

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 TENNESSEE AS AMICUS CURIAE
IN SUPPORT OF PETITIONERS**

JONATHAN SKRMETTI
Attorney General of Tennessee

J. MATTHEW RICE
*Solicitor General
Counsel of Record*

MADLINE W. CLARK
*Principal Deputy
Solicitor General*

WALKER ANDERSON
THOMAS C. ARCHIBALD
Honors Fellows

OFFICE OF TENNESSEE
ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202
(615) 532-6026
Matt.Rice@ag.tn.gov

TABLE OF CONTENTS

INTERESTS OF AMICUS CURIAE1
SUMMARY OF ARGUMENT2
ARGUMENT.....4
I. At the founding, States possessed complete territorial sovereignty.....4
II. The Constitution preserved, and reflects the existence of, the States’ right to territorial sovereignty.9
III. Precedent recognizes the States’ right to territorial sovereignty.....14
IV. Colorado cannot regulate other sovereign States.....21
CONCLUSION23

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Addington v. Texas</i> , 441 U.S. 418 (1979)	1
<i>Alden v. Maine</i> , 527 U.S. 706 (1999)	9
<i>Baldwin v. G.A.F. Seelig, Inc.</i> , 294 U.S. 511 (1935)	16
<i>BMW of N. Am., Inc. v. Gore</i> , 517 U.S. 559 (1996)	17, 18
<i>Bonaparte v. Tax Court</i> , 104 U.S. 592 (1881)	14
<i>Boyle v. Zacharie</i> , 31 U.S. 635 (1832)	15
<i>Bristol-Myers Squibb Co. v. Superior Ct. of Cal.</i> , 582 U.S. 255 (2017)	15
<i>Camps Newfound/Owatonna, Inc. v. Town of Harrison</i> , 520 U.S. 564 (1997)	7, 8, 17
<i>Chisholm v. Georgia</i> , 2 Dall. 419 (1793).....	19

<i>City of New York v. Chevron Corp.</i> , 993 F.3d 81 (2d Cir. 2021).....	21, 22
<i>D’Arcy v. Ketchum</i> , 52 U.S. (11 How.) 165 (1851).....	10
<i>Ford Motor Co. v. Mont. Eighth Jud. Dist.</i> , 592 U.S. 351 (2021)	17
<i>Franchise Tax Bd. of Cal. v. Hyatt</i> , 587 U.S. 230 (2019)	1, 2, 4, 5, 9, 10, 13, 16, 19, 20
<i>Fuld v. Palestine Liberation Org.</i> , 606 U.S. 1 (2025)	4, 5, 14
<i>Gundy v. United States</i> , 588 U.S. 128 (2019)	18
<i>Healy v. Beer Inst.</i> , 491 U.S. 324 (1989)	15
<i>Hencely v. Fluor Corp.</i> , 146 S. Ct. 1086 (2026)	16
<i>Hinderlider v. La Plata River & Cherry Creek Ditch Co.</i> , 304 U.S. 92 (1938)	16
<i>Illinois v. City of Milwaukee</i> , 406 U.S. 91 (1972)	16
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010)	18

<i>Murray v. The Schooner Charming Betsy</i> , 6 U.S. (2 Cranch) 64 (1804)	11
<i>Nat'l Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023)	1, 3, 13, 16, 18
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932)	17
<i>N.Y. Life Ins. Co. v. Head</i> , 234 U.S. 149 (1914)	10, 17
<i>Ogden v. Saunders</i> , 25 U.S. 213 (1827)	3, 15
<i>Osborn v. Ozlin</i> , 310 U.S. 53 (1940)	16, 22
<i>Pennoyer v. Neff</i> , 95 U.S. 714 (1878)	13
<i>PPL Mont., LLC v. Montana</i> , 565 U.S. 576 (2012)	19
<i>Printz v. United States</i> , 521 U.S. 898 (1997)	3, 11
<i>Rhode Island v. Massachusetts</i> , 37 U.S. 657 (1838)	16
<i>Sackett v. EPA</i> , 598 U.S. 651 (2023)	22

<i>San Diego Bldg. Trades Council v. Garmon</i> , 359 U.S. 236 (1959)	22
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977)	13
<i>Shelby County v. Holder</i> , 570 U.S. 529 (2013)	19
<i>Simpson v. State</i> , 17 S.E. 984 (Ga. 1893)	15
<i>Sosa v. Alvarez-Machain</i> , 542 U.S. 692 (2004)	5
<i>Strassheim v. Daily</i> , 221 U.S. 280 (1911)	15
<i>Tex. Indus., Inc. v. Radcliff Materials, Inc.</i> , 451 U.S. 630 (1981)	16
<i>The Nereide</i> , 13 U.S. (9 Cranch) 388 (1815)	5
<i>The Schooner Exch. v. McFaddon</i> , 11 U.S. (7 Cranch) 116 (1812)	6, 10
<i>Thomas v. Wash. Gas Light Co.</i> , 448 U.S. 261 (1980)	12
<i>U.S. Steel Corp. v. Multistate Tax Comm'n</i> , 434 U.S. 452 (1978)	5

<i>United States v. Bevans</i> , 16 U.S. (3 Wheat.) 336 (1818)	14
<i>United States v. Lopez</i> , 514 U.S. 549 (1995)	1, 19
<i>United States v. Morrison</i> , 529 U.S. 598 (2000)	17
<i>United States v. Smith</i> , 18 U.S. 153 (1820)	5
<i>Ware v. Hylton</i> , 3 U.S. (3 Dall.) 199 (1796)	4, 22
<i>World-Wide Volkswagen v. Woodson</i> , 444 U.S. 286, 293 (1980).....	15
<i>Zivotofsky ex rel. Zivotofsky v. Kerry</i> , 576 U.S. 1 (2015)	5
Constitutional Provisions	
U.S. Const. amend. X	12
U.S. Const. art. IV, § 1	12
U.S. Const. art. IV, § 3, cl. 1.....	13
U.S. Const. art. IV, § 4	13
U.S. Const. art. VII.....	9

Legislative Materials

- 35 Annals of Cong. (1820)11, 12
- Max Farrand, *The Records of the Federal Convention of 1787* (1911).....13
- Resolution of Aug. 25, 1779, 14 Journals of the Continental Congress8

Other Authorities

- Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 Yale L. J. 1425 (1987).....8
- Alexander Hamilton, *Pacificus* No. I.....5
- Alexander Hamilton, The Federalist No. 22 (J.E. Cooke ed., 1961)8
- Alexander Hamilton, The Federalist No. 32 (J.E. Cooke ed., 1961)10, 20
- Anthony J. Bellia & Bradford R. Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835 (2020)5, 6, 9, 10, 11
- Declaration of Independence (1776)4
- E. de Vattel, *The Law of Nations* (J. Chitty ed. 1844)4, 6, 7, 11
- F. Wharton, United States Revolutionary Diplomatic Correspondence (1889)5

French Const. of 1791.....	13
Gordon S. Wood, <i>The Creation of the American Republic</i> (1998)	6
James Madison, The Federalist No. 39 (J.E. Cooke ed., 1961)	9, 12
James Madison, The Federalist No. 45 (J.E. Cooke ed., 1961)	9, 11
Joseph Story, <i>Commentaries on the Conflict of Laws</i> (5th ed. 1857).....	7
Letter from Roger Sherman & Oliver Ellsworth to Gov. Samuel Huntington of Connecticut (Sept. 26, 1787)	9
Michael D. Ramsey, <i>Executive Agreements and the (Non)treaty Power</i> , 77 N.C. L. Rev. 133 (1998).....	5
Neal Kumar Katyal & Thomas P. Schmidt, <i>Active Avoidance: The Modern Supreme Court and Legal Change</i> , 128 Harv. L. Rev. 2109 (2015)	20
Proceedings of Commissioners to Remedy Defects of the Federal Government (Annapolis Convention, Sept. 14, 1786)	8
Stephen E. Sachs, <i>Constitutional Backdrops</i> , 80 Geo. Wash. L. Rev. 1813 (2012)	20

W. Blackstone, *Commentaries on the Laws of
England* (1769)5, 6

INTERESTS OF AMICUS CURIAE

The States entered the Union as “fully sovereign nations.” *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 237 (2019). And they retained their sovereignty “except as altered by the plan of the Convention or certain constitutional Amendments.” *Id.* at 241 (quotation omitted). As the Constitution allocates only “limited and enumerated powers” to the federal government, States like Tennessee enjoy “exclusive control” over “most areas of life.” *United States v. Lopez*, 514 U.S. 549, 590, 592 (1995) (Thomas, J., concurring). Tennessee’s ability to exercise its sovereign authority within its borders leaves it “free to develop a variety of solutions to [the] problems” facing its citizens without “be[ing] forced into a common, uniform mold.” *Addington v. Texas*, 441 U.S. 418, 431 (1979).

Increasingly, threats to that sovereignty come not just from the federal government, but from other States trying to project their regulatory authority beyond their borders. These States attempt to unilaterally impose their policy preferences nationwide or “force other States to regulate in accordance with” their own “idiosyncratic state demands.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 407 (2023) (Kavanaugh, J., concurring in part and dissenting in part). Those efforts threaten Tennessee’s “equal dignity and sovereignty under the Constitution,” undermine the Framers’ design, and erode Tennesseans’ right to self-govern within the State’s borders. *See Hyatt*, 587 U.S. at 245. Tennessee has an interest in protecting its territorial sovereignty by ensuring that fellow States remain within their proper regulatory ambit.

SUMMARY OF ARGUMENT

The Constitution preserves the States' right to territorial sovereignty. That right prohibits States from regulating within the borders of another. And like sovereign immunity, it is a preexisting "aspect[] of sovereignty" that States "retained" after ratifying the Constitution. *Hyatt*, 587 U.S. at 241. The Court should clarify as much and reject Colorado's attempt to regulate emissions in other States.

I. Before ratification, the States operated as independent sovereign nations with exclusive control over conduct within their territories. The law of nations, as part of the common law, governed relations between sovereign States. And under the law of nations, each State enjoyed the right to self-government and territorial sovereignty. That right ensured that no State could interfere within the borders of another.

The Constitution's Framers did not seek to change that. They sought to strengthen the federal government's authority to quell interstate disputes and conduct foreign relations. But the role of States as independent sovereigns remained the foundation of the new federalist system.

II. That being so, the Constitution left the States' sovereignty intact except where expressly provided otherwise. And nothing in the Constitution altered the States' right to territorial sovereignty—i.e., the right to regulate within territorial limits—with respect to other sovereign States. While the Constitution shifted some power from the States to the federal government, it did not reallocate power between the

States. Far from abridging States' territorial sovereignty vis-à-vis other States, the "Constitution's text" reflects the States' "residuary and inviolable sovereignty" within their borders. *Printz v. United States*, 521 U.S. 898, 918-19 (1997) (quotations omitted).

III. This Court's precedent recognizes the States' territorial sovereignty and the limitations it imposes. It has explained that when a State regulates outside its territory, "there arises a conflict of sovereign power ... which renders the exercise of such a power incompatible with the rights of other States." *Ogden v. Saunders*, 25 U.S. 213, 369 (1827) (Johnson, J.). The Court, though, has been inconsistent about the constitutional basis of that principle—erecting a series of doctrines infused with the territorial sovereignty concept. But there's no need to cram the limits imposed by territorial sovereignty into a specific constitutional provision, nor "[r]ead[] between the Constitution's lines" to recognize the doctrine. *Pork Producers*, 598 U.S. at 368. Like sovereign immunity, territorial sovereignty is one of the many preexisting aspects of sovereignty the Constitution left with the States.

IV. Colorado's regulation of greenhouse gas emissions violates territorial sovereignty. Fossil fuels power virtually all modern American life, and greenhouse gas emissions pose a complicated set of policy tradeoffs. But the decision below allows Colorado state tort law to dictate energy policy in every State—all fifty of them. The Constitution does not grant Colorado that authority. Colorado's attempt to regulate conduct throughout the country plainly violates the territorial sovereignty of its fellow States.

ARGUMENT

I. At the founding, States possessed complete territorial sovereignty.

Before ratification, the States operated as independent sovereigns that, under the law of nations, held a perfect right to territorial sovereignty.

A. When the Colonies claimed their independence, they became “fully sovereign nations.” *Hyatt*, 587 U.S. at 237-38. They declared themselves “Free and Independent States” with “full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.” Declaration of Independence ¶ 32 (1776). That meant that each State had the “right to govern itself by its own authority, and its own laws, without any control from any other power.” *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 224 (1796) (Chase, J.).

As independent sovereigns, early American States looked to the law of nations to govern their relations with one another. *See Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 37 (2025) (Thomas, J., concurring in the judgment). The law of nations comprised a body of “[c]ertain maxims and customs, consecrated by long use, and observed by nations in their mutual intercourse with each other as a kind of law.” E. DE VATTEL, *THE LAW OF NATIONS*, intro., § 25, at lxxv (J. Chitty ed. 1844) (emphasis altered); *cf. Hyatt*, 587 U.S. at 239.¹ The founding generation uniformly

¹ Vattel’s *THE LAW OF NATIONS* was “widely consulted by the constitutional generation in the United States,” and was “invariably

agreed that the “law of Nations form[ed] a part of the law of the land,” Alexander Hamilton, *Pacificus* No. I, and was “adopted in its full extent by the common law.” 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 67 (1769); *see also The Nereide*, 13 U.S. (9 Cranch) 388, 423 (1815) (concluding that “the law of nations ... is a part of the law of the land”) (Marshall, C.J.); *United States v. Smith*, 18 U.S. 153, 161 (1820) (“the law of nations ... is part of the common law”) (Story, J.).

Under the law of nations, independent sovereigns exercised the right to “self-government and territorial sovereignty.” Anthony J. Bellia & Bradford R. Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835, 847 (2020) (“*Origins*”). The authority to wield the coercive power of the State

invoked as authoritative on matters of international law by the likes of Alexander Hamilton, James Madison, James Wilson, Edmund Randolph, Thomas Jefferson, John Marshall, Joseph Story and James Kent, among others.” *Fuld*, 606 U.S. at 28 n.1 (Thomas, J., concurring in the judgment) (quoting Michael D. Ramsey, *Executive Agreements and the (Non)treaty Power*, 77 N.C. L. Rev. 133, 169-70 (1998)). During the 1775 Continental Congress, “Benjamin Franklin acknowledged receipt of three copies of a new edition, in French, of Vattel’s Law of Nations and remarked that the book ‘has been continually in the hands of the members of our Congress now sitting.’” *U.S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452, 462 n.12 (1978) (quoting 2 F. Wharton, *United States Revolutionary Diplomatic Correspondence* 64 (1889)). This Court, too, has recognized Vattel as “the founding era’s foremost expert on the law of nations.” *Hyatt*, 587 U.S. at 239; *see also Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 12 (2015) (referring to Vattel as a “prominent international scholar[]” “[a]t the time of the founding”); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 714-16 (2004).

was understood as “the greatest act of superiority that [could] be exercised by one being over another.” 1 W. BLACKSTONE, COMMENTARIES, at *28. Indeed, it was the very essence of sovereignty. See VATTEL, bk. I, § 4, at 2. And “[a]s Samuel Adams said in 1776, paraphrasing Vattel,” each State had “an interest and will of its own.” GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC 58 (1998). So each sovereign nation’s authority “within its own territory [wa]s necessarily exclusive and absolute.” *The Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812) (Marshall, C.J.).

That exclusive authority flowed from the “equal rights and equal independence” of “distinct sovereignties.” *Id.* “Since men are naturally equal,” the law of nations understood “Nations composed of men” to be “naturally equal,” too. VATTEL, intro., § 18, at lxii-lxiii. The law of nations precluded one State from “claiming a superiority of rights or a ‘pre-eminence of rank over’” another. Bellia & Clark, *Origins, supra*, at 852 (quoting VATTEL, bk. II, § 37, at 149).

The co-equal status of sovereigns meant, on the one hand, “that all [states] have a right to be governed as they think proper,” and on the other, “that no state has the smallest right to interfere in the government of another.” VATTEL, bk. II, § 54, at 154-55; *id.*, bk. II, § 57, at 156. Each enjoyed the right to “govern herself according to her own pleasure, [a]s a necessary part of her independence.” *Id.* That meant, though, that sovereign nations lacked authority to “interfere” within the borders of another “independent state.” *Id.* Under the law of nations, “[i]f any intrude into the domestic

concerns of another nation, and attempt to put a constraint on its deliberations they do it an injury.” *Id.*, bk. I, § 37, at 11.

This right to territorial sovereignty was well-understood by the founding generation. Recounting the works of mid-seventeenth century scholars on the law of nations (including Vattel), Joseph Story said that the “first and most general maxim” that “govern[s] the conduct of nations” is that “every nation possesses an exclusive sovereignty and jurisdiction within its own territory.” JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS, § 17-18, at 26 (5th ed. 1857). A “natural consequence” of that proposition is that “no State or nation can, by its laws, directly affect or bind property outside its own territory.” *Id.* § 20, at 28. For a State to do so would “be wholly incompatible with the equality and exclusiveness of the sovereignty of all nations.” *Id.*

B. The founding generation quickly realized that the nation needed a stronger national government to unify the independent States and protect their sovereign authority.

The national government established by the Articles of Confederation proved too weak to prevent interstate disputes and to effectively facilitate foreign relations. For example, in 1779, the “acute” problem of interstate trade barriers led the Continental Congress to request that the States “repeal all laws or other restrictions laid on the inland trade between the said states.” *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 628 (1997) (Thomas,

J., dissenting) (quoting Resolution of Aug. 25, 1779, 14 Journals of the Continental Congress 986). But because Congress had “no means” of “compelling compliance” with any of its dictates, Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 Yale L. J. 1425, 1447 (1987), States largely “ignored the request,” *Camps Newfound*, 520 U.S. at 629 (Thomas, J., dissenting). States also routinely undercut one another to obtain favorable trade relations abroad—especially with Great Britain. “[T]he want of concert, arising from the want of a general authority ... frustrated every experiment of the kind” and fractured relations among the States. THE FEDERALIST NO. 22, at 136-37 (A. Hamilton) (J.E. Cooke ed., 1961).

These problems spurred several States to convene the Annapolis Convention in 1786 to consider ways to better promote the “common interest and permanent harmony” of the States. Proceedings of Commissioners to Remedy Defects of the Federal Government (Annapolis Convention, Sept. 14, 1786), reprinted in The Avalon Project, Yale Law School, <https://perma.cc/L74L-PXN9>. But by then, it was clear that the Articles were a failure and more robust change was necessary. That prompted the Philadelphia Convention in 1789. See Amar, *Of Sovereignty and Federalism*, *supra*, at 1447-48.

That Convention focused on the creation of a more centralized federal government to address the then-exigent issues. But the idea that the States would continue to function as independent sovereigns remained central to the construction of a new government. Rather than concentrate all power in a central

government, the Framers sought to vest in the federal government the “few and defined” powers “absolutely necessary” to address the problems facing the new nation. THE FEDERALIST NO. 45, at 308, 313 (J. Madison) (J.E. Cooke ed., 1961). “Those powers extend[ed] only to matters respecting the common interests of the union, and [we]re specially defined, so that the particular states retain[ed] their sovereignty in all other matters.” Letter from Roger Sherman & Oliver Ellsworth to Gov. Samuel Huntington of Connecticut (Sept. 26, 1787), <https://perma.cc/FQ98-BZAD>.

II. The Constitution preserved, and reflects the existence of, the States’ right to territorial sovereignty.

The States retained their sovereign authority except as displaced by the Constitution. *Hyatt*, 587 U.S. at 241. And nothing in the Constitution strips States of their right to territorial sovereignty vis-à-vis other States. If anything, the text confirms its continued existence.

A. The Constitution fundamentally “preserve[d] the sovereign status of the States.” *Alden v. Maine*, 527 U.S. 706, 714 (1999). It recognized each State “as a sovereign body independent of all others.” THE FEDERALIST NO. 39, at 254 (J. Madison) (J.E. Cooke ed., 1961). As an independent sovereign, a State could “only ... be bound by its own voluntary act”—and only to the extent that it voluntarily ceded its power. *Id.*; see also U.S. Const. art. VII (binding only States who voluntarily ratified it); Bellia & Clark, *Origins, supra*, at 854-57. “All exceptions ... to the full and complete power of a nation within its own territories, must be

traced up to the consent of the nation itself.” *Schooner Exch.*, 11 U.S. (7 Cranch) at 136.

And while the States consented to some delegation of power by ratifying the Constitution, they maintained “all the rights of sovereignty which they before had and which were not by that act exclusively delegated to the United States.” THE FEDERALIST NO. 32, at 200 (A. Hamilton) (J.E. Cooke ed., 1961) (emphasis altered). That is, the States retained all “aspects of sovereignty”—those that existed under “common law and the law of nations”—“except as altered by the plan of the Convention or certain constitutional Amendments.” *Hyatt*, 587 U.S. at 241 (quotations omitted); see also *D’Arcy v. Ketchum*, 52 U.S. (11 How.) 165, 176 (1851).

B. Nothing in the Constitution removes the States’ territorial sovereignty vis-à-vis other States. The text does not even hint at such a delegation. See Bellia & Clark, *Origins, supra*, at 878-79; *infra* 12-13. Nor does the structure of the Constitution somehow suggest that the States granted other co-equal sovereigns authority within their borders. See *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161-62 (1914); *infra* 12-13. There’s not even a whisper of a penumbra—let alone a clear indication that the Constitution extinguished States’ right to territorial sovereignty with respect to other co-equal States.²

² If the Framers wanted to abrogate that sovereignty, they would’ve done so with exacting specificity. It was well understood by legal authorities at the time that legal texts should be strictly construed in favor of “preserv[ing] preexisting sovereign

That makes sense. The Constitution didn't seek to reallocate the regulatory authority of States as against one another. The idea was that States would cede some of their power "to the new *Federal* Government," *Printz*, 521 U.S. at 918-19, to address the shortcomings of the Articles of Confederation, *supra* 7-9. And the States did so by granting the federal government "few and defined" powers—powers that "principally [touch] on external objects" and areas of domestic authority where national uniformity is necessary. THE FEDERALIST NO. 45, at 313 (J. Madison) (J.E. Cooke ed., 1961).

William Pinkney—Senator from Maryland and the Attorney General of the United States during the Madison Administration—perhaps summed it up best on the floor of the Senate in 1820. He said that "the Constitution recognizes" the "natural equality of the States" because it "takes the States as it finds them, free and sovereign alike." 35 Annals of Cong. 400 (1820) (statement of Sen. Pinkney). In allocating power, it "diminishes the individual sovereignty of each [State], and transfers, what it subtracts, to the [federal] Government which it creates," but "it takes

rights." Bellia & Clark, *Origins, supra*, at 856-57 & n.106. That rule ensured that an interpreting court would not inadvertently affect an "odious" and unconsented deprivation of a State's sovereignty. See VATTEL, bk. II, § 308, at 267-68. And because such an unconsented deprivation would violate the law of nations, *supra* 9-10, the rule is merely a narrow instantiation of the well-established "Charming Betsy" canon. See *Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (Marshall, C.J.) ("[A]n act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.").

from all alike, and leaves them” “equal in sovereign power” “relative[] to each other.” *Id.*

The Constitution therefore left the States with regulatory powers that applied (as they always had) “within their respective spheres”—i.e., within their borders. THE FEDERALIST NO. 39, at 256 (J. Madison) (J.E. Cooke ed., 1961).

C. The Constitution’s text recognizes the continued existence of the States’ territorial sovereignty. Start with the Tenth Amendment. It affirms that the States “delegated” certain powers “*to the United States.*” U.S. Const. amend. X (emphasis added). But it then explicitly “reserve[s]” all other powers “to the States *respectively*”—meaning, to each individual sovereign State. *Id.* (emphasis added). That text reflects that the States’ limited delegation of sovereignty was vertical, not horizontal.

Other provisions confirm the preservation of territorial sovereignty with respect to co-equal States. The Full Faith and Credit Clause requires States to recognize judgments issued by jurisdictionally competent courts in sister States—a requirement rooted in territorial sovereignty. U.S. Const. art. IV, § 1; *see Thomas v. Wash. Gas Light Co.*, 448 U.S. 261, 272 (1980) (“To vest the power of determining the extra-territorial effect of a State’s own laws and judgments in the State itself risks ... parochial entrenchment on the interests of other States.”). The Due Process Clause, as once explained by this Court, protected non-residents from a state court’s territorial over-

reach by limiting its “authority” to “the territorial limits of the State in which it was established.” *Pennoyer v. Neff*, 95 U.S. 714, 720 (1878); *Shaffer v. Heitner*, 433 U.S. 186, 197 (1977) (holding that “any attempt ‘directly’ to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the inherent limits of the State’s power”). And the Guarantee Clause compels the federal government to protect States against “Invasion” or other territorial incursions (including by other States) that threaten their territorial sovereignty. U.S. Const. art. IV, § 4; see 2 Max Farrand, *The Records of the Federal Convention of 1787*, at 48 (1911).

Even the Constitution’s choice to preserve state borders at all is illustrative. See *Pork Producers*, 598 U.S. at 375. Many constitutions don’t. Famously, the French Constitution of 1791 wholesale abolished the country’s preexisting provincial governments, instead declaring France to be “one and indivisible” as administered through eighty-three artificially delineated and federally controlled “departments.” French Const. of 1791, Tit. II, art. 1. Our Constitution, however, took the States’ existence—and their sovereignty—as given. See *supra* 9-10; cf. *Hyatt*, 587 U.S. at 241 (“The Constitution’s use of the term ‘States’ reflects” that States retained sovereign immunity “under both the common law and the law of nations”). And by mandating that “no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States,” it explicitly protected the States from having their territory eroded by other States. U.S. Const. art. IV, § 3, cl. 1.

The bottom line: States retained their right to territorial sovereignty as between one another under the Constitution. That right pre-existed the Constitution, and nothing in the Constitution took it away. If anything, the constitutional text *reinforces* rather than supplants the territoriality right.

III. Precedent recognizes the States' right to territorial sovereignty.

This Court's precedent likewise recognizes the States' right to territorial sovereignty and the limitations it imposes. But the conceptual underpinning of the right remains unsettled. The Court should resolve that doctrinal confusion by acknowledging that territorial sovereignty (like sovereign immunity and equal sovereignty) is a component of sovereignty reserved to the States.

A. This Court has always acknowledged the States' territorial limits. Shortly after the founding, Chief Justice Marshall proclaimed "without hesitation" that "the jurisdiction of a state is co-extensive with its territory." *United States v. Bevans*, 16 U.S. (3 Wheat.) 336, 386-87 (1818) (Marshall, C.J.). And as recently as last term, this Court remarked that "State sovereign authority" has always been "bounded by the States' respective borders." *Fuld*, 606 U.S. at 14.

In between, the principle that "[n]o state can legislate except with reference to its own jurisdiction" permeates this Court's jurisprudence. *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881). The Court has recognized that "[t]he sovereignty of each State ... implie[s] a limitation on the sovereignty of all of its sister

States.” *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 293 (1980). The Court has preserved “the autonomy of the individual States within their respective spheres.” *Healy v. Beer Inst.*, 491 U.S. 324, 335-37 (1989). And the Court has acknowledged that when States endeavor to “pass beyond their own [territorial] limits” and regulate conduct out of State, “there arises a conflict of sovereign power ... which renders the exercise of such a power incompatible with the rights of other States.” *Ogden*, 25 U.S. at 369 (Johnson, J.); *see also Boyle v. Zacharie*, 31 U.S. 635, 643 (1832) (Story, J.) (confirming that Justice Johnson spoke for the *Ogden* majority).

To be sure, this Court has recognized that a State may regulate in-State aspects of cross-border conduct or transactions that affect the health, safety, or welfare of its own citizens in some circumstances. *See Strassheim v. Daily*, 221 U.S. 280, 285 (1911); *accord Simpson v. State*, 17 S.E. 984, 985-86 (Ga. 1893) (State has jurisdiction to prosecute cross-border shooting). But that power doesn’t mean States can circumvent territorial limits by recasting extraterritorial intrusions as in-State regulation. At least two guardrails constrain such overreach.

One, the Court requires a nexus between the State’s regulatory interest and the supposedly detrimental effects within the State. *See Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 263 (2017). For example, California cannot “condition importation” of whiskey “upon proof of a satisfactory wage scale” at a Tennessee distillery—even if California were to impose that requirement only on whiskey

that was shipped into California. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 524 (1935). Though California may have some regulatory interest in ensuring the safety of whiskey drunk in California, the Tennessee distillery’s wage scale is wholly unrelated to that interest. *Id.* As to California, then, Tennessee wages would be “none of her concern.” *Osborn v. Ozlin*, 310 U.S. 53, 62 (1940); *cf. Pork Producers*, 598 U.S. at 407 (Kavanaugh, J., concurring in part and dissenting in part) (same, for States regulating “the sale of fruit picked by noncitizens who are unlawfully in the country”).

Two, the Court prohibits States from arrogating power in “interstate and international disputes” that “implicat[e] the conflicting rights of States or our relations with foreign nations.” *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981); *see also Hyatt*, 587 U.S. at 246-47. A State cannot claim the right to take all of the water in an interstate river, *see Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938); the right to dump sewage off a neighboring State’s coast, *see Illinois v. City of Milwaukee*, 406 U.S. 91, 107 (1972); or even the right to unilaterally assert ownership of another State’s land, *cf. Rhode Island v. Massachusetts*, 37 U.S. 657, 737 (1838). When States entered the Union, they surrendered the power to make policy that necessarily implicates other States’ sovereignty or involves distinctly national or international interests. *Hyatt*, 587 U.S. at 246-47. Those matters, therefore, can only be governed by federal legislation or, failing that, federal common law. *See Hencely v. Fluor Corp.*, 146 S. Ct. 1086, 1094 (2026).

In short, “[t]he Constitution requires a distinction between what is truly national and what is truly local.” *United States v. Morrison*, 529 U.S. 598, 617-18 (2000). Of course, it’s axiomatic that States can regulate in-State conduct. But “no single State [can] ... impose its own policy choice[s] on neighboring States.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571-72 (1996). That infringes on the sovereign authority of sister States and short circuits the “happy incident[] of the federal system” that States may independently innovate and “try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

B. Still, “authorities directly dealing with” the reciprocal limitations on the territorial sovereignty of the States “do not abound.” *Head*, 234 U.S. at 161. The principle that statutes cannot “operate beyond the jurisdiction of that State ... lies at the foundation” of our federalist system and “is so obviously the necessary result of the Constitution that it has rarely been called in question.” *Id.* at 161-62. The Court, though, hasn’t always been consistent about that principle’s legal foundation.

Over time, this Court has erected a series of federalism-inflected doctrines that implement the territorial sovereignty concept—some of which rest on uneasy constitutional footing. *E.g.*, *Camps Newfound*, 520 U.S. at 610-620 (Thomas, J., dissenting) (Dormant Commerce Clause); *Ford Motor Co. v. Mont. Eighth Jud. Dist.*, 592 U.S. 351, 379-84 (2021) (Gorsuch, J., concurring in the judgment) (*International*

Shoe and its progeny); *BMW*, 517 U.S. at 599-602 (Scalia, J., dissenting) (Due Process limits on punitive damages).³ But that is often the natural progression of things: When the Court fails to properly ground a constitutional principle, “the hydraulic pressures of our constitutional system sometimes shift the responsibility to different doctrines.” *Gundy v. United States*, 588 U.S. 128, 166-67 (2019) (Gorsuch, J., dissenting). That holds true even when the shifted-to doctrine struggles to do the work that the Court tasks it with. *See, e.g., McDonald v. City of Chicago*, 561 U.S. 742, 805-13 (2010) (Thomas, J., concurring in the judgment) (noting the problems with incorporation of the Bill of Rights by way of the Due Process Clause rather than the Privileges or Immunities Clause).

C. The Court’s struggle to locate the source of the self-evident territoriality limitation on State authority stems from its effort to root the principle in specific constitutional text. But there’s no need to “[r]ead[] between the Constitution’s lines” when it comes to territorial sovereignty. *Pork Producers*, 598 U.S. at 368. The States retained all preexisting authority that the Constitution did not displace. *Supra* 9-10. That includes the States’ well-established right to territorial sovereignty. *Supra* 10-14. So the Court doesn’t need to identify a “constitutional provision explicitly

³ It’s worth considering whether much of the Court’s precedent on the dormant Commerce Clause can be properly reconceptualized through the territoriality lens. *See Pork Producers*, 598 U.S. at 376 n.1 (noting that “the state law at issue in *Edgar*” may better be understood as “testing the territorial limits of state authority under the Constitution’s horizontal separation of powers” rather than “pos[ing] a dormant Commerce Clause question”).

grant[ing]” that right. *Hyatt*, 587 U.S. at 247. It’s one of the many “powers reserved” by the States under the Constitution. *United States v. Lopez*, 514 U.S. 549, 584 (1995) (Thomas, J., concurring) (quoting *Chisholm v. Georgia*, 2 Dall. 419, 435 (1793) (Iredell, J.)).

In that way, the States’ right to territorial sovereignty is situated exactly like other doctrines rooted in the States’ sovereign status. Take sovereign immunity. Just like sovereign immunity, territorial sovereignty is an inherent right of sovereigns. *Compare Hyatt*, 587 U.S. at 238 (“[A]n integral component of the States’ sovereignty was their immunity from private suit.” (quotations omitted)), *with supra* 4-7. Just like sovereign immunity, territorial sovereignty was recognized by the law of nations and well-understood at the time of the founding. *Compare Hyatt*, 587 U.S. at 238-39, *with supra* 4-7. And just like sovereign immunity, territorial sovereignty was a preexisting right of States that the Constitution left substantially intact. *Compare Hyatt*, 587 U.S. at 241, *with supra* 9-14.

Likewise, time and again, this Court has affirmed “that all the States enjoy equal sovereignty.” *Shelby County v. Holder*, 570 U.S. 529, 540 (2013) (quotations omitted); *see also, e.g., PPL Mont., LLC v. Montana*, 565 U.S. 576, 591 (2012). That equality “implies certain constitutional limitations on the sovereignty” of all States. *Hyatt*, 587 U.S. at 245 (cleaned up). Much like the territorial sovereignty principle, the States’ status as co-equal sovereigns was a fundamental prin-

ciple under the law of nations at the time of the founding. *Supra* 4-7. So although there's no "equal sovereignty" clause in the Constitution, the doctrine is hardly "an outright invention." Neal Kumar Katyal & Thomas P. Schmidt, *Active Avoidance: The Modern Supreme Court and Legal Change*, 128 Harv. L. Rev. 2109, 2133-34 & n.103 (2015) (criticizing the doctrine). There was no need for the Framers to spell it out in the Constitution's text—the Constitution's silence left the States' equal sovereignty as it found it.

Many doctrines, like sovereign immunity and equal sovereignty, are "not spelled out in the Constitution." *Hyatt*, 587 U.S. at 247-48 (collecting examples). In part, that's because the Constitution "didn't declare a legal Year Zero" or "replace and repeal all prior law." Stephen E. Sachs, *Constitutional Backdrops*, 80 Geo. Wash. L. Rev. 1813, 1821 (2012). Instead, it left unaltered many pre-existing "aspects of sovereignty." *Hyatt*, 587 U.S. at 241.

Territorial sovereignty is no different. States "retain[ed]" under the Constitution "all the rights of sovereignty which they before had and which were not ... *exclusively* delegated to the United States." THE FEDERALIST NO. 32, at 200 (A. Hamilton) (J.E. Cooke ed., 1961) (emphasis original). And the right of States to regulate within their borders exclusive of other States remained untouched.

IV. Colorado cannot regulate other sovereign States.

Applying these principles, the Court should hold that the application of Colorado law to petitioners exceeds Colorado’s territorial sovereignty and infringes on the territorial sovereignty of other States.

The Colorado Supreme Court’s decision allows one county to collect damages stemming from “global [greenhouse gas] emissions” that have “collectively ‘exacerbate[d] global warming’” the world over. Pet. App. 33a (Samour, J., dissenting) (quoting *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021)). By doing so, the court placed conduct in every State in the Union within the ambit of Colorado state tort law. In other words, any conduct that impacts the global climate in ways that are felt in Colorado—no matter how remote—must comply with Colorado tort law.

“[T]hat just can’t be right.” Pet. App. 47a (Samour, J., dissenting). Nearly every aspect of modern life produces some greenhouse gas emissions. *City of New York*, 993 F.3d at 86. Millions of Tennesseans drive to work every morning in gas-powered cars; West Virginians heat their home with electricity generated from coal; households in Alabama cook with natural gas; cattle ranches in Texas emit methane; the list goes on. But Colorado claims that it has a regulatory interest in *all of it*. The scope of that claimed authority is limitless.

The Constitution does not give Colorado the authority to “govern[] conduct and control[] environmen-

tal] policy” nationwide. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959). States, of course, can regulate purely *intrastate* pollution within their borders. *See Sackett v. EPA*, 598 U.S. 651, 686 (2023) (Thomas, J., concurring). But only the federal government, acting within its Commerce Clause authority, may implement a comprehensive nationwide regulatory scheme for greenhouse gas emissions reduction. *See id.* at 686-87 (Thomas, J., concurring). States may not, as here, marshal their state tort law regimes to regulate “conduct occurring simultaneously across just about every jurisdiction on the planet.” *City of New York*, 993 F.3d at 92. Colorado “has reached beyond her borders to regulate a subject which was none of her concern because the Constitution has placed control elsewhere.” *Osborn*, 310 U.S. at 62.

That cross-border regulation plainly violates the territorial sovereignty of fellow States. Notwithstanding the limited powers ceded to the federal government, States retain the “right to govern [themselves] by [their] own authority” and “without any control from any other power.” *Ware*, 3 U.S. (3 Dall.) at 224 (Chase, J.). When Colorado claims a right to apply its tort law to conduct that occurs wholly within *other* States and causes no unique, intrastate harm to Colorado, Colorado claims for itself the sovereign authority that properly belongs to other States. *See supra* 4-14. Simply put, Tennessee (and States like it) never delegated its sovereign authority to regulate emissions to Colorado. Colorado’s attempt to regulate con-

duct throughout the country therefore violates Tennessee’s—and other States’—right to territorial sovereignty.

* * *

As the dissenting Justices below noted, the Colorado Supreme Court’s holding gave Boulder County and other Colorado municipalities “the green light to act as [their] own republic,” Pet. App. 25a, assuming for themselves the right to make complex, nationwide policy judgments on behalf of Americans from Savannah to Seattle. Our Constitution doesn’t give them that right. The Constitution mostly left the several States as it found them—the exclusive sovereigns within their own borders, subject only to the oversight of a federal government with limited, enumerated powers. If anyone is authorized to make environmental policy on behalf of the whole nation, it’s Congress—not Colorado.

CONCLUSION

The Court should reverse.

24

Respectfully submitted,

JONATHAN SKRMETTI
*Attorney General of
Tennessee*

J. MATTHEW RICE
*Solicitor General
Counsel of Record*

MADLINE W. CLARK
*Principal Deputy
Solicitor General*

WALKER ANDERSON
THOMAS C. ARCHIBALD
Honors Fellows

OFFICE OF TENNESSEE
ATTORNEY GENERAL
P.O. Box 20207
Nashville, TN 37202
(615) 532-6026
Matt.Rice@ag.tn.gov

Counsel for Tennessee

MAY 21, 2026