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* GENERAL (RETIRED) RICHARD B. MYERS and ADMIRAL (RETIRED) MICHAEL G. MULLEN, IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE[1]

United States Air Force General (Retired) Richard B. Myers was appointed Vice Chairman of the Joint Chiefs of Staff by President William J. Clinton in 2000 and was appointed by President George W. Bush in 2001 to become the 15th Chairman of the Joint Chiefs of Staff. In that capacity, he served as the principal military advisor to the United States President, Secretary of Defense, and the National Security Council. He served in that role until 2005.

General Myers joined the Air Force in 1965 through the ROTC program at Kansas State University. He served in the Vietnam War and had over 600 combat flying hours in Vietnam. He has held numerous commands and served in significant staff positions in the Air Force. General Myers has received numerous awards and decorations for his service, including the Legion of Merit, the French Legion of Honor, and the Presidential Medal of Freedom. He received his fourth-star in 1997 and retired from active duty in 2005, after more than forty years of active service. General Myers began serving as the Interim President of Kansas State University in late April 2016 and was announced as the permanent President on November 15, 2016. General Myers served as the 14th President of Kansas State University until his retirement on February 11, 2022.

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* affirm that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amici curiae*, or their counsel, made a monetary contribution to the preparation or submission of the brief. *Amici curiae* have accepted no payment for submission of this brief.

United States Navy Admiral (Retired) Michael G. Mullen, served as the 17th Chairman of the Joint Chiefs of Staff from 2007-2011 under both President George W. Bush and President Barack H. Obama. A graduate of the United States Naval Academy in 1968, Admiral Mullen served in the Vietnam War and commanded his first ship, the USS Noxubee, from 1973-1975. He earned a Master's Degree in Operations Research in 1985 and, later that year, took command of the guided-missile destroyer USS Goldsborough. In 1991, Admiral Mullen participated in Harvard University's Advanced Executive Management graduate program. He was promoted to Rear Admiral in 1997 and, in 1998, was named Director of Surface Warfare in the office of the Chief of Naval Operations (CNO). Admiral Mullen is one of only four naval officers who has the distinction of receiving four, 4-Star assignments. In 2003, Admiral Mullen was named Vice Chief of Naval Operations and was tapped to head the United States Naval Forces in Europe and NATO's Joint Force Command in Naples. He then was appointed Chief of Naval Operations in 2005, and, in 2007, he was nominated by President George W. Bush to be the 17th Chairman of the Joint Chiefs of Staff. Admiral Mullen retired from this position in 2011 after serving for four years under both a Republican and a Democratic president.

The focus of this brief is not on climate change policy. *Amici* express no view, and take no position, on climate change policy. They strongly believe these important national and international policy issues should be addressed to Congress and the Executive Branch, not adjudicated piecemeal across the country in a multitude of state courts. Instead, this brief provides a history of the Federal Government's role in

the production and sale of gasoline and diesel to ensure that the military is "deployment-ready." For more than a century, petroleum products have been, and currently are, essential for fueling the United States military around the world. In *amici's* view, the use of fossil fuels was crucial to the success of the armed forces when *amici* served as Chairmen of the Joint Chiefs of Staff, and it remains crucial today.

Considering that concern, *amici* believe this extensive history and their practical experience demonstrate that these cases do not involve localized, intra-state interests. Rather, the causation and damages theories in these cases inextricably involve worldwide impacts and core federal interests. *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) (Plaintiffs seek to hold petitioners liable "for the effects of emissions made around the globe over the past several hundred years."); *County Commissioners of Boulder County v. Suncor Energy, et al.,* 586 P.3d 161, 175 (Colo. 2025) (Samour, J., Dissenting) ("Boulder's damages claims…are based on harms the State of Colorado has allegedly suffered as a result of global climate change. According to Boulder, by producing, promoting, refining, marketing, and selling fossil fuels in the United States and globally, the energy companies have played and continue to play a substantial role in increasing the concentration of greenhouse gases ("GHGs") in the atmosphere, thereby inducing changes to the climate worldwide.").

To be clear, it is not as though we believe anything having to do with climate change presents a national security concern. There are lots of lawsuits filed that may relate in some way to greenhouse gases, and we do not feel the need to weigh in on many of

those lawsuits. But climate change cases like this one are different. This subset of cases causes us concern because of both its sheer scope and its transparent attempt to substitute parochial judgments for those of the national, elected and appointed actors, to whom the Constitution commits domestic and international policy-making for this complex, multi-faceted worldwide issue. Therefore, to assist the Court in understanding why these cases cause significant national security concerns, this brief first discusses the Federal Government's—particularly the military's—historical control and direction of Petitioners' production and sale of petroleum products.

The brief concludes with our perspective on the practical realities presented by these cases and the reasons we believe the Court should reverse the Colorado Supreme Court's decision. As former Chairmen of the Joint Chiefs of Staff serving under both Democratic and Republican administrations and with over 80 years of combined service in the military, we can personally attest that petroleum products produced by companies like Petitioners have been critical to national security, military preparedness, and combat missions. We are not alone in this belief. Military commanders, like General David Petraeus, universally emphasize that "[e]nergy is the lifeblood of our warfighting capabilities."[2] To ensure the military has a dependable, abundant supply of the energy indispensable to our Nation's warfighting

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[2] Quoted in Department of Energy, "Energy for the Warfighter: The Department of Defense Operational Energy Strategy," June 14, 2011, https://www.energy.gov/articles/energy-war-fighter-department-defense-operational-energy-strategy.

capacity, this brief explains why, in our view, the climate change issues at the heart of these civil damages suits are a matter for federal law, not state law.

While it is important to continue to look for "greener" ways to fuel the military, the reality is the U.S. military must always consider its enemies' own fossil-fuel uses and potential superior deployment abilities because of those uses. The United States could go it alone and unilaterally strip itself of higher-performing fossil fuels, but that approach would put the Nation at a significant disadvantage. It would weaken our armed forces while strengthening those of our adversaries. Stated differently, achieving energy security is a prerequisite for national security. As a result, reduction in fossil-fuel use can be accomplished only through comprehensive international, multi-lateral negotiations and treaties led by the Legislative and Executive branches. This is how reduction of nuclear weapons was achieved during and following the Cold War.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case centers on the global sale and consumption of oil and gas products that are used by virtually every person on the planet every single day. Respondents seek to impose ruinous liability on Petitioners for their production and sale of these essential products through claims brought under state law. Due to the extensive Federal Government involvement in the development and growth of the domestic oil and gas industry, Respondents' claims implicate uniquely federal interests that are necessarily governed by federal law.

Oil and gas products are critical to national security, economic stability and military preparedness. For more than 100 years, the Federal Government has actively encouraged – indeed it has compelled – domestic exploration, production and sale of oil and gas. As federal courts have recognized, petroleum products have been "*crucial* to the national defense," including but by no means limited to "fuel and diesel oil used in the Navy's ships; and lubricating oils used for various military machines." *Exxon Mobil Corp. v. United States*, 2020 WL 5573048, at *31 (S.D. Tex. Sept. 16, 2020) (emphasis added); *see also id.* at *47 (noting the "value of [the] petroleum industry's contribution to the nation's military success"). The Federal Government has incentivized and contracted with Petitioners to obtain oil and gas products to ensure a dependable, abundant supply of oil and gas for the Nation's economic and military security.

In contrast to the Colorado Supreme Court, the United States Second Circuit Court of Appeals recognized that "[i]t [wa]s precisely *because* fossil fuels emit greenhouse gases – which collectively 'exacerbate global warming' – that the "plaintiff[] [wa]s seeking damages." *City of New York*, 993 F.3d at 91, 97. "Consequently, though the City's lawsuit would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless." *Id.* at 93. Therefore, the court concluded that the city's "sprawling" claims, which – like Respondents claims here – sought "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet" – were "simply beyond the limits of state law." *Id.* at 92.

We share the Second Circuit's concerns. The specter of huge and inconsistent damages awards across the country is likely to trigger cascading effects, gravely imperiling our military preparedness. *Id.* at 93-94 (citing *Am. Elec. Power Co. v. Conn.*, 564 U.S. 410, 427 (2011)) (explaining that "[t]o permit this suit to proceed under state law would further risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and *national security*, on the other." (emphasis added)). Because "states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the [energy companies'] global operations to a welter of different states' laws could undermine important federal policy choices." *Id.* The court concluded that "[t]o hold the [energy company defendants] accountable … would ... bypass the various diplomatic channels that the United States uses to address this issue." *Id.* at 103.

In contrast, the Colorado Supreme Court did not address at all the "foreign policy concerns" that the Second Circuit determined "foreclose" claims "targeting emissions emanating from beyond our national borders." *Id.* at 101. It did not address those foreign affairs concerns because that court concluded Respondents "do not seek to regulate emissions" because they have not "brought an action against a pollution emitter to abate pollution" but instead "seek damages from the production and sale of fossil fuels." 586 P.3d at 165, 170, 171, 173, 175. But from our perspective, this conclusion blinks reality. As

Colorado Supreme Court Justice Samour said in his well-reasoned dissent, which was joined by Justice Boatright, "that distinction is neither here nor there—the bottom line is that this suit is about the *alleged GHG emissions from the energy companies*, even if the energy companies are actually a few steps removed from the physical release of the pollutants." *Id.* at *178 (emphasis in the original). Similarly, the Second Circuit explained "regulation can be effectively exerted through an award of damages." "Although the City's lawsuit would regulate cross-border emissions in an indirect and roundabout manner, it would regulate them nonetheless." *City of New York*, 993 F.3d at 92-93.

It is precisely this "indirect and roundabout" regulation of available fuel sources that concerns us. State tort damages and abatement cases like this one unduly risk constricting the availability of oil and gas to the detriment of national security interests, at a critical juncture in our Nation's history, when geopolitical forces and energy security are especially vulnerable to international conflicts and belligerent nations. As the dissenting Justices recognized, "Boulder's requested relief will inevitably impose a limitation on GHG emissions." 586 P.3d at 178. This is deeply concerning when the availability of Petitioners' fuel products remains crucial to the success of our armed forces. As Admiral Mullen once put it, "[e]nergy security needs to be one of the first things we think about, before we deploy another soldier, before we build another ship or plane, and

before we buy or fill another rucksack."[3] The Second Circuit correctly recognized,

> [t]o hold the [energy companies] accountable … would require them to internalize the costs of climate change and would presumably affect the price and production of fossil fuels abroad. It would also bypass the various diplomatic channels that the United States uses to address this issue, such as the U.N. Framework and the Paris Agreement. Such an outcome would obviously sow confusion and needlessly complicate the nation's foreign policy, while clearly infringing on the prerogatives of the political branches.

City of New York, 993 F.3d at 103; *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 413 (2003) (quoting *Banco National de Cuba v. Sabbatino*, 376 U.S. 398 (1964), at 427 n.25) ("There is … no question that at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy, given the 'concern for uniformity in this country's dealings with foreign nations' that animated the Constitution's allocation of the foreign relations power to the National Government in the first place."); 586 P.3d at 183, Samour, J. Dissenting ("Because our federal government has clearly balanced many different interests in formulating its foreign policy on air pollution, it makes little sense to allow international regulation through the types of

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[3] Energy Security Forum, Washington, D.C., 13 October 2010, https://www.dvidshub.net/news/58040/mullen-military-has-strategic-imperative-save-resources.

state claims Boulder has brought. By giving Boulder the nod to proceed with its claims, the majority risks impeding our federal government's judgment as to how to approach air pollution in the international sphere.").

And while Respondents may argue that their case is not about regulating emissions, that they do not seek to prevent the sale or use of fossil fuels, and their claims are merely tort claims for damages, the reality is their theory of causation and the relief they seek are not so limited. As Justice Samour explained, "[w]hile Boulder's state-law claims masquerade as tort claims for damages, a closer look at the substance of those claims' allegations reveals that Boulder seeks to effectively abate or regulate interstate emissions." 586 P.3d at 178. *see also, Bucks County v. BP P.L.C.*, 2025 WL 1484203 (Pa. Ct. Com. P. May 16, 2025) at *7("[w]hile Bucks County does everything it can to avoid the issue of emissions, it cannot avoid the fact that if there were no emissions there would be no damages."). Indeed, "regulation can be effectively exerted through an award of damages," *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (cleaned up), and "[s]tate power" can be wielded as much by the "application of a state rule of law in a civil lawsuit as by a statute," *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 n.17 (1996). Environmental tort claims force defendants "to change [their] methods of doing business." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 495 (1987).

Thus, to us, this clearly is not a simple, localized dispute, with only limited intra-state consequences and damages. We have seen firsthand backdoor attempts to force reductions in tried-and-

true capabilities for less-proven substitutes. It poses too much risk without as-good-if-not-better performing substitutes. The military and Department of Defense cannot afford to rely on a hope or an aspiration that alternative fuels will be just as good because there are too many lives at stake, and the stakes are too great when fighting a war and deploying men and women onto a battlefield. This is especially so here when the alternative fuels are just not sufficiently tested, especially battle-tested.

Our experience teaches us therefore that these suits pose a grave threat to our national security because any future damages award will necessarily restrict fuel supply, and, in turn, will take from the military, or significantly reduce, these proven fuel capabilities without adequate substitutes, which will imperil lives. The suggestion that we should just "trust" that these suits will not take away or diminish these capabilities, that the availability of fossil fuels will not be reduced and that the military therefore will not be weakened, defies reality.

The other side seems to rely on speculation that these huge damages suits will not impact the supply of fuel needed for our national security when we know better; we've seen how these types of suits play out, and it is men and women on the battlefield who wind up getting hurt. Therefore, we feel duty-bound to file this *amicus* brief as a friend of this Court on the practical realities in play—not because we feel sorry for the energy companies, but because we have seen what happens when energy is effectively constrained when it is needed most.

We have spent most of our adult lives managing energy needs for the military, and it involves a complex, multi-factor apparatus to ensure our troops have what they need to succeed. Neither this Court nor the states and localities bringing these suits can expect the military to take a leap of faith here; the risks are just too high. As much as we'd like to never see war again, sadly, past is prologue. We must be incredibly judicious about putting these national assets at risk. And while we are always open to new, innovative approaches, we must have the most effective and robust energy sources possible and be wide-eyed and realistic about what the costs versus rewards are with any changes. We must look at alternatives honestly, not hopefully. The military does not make policy, but once we are sent to war or deployed into battle, we must have the proven resources to succeed because lives are at stake.

Allowing Respondents to obtain its requested sweeping relief, therefore, "would encourage courts to use vague public nuisance standards to scuttle the nation's carefully created system for accommodating the need for energy production and the need for clean air. The result would be a balkanization of clean air regulations and a confused patchwork of standards, to the detriment of industry and the environment alike." *N. Car., ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 301 (4th Cir. 2010); *see also United States v. Standard Oil Co. of Cal.*, 332 U.S. 301, 311 (1947).

Because Respondents' Complaint seeks to penalize Petitioners for their lawful past, present and future production and sale of oil and gas, it risks making oil and gas prohibitively costly and scarce. *See* Petitioners Merits Brief at 3 (describing a member of

the Respondents' legal team as "openly avow[ing]" that this case is part of "coordinated nationwide litigation [that] aims to impose an enormous 'carbon tax' that could 'bankrupt[]' the energy industry."). These claims, therefore, necessarily cause national security concerns.

ARGUMENT

For more than a century, and to this day, the Federal Government has incentivized, compelled and controlled aspects of United States oil and gas sales and has reserved rights to take additional control for the benefit of the Nation's defense, security, and economy. The Federal Government has required and otherwise been inextricably involved in the development of the Nation's oil resources both for governmental use and the use of billions of consumers. Respondents' claims arising from the production and sale of oil and gas necessarily implicate the Federal Government's actions and policy choices, including the extensive history of federal laws, contracts and leases that supported and controlled significant portions of our Nation's fuel supply.

I. The Important National Security Interests in the Crosshairs of These Cases: The Practical Realities and Importance of the Production and Sale of Oil and Gas to Our National Defense.

More than a century ago, in 1910, President Taft implored Congress to develop domestic oil sources: "As not only the largest owner of oil lands, but as a prospective large consumer of oil by reason of the increasing use of fuel oil by the Navy, the Federal Government is directly concerned both in encouraging

rational development and at the same time insuring the longest possible life to the oil supply." Hearings Before Committee on Naval Affairs of the House of Representatives on Estimates Submitted by the Secretary of the Navy, 64th Cong. 761 (1915).

Within two years, on September 2, 1912, President Taft established by Executive Order the first "Naval Petroleum Reserve" at Elk Hills, California, taking the extraordinary step of withdrawing large portions of land from eligibility for private ownership and designating them for the development of fuel resources to ensure the United States Navy would remain deployment-ready in the event of war. *See* U.S. Gov't Accountability Off., GAO/RCED-87-75FS, Naval Petroleum Reserves: Oil Sales Procedures and Prices at Elk Hills, April Through December 1986, at 3 (1987) ("GAO Fact Sheet").[4]

The defining characteristic of World War I was mechanization (*i.e.*, the emergence of tanks, aircraft, and submarines), and accordingly "oil and its products began to rank as among the principal agents by which the Allies would conduct war and by which they could win it.'" Ian O. Lessor, *Resources and Strategy: Vital Materials in International Conflict 1600 – The Present* (1989) at 42. The necessity was echoed among the Allies, as British Cabinet Minister Walter Long expressed in an address to the House of Commons in 1917:

> Oil is probably more important at this moment than anything else. You may have men, munitions, and money, but

[4] http://www.gao.gov/assets/90/87497.pdf

> if you do not have oil, … all your other advantages would be of comparatively little value.

Yergin, THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER (1991) at 177.

By 1917, American oil was vital for war efforts. As the Admiralty Director of Stores stated, "[W]ithout the aid of oil from America our modern oil-burning fleet cannot keep the sea." Lessor, *Resources and Strategy* at 43. In response to the Allies' cry for help, the United States provided over 80 percent of the Allied requirements for petroleum products and greatly influenced the outcome of the war. *Id.* (explaining that "petrol … is as necessary as blood in the battles of tomorrow") (quoting Clemenceau's letter to President Wilson)).

World War II confirmed petroleum's role as a key American resource and underscored the government's interest in maintaining and managing it. Statement of Ralph K. Davies, Deputy Petroleum Administrator of War, Special Committee Investigating Petroleum Resources, S. Res. 36, at 4 (Nov. 28, 1945) ("Our overseas forces required nearly twice as many tons of oil as arms and armament, ammunition, transportation and construction equipment, food, clothing, shelter, medical supplies, and all other materials together. In both essentiality and quantity, oil has become the greatest of all munitions."); National Petroleum Council, *A National Oil Policy for the United States* at 1 (1949) ("A prime weapon of victory in two world wars, [oil] is a bulwark of our national security.").

In 1941, as the United States prepared to enter World War II, its need for large quantities of oil and gas to produce high-octane fuel for planes ("avgas"), oil for ships, lubricants, and synthetic rubber far outstripped the Nation's capacity. Given the role played by strategic bombers, small attack bombers, fighters, and search and rescue aircraft, avgas was particularly essential to the war effort in both Europe and the Pacific. It is fair to describe it as the most critically needed petroleum product during the War. And it continues to be essential today. To ensure its supply, the Federal Government created agencies to control petroleum production and distribution; it directed the production of certain petroleum products; and it managed resources.

In 1942, President Roosevelt established several agencies to oversee wartime petroleum production, including the Petroleum Administration for War ("PAW"). The PAW centralized the government's petroleum-related activities. The PAW dictated products, quantity and quality to America's oil refiners. See John W. Frey & H. Chandler Ide, *A History of the Petroleum Administration for War, 1941-1945*, at 219 (1946)).

At the direction of the Federal Government, the oil companies increased avgas production "over twelve-fold from approximately 40,000 barrels per day in December 1941 to 514,000 barrels per day in 1945, [which] was crucial to Allied success in the war." *Shell Oil Co. v. United States*, 751 F.3d 1282, 1285 (Fed. Cir. 2014). "No one who knows even the slightest bit about what the petroleum Industry contributed … can fail to understand that it was, without the slightest doubt, one of the most effective arms of this Government" in

fulfilling the government's core defense functions. Statement of Senator O'Mahoney, Chairman, Special Committee Investigating Petroleum Resources, S. Res. 36, at 1 (Nov. 28, 1945) (emphasis added).

In 1950, President Truman established the Petroleum Administration for Defense ("PAD") under authority of the Defense Production Act of 1950, Pub. L. No. 81–774 ("DPA"). The PAD ordered production of oil and gas to ensure adequate quantities of avgas for military use. *Exxon*, 2020 WL 5573048, at *28; *see also id.* at *15 (detailing the government's use of the DPA to "force" the petroleum industry to "increase [its] production of wartime . . . petroleum products").

To further promote domestic oil and gas production in 1953, Congress passed the Outer Continental Shelf Lands Act ("OCSLA"), directing the U.S. Department of the Interior to make nearly 27 million acres of the Outer Continental Shelf ("OCS") available for "expeditious and orderly development" of fossil fuel production. 43 U.S.C. §1332(3).

During the Cold War, the U.S. military commanded the development of more innovative military fuels and continued its role as the driving force behind domestic production. During the 1960s, U.S. energy consumption increased 51%, compared to only 36% during the previous decade. Jay Hakes, A Declaration of Energy Independence at 17 (2008). As demand continued to climb into the early 1970s, the Nation faced a precarious shortage of oil and gas.

To avert a national energy crisis, in 1973, President Nixon ordered a dramatic increase in development for ready production from the OCS:

> Approximately half of the oil and gas resources in this country are located on public lands, primarily on the Outer Continental Shelf [OCS]. The speed at which we can increase our domestic energy production will depend in large measure on how rapidly these resources can be developed. I am therefore directing the Secretary of the Interior to take steps which would triple the annual acreage leased on the Outer Continental Shelf by 1979 ….

Nixon Message, *N.Y. Times,* Apr. 19, 1973.[5]

The following year, President Nixon announced a goal of *energy independence* by 1980. Annual Message to the Congress on the State of the Union, 1 Pub. Papers 59 (Jan. 23, 1974).[6] "Project Independence 1980" ordered, among other things, that the Secretary of the Interior "increase the acreage leased on the [OCS] to 10 million acres beginning in 1975, more than tripling what had originally been planned." Special Message to the Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).[7]

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[5] https://www.nytimes.com/1973/04/19/archives/excerpts-from-nixon-message-developing-our-domestic-energy.html.

[6] https://quod.lib.umich.edu/p/ppot-pus/4731948.1974.001/99?view=image&size=100

[7] https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/69

In addition, Congress passed the Trans-Alaska Pipeline Authorization Act of 1973, determining that it was in the "national interest" to deliver oil and gas from Alaska's North Slope "to domestic markets … because of growing domestic shortages and increasing dependence upon insecure foreign sources." Trans-Alaska Pipeline Authorization Act, Pub. L. No. 93-153, § 202(a), 87 Stat. 576, 584 (1973), Pub. L. No. 93-153.[8]

To address "immediate and critical" petroleum shortages in the military brought about by the 1973 OPEC Oil Embargo, the Federal Government invoked the DPA to bolster its reserves with additional petroleum from domestic oil and gas companies. Twenty-Fourth Annual Report of the Activities of the Joint Committee on Defense Production, S. Rep. No. 94-1, Pt. 1, at 442 (Jan. 17, 1975, 1st Sess.).

In 1974, responding to President Nixon's direction to "increase the acreage leased on the Outer Continental Shelf", Congress amended OCSLA. This amendment increased federal control over lessees "to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade." *California ex rel. Brown v. Watt*, 668 F.2d 1290, 1296 (D.C. Cir. 1981) (quoting 43 U.S.C. § 1802); *see also* Special Message to the

[8] https://www.govinfo.gov/content/pkg/ STATUTE-87/pdf/STAT-UTE-87-Pg576.pdf

Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).[9]

In 1978, as part of amendments to OCSLA, the Congressional Ad Hoc Select Committee on the OCS concluded again that "alternative sources of energy will not be commercially practical for years to come," H.R. Rep. No. 94-1084, at 254 (1976), and "[d]evelopment of our OCS resources will afford us needed time—as much as a generation—within which to develop alternative sources of energy." H.R. Rep. No. 95-590, at 53 (1977).

II. A Dependable, Abundant Supply of Oil and Gas Continue to be Essential to Our Nation's Conduct of Foreign Affairs and Military Preparedness.

In 1995, Congress and President Clinton amended OCSLA to permit the Secretary of the Interior to "unlock an estimated 15 billion barrels of oil in the central and western Gulf of Mexico" for exploration, production and sale. Press Secretary, White House Office of Communications, Statement on North Slope Oil Bill Signing (Nov. 28, 1995), 1995 WL 699656, at *1.

Federal promotion and use of domestic oil continued to grow in the 2000s. In 2006, the Bush Administration opened leases of approximately 8 million additional acres of OCS lands in the Gulf of Mexico to "address *high energy prices, protect American jobs, and reduce our dependence on foreign oil*." *Statement By President George W. Bush Upon Signing [H.R.*

[9]https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001?rgn=main;view=fulltext.

6111], 2 Pub. Papers 2217 (Dec. 20, 2006) (emphasis added).[10]

In 2010, President Obama "announc[ed] the expansion of offshore oil and gas exploration," explaining "in order to sustain economic growth, produce jobs, and keep our businesses competitive, *we are going to need to harness traditional sources of fuel* even as we ramp up production of new sources of renewable, homegrown energy." President Barack Obama, Remarks on Energy at Andrews Air Force Base, Maryland (Mar. 31, 2010) (emphasis added).[11]

In 2019, the United States became a net total energy exporter for the first time since 1952. U.S. Energy Info. Admin., U.S. energy facts explained (Apr. 27, 2020).[12] The Department of Defense alone purchased 94.2 million barrels of military-spec compliant fuel products, totaling $12.1 billion in procurement actions.[13] Even during President Biden's Administration, as former Vice Admiral Robert Harward reported, "energy manufacturers are answering President Biden's directive to export natural gas to our allies in Europe. For example, the U.S. has been able to respond to Russia's chokehold of the European energy market by increasing shipments

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[10] https://books.google.com/books?id=o2ei8yOph-boC&printsec=frontcover#v=onepage&q&f=false.

[11]https://obamawhitehouse.archives.gov/the-press-office/remarks-president-energy-security-andrews-air-force-base-3312010

[12] https://www.eia.gov/energyexplained/ us-energy-facts/imports-and-exports.php.

[13] Def. Logistics Agency Energy, Fiscal Year 2019 Fact Book (2019) at 4, 27, https://www.dla.mil/Portals/104/Documents/Energy/Publications/FactBook-FiscalYear2019_highres.pdf?ver=2020-01-21-103755-473.

of liquefied natural gas and crude oil by 137 percent and 38 percent, respectively."[14]

And, just a year ago, on April 8, 2025, President Trump issued Executive Order 14260, titled "Protecting American Energy from State Overreach", stating the federal policy priority as follows: "An affordable and reliable domestic energy supply is essential to the national and economic security of the United States *as well as our foreign policy*." (Emphasis added). Shortly, thereafter, on August 6, 2025, relying, in part, on this Executive Order, a South Carolina court dismissed a similar climate change case filed by a municipality in its entirety, stating:

> "The U.S. Constitution makes certain matters the exclusive domain of federal law for good reason. If all fifty states, let alone the tens of thousands of political subdivisions therein, were permitted to apply their own laws to such federal issues as interstate and international emissions, the result would be conflicting state standards that would be impossible for energy companies to navigate—what the U.S. Supreme Court called a "chaotic confrontation between sovereign states." *Ouellette,* 479 U.S. at 496. **That chaos would hamstring national energy production, which**

[14] U.S. Climate Lawsuits Endanger Military and U.S. National Security Interests by Robert Harward, Vice Admiral, U.S. Navy Retired, *American Military News* (April 20, 2023) at https://americanmilitarynews.com/2023/04/u-s-climate-lawsuits-endanger-military-and-u-s-national-security-interests/

> **the Executive Branch has highlighted as a priority across Administrations**. *See* Exec. Order 14,260, 90 Fed. Reg. 15,513, 15,513–14 (Apr. 8, 2025) ("My Administration is committed to unleashing American energy, especially through the removal of all illegitimate impediments"—including these "causes of action"—"to the identification, development, siting, production, investment in, or use of domestic energy resources—particularly oil, natural gas, coal, hydropower, geothermal, biofuel, critical mineral, and nuclear energy resources."); Ben Lefebvre, *"We are on war footing": Granholm calls on oil companies to ramp up production,* Politico (Mar. 9, 2022), https://bit.ly/40b52i6 (Biden Administration emphasizing the "need [for] oil and gas production to rise to meet current demand"); *Obama's Remarks on Offshore Drilling,* N.Y. Times (Mar. 31, 2010), https://bit.ly/4lG2mkO (Obama Administration announcing "the expansion of offshore oil and gas exploration" because "our dependence on foreign oil threatens our economy")".

Order Granting Defendants' Joint Motion to Dismiss at 14, *City of Charleston v. Brabham Oil Co.*, Case No. 2020-CP-02975 (S.C. Ct. Com. Pl. Aug. 6, 2025) (emphasis added).

Finally, as recently as last month, on April 20, 2026, President Trump signed several determinations under the Defense Production Act finding that "ensuring resilient domestic petroleum production, refining and logistics capacity is central to the United States defense readiness." "Petroleum fuels the Nation's armed forces.…Without immediate federal action, United States defense capabilities will remain vulnerable to disruption." The Presidential Determinations also stated that "ensuring sufficient" fossil fuels are "essential to United States national defense," and "critical" to sustaining United States defense operations and ensuring allied energy security. *See*, 2026-04-20, Presidential Determination to Section 303 of the Defense Production Act ("DPA") of 1950, as Amended, on Domestic Petroleum Production, Refining and Logistics Capacity.[15] *See also*, 2026-04-20 Presidential Determination pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Natural Gas Transmission, Processing, Storage, and Liquefied Natural Gas Capacity (relying on the January 2025 Executive Order 14156 (Declaring a National Energy Emergency)("hostile foreign actors have weaponized American's reliance on foreign energy…leaving the United States and its allies dangerously exposed.…America [therefore] must develop its capacity to supply …energy to international allies to compete with hostile foreign powers…and support international peace and security.").

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[15] *See* https://www.whitehouse.gov/presidential-actions/2026/04/presidential-determination-pursuant-to-section-303-of-the-defense-production-act-of-1950-as-amended-on-domestic-petroleum-production-refining-and-logistics-capacity/

When Respondents' Complaint is viewed within the historical context of the Federal Government's pervasive control and direction of oil and gas production, it is clear Respondents' state law claims seek to undercut these national and international policies and actions governing the sale of oil and gas and trigger national security concerns for a reliable and stable energy supply.

III. Our Nation's Vital Interests in Fuel Security and Managing Climate Change Cannot be Regulated by a Patchwork of State-Court Actions.

At the end of the day, we are concerned that the upshot of this litigation and the broad relief it seeks would undermine national interests in fuel security and military readiness. As the foregoing history and our personal experience demonstrate, fuel security is a crucial national interest and is especially critical to the U.S. military, in times of both war and peace, to power ships, tanks, and aircraft, provide energy to run bases, stations, and detachments, and enable numerous operations. It should thus come as no surprise that the U.S. military is the single largest purchaser and consumer of fuel in the United States.

Climate change is likewise an issue of critical national (indeed, global) importance. Greenhouse-gas emissions are a form of transboundary air pollution and thus present a matter of uniquely federal concern, rather than a state or local matter. *See City of New York*, 993 F.3d at 85-86 ("Global warming presents a uniquely international problem of national concern. It is therefore not well-suited to the application of state law.").

Because national security issues and climate change concerns are both uniquely federal interests, they must be addressed and solved by the Federal Government and the political branches, not through bread-and-butter state law claims. *See Torres v. Texas Dep't of Pub. Safety*, 597 U.S. 580, 590 (2022) ("[T]he Constitution's text, across several Articles, strongly suggests a complete delegation of authority to the Federal Government to provide for the common defense . . . [Therefore] [t]hese substantial limitations on state authority, together with the assignment of sweeping power to the Federal Government, provide strong evidence that the structure of the Constitution prevents States from frustrating national objectives in this field.").

Litigating Respondents' claims against Petitioners in a decentralized way under various states' laws will undermine these vital national interests and undermine a reliable domestic fuel supply. It would subject Petitioners to potential liability under a patchwork of state laws, without a uniform guide. Courts have recognized that this would "risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other." *City of New York*, 993 F.3d at 93; *see also id.* ("And as states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the Producers' global operations to a welter of different states' laws could undermine important federal policy choices."); *Bucks County*, 2025 WL 1484203, at *8

(recognizing "that our federal structure does not allow … any State's law, to address the claims raised in [the] County's Complaint. Rather, federal common law addresses subjects within national legislative power where Congress has so directed or where the basic scheme of the Constitution so demands.").

To be sure, the U.S. military continues to look for "greener" ways to fuel its operations, and we support ameliorating climate change risks at our bases, but the reality is the U.S. military must always take into account its enemies' own fossil-fuel uses and potential superior deployment abilities because of those uses. The United States could go it alone and unilaterally strip itself of higher-performing fossil fuels, but that risks putting the Nation at a significant disadvantage, militarily and otherwise. The ruinous damages these cases seek risk knee-capping this country while empowering others who seek to exploit just such vulnerabilities. Stated differently, energy security and national security go hand-in-hand; we cannot achieve national security without energy security.

At bottom, our experience has taught us that private-sector production and sale of oil and gas are essential to our military operations and thus our national security. The practical reality is that Respondents far-reaching claims are a recipe for a runaway tort system, which would interfere with the proper balancing of federal and state interests. It would elevate parochial interests over the national common good. Our Constitutional oath includes our commitment to "support and defend the Constitution of the United States against all enemies, foreign and domestic," which necessarily includes a commitment

to ensure the military has sufficient fuel to accomplish its missions. To adhere to that oath, it is the duty of military officers to enable a plentiful supply of fuel to operate vehicles, ships, and planes. Because energy is essential to protect our Nation, its people, and the world at large, the decision of how much is appropriate must be left with the Federal Government and the branches of the Federal Government tasked with our foreign policy and national security.

CONCLUSION

The dissenting Justices below rightly explained that if allowed to stand the decision would "contribute to a patchwork of inconsistent local standards that will beget regulatory chaos." 586 P.3d at 184. We share this exact concern, as the resulting regulatory chaos and impact on our fuel supplies will directly impair national security. Having committed our lives to the defense of this Nation, we view this problematic outcome as completely inconsistent with the Constitution's delegation of power. As Justice Samour succinctly put it "[i]n our individual nation, that just can't be right." *Id.* Accordingly, we urge this Court to reverse the Colorado Supreme Court's decision.

Respectfully submitted,

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