No. 25-170

In the Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC.; SUNCOR ENERGY SALES INC.; EXXON MOBIL CORPORATION,

Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY; CITY OF BOULDER,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

BRIEF FOR THE AMERICAN PETROLEUM INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

MARK A. PERRY
Counsel of Record
BRADY D. MORRIS
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Suite 600
Washington, D.C. 20036
(202) 682-7000
Mark.Perry@weil.com

Counsel for Amicus Curiae American Petroleum Institute

SARAH M. STERNLIEB
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue
Suite 1200
Miami, FL 33131

May 21, 2026

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES — Continued

Page(s)

TABLE OF AUTHORITIES — Continued

Page(s)

TABLE OF AUTHORITIES — Continued

Page(s)

TABLE OF AUTHORITIES — Continued

Page(s)

STATUTES, BILLS, & LEGISLATIVE MATERIALS

OTHER AUTHORITIES

TABLE OF AUTHORITIES — Continued

Page(s)

TABLE OF AUTHORITIES — Continued

Page(s)

INTERESTS OF THE *AMICUS CURIAE*[1]

The American Petroleum Institute ("API") is a nationwide, non-profit trade association that represents approximately 600 companies involved in every aspect of the petroleum and natural-gas industry. Its members range from the largest integrated companies to the smallest independent oil and gas producers. API's members include producers, refiners, suppliers, marketers, pipeline operators, and marine transporters, as well as service and supply companies that support the industry. API is also the leading body for establishing standards that govern the oil and natural-gas industry.

This case is one of many that have been brought against petroleum and natural-gas companies ostensibly on behalf of state and local governments, often represented by the same private counsel. Although API is not a party to this case, API has been named as a defendant in other cases, in which the plaintiffs contend that API's exercise of its First Amendment rights to advocate and petition the government on behalf of its members is a basis for tort liability. See, *e.g.*, *Minnesota* v. *Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct.); *Delaware ex rel. Jennings* v. *BP Am. Inc.*, No. N20C-09-097 (Del. Super. Ct.). More broadly, the Court's resolution of this case will have implications for the entire petroleum and natural-gas industry, including API's members, and thus API has a concrete interest

[1] Pursuant to Supreme Court Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

in ensuring that state tort law is not misused to target its members for extraterritorial conduct that is properly subject only to federal regulation.

This suit, and others like it, is an effort to impose policy preferences and regulatory control, at the state and local level, over a small subset of the alleged contributors to the global phenomenon of climate change. At bottom, Respondents seek money damages under state tort law based on greenhouse gas emissions. Interstate emissions, however, have long been governed exclusively by federal law because they occupy an inherently federal domain that states and municipalities do not have the authority to regulate. In API's view, the contrary decision of the Colorado Supreme Court in this case conflicts with a century of this Court's precedent, and it should be rejected.

In response to increasing concerns about climate change, API has advocated for considered and evidence-based policies at the national level that support research and the ongoing transition to cleaner energy. API knows from long experience that policymakers must strike a delicate balance between reducing greenhouse gas emissions and maintaining the consistent energy supply on which the world economy depends. Tort claims like this one permit no such balance; rather, individual plaintiffs seek to recover maximal damages, while leaving the hard work of reducing greenhouse gas emissions to others. If anything, Respondents' suit would make it more difficult to address climate change by inviting 50 states and countless cities, counties, and territories to differentially regulate beyond their boundaries.

Ad hoc sanctioning and extraterritorial regulation of energy companies through the state tort system would destabilize the whole sector. API is uniquely situated to explain the likely effects on the industry, national security, and the world economy if the threat of future liability under varying state-court judgments undercuts American energy production. As API explains below, even small changes to costs and prices in the energy industry can have ripple effects throughout the global infrastructure. This Court should make clear that this suit, and others like it, may not proceed under state tort law, thereby safeguarding principles of federalism and leaving the global issue of greenhouse gas emissions to policymakers at the federal level.

QUESTION ADDRESSED BY THE *AMICUS*

This brief addresses the first question presented in the Brief for Petitioners: 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.

SUMMARY OF ARGUMENT

The Colorado Supreme Court erred in ruling that Respondents could bring state-law tort claims seeking damages for injuries allegedly caused by global greenhouse gas emissions and global climate change. For over a century, this Court has held that interstate air and water pollution are inherently federal domains, governed exclusively by federal common law or statute. Accordingly, claims alleging that out-of-state emissions cause injury within a state have always been governed by federal law. Yet the court below found that Congress's enactment of the Clean Air Act ("CAA") somehow

"revived" state-law claims that, under this Court's precedent, never existed.

This case is emblematic of the concerted effort litigants have made to repackage their climate litigation claims to avoid application of federal law. The Colorado Supreme Court endorsed this effort, finding that Respondents' state tort claims were viable because (1) the tortious conduct was not the emission of greenhouse gases, and (2) federal common law no longer precludes state-law claims. Pet. App. 18a, 20a. But Respondents necessarily allege that the tortious conduct at issue is causing the emission of greenhouse gases, and the decision below erred in concluding otherwise.

Allowing Respondents' claims to proceed would trigger a surge of similar suits, subjecting Petitioners and other participants in the energy industry to an impossible web of disparate judgments and multi-billion-dollar claims for the same conduct. This would undermine the federal government's ability to set nationwide policy, instead creating piecemeal standards and chaos in the industry and world economy more broadly.

This problem is compounded by a disparate array of enacted and proposed state so-called climate change "superfund" statutes, insurance recovery statutes, and private rights of action that would subject energy companies to even more liability regimes. In short, Respondents' suit is not a workable means by which to address climate change, and indeed would destabilize sectors vital to the American economy and national security.

Respondents' effort to plead around the exclusivity of federal law, by portraying their claims as related only to the marketing, sale, and production of fossil fuels—

rather than the emission of greenhouse gases—should be rejected. All of Respondents' asserted injuries were allegedly caused by global climate change, which is caused largely by the emission of greenhouse gases. Petitioners' "upstream" marketing, sale, and production of fossil fuels are at best several times removed from Respondents' alleged injury. The complaint's focus on a narrow set of remote activities is not controlling because Respondents ultimately seek to recover for the effects of interstate greenhouse gas emissions. But "[n]o amount of creative pleading can masquerade the fact that the local governments are attempting to utilize state law to regulate global conduct that is purportedly causing global harm." *Mayor & City Council of Baltimore* v. *B.P. P.L.C.*, 353 A.3d 1142, 1173 (Md. 2026).

Federal law has always applied to disputes arising from interstate emissions, because the regulation of interstate emissions is an inherently federal domain. *Am. Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 421, 422 (2011) ("air and water in their ambient or interstate aspects" are "meet for federal law governance"). For decades, this Court applied federal common law to disputes arising from interstate emissions. See *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 103 (1972) (hereinafter "*Milwaukee I*"); see also *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases). After the CAA and Clean Water Act ("CWA") were enacted, this Court held that Congress had displaced federal common law in the realm of interstate emissions. *Am. Elec. Power*, 564 U.S. at 420-24; *City of Milwaukee* v. *Illinois & Michigan*, 451 U.S. 304, 313-14 (1981) (hereinafter "*Milwaukee II*"). Disputes arising from interstate emissions were thereafter governed by the CAA, which

is a comprehensive statutory scheme for the regulation of air quality across the United States. It leaves no room for the application of state law to interstate emissions.

Extraterritorial state regulation in this area would not only be unprecedented, but likely devastatingly costly. The multi-billion-dollar judgments that may flow from these claims could cause major economic disruption. Fossil fuels still power large swaths of the American and world economies—from transportation and logistics to agriculture and healthcare—and a judgment-fueled increase in energy costs could create volatility in the energy markets and broader economic uncertainty.

Fossil fuels not only drive the world economy, they also play a key role in U.S. national security and diplomacy. The Constitution vests exclusive control over matters related to foreign affairs in the federal government, and state law must not interfere with this exclusive federal domain. Respondents' suit threatens to interfere with the United States' ability to conduct foreign affairs, shifting regulatory power over a strategically important industry from the federal government to the states. Furthermore, Respondents' suit and the likely follow-on suits, if successful, threaten the United States' ability to manage energy resources in global conflicts and weaken national security.

The question presented in this case is not whether climate change is serious. It is. The question is what law applies to decisions that directly affect how to balance emissions reduction, energy reliability, consumer cost, infrastructure investment, foreign relations, and national security. Fossil fuels provide the majority of the world's energy, with no replacement yet viable at scale. Regulation must be carefully targeted to avoid

destabilizing the energy supply that underlies the world economy. A federal regulatory determination, rather than extraterritorial state laws and lawsuits, is better suited for a coordinated, effective policy. Respondents' suit bluntly targets fossil fuel companies and attempts to recover localized damages, without regard to the effects on the rest of the country or the world. Allowing it to proceed would impair federal action by inviting a complex and inconsistent web of state-court rules.

ARGUMENT

I. This Case Is Symptomatic Of A Rash Of State-Law Climate Change Litigation

Respondents' case is part of a movement that stretches far beyond Boulder County, Colorado. If Respondents' claims are allowed to proceed, an onslaught of similar claims will follow in state courts across the country. Dozens of lawsuits bringing extraterritorial state-law tort claims have already been filed in different state jurisdictions.[2] Inevitably, state courts around the

---

[2] *Leon* v. *Exxon Mobil Corp.*, No. 25-2-15986-8 (Wash. Super. Ct.); *City of Chicago* v. *BP p.l.c.*, No. 2024CH01024 (Ill. Cir. Ct.); *County of Multnomah* v. *Exxon Mobil Corp.*, No. 23CV25164 (Or. Cir. Ct.); *California* v. *Exxon Mobil Corp.*, No. CGC23609134 (Cal. Super. Ct.); *Makah Indian Tribe* v. *Exxon Mobil Corp.*, No. 23-2-25216-1 (Wash. Super. Ct.); *Platkin* v. *Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct.); *City of Annapolis* v. *BP p.l.c.*, No. C-02-CV-21-000250 (Md. Cir. Ct.); *Anne Arundel County* v. *BP p.l.c.*, No. C-02-CV-21-000565 (Md. Cir. Ct.); *City of Hoboken* v. *Exxon Mobil Corp.*, No. HUD-L-003179-20 (N.J. Super. Ct.); *Delaware* v. *BP Am. Inc.*, No. N20C-09-097 (Del. Super. Ct.); *City of Charleston* v. *Brabham Oil Co.*, No. 2020-CP-10-03975 (S.C. Ct. Com.); *Minnesota* v. *Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct.); *Rhode Island* v. *Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct.); *City of Richmond* v. *Chevron Corp.*, No. C18-00055 (Cal. Super. Ct.); *Mayor*

country will reach contradictory conclusions, and the oil and natural gas industry could well be subject to inconsistent laws and judgments. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987) (allowing "a number of different states to have independent and plenary regulatory authority over a single discharge would lead to chaotic confrontation between sovereign states." (citation omitted)). Respondents seek to hijack the formulation of national policymaking to their exclusive benefit, at the expense of every other state and locality in the nation—all of which are affected by climate change.

A. Climate Litigation Trends Post-*American Electric Power* Illuminate The Problem

The use of strategic litigation to influence climate policy has evolved over the past two decades. *American Electric Power*, the first major case addressing an attempt to hold companies liable for greenhouse gas emissions and alleged climate change harms, dealt with common-law public nuisance claims against power

---

& City Council of Balt. v. *BP p.l.c.*, No. 24-C-18-004219 (Md. Cir. Ct.); *City of Imperial Beach* v. *Chevron Corp.*, No. C17-01227 (Cal. Super. Ct.); *County of Marin* v. *Chevron Corp.*, No. CIV1702586 (Cal. Super. Ct.); *County of San Mateo* v. *Chevron Corp.*, No. 17CIV03222 (Cal. Super. Ct.); *City of Santa Cruz* v. *Chevron Corp.*, No. 17CV03243 (Cal. Super. Ct.); *County of Santa Cruz* v. *Chevron Corp.*, No. 17CV03242 (Cal. Super. Ct.); *California ex rel. Herrera* v. *BP p.l.c.*, No. CGC-17-561370 (Cal. Super. Ct.); *California ex rel. Oakland City Att'y* v. *BP p.l.c.*, No. RG17875889 (Cal. Super. Ct.); *City & County of Honolulu* v. *Sunoco LP*, No. 1CCV-20-0000380 (JPC), 2022 WL 22866746 (Haw. Cir. Ct. Mar. 29, 2022); *City & County of Honolulu* v. *Sunoco LP*, No. 1CCV-20-0000380 (JPC), 2022 WL 22866745 (Haw. Cir. Ct. Mar. 31, 2022); *Bucks County* v. *BP p.l.c.*, No. 2024-01836 (Pa. Ct. C.P.); *Estado Libre Asociado de Puerto Rico* v. *Exxon Mobil Corp.*, No. SJ2024CV06512 (P.R. Super. Ct.).

companies for emitting greenhouse gases. *Connecticut* v. *Am. Elec. Power Co.*, 406 F. Supp. 2d 265 (S.D.N.Y. 2005), *vacated and remanded*, 582 F.3d 309 (2d Cir. 2009), *rev'd*, 564 U.S. 410 (2011). During this early phase of strategic climate litigation, cases were also filed against auto manufacturers for allegedly making products that emit greenhouse gases that contribute to global warming, *California* v. *Gen. Motors Corp.*, No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007) (claims dismissed as non-justiciable), oil and gas producers for emitting greenhouse gases that contribute to rising sea levels, *Native Village of Kivalina* v. *ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012), and energy producers for emitting greenhouse gases that made Hurricane Katrina more intense, *Comer* v. *Murphy Oil USA, Inc.*, 718 F.3d 460 (5th Cir. 2013).

In the wake of this Court's decision in *American Electric Power*, the Ninth and Fifth Circuits affirmed the dismissal of both the state and federal law climate change claims brought in *Kivalina* and *Comer*. In *Kivalina*, the Ninth Circuit concluded that federal statutory law precluded plaintiffs' federal common law claims. 696 F.3d at 856-58. And in *Comer*, the undisturbed district court decision held that the plaintiffs' state-law claims were preempted by the Clean Air Act. *Comer* v. *Murphy Oil USA, Inc.*, 839 F. Supp. 2d 849, 865 (S.D. Miss. 2012), *aff'd*, 718 F.3d 460 (5th Cir. 2013).

After the Court's decision in *American Electric Power* and plaintiffs' losses in *Kivalina and Comer*, there was a concerted effort to repackage climate litigation claims in an attempt to skirt the clear implication of *American Electric Power*'s holding: that state-law claims seeking redress for alleged climate change

injuries are available only under the laws of the state in which the pollution-emitting defendants are located. See, *e.g.*, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control, Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies*, Union of Concerned Scientists & Climate Accountability Inst. (Oct. 2012), at 11-14, 18-19.[3]

As the first appellate court to rule on the merits of this reframing, the Second Circuit in *City of New York* v. *Chevron Corp.* held that municipalities were precluded from holding multinational oil companies liable for climate change damages under state tort law. 993 F.3d at 100. As here, the City argued that its suit concerned "'the production, promotion, and sale of fossil fuels,' not the regulation of emissions." *Id.* at 91 (quoting City Br. at 40). The Second Circuit rejected this, stating: "Artful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions. It is precisely *because* fossil fuels emit greenhouse gases – which collectively 'exacerbate global warming' – that the City is seeking damages." *Id.*

State courts have not uniformly followed the Second Circuit's lead.[4] Although the Colorado Supreme Court's

---

[3] https://www.ucs.org/sites/default/files/attach/2016/04/establishing-accountability-climate-change-damages-lessons-tobacco-control.pdf.

[4] Contrast Pet. App. A (the Colorado Supreme Court's opinion below) and *City & County of Honolulu* v. *Sunoco LP*, 537 P.3d 1173 (Haw. 2023) (permitting state claims to proceed) with *Mayor & City Council of Baltimore* v. *B.P. P.L.C.*, 353 A.3d 1142 (Md. 2026); *Delaware ex rel. Jennings* v. *BP Am., Inc.*, No. N20C-09-097, 2024 WL

opinion below was not the first to depart from the Second Circuit's conclusion, it is in the minority. The Colorado Supreme Court largely adopted the analysis employed by the Hawaii Supreme Court's earlier conclusion that federal law did not preempt state tort claims seeking climate change damages from oil and gas producers. See Pet. App. at 8a, 15a-16a, 19a, 25a-26a; *City & County of Honolulu* v. *Sunoco LP*, 537 P.3d 1173 (Haw. 2023).

Efforts to stem the tide of this form of litigation have also been undertaken by other states and the federal government. In 2024, Alabama, joined by 18 states, unsuccessfully sought to file a bill of complaint in this Court to stop these suits. See *Alabama* v. *California*, No. 158 (Original) (U.S., filed May 22, 2024), *motion for leave to file a bill of complaint denied*, 145 S. Ct. 757 (2025). In the past year, the federal government has filed lawsuits in Hawaii, Michigan, and Minnesota to prevent their climate litigation from proceeding, arguing the states are "thwarting the United States' exclusive authority to regulate interstate air pollution, administer federal law, and conduct foreign affairs." Compl. ¶ 2, *United States* v. *Minnesota*, No. 26-cv-2456 (D. Minn. May 4, 2026). District courts have since

---

98888 (Del. Super. Ct. Jan. 9, 2024); *Platkin* v. *Exxon Mobil Corp.*, No. MER-L-001797-22, 2025 WL 604846 (N.J. Super. Ct. Law Div. Feb. 5, 2025); *Bucks County* v. *BP P.L.C.*, No. 2024-01836 (Pa. Ct. C.P. May 16, 2025); *City of Charleston* v. *Brabham Oil Co., Inc.*, No. 2020-CP-10-03975, 2025 WL 2269770 (S.C. Ct. C.P. Aug. 6, 2025) (dismissing state claims). Many more suits remain pending, with some stayed in anticipation of the Court's resolution of this case. See, *e.g.*, *Fuel Industry Climate Cases*, No. CJC-24-005310 (Cal. Super. Ct. Apr. 14, 2026) ("Order Staying Litigation Pending Final Decision by U.S. Supreme Court").

dismissed the Michigan and Hawaii lawsuits, ruling they lacked Article III jurisdiction to hear the cases due to standing and ripeness issues. See *United States* v. *Michigan*, 817 F. Supp. 3d 630 (W.D. Mich. 2026); *United States* v. *Hawaii*, No. CV 25-00179 HG-WRP, 2026 WL 1021227 (D. Haw. Apr. 15, 2026).

B. State Statutes And Private Rights Of Action Compound The Problem, Subjecting Energy Companies To Innumerable Different Liability Regimes

The patchwork problem is not limited to *Boulder*-like lawsuits by state and local governments. Colorado's rule would bless a broader state-by-state campaign to impose liability on energy companies for interstate emissions through state statutes, administrative programs, insurance-recovery laws, and newly created private rights of action. If a city or state may impose liability for alleged local injuries attributed to interstate and international greenhouse-gas emissions in an area covered by the Clean Air Act, the other 49 states (and innumerable municipalities) may do the same. This may be through whatever mix of tort law, statutory strict liability, cost-recovery funds, attorney-general actions, insurer subrogation rights, and private causes of action its legislature or courts choose to create.

Climate "superfund" programs, like those in New York and Vermont, illustrate the point. New York's Climate Change Superfund Act directs state officials to collect $75 billion from selected energy companies over a 25-year period for climate-adaptation projects. N.Y. Env't Conserv. Law art. 76; see also S.824, 2025-2026 Leg., Reg. Sess. (N.Y. 2025). The law does not, however, impose liability based on a defendant's emissions in

New York; instead, it assigns liability based on historical, worldwide fossil-fuel activity and the emissions allegedly attributable to that activity for the covered period of January 1, 2000 to December 31, 2024. A "responsible party" is strictly liable for a share of New York State's selected climate-adaptation costs. N.Y. Env't Conserv. Law § 76-0103.

Vermont's Climate Superfund Cost Recovery Program (Vermont Act 122) follows the same model, but with somewhat different rules. Vermont's program covers an expanded period (January 1, 1995 to December 31, 2024), directs the State to identify "responsible part[ies]," and mandates cost-recovery demands tied to alleged greenhouse-gas emissions associated with fossil fuels extracted or refined over those 30 years. 10 V.S.A. §§ 596-599c; 2024 Vt. Acts & Resolves No. 122. Like New York, Vermont imposes strict liability on climate-related costs and preserves other remedies. 10 V.S.A. §§ 598, 599c.

The result here is not a single national rule of decision. It is a state-by-state, overlapping regime in which different states may choose different periods, different emissions thresholds, different attribution methodologies, different defenses, different remedies, and different administrative processes—all for the same molecules in the same atmosphere. For example, energy companies who sold fossil-fuel products to consumers in California would by definition be liable to *both* New York *and* Vermont for the *same* emissions resulting from the use of those *same* products in California—and would be subject to money damages for those emissions even if the sale and use of those products was entirely lawful as a matter of both federal and California law. There

would be no reason why dozens of other states could not jump into the fray, each assigning its own standards of liability and damages for those same lawful activities taking place outside of its state. The resulting quagmire of conflicting and duplicative state laws, all seeking to regulate the same out-of-state conduct, is easy to predict.

Insurance-recovery measures and private rights of action compound the problem. The California legislature has considered authorizing its Attorney General to sue selected fossil-fuel companies to recover insurance-related losses allegedly arising from climate disasters, including losses suffered by the California FAIR Plan Association and policyholders. Cal S.B. 982, 2025-2026 Reg. Sess. Thus far, that legislation has been rejected. *Bill History, SB-982 Climate disasters: civil actions*, Cal. Legis. Info. (Apr. 23, 2026).[5] Hawaii, too, has considered legislation authorizing its Attorney General, the Hawaii Property Insurance Association, the Hawaii hurricane relief fund, and private insurers to bring civil actions against "responsible parties" to recover costs and losses resulting from "climate attributable harm," including increased premiums, insurer withdrawals, and reduced insurance availability. Haw. S.B. 3000, 33d Leg., Reg. Sess. (2026).

These enactments and proposals are the predictable consequence of the rule Respondents defend. The premise of Respondents' theory is that each state may use its own law to allocate the costs of global climate change to energy producers and sellers beyond its borders. If state

---

[5] https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202520260SB982.

law is not preempted, and Boulder County may seek relief under Colorado law for alleged local injuries caused by interstate and international emissions, states will rush to pursue their own attempts for relief. New York may seek to impose a $75 billion statutory assessment; Vermont may seek to impose its own retroactive cost-recovery program; California may seek to create an insurance-recovery cause of action; Hawaii may seek to authorize insurers and state funds to sue; and every other state might experiment with other policy variations, including their own private rights of action. There is no limiting principle in Boulder County's theory.

A single barrel of oil, cubic foot of natural gas, or ton of coal may be counted again and again by different states, under different formulas, for different time periods, as the basis for fifty different states to impose liability. An energy company may face strict liability in one state, negligence-based liability in another, public-nuisance remedies in a third, insurer-subrogation claims in a fourth, and private damages actions in a fifth. And because climate change results from cumulative global emissions over time, each State's asserted "local" injury necessarily depends on emissions and energy consumption far outside that State's borders, accumulated in the global atmosphere over decades. Fifty competing liability systems reaching extraterritorially for the same underlying emissions is simply untenable.

II. Climate Change Litigation Cannot Proceed Under State Law

A. Respondents' Claims Are Premised On Out-Of-State Greenhouse Gas Emissions

For over a hundred years, disputes over interstate pollution have been resolved exclusively under federal

law. See *infra* Section II.B. The opinion below upends that consistent history by authorizing state regulation of interstate and international emissions of greenhouse gases. The Colorado Supreme Court held that the Clean Air Act, having displaced the federal common law governing interstate greenhouse gas emissions, did not preempt Respondents' state-law tort claims—interpreting Congress's silence on state-law claims as an implicit license. See Pet. App. at 14a-16a (holding "the CAA does not completely occupy the field of emissions regulation[s]," nor does "state tort liability…frustrate the CAA's purposes" or "upset any balance set by Congress because Boulder's claims do not seek to impose liability for activities that the CAA regulates"). However, "even if the federal common law in this area still existed," the court held, "it would not appear to apply here" because, according to the court, Boulder's suit does not seek to regulate greenhouse gas emissions. *Id.* at 17a.

Respondents argue their claims are premised only on the marketing, sale, and production of fossil fuels—purportedly bringing their claims within the ambit of state law. In fact, Respondents' claims seek to remedy alleged injuries from interstate greenhouse gas emissions—bringing them within an inherently federal domain. The Colorado Supreme Court accepted Respondents' arguments at face value. Finding that the complaint's allegations had everything to do with "tortious conduct that [federal law] does not address," and nothing to do with "[greenhouse gas] emissions by defendants themselves," the court held that Respondents' claims did not implicate the regulation of interstate emissions. Pet. App. at 21a.

Respondents' assertion that their claims relate only to the marketing, sale, and production of fossil fuels

does not withstand scrutiny, and the Court should not indulge their sleight of hand pleading. *Minn. v. Am. Petroleum Inst.*, 63 F.4th 703, 717 (8th Cir. 2023) (Stras, J., concurring) (describing Minnesota's purported "state law consumer-protection claims" as "artful pleading," "tak[ing] aim at the production and sale of fossil fuels worldwide").

The majority below reasoned that "[Respondents'] claims do not seek compensation for any [greenhouse gas] emissions by defendants themselves but rather focus on [Petitioners'] upstream production activities." Pet. App. at 21a. But the distinction between greenhouse gas emissions and "upstream activities" is illusory. Respondents demand compensation from Petitioners for the effects of worldwide greenhouse gas emissions. The "upstream activities" Respondents identify are only relevant to the extent they allegedly caused the emission of greenhouse gases. See, *e.g.*, J.A. 35-36, ¶¶ 127-29 (alleging that production of fossil fuels resulted in higher levels of CO2); see also Pet. App. at 32a (Samour, J., dissenting) ("[A] closer look at the substance of [Respondents'] claims' allegations reveals that Boulder seeks to effectively abate or regulate interstate emissions.").

There is no question that all of Respondents' injuries are alleged to have been directly caused by the accumulation of greenhouse gas emissions. See, *e.g.*, J.A. 36, ¶ 129. The emissions themselves are therefore a necessary causal link, without which Respondents cannot establish that Petitioners' marketing, sale, and production of fossil fuels was an actual or proximate cause of injuries in Colorado. That these emissions—emitted from many sources since the beginning of the industrial

revolution—are the direct cause of Respondents' alleged injuries and a necessary element of Respondents' claims elides Respondents' assertions that the case does not involve the regulation of interstate greenhouse gases.

The decision below sidestepped the central issue in the complaint by concluding that Respondents' claims do not "involve uniquely federal areas of regulation" because "nuisance abatement issues and the other torts that Boulder has alleged in this case have been deemed traditional state law matters implicating important state interests." Pet. App. at 15a (emphasis omitted). The court failed to acknowledge, however, that the "nuisance abatement issues" are not standard local disputes, but rather concern atmospheric changes with global impact. Putting state-law labels on plainly interstate activities does not suffice to sustain state-law claims in the inherently federal domain of interstate emissions.

B. The Regulation Of Interstate Emissions Is An Inherently Federal Domain

This Court has recognized that "air and water in their ambient or interstate aspects" are "meet for federal law governance." *Am. Elec. Power*, 564 U.S. at 421, 422. "[A] mostly unbroken string of cases" going back more than a century "has applied federal law to disputes involving" claims arising out of interstate emissions. *City of New York*, 993 F.3d at 91 (collecting cases); see *Milwaukee I*, 406 U.S. at 103. It is because of the inherently federal nature of interstate emissions and discharges that this Court long held that suits related to air and water pollution are governed by federal common law. See *Am. Elec. Power*, 564 U.S. at 420-24; *Milwaukee I*, 406 U.S. at 103. After the enactment of the CAA

and CWA, this Court held that the federal statutory schemes had displaced federal common law. *Milwaukee II*, 451 U.S. at 313-14; *Ouellette*, 479 U.S. at 492; *Am. Elec. Power*, 564 U.S. at 420-23. In holding that the CWA preempted most state-law claims, this Court relied not only on the statute itself, but also on "the fact that the control of interstate pollution is primarily a matter of federal law." *Ouellette*, 479 U.S. at 492.

That a comprehensive statutory scheme displaced federal common law does not render this area of law any less inherently federal. The "demands for applying federal law"—which may implicate federal common law or a federal statute—implicate an "overriding federal interest in the need for a uniform rule of decision" in the field of interstate emissions. *Milwaukee I*, 406 U.S. at 105 n.6. "[F]ederal common law and not the varying common law of the individual States" must apply when a controversy invokes "the environmental rights of a State against improper impairment by sources outside its domain." *Id.* at 107 n.9 (quoting *Texas* v. *Pankey*, 441 F.2d 236 (10th Cir. 1971)). If state law was permitted to resolve such disputes, "more conflicting disputes, increasing assertions and proliferating contentions would seem to be inevitable." *Pankey*, 441 F.2d at 241.

The justifications for precluding state-law claims in interstate emissions cases are not "undermine[d]" by the CAA or the CWA. *Illinois* v. *City of Milwaukee*, 731 F.2d 403, 410 (7th Cir. 1984), *cert. denied*, 469 U.S. 1196 (1985). Nor are they any less applicable to the emissions that cause global climate change. That global climate change inherently requires a federal solution is perhaps more evident than with respect to the other forms of pollution that this Court has previously addressed. In

particular, this Court's decisions emphasize that the location of the source of an emission or discharge is a dispositive factor in determining whether federal law provides the exclusive remedy. See, *e.g.*, *Milwaukee I*, 406 U.S. at 93, 103 (federal common law applied to pollution in Wisconsin caused by sewage discharge originating in Illinois); *Ouellette*, 479 U.S. at 488-89 (state-law claims permitted only where water pollution is caused by an in-state source).

Although Respondents try to avoid saying so in their complaint, it cannot seriously be disputed that emissions throughout the United States and the world contribute to climate change, and that CO2, methane, and other greenhouse gases from countless sources intermix in the atmosphere. See *What are the trends in greenhouse gas emissions and concentrations and their impacts on human health and the environment?*, U.S. Environmental Protection Agency.[6] Importantly, not all of these emissions originate in petroleum products, or indeed from energy consumption at all. *Sources of Greenhouse Gas Emissions*, U.S. Environmental Protection Agency.[7] Given the breadth and scale of the causes of climate change, any solutions that are to be effective must be uniform and comprehensive, whether by federal statute or federal common law.

State-law tort claims that aim to regulate emissions not only violate the "overriding federal interest in the need for a uniform rule of decision," *Milwaukee I*, 406

---

[6] https://web.archive.org/web/20250830015710/https://www.epa.gov/report-environment/greenhouse-gases (last visited May 21, 2026).

[7] https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions (last visited May 21, 2026).

U.S. at 105 n.6, they also impinge on the rights of other states by making determinations that will have an impact well beyond the borders of the state in which the claims are brought. For example, by asking a Colorado court to determine whether fossil fuel production "unreasonabl[y] interfere[s]" with a public right such that it amounts to a public nuisance, Restatement (Second) of Torts § 821B (1979), Respondents are necessarily asking the court to determine whether fuel producers' conduct was reasonable. Making that determination requires considering not only the risks of fossil fuel use to the planet, but also how well those risks have been weighed against the world's gargantuan need for energy and the difficulty of developing an alternative at scale. See *infra* Section II.C.2. Furthermore, the Colorado court would need to apportion liability and damages for climate change as a whole, not merely alleged harms felt in Colorado, which cannot possibly be traced to specific sources. The single state court would thus take on the role of quantifying the contribution of whole industries to global climate change, including the many fuel producers and unrelated industries not before the court (not to mention other states that might do the same).

This Court has affirmed on multiple occasions that weighty determinations affecting the entire nation must be made by Congress or its designated federal agency. *West Virginia* v. *EPA*, 597 U.S. 697, 735 (2022) (concluding that "[c]apping carbon dioxide emissions at a level that will force a nationwide transition" is a "decision of such magnitude and consequence [that it] rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body"); *Am. Elec. Power*, 564 U.S. at 428 ("Congress designated an expert

agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions").

In *American Electric Power*, the Court held that the Clean Air Act "displaces federal common law" climate change claims. 564 U.S. at 429. Although the Court did not decide whether federal law preempted claims pursuant to the law of a state other than the source state (because that question was not briefed), the Court did explain that "the availability *vel non* of a state lawsuit depends, *inter alia*, on the preemptive effect of the federal Act." *Id.* Citing *Ouellette*, the Court reiterated that "the Clean Water Act does not preclude aggrieved individuals from bringing a 'nuisance claim pursuant to the law of the source State.'" *Id.*

In an attempt to distinguish the repeated declarations of this Court regarding the inherently federal nature of claims premised on interstate emissions, the decision below asserted that the enactment of the CAA rendered the Court's prior holdings inapplicable. Specifically, the Colorado Supreme Court reasoned that "the CAA displaced federal common law governing interstate pollution damages suits and, thereafter, federal common law did not preempt state law." Pet. App. 16a. The court thus appeared to posit that if federal common law no longer applies, state law must apply.

As an initial matter, the decision below rests on the dubious suggestion that the enactment of a broad federal air pollution and emissions scheme *reduced* the scope of federal authority in that very field. *Id.* at 17a (noting Petitioners cited "no applicable authority supporting the proposition that once federal common law exists, the structure of the Constitution precludes the application of state law even when that common law no

longer exists"). This proposition has no basis in this Court's precedents, which teach that the CWA's (and, by extension, the CAA's) displacement of federal common law leaves no room for the types of state-law claims at issue here. See, *e.g.*, *Milwaukee II*, 451 U.S. at 313 n.7 ("[I]f federal common law exists, it is because state law cannot be used."); *Ouellette*, 479 U.S. at 488-89; *Am. Elec. Power*, 564 U.S. at 429 (citing *Ouellette*, opining on "the availability *vel non*" of state-law claims). Furthermore, even assuming that the displacement of federal common law by a federal statute could theoretically resurrect state-law claims, the court's reasoning would nevertheless run up against the basic fact that interstate emissions have never been governed by state law. In short, the CAA's displacement of federal common law could not have resurrected state-law claims that never existed.

C. Allowing Respondents' Claims Would Interfere With Federal Energy, Economic, and Foreign Policy

The inherently federal nature of emissions regulation is grounded not only in abstract constitutional principles of federalism, but also in the practical impossibility of effectively regulating interstate (and international) environmental matters at the state level. Allowing state law to regulate interstate emissions would compromise any uniform regulatory scheme and risk serious disruption to the national economy and undermine the United States' ability to conduct foreign affairs.

1. Expansive Extraterritorial Regulation Is Untenable

The CAA leaves room for states to impose unique regulations on intrastate emissions, but it does not

permit extraterritorial, conflicting regulatory schemes governing interstate and international emissions. The practical implications of expansive extraterritorial regulation are well known to API and its members, who operate across the world and comply with the laws of many different jurisdictions. Because of the need to standardize fuel production methods, changes in the law of one jurisdiction affect companies' behavior in other jurisdictions. Climate change is undisputedly a global phenomenon that requires a coordinated response at the national and international level. Crafting policy to adequately address global climate change—while balancing energy availability, national security, and other concerns—is one of the great challenges of our age. The solutions require significant coordination, research, scientific innovation, and carefully targeted regulation. Any solution also requires coordination with other sovereign nations. Federal authorities—the President, Congress, and the expert agency to which it has delegated authority (the EPA)—are the bodies capable of undertaking this task.

In contrast, state courts are not in a position to effectively regulate interstate and global greenhouse gas emissions and are barred from doing so in our federal system. Regulating greenhouse gas emissions via a litany of state-law tort actions would create a sprawling patchwork of regulations across all 50 states that would both undermine any attempt at uniform, federal regulation and result in equally sovereign states treading on each other. "[W]hen interstate disputes are litigated through the surrogate of a private party as the defendant, fifty state courts get to handle them" in a myriad of

ways. *Minnesota* v. *Am. Petroleum Inst.*, 63 F.4th 703, 717-19 (8th Cir. 2023) (Stras, J., concurring).

Our federal system of laws has never tolerated a Balkanized approach to regulating interstate air pollution. Instead, disputes over pollution crossing state lines require a "uniform" federal rule, *Milwaukee I*, 406 U.S. at 105 n.6, not "vague and indeterminate" standards drawn from the laws of multiple states over extraterritorial emissions. *Milwaukee II*, 451 U.S. at 317; see also *Ouellette*, 479 U.S. at 496-97 (recognizing that permitting individual state nuisance law to apply to out-of-state pollution sources would result in a "variety of common-law rules"). Yet, this case is emblematic of the conscious efforts by some state and local governments to depart from federal policy.

At bottom, the CAA provides federal mechanisms for regulating air emissions, including cooperative federalism rules that preserve state authority over in-state sources while preventing one State from dictating the emissions policy of others. See 42 U.S.C. §§ 7401 *et seq.*; *Ouellette*, 479 U.S. at 497-500. Respondents' rule would invert that structure, allowing each state to impose retroactive liability on interstate and international energy activity, not through source-specific standards approved under federal law, but through open-ended damages actions and cost-recovery programs untethered to any federal emissions standard. "[T]hese liabilities would attach even though the source had fully complied" with federal obligations. *Ouellette*, 479 U.S. at 495. That result would offend both vertical and horizontal federalism, and is precisely what federal law forbids.

2. Blessing Respondents' Theories Would Likely Have Dire Economic Consequences

The damages requested by Respondents and other plaintiffs across the country could severely impact the energy industry and cause ripple effects throughout the American economy. Respondents seek extensive monetary relief to compensate for alleged property damage and to maintain basic municipal functions, such as repairing bridges and containing wildfires. J.A. 136-37, ¶ 532. Other states have signaled that they will seek damages on an even larger scale. For example, California is seeking "tens of billions to hundreds of billions of dollars in ongoing damage going forward." William Brangham & Dorothy Hastings, *California Sues Oil Companies for Exacerbating Climate Change*, PBS News Hour (Sept. 20, 2023) (comments of Rob Bonta, Attorney General of California).[8] Multnomah, Oregon is seeking over $1.5 billion in damages and an abatement fund of over $50 billion paid for by the defendants. Compl. at 174-75, *County of Multnomah*, No. 23CV25164 (Or. Cir. Ct. June 22, 2023).

If these suits succeed in obtaining billion-dollar judgments, the costs—payouts made to individual states and localities—will likely impact the energy supply chain. This could have sweeping effects on the U.S. economy and international trade. About 60% of U.S. households rely on natural gas as their primary source of energy. U.S. Energy Info. Admin., *Natural gas explained, Use of natural gas*[9]; U.S. Energy Info. Admin.,

---

[8] https://www.pbs.org/newshour/show/california-sues-oil-companies-for-exacerbating-climate-change.

[9] https://www.eia.gov/energyexplained/natural-gas/use-of-natural-gas.php (last visited May 21, 2026).

Use of energy explained.[10] Nearly the entire transportation sector depends on energy derived from fossil fuels. U.S. Energy Info. Admin., *Use of energy explained, Energy use for transportation*.[11] Inflated fossil fuel prices affect not only the cost of gas for individuals, but also the cost of logistics and shipping. Within these vital sectors, even modest increases in core energy prices can have ripple effects that disrupt the entire economy. Dep't of Transp., Bureau of Transp. Stats., *Inflation and Transportation* (showing that, in April 2026, transportation was responsible for 31.1% of the year-over-year change in the price for all goods and services).[12]

The value of petroleum to the economy also extends well beyond fuel. Petroleum-based products such as plastic are ubiquitous in basic consumer products and essential to nearly every major industry. An increase in the cost of petroleum-based products would likely be immediately felt in the agricultural industry, U.S. Dep't of Agric., *Impacts of Higher Energy Prices on Agriculture and Rural Economies* (Aug. 2011),[13] the manufacturing industry, U.S. Energy Info. Admin., *Use of energy explained*,[14] and the healthcare industry, U.S. Dep't of

---

[10] https://www.eia.gov/energyexplained/use-of-energy/ (last visited May 21, 2026).

[11] https://www.eia.gov/energyexplained/use-of-energy/transportation.php (last visited May 21, 2026).

[12] https://data.bts.gov/stories/s/Transportation-and-Inflation/f9jm-cqwe/ (last visited May 21, 2026).

[13] https://ers.usda.gov/sites/default/files/_laserfiche/publications/44894/6806_err123_reportsummary.pdf.

[14] https://www.eia.gov/energyexplained/use-of-energy/ (last visited May 21, 2026).

Energy, *U.S. Oil and Natural Gas: Providing Energy Security and Supporting Our Quality of Life* (Sept. 2020).[15]

The economy-wide impacts of increased fuel costs are not hypothetical, nor are they borne solely by energy companies. When global events cause a temporary price shock in energy markets, it affects the whole economy. In the wake of Russia's 2022 expanded invasion of Ukraine, markets were rocked by "the largest 23-month increase in energy prices since the 1973 oil price hike." World Bank, *Commodity Markets Outlook*, 1-2, 9 (Apr. 2022).[16] More recently, the Iran conflict has also impacted energy costs. See, *e.g.*, *Iran War Energy Cost Tracker*, Climate Solutions Lab at Brown University.[17]

The potential consequences of Respondents' suit have serious implications for the national economy. It is for good reason that federal policymakers, and not individual states, have the exclusive authority to regulate interstate emissions. Allowing states to bypass federal supremacy would impose ad hoc, localized solutions on a problem that requires a broad and careful review in which all interested parties are represented.

3. Foreign Affairs And National Security Require Exclusive Federal Control

Allowing state tort law to govern worldwide emissions would also intrude on the federal government's

---

[15] https://www.energy.gov/sites/prod/files/2020/10/f79/Natural%20Gas%20Benefits%20Report.pdf.

[16] https://openknowledge.worldbank.org/server/api/core/bitstreams/da0196b9-6f9c-5d28-b77c-31a936d5098f/content.

[17] https://iranwarcost.watson.brown.edu/ (last visited May 21, 2026).

exclusive control over foreign affairs. *Am. Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 421 (2003) ("[t]he exercise of the federal executive authority," particularly in the area of foreign affairs, "means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two"). Based on its (incorrect) understanding that Respondents' claims do not seek to regulate greenhouse-gas emissions and instead "involve areas of traditional state responsibility," the Colorado Supreme Court held that neither "principles of conflict preemption" nor field preemption relating to foreign affairs bar Respondents' claims. Pet. App. at 22a-24a. But any climate solution demands international cooperation, and the federal government must retain authority to decide energy policy on behalf of the nation as a whole. The federal government cannot effectively do so if the states have already imposed their own extraterritorial standards that may conflict with those under negotiation. *City of New York*, 993 F.3d at 103 (state-law tort suit "would not only risk jeopardizing our nation's foreign policy goals but would also seem to circumvent Congress's own expectations and carefully balanced scheme of international cooperation on a topic of global concern.").

More generally, the strategic importance of fossil fuels has been demonstrated by their crucial role in foreign affairs. "When the United States entered the Second World War, aviation gasoline—or "avgas"—became critical for the military." *Chevron USA Inc.* v. *Plaquemines Par., Louisiana*, 146 S. Ct. 1052, 1058 (2026). The United States' reserves of oil became "[a] prime weapon of victory in two world wars" and "a bulwark of our national security." Nat'l Petroleum Council,

A National Oil Policy for the United States 1 (1949).[18] At the time the United States entered the war, it had the world's largest petroleum reserves, and President Franklin Roosevelt wielded the industry as an instrument of foreign affairs. *Energy's Vital Role in World War II Offers Lessons For Today*, Am. Oil & Gas Rep. (Oct. 2023).[19] In 1941, the United States embargoed oil shipments to Japan while accelerating shipments of high-octane fuel for aircraft, as well as oil for ships, lubricants, and synthetic rubber to the Allies. *Id.* During the span of the conflict, the oil industry increased production by nearly 30% to meet the enormous demand. *Id.* U.S. oil and petroleum-based products were necessary for the Allies to continue fighting, and the United States' wealth of petroleum resources emerged as one of its most powerful tools in foreign affairs. *Id.*; Nat'l Petroleum Council, *A National Oil Policy for the United States* 1.[20]

The petroleum industry is no less a part of foreign affairs today. In 2022, following Russia's invasion of Ukraine, the European Union sought to reduce its dependence on natural gas from Russia. President Biden agreed to increase shipments of natural gas and dramatically increase the United States' export capacity. Clifford Krauss, *Europe and the U.S. Make Ambitious Plans to Reduce Reliance on Russian Gas*, N.Y. Times,

---

[18] https://www.energy.gov/sites/default/files/2022-11/1949-National_Oil_Policy_for_United_States.pdf.

[19] https://www.aogr.com/web-exclusives/exclusive-story/energys-vital-role-in-world-war-ii-offers-lessons-for-today.

[20] https://www.energy.gov/sites/default/files/2022-11/1949-National_Oil_Policy_for_United_States.pdf.

Mar. 25, 2022.[21] This year, the petroleum industry's role in national security once again came to the fore due to the conflict with Iran. See, *e.g.*, Michael Froman, *Iran, the Strait of Hormuz, and an Unprecedented Energy Crunch*, Council on Foreign Relations (Mar. 13, 2026).[22]

Given the vital role that fossil fuels continue to play in foreign affairs and national security, the need to reduce emissions and combat climate change must be carefully weighed against the need to increase production when it is in the interest of national security. State courts are not the proper authority to conduct this balancing of environmental and national security interests, and their attempt to do so would violate the federal government's exclusive control over foreign affairs. State-court suits like Respondents' and their attendant risk of future liability for purported climate-related damages could well impact fuel production. This would severely hinder the federal government's ability to use the United States' natural resources as a tool to advance the nation's strategic interests.

CONCLUSION

Global climate change is a serious issue that deserves serious attention. The competing interests at stake require that the federal government must maintain its exclusive discretion in setting national standards for interstate and international greenhouse gas emissions, leaving other States the authority to regulate emissions within their own borders. Americans depend

---

[21] https://www.nytimes.com/2022/03/25/business/energy-environment/biden-eu-liquefied-natural-gas-deal-russia.html.

[22] https://www.cfr.org/articles/iran-the-strait-of-hormuz-and-an-unprecedented-energy-crunch.

on a stable energy supply and the economy that it powers, and these energy needs must be carefully balanced.

The judgment below should be reversed.

Respectfully submitted,

MARK A. PERRY
Counsel of Record
BRADY D. MORRIS
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Suite 600
Washington, D.C. 20036
(202) 682-7000
Mark.Perry@weil.com

Counsel for Amicus Curiae
American Petroleum Institute

SARAH M. STERNLIEB
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Avenue
Suite 1200
Miami, FL 33131

May 21, 2026