phenomena occur worldwide. Allowing such claims to proceed would effectively permit each State and, as

relevant to these Amici, each locality within a State to attempt to dictate national climate and energy policy, creating conflicting legal standards, massive and duplicative liability, and substantial disruption to one of the Nation's largest and most important industries. Petitioners correctly warn that, if sustained, the decision below would invite courts and juries nationwide to establish climate policy through state tort law rather than through the political branches of the federal government.

This is all the more significant given the federal government's exclusive authority over foreign affairs. Because climate change and greenhouse-gas emissions are inherently global issues that implicate international diplomacy, trade, energy security, and treaty negotiations, state-law tort suits targeting worldwide emissions threaten to undermine the federal government's carefully calibrated foreign-policy judgments. The Constitution entrusts such matters exclusively to the national government and therefore precludes state-law claims predicated on international emissions and global policy.

Finally, Petitioners are correct that the Clean Air Act independently preempts Respondents' claims. The Clean Air Act conflicts with state-law efforts to impose liability for out-of-state emissions. By empowering EPA to establish nationwide standards and by creating specific mechanisms for interstate pollution disputes and oversight, Congress foreclosed the use of state tort law as an alternative regulatory mechanism.

* * *

Petitioners correctly explain why Respondents' claims are incompatible with federal authority over interstate pollution. Amici's arguments highlight an additional dimension—the intrastate consequences of permitting local counties, through the tool of tort litigation, to impose economic and policy consequences borne disproportionately by sister counties possessing equal political status. Respondents should not be permitted to impose their policy preferences onto coordinate political subdivisions with fundamentally different economic interests and governing priorities.

I. Litigation like administrative adjudication can serve as a regulatory tool.

Respondents here do not merely seek "compensation" for harms caused within their jurisdictional borders. Instead, they seek to regulate a worldwide industry. This Court has recognized that common-law litigation may operate as a form of regulation no less than legislation or administrative action.

The foundational decision is *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). There, the Court explained that "regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *Id.* at 247. As a result, state tort litigation implicates the same supremacy, equal sovereignty, and uniformity concerns as direct governmental

regulation. Indeed, in *Garmon*, the Court rejected any formal distinction between regulation accomplished through agency commands and regulation accomplished through liability imposed by courts and juries. "[R]emedies," the Court explained, "form an ingredient of any integrated scheme of regulation." *Id.*

This Court has repeatedly reaffirmed that principle. In *Cipollone v. Liggett Group, Inc.*, the plurality held that state common-law tort claims could constitute state-law "requirements or prohibitions" subject to federal preemption. 505 U.S. 504, 522 (1992) (citation modified). Quoting *Garmon*, this Court reiterated that "regulation can be as effectively exerted through an award of damages as through some form of preventive relief." *Id.* at 521 (citation modified). The plurality further recognized that tort suits necessarily rest upon state-imposed legal duties and therefore function as regulatory commands: "common-law damages actions . . . are premised on the existence of a legal duty, and it is difficult to say that such actions do not impose 'requirements or prohibitions.'" *Id.* at 522 (citation omitted). A tort verdict, no less than a statute, directs future conduct by attaching legal consequences to disfavored behavior. Likewise, in *BMW of North America, Inc. v. Gore*, the Court again emphasized that "[s]tate power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute." 517 U.S. 559, 572 n.17 (1996).

Lower federal courts and state courts have similarly noted this principle. In *Palmer v. Liggett Group, Inc.*, the First Circuit observed that a verdict

in a cigarette-warning label suit would "arrogate[] to a single jury the regulatory power explicitly denied to all fifty states' legislative bodies." 825 F.2d 620, 628 (1st Cir. 1987). This is because a damages award has "an effect similar to . . . a state regulation"—it exerts regulatory force over future conduct. *Wood v. Gen. Motors Corp.*, 865 F.2d 395, 408 (1st Cir. 1988); *see also Gonzalez v. Ideal Tile Importing Co.*, 853 A.2d 298, 305 n.4 (N.J. Super. Ct. App. Div. 2004) (noting that "[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy" (citation modified)).

The logic of those observations applies with great force here. A climate-change tort judgment would not merely compensate discrete injuries; it would operate as a de facto emissions and energy policy, compelling companies to alter nationwide—and indeed worldwide—production, marketing, and investment decisions under threat of massive liability.

That regulatory objective is not incidental to Respondents' lawsuit; it is its premise. Respondents do not allege, nor could they, that Petitioners caused localized pollution confined within state borders. They seek to hold Petitioners liable for the cumulative effects of worldwide greenhouse-gas emissions resulting from the extraction, sale, and combustion of fossil fuels across the globe over many decades. The relief sought is correspondingly regulatory in character. Massive compensatory and punitive damages tied to the societal costs of climate change would necessarily function as a judicially imposed carbon-pricing regime—one fashioned not by Congress

or federal agencies, but by state juries applying divergent standards in jurisdictions across the country.

Permitting such suits would authorize each State, and indeed each locality, to superimpose its own policy judgments onto a matter of uniquely national and international concern. One jury might conclude that lawful fossil-fuel production should carry billions of dollars in liability; another might not. Some jurisdictions might effectively demand rapid decarbonization; others might tolerate continued production. The resulting patchwork would subject national energy policy to untenable extraterritorial control.

Because "[t]he obligation to pay compensation" is "a potent method of governing conduct and controlling policy," *Garmon*, 359 U.S. at 247, these actions cannot be dismissed as ordinary compensation litigation. They are exercises of sovereign regulatory power through the vehicle of tort law.

II. One county may not impose its policy preferences on sister counties through tort litigation.

Courts across the country agree on the foundational principle that a county's regulatory authority ends at its own borders. County governments derive their existence from state law, and any exercise of regulatory power requires affirmative authorization from the state. *See, e.g.*, *Laramie Cnty. Comm'rs v. Albany Cnty. Comm'rs*, 92 U.S. 307, 312 (1875); *Cedar Cnty. Comm'n v. Parson*,

661 S.W.3d 766, 771-72 (Mo. 2023) (en banc); *Craig v. Cnty. of Chatham*, 565 S.E.2d 172, 175 (N.C. 2002). Thus, the "basic rule is that a local government has no extraterritorial powers and cannot, without express authorization from the state, extend its regulations or the force of its laws outside its own boundaries." *State ex rel. Village of Los Ranchos de Albuquerque v. City of Albuquerque*, 889 P.2d 185, 195 (N.M. 1994) (citation omitted); *see Benewah Cnty. Cattleman's Ass'n, Inc. v. Bd. of Cnty. Comm'rs of Benewah Cnty.*, 668 P.2d 85, 88 (Idaho 1983) (explaining that a county "ordinance is without force and effect within the limits" of other political subdivisions of the state). Within this framework, a county's regulatory power generally extends only to "matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest." *State ex rel. Morrison v. Beck Energy Corp.*, 37 N.E.3d 128, 133-34 (Ohio 2015) (citation modified).

Colorado applies the same principles. Statutory counties "derive their authority from the state" and "possess only those authorities expressly conferred upon them by the state and those incidental implied powers reasonably necessary to carry out their expressly granted powers." *Colo. Min. Ass'n*, 199 P.3d at 729. Indeed, a statutory county "has no inherent sovereign authority." *Dill v. Bd. of Cnty. Comm'rs*, 928 P.2d 809, 812 (Colo. Ct. App. 1996). Colorado courts thus weigh several factors to determine the validity of a political subdivision's regulatory actions, including "(1) the need for statewide uniformity of regulation, (2) the extraterritorial impact of the local regulation, (3)

whether the state or local governments have traditionally regulated the matter, and (4) whether the Colorado Constitution specifically commits the matter to either state or local regulation." *City of Longmont v. Colo. Oil & Gas Ass'n*, 369 P.3d 573, 580 (Colo. 2016). Even for home-rule political subdivisions that possess greater regulatory authority than statutory counties, where a local action generates a "ripple effect that impacts state residents" outside the enacting jurisdiction with "serious consequences," that impact will weigh decisively in favor of finding the regulatory action invalid. *Id.* at 581 (citation omitted). A principal aim of this approach is to avoid "creating a patchwork of local and state rules" and to prevent political subdivisions from enacting "de facto statewide" regulations. *Id.* (citation omitted).

As a result, this case also presents a foundational question about the proper role of local governments within a single sovereign State. Respondents seek to invoke Colorado law not simply to obtain compensation for localized harms, but to impose policy consequences that will be borne disproportionately by other counties possessing equal legal status under Colorado law. In practical effect, Respondents seek to leverage the judicial process to accomplish what they could not accomplish through the ordinary political process: the imposition of a statewide energy policy preference favoring rapid contraction of fossil-fuel production and use.

But Colorado's sister counties are not subordinate policy enclaves whose economic futures may be dictated by whichever locality is most politically

opposed to a particular industry. Boulder County is not Colorado's energy overlord. It is not authorized to use tort law as a mechanism for restructuring the State's economy according to Boulder County's own policy preferences while externalizing the resulting costs onto other communities. Colorado's statutory counties stand on equal footing as political subdivisions of the State. *See Colo. Min. Ass'n*, 199 P.3d at 729. They serve different constituencies, possess different economies, and necessarily adopt different policy priorities in response to local conditions and needs. *See supra.* pp. 4-6 (describing how Respondents' economic interests diverge sharply from those of Amici). What may appear economically inconsequential to Boulder County may threaten the fiscal stability of rural counties whose schools, roads, hospitals, and emergency services depend substantially upon energy development and mineral production. *See id.*

That divergence of interests matters here because Respondents' theory of liability is inherently regulatory in operation. The extraordinary damages Respondents seek would not remain confined to Boulder County. Any judgment of the magnitude contemplated by this litigation would predictably alter investment decisions, suppress production activity, increase operational costs, and diminish the tax base upon which energy-producing counties depend. Those consequences would radiate throughout Colorado's rural communities irrespective of whether those communities agree with Respondents' policy objectives. Respondents thus seek to impose statewide

and indeed global economic and policy consequences through the adjudicative process even though Colorado's political structure provides no authority for one county to regulate the economic priorities of another.

The concern is not merely economic. Colorado's constitutional structure reflects a balance between statewide interests and local self-government. Allowing one locality to wield state tort law as a de facto instrument of statewide energy regulation would destabilize that balance by empowering individual counties to pursue conflicting statewide agendas through litigation. But courts in Colorado and across the country have recognized that county and local governments do not have the power to regulate issues—like this one—that are of statewide concern. *See, e.g.*, *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061, 1062 (Colo. 1992) (en banc) (explaining that the "efficient development and production of oil and gas resources" was a matter of "statewide interest"); *Beck Energy Corp.*, 37 N.E.3d at 133-34 (explaining that local governments in Ohio may not regulate "matters which are of a statewide nature or interest"). Thus, in similar circumstances, state courts have struck down "de facto statewide" regulations based in part on the need to avoid "creating a patchwork of local and state rules." *See, e.g.*, *City of Longmont*, 369 P.3d at 581. Respondents' litigation tactics are of a kind with such impermissible attempts to dictate statewide policy.

Today the issue is fossil-fuel production, tomorrow it could be water or transportation. If each locality may deploy tort law to impose its own

preferred statewide policy outcomes on sister counties, the result will be fragmentation, instability, and precisely the kind of patchwork governance this Court and Colorado courts alike have repeatedly rejected.

Amici do not contend that state tort law is categorically unavailable whenever interstate or statewide economic effects are present. Nor do Amici dispute that counties may seek relief for genuinely localized harms occurring within their own jurisdictional boundaries. The problem here is the unprecedented attempt to use state-law tort theories to regulate a global industry and thereby impose sweeping economic consequences upon coordinate political subdivisions that reject Respondents' policy judgments. The Constitution does not permit one county to exercise that kind of regulatory authority over the rest of the State through the vehicle of tort litigation.

CONCLUSION

The judgment of the Colorado Supreme Court should be reversed.

Respectfully submitted,

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