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 *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONERS AND REVERSAL


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## INTEREST OF *AMICUS CURIAE*[1]

*Amicus curiae*, the National Association of Manufacturers (NAM), is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs 13 million men and women, contributes $2.9 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NAM is dedicated to manufacturing safe, innovative, and sustainable products that provide essential benefits to consumers while protecting human health and the environment. Climate change is one of the most important public policy issues of our time, and the NAM supports national efforts to address climate change and improve public health through appropriate laws and regulations. Developing new technologies to reduce greenhouse gas emissions, make energy more efficient, and modify infrastructures to deal with the impacts of climate change has become an international imperative.

The NAM has grave concerns about Boulder's and similar state and local governments' attempts to

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[1] Pursuant to Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of the brief.

impose state-law liability over the worldwide production, sale, and promotion of energy products. As the Court found in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011), climate litigation implicates federal law and complex policymaking. State-law claims, no matter how pleaded, are not the appropriate mechanism for deciding these critical national issues. For these reasons, the NAM has a substantial interest in attempts by Respondents and local governments to subject its members to unprincipled state liability for harms associated with climate change and impose these costs on American manufacturers generally, particularly when doing so will not meaningfully address climate change and will harm their ability to compete in the international marketplace.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This lawsuit is part of a coordinated, national litigation campaign over global climate change that is invoking state liability law to regulate and impose a penalty on the worldwide use of fossil fuels sold by only certain companies. These claims, including the one at bar, are legally unprincipled. As the organizers of the litigation have acknowledged, the plaintiffs and jurisdictions for these lawsuits have been chosen for political reasons. The complaints have been carefully packaged to appeal to parochial interests of state courts by invoking state law and seeking money for local constituencies. And the lawsuits target the companies they are choosing to blame for climate change.

As the U.S. Court of Appeals for the Second Circuit, the Maryland Supreme Court, and others have held, this litigation cannot be allowed to proceed under any state's laws, regardless of the state liability

theory invoked or which companies were chosen for the suits. The North Star for these rulings has been this Court's decision in *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011) (hereafter "*AEP*"), where this Court stated that determining the rights and responsibilities for global climate change "require federal law governance" and that "borrowing the law of a particular State would be inappropriate." 564 U.S. at 422. The conduct and emissions alleged in climate lawsuits largely occurred outside of any state's borders and, as with any interstate or international emissions case, they are not subject to state law. Further, as the Court recognized in *AEP*, climate change has resulted from emissions of innumerable sources, products, and actions around the world for more than 200 years and involves air in its "ambient" state. *Id.* at 421. Thus, the Court explained, the Constitution "demands" federal decisional law for these matters. *Id.*

Indeed, the history of *AEP* is fundamental to this litigation. There, the Court made clear that federal law governs climate change emissions, federal common law claims over these emissions were displaced when Congress enacted the Clean Air Act and delegated this governance to the Environmental Protection Agency (EPA), and the judiciary does not have the institutional tools for deciding rights and responsibilities for climate change. *Id.* at 424. It concluded that there was no room for a "parallel track" of tort litigation. *Id.* at 425.[2] Given the clarity and breadth of the ruling, the Ninth and Fifth Circuits dismissed climate suits in their courts even though the cases were

[2] The Court reaffirmed *AEP* in *West Virginia v. Environmental Prot. Agency*, 597 U.S. 697, 730-31 (2022); *see also id.* at 771 (Kagan, J., dissenting).

brought under both state and federal laws, named other types of energy companies, and sought other remedies including damages and abatement. *See Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012); *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460 (5th Cir. 2013).

This case, as well as the broader climate litigation, is an unapologetic attempt to circumvent the Court's ruling in *AEP*. Since 2017, the City and County of Boulder have been among three-dozen local and state governments that have filed comparable climate-related claims. The lawsuits have been purposefully reframed to *look* different from *AEP* but have the same national effect. Like throwing legal spaghetti on the wall, they invoke various state laws, target an assortment of activities they allege led to climate change in violation of those state laws, name different combinations of companies, and seek money for local governments to deal with climate impacts—all to find a state court that will not apply *AEP* to dismiss the claims. The inescapable fact, though, is that regardless of how the claims are repackaged, the people, products and activities contributing to global climate change cannot be subjected to any one state's liability law. Such a "sprawling case is simply beyond the limits" of state liability law. *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021). "Artful pleading cannot transform [plaintiff's] complaint into anything other than a suit over global greenhouse gas emissions." *Id.*

*Amicus* respectfully requests that this Court reverse the Colorado Supreme Court ruling below. Determining how to address climate change—its causes and impacts—is one of the most important public policy issues that Congress, state and federal agencies,

and international bodies have been working on for decades. These matters lie beyond the reach of Colorado law, and the ruling below should be reversed.

## ARGUMENT

### I. THE COURT SHOULD NOT ALLOW BOULDER TO CIRCUMVENT ITS RULING IN *AEP* THAT CLIMATE CHANGE CLAIMS INVOKE A "SPECIAL FEDERAL INTEREST"

The history of Boulder's climate suit starts with *AEP*, which was the first major case seeking to impose liability over greenhouse gas emissions (GHGs) and climate change. The targets for the litigation in *AEP* were utilities that generated electricity for much of America. Three lawsuits followed, each testing other ways climate litigation could be framed. In *California v. General Motors Corp.*, California sued auto manufacturers for making products that emit GHGs. *See* No. C06-05755 MJJ, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007). In *Kivalina*, a village sued oil and gas producers for damages related to rising sea levels. *See* 696 F.3d at 849. As here, the village alleged the defendants were "substantial contributors to global warming" in part caused by "conspir[ing] to mislead the public about the science of global warming." *Id.* at 854. In *Comer*, Mississippi residents filed a class action against energy producers for Hurricane Katrina losses, arguing defendants caused emissions that made the hurricane more intense. *See* 718 F.3d at 460.

The underpinnings of all four cases are the same as those here: climate change is caused by GHG emissions, including global use of oil, gas, and other fossil fuels. *See AEP*, 564 U.S. at 416. The emissions have

accumulated in the atmosphere for more than 200 years and have caused impacts on the Earth. The defendants are in violation of some federal or state law based on the way they are contributing to GHG emissions through their products, operations, or other activities. *See id.* at 418 (pleading state tort law in the alternative). As a result, the defendants are responsible for climate change and its impacts, and the plaintiffs are entitled to various remedies. *See id.*

In *AEP*, the Obama administration filed a brief in opposition to this liability. The Solicitor General underscored the legal deficiencies with allowing any entity to be liable for climate change, explaining that claims over GHG emissions are inherently subjective and unprincipled. It stated that there are "almost unimaginably broad categories of both potential plaintiffs and potential defendants." Brief for the Tennessee Valley Authority, *American Electric Power Co. v. Connecticut*, No. 10-174 (U.S., filed Jan. 31, 2011). The "[p]laintiffs have elected to sue a handful of defendants from among an almost limitless array of entities that emit greenhouse gases. Moreover, the types of injuries that [the] plaintiffs seek to redress, even if concrete, could potentially be suffered by virtually any landowner, and to an extent, by virtually every person." *Id.* at 15. "The medium that transmits injury to potential plaintiffs is literally the Earth's atmosphere—making it impossible to consider the sort of focused and more geographically proximate effects" characteristic of U.S. liability law. *Id.* at 17.

This Court then unanimously held that Congress, in enacting the Clean Air Act, displaced any federal common law cause of action, thereby extinguishing the viability of these GHG claims. The Court's

reasoning demonstrates why claims over global climate change cannot be adjudicated under any state's law either. First, the Court explained that in *United States v. Standard Oil Co. of California* it held that certain claims invoke the "interests, powers and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings." 332 U.S. 301, 307 (1947). And, in *Illinois v. City of Milwaukee*, it stated that "air and water in their ambient or interstate aspects" are among those areas of law where "the basic scheme of the Constitution" demands that they are governed by federal law. 406 U.S. 91, 103 (1972). The Court held these rulings apply to climate litigation because determining rights and responsibilities for interstate and international GHG emissions are inherently matters of "special federal interest," which makes this subject "meet for federal law governance." *AEP*, 564 U.S. at 422, 424.

Second, the Court expressed concern about allowing judges to make determinations and impose remedies over these national public policy matters given the institutional limitations on the tools judges have available to them. *See id.* at 428. To adjudicate these claims, courts would have to regulate GHG emissions from defendants' products and conduct "by judicial decree." *Id.* at 427. "The appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be prescribed in a vacuum: as with other questions of national or international policy, informed assessment of competing interests is required." *Id.* "[O]ur Nation's energy needs and the possible economic disruption must weigh in the balance." *Id.* Courts do not have the ability to weigh these extrajudicial factors; they can decide only legal disputes on the evidence presented. *See id.* at 428 ("Judges lack

the scientific, economic, and technological resources an agency can utilize in coping with issues of this order."). Thus, regardless of legal doctrine, these policy matters should not be decided by judges on an "ad hoc, case-by-case" basis. *Id.*[3]

Given the Court's clear direction against this type of litigation on constitutional, federal common law, and public policy grounds, courts dismissed the remaining climate cases. In *Kivalina*, the Ninth Circuit stated that even though the parties, theories of liability, and remedies differed from *AEP*, given the Court's broad message against climate liability, "it would be incongruous to allow [such litigation] to be revived in another form." 696 F.3d at 857. It appreciated that climate suits are the type of "transboundary pollution" claims the Constitution commits exclusively to federal law. *Id.* at 855. This is true regardless of how the suits are framed—over energy use or products, by public or private plaintiffs, under federal or state law, or for injunctive relief, abatement, or damages. In *Comer*, a judge held that under *AEP* the state law claims were preempted. *See* 839 F. Supp. 2d 849 (S.D. Miss. 2012).

Thus, the law was and is clear: claims over emissions contributing to global climate change are governed exclusively by federal law and the Clean Air Act. The Court should not allow Boulder to skirt this jurisprudence merely by painting these federal public policy matters with a state liability law brush.

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[3] *See also* Victor E. Schwartz et al., *Does the Judiciary Have the Tools for Regulating Greenhouse Gas Emissions?*, 46 Val. U. L. Rev. 369, 388-92 (2012) (discussing practical causation and redressability issues with climate litigation).

## II. REPACKAGING CLAIMS FROM *AEP* DOES NOT CHANGE THE FACT THAT TODAY'S CLIMATE LITIGATION SEEKS TO REGULATE INTERSTATE AND INTERNATIONAL EMISSIONS

Undeterred by *AEP*, the individuals behind the climate litigation campaign purposefully set out to retool this litigation so that it would *appear* different from *AEP* but have the same effect of regulating interstate and international emissions. In 2012, many of the advocacy groups and lawyers behind this litigation convened in La Jolla, California to brainstorm on how to repackage the litigation in hopes of achieving their national goals. *See* Findings of Fact and Conclusions of Law, *In re ExxonMobil Corp.*, No. 096-297222-18 (Tex. Dist. Ct.–Tarrant Cty. Apr. 24, 2018), at 3 (discussing the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies"). The strategies discussed included the one they ultimately employed: filing lawsuits in multiple jurisdictions under various state laws and asking for local damages, hoping at least one court would allow claims to progress. *See id*.

Organizers of the conference captured their discussion and strategies for this litigation in a published report. *See Establishing Accountability for Climate Damages: Lessons from Tobacco Control, Summary of the Workshop on Climate Accountability, Public Opinion, and Legal Strategies*, Union of Concerned Scientists & Climate Accountability Institute (Oct. 2012).[4] Despite *AEP*, they said "the courts offer the best

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

current hope" for imposing their national public policy agenda over fossil fuel emissions, including imposing a carbon penalty. *Id.* at 28. They discussed "the merits of legal strategies that target major carbon emitters, such as utilities [as in *AEP*], versus those that target carbon producers," as here. *Id.* at 12. And, they talked through various causes of action, "with suggestions ranging from lawsuits under public nuisance laws," as here, "to libel claims." *Id.* at 11.

Given *AEP*, they emphasized making the lawsuits look like traditional state damages claims rather than directly asking a court to regulate emissions or put a price on carbon use. *See id.* at 13. As one participant said, "Even if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties." *Id.* Finally, they discussed "the importance of framing a compelling public narrative," including "naming [the] issue or campaign" to generate "outrage." *Id.* at 21, 28. Lawsuits following this playbook were filed starting in 2017, with Boulder's action filed soon thereafter.

Outside of court, the advocates have openly acknowledged the desired effect of this litigation is to impose costs on consumers for the worldwide production, promotion, sale and use of fuel—what they call its "true cost." Kirk Herbertson, *Oil Companies vs. Citizens: The Battle Begins Over Who Will Pay Climate Costs*, EarthRights Int'l, Mar. 21, 2018. One attorney associated with Boulder's case told a Colorado radio station that they want to force energy companies to raise the price of fuel so "if they are continuing to sell fossil fuels, that the cost of [climate change] would ultimately get priced into them." Julia Caulfield, *Local Lawsuits Asks Oil and Gas to Help Pay for Climate*

*Change*, KOTO, Dec. 14, 2020.[5] This tactic is based on their recognition that "companies are agents of consumers" such that "holding oil companies responsible *is* to hold oil consumers responsible." Jerry Taylor & David Bookbinder, *Oil Companies Should be Held Accountable for Climate Change*, Niskanen Ctr., Apr. 17, 2018.[6] Another lawyer associated with Boulder's litigation put it this way: "Essentially, the tort liability is an indirect carbon tax. You sue an oil company, an oil company is liable, the oil company then passes that liability on to the people who are buying its products." Kamden Mulder, *Lawyer Behind Colorado Climate Suit Says the Quiet Part Out Loud: Litigation Is a Tax on Oil Companies and Consumers*, Nat'l Review, Oct. 20, 2025 (quoting David Bookbinder).

In an effort to mask these goals and make this litigation more politically palatable, the advocates partnered with state and local governments—including Boulder here—which would use the asserted monetary penalty to deal with local impacts of climate change. The governments often disclaim any attempt to regulate or put costs on emissions; they say they just want money to deal with impacts of climate change in their jurisdictions. However, artful pleading

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[5] https://coloradosun.com/2021/02/01/boulder-climate-lawsuit-opinion/.

[6] A reporter who follows the litigation has observed the incongruity between the ways the cases are presented in and out of court: "State and local governments pursuing the litigation argue that the cases are not about controlling GHG emissions . . . But they also privately acknowledge that the suits are a tactic to pressure the industry." Dawn Reeves, *As Climate Suits Keeps Issue Alive, Nuisance Cases Reach Key Venue Rulings*, Inside EPA, Jan. 6, 2020, at https://insideepa.com/outlook/climate-suits-keeps-issue-alive-nuisance-cases-reach-key-venue-rulings.

and disclaimers cannot hide the true federal, public policy nature of this litigation. The lawsuits are being funded by national and international non-profits *because* the litigation would impact federal energy policy. *See, e.g.,* City of Hoboken Press Release, *Hoboken Becomes First NJ City to Sue Big Oil Companies, American Petroleum Institute for Climate Change Damages*, Sept. 2, 2020 (noting legal fees would be paid by the Institute for Governance and Sustainable Development).[7] As one jurist stated, the governments and backers are waging this federal energy dispute "through the surrogate of a private party as the defendant." *Minnesota v. American Petroleum Inst.*, 63 F.4th 703, 719 (8th Cir. 2023) (Stras, J., concurring).

Thus, the purposeful effect of this national litigation campaign is to use state law to penalize national energy use and direct money from energy consumers across the country to local governments, unbridled by the checks and balances of Congress's legislative process. But, as discussed below, the narrative promoted by the campaign's advocates to try to justify these cases—that there is some widespread "campaign of deception"—is undermined by the way the lawsuits are packaged and pleaded. Governments are naming anywhere from one or two, as here, to several dozen defendants in different aspects of the energy industry, including local entities to keep the cases in state court. The ever-changing combination of defendants undermines the existence of any such conspiracy. It also highlights why imposing liability on any one or group

[7] https://www.hobokennj.gov/news/hoboken-sues-exxon-mobil-american-petroleum-institute-big-oil-companies.

of defendants a plaintiff chooses to name for its lawsuit lacks any principled legal basis.

In addition, groups generating these lawsuits have also acknowledged they are engaging in political-style tactics to recruit local governments to bring these cases and to leverage the litigation to hinder the energy companies politically. *See* Lesley Clark, *Why Oil Companies Are Worried About Climate Lawsuits From Gas States,* E&E News, Nov. 7, 2023. As one leader of this effort said, "It's no secret that we go around and talk to elected officials" about bringing these lawsuits and "look at the politics" in deciding whom to approach. *Id.*; *see also Beyond the Courtroom*, Manufacturers' Accountability Project (detailing this litigation campaign).[8] They also believe state courts "tend to be more favorable" than federal courts. Susanne Rust, *California Communities Suing Big Oil Over Climate Change Face a Key Hearing Wednesday*, L.A. Times, Feb. 5, 2020 (quoting Prof. Hecht, co-Executive Director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law). It is because of these dynamics—where state courts are being asked to rule against "unpopular" federal laws or out-of-state defendants in favor of local recoveries—that this Court has expressed concern that some state courts "may reflect local prejudice." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007) (cleaned up).

Overall, three dozen of these suits have been filed in carefully chosen jurisdictions in an effort to "sidestep federal courts and [U.S.] Supreme Court precedent" and convince local courts to help them advance their preferred public policy agenda by awarding

[8] https://mfgaccountabilityproject.org/beyond-the-courtroom.

money to state and local jurisdictions. Editorial, *Climate Lawsuits Take a Hit*, Wall St. J., May 17, 2021. If this gambit is successful, it will not just lead to a state take-over of federal climate emissions law, as sought here. It will provide a road map for people to use state liability law to drive a wide variety of federal legal and public policy matters irrespective of decisions made in Congress and federal agencies.

## III. MERELY PASTING STATE LAW LABELS ON FEDERAL LAW CLAIMS CANNOT BE A MEANS FOR USURPING FEDERAL AUTHORITY

The constitutional, legal, and public policy concerns this Court identified in *AEP* with respect to climate-related claims are not cured by reframing them under state law. The causes of climate change are no more local than in *AEP*; they still result from interstate and international emissions. And, the institutional deficiencies with judges making federal public policy decisions on an ad hoc basis are magnified when individual state judges could reach different determinations without legislative oversight or federal uniformity. When theories of harm are not moored to any plaintiff, defendant, or jurisdiction and can be asserted by any state or local government in the nation, liability against whom for whom and how much becomes unprincipled and could vary from court to court.

Federal courts readily saw through this state-law reframing. The first jurist to address the substantive issues was Judge Alsup in claims brought by San Francisco and Oakland. *See City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017 (N.D. Cal. 2018) (vacated on other grounds). He found these cases even more global than *AEP*, stating "[i]n light of *AEP*, plaintiffs

shift[ed] their focus" from local utility operations in certain states "to sales of fossil fuels worldwide," which broadly expanded the national and international scope of the challenged activities. *Id.* at 1025. "Their theory rests on the sweeping proposition that otherwise lawful and everyday sales of fossil fuels, combined with an awareness that greenhouse gas emissions lead to increased global temperatures, constitute a public nuisance." *Id.* at 1022. It attempts to "reach the sale of fossil fuels anywhere in the world." *Id.* "The scope of plaintiffs' theory is breathtaking." *Id.*

The Second Circuit, in a ruling affirming dismissal of New York City's climate suit, directly called out this reframing as a false veneer. The court wrote: "we are told that this is merely a local spat about the City's eroding shoreline, which will have no appreciable effect on national energy or environmental policy. We disagree." *City of New York*, 993 F.3d at 91. "Stripped to its essence" the state law claims seek to impose liability and set national public policy law over global emissions. *Id.* The Second Circuit then invoked *Kivalina*, holding that, regardless of the theories and remedies asserted, *AEP* controls claims over climate change. *Id.* at 96. Any "daylight" the plaintiffs assert between these types of cases and *AEP* and *Kivalina* "does not change the substance of [the] claims." *Id.* at 97. There are no legal distinctions from *AEP*.

The Second Circuit went on to explain the legal and constitutional deficiencies with allowing climate claims packaged under state law: "a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." *Id.* That is because "a substantial damages award like the one requested by the City would effectively regulate the

Producers' behavior far beyond New York's borders." *Id.* at 92. "Any actions the Producers take to mitigate their liability, then, must undoubtedly take effect across every state (and country). And all without asking what the laws of those other states (or countries) require." *Id.* Such "sprawling" claims seeking "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," are "beyond the limits of state law." *Id.*

During the pendency of the case at bar, the Maryland Supreme Court created a direct state high court split with Colorado when it adopted the Second Circuit's reasoning and affirmed dismissal of three local climate lawsuits all based on the same general premise as here. *See Mayor and City Council of Baltimore v. B.P. P.L.C.*, -- A.3d --, 2026 WL 809501, at *20 (Md. Mar. 24, 2026). Echoing the Second Circuit, the Maryland Supreme Court stated that "[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." *Id.* Even if the reframing were permissible, the Maryland court continued, "we reject the assertion that their sweeping claims may be pursued under state law." *Id.* "The local governments are seeking to apply Maryland law to regulate conduct that occurs outside their jurisdictional borders." *Id.* at 20. Their "police powers" do not have this reach. *Id.*

The Maryland Supreme Court also agreed these cases are governed by *AEP*, stating with respect to their viability that it could "make short work of this analysis given the Supreme Court's ruling in *AEP*." *Id.* at *23. In light of this Court's precedent on interstate emission cases, the Maryland court concluded

that federal law displaced or preempted the state-law claims: "Interstate water and air pollution are areas that the Supreme Court and lower federal courts have determined are governed by federal common law and, therefore, leave no place for the application of state law." *Id.* at *10. "Allowing each of the 50 states (and the countless individual local governments located within them) to impose their own preferred policy solutions for climate change—with each state naturally focused on local rather than national or international impacts, would create a plainly 'irrational system of regulation' that would lead to 'chaotic confrontation between sovereign states.'" *Id.* at *22 (quoting *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987)).

The way this litigation has played out in Delaware has underscored the fact that this global reach is the intended nature of this litigation. There, the trial court winnowed the state's climate lawsuit based on a determination that federal law "preempts state law to the extent a state attempts to regulate air pollution originating in other states." *Delaware ex rel. Jennings v. BP America Inc.*, 2024 WL 98888, at *10 (Del. Super. Ct. Jan. 9, 2024). The State could sue only for emissions in Delaware. In a telling response, the State moved for partial final judgment, saying it had no interest in litigating a case based "solely [on] in-state emissions." Pl.'s Mot. For Entry of Partial Judgment Pursuant to Rule 54(b), Delaware v. BP Am., Inc., C.A. No. N20-C-09-097 (Del. Super. Ct. Oct. 21, 2024). The plaintiff affirmed it was seeking relief for conduct that "occurred in and outside of Delaware and that increased emissions in and outside of Delaware." *Id.*

Several other state trial courts have issued similar rulings, with some appeals of those rulings stayed

pending the Court's decision in this case. A New Jersey court agreed with the "logic and reasoning" of the Second Circuit that state tort law is not available for climate change suits. *Platkin v. ExxonMobil Corp.*, 2025 WL 604846, at *3 (N.J. Super. Ct. Feb. 5, 2025). "Plaintiffs' complaint, even under the most indulgent reading, is entirely about addressing the injuries of global climate change." *Id.* at *9. A Pennsylvania trial court also dismissed a local climate lawsuit, stating "our federal structure does not allow Pennsylvania law, or any State's law, to address [state-law] claims" that "are so intertwined with emissions." *Bucks County v. BP P.L.C.*, 2025 WL 1484203, at *7, *8 (Pa. Ct. Comm. Pleas May 16, 2025). Although the county did "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." *Id.* at *7.

In New York, a trial court dismissed New York City's latest attempt at climate litigation, which focused on consumer protection claims. It stated that any allegation over the impact of fossil fuel emissions on the climate involves public information, meaning "a reasonable consumer cannot have been misled." *City of New York v. Exxon Mobil Corp.*, 2025 WL 209843, *13 (N.Y. Sup. Ct. Jan. 14, 2025). "The City cannot have it both ways by, on one hand, asserting that consumers are aware of and commercially sensitive to the fact that fossil fuels cause climate change, and, on the other hand, that the same consumers are being duped by Defendants' failure to disclose that their fossil fuel products emit greenhouse gasses that contribute to climate change." *Id.* at *14.

In South Carolina, the court noted Charleston was "seeking to hold two dozen energy companies,

retailers, and a pipeline liable under South Carolina law for harms allegedly arising from the effects of global greenhouse gas emissions and global climate change." *City of Charleston v. Brabham Oil Co., Inc.*, 2025 WL 2269770, at *1 (S.C. Ct. Comm. Pleas Aug. 6, 2025). The court dismissed the claims, concluding that "although Plaintiff's claims purport to be about deception, they are premised on, and seek redress for, the effects of greenhouse gas emissions." *Id.* at *2. In North Carolina, a court dismissed climate claims against Duke Energy Corporation as presenting "non-justiciable questions." *Town of Carrboro v. Duke Energy Corp.*, 2026 WL 411466, at *1 (N.C. Super. Ct. Feb. 12, 2026).

Finally, both President Biden's and Trump's administrations have joined the Obama administration in identifying legal deficiencies with state climate litigation. When a Petition in Honolulu's climate case was pending before this Court, President Biden's Solicitor General asked this Court not to review it. *See* Brief for the United States as Amicus Curiae, *Sunoco LP v. City and County of Honolulu*, Nos. 23-947, 23-952, 2024 WL 5095299 (U.S., filed Dec. 10, 2024). But she also acknowledged state-law climate claims may be foreclosed "to the extent they are based on emissions or other conduct outside of Hawaii." *Id.* at *7. She added: "To be sure, petitioners may ultimately prevail on their contention that respondents' claims are barred by the Constitution—specifically, the Interstate and Foreign Commerce Clause, the Due Process Clause, and federal constitutional structure." *Id.* at *13. The Trump administration has amplified the federal government's view that this litigation is unsound, calling the suits "illegitimate impediments to the production of affordable, reliable energy"

Americans need. Alexa St. John, *Justice Department Sues Hawaii, Michigan, Vermont and New York Over State Climate Actions*, Assoc. Press, May 1, 2025 (quoting then-U.S. Attorney General Bondi).

Thus, administrations of both political parties and courts in a multitude of states are aligned on the inherent federal nature of this litigation. Determining the rights and responsibilities for climate change is a matter of federal public policy—not state liability law—regardless of packaging.

## IV. THE COURT SHOULD AFFIRM THAT CLAIMS ALLEGING HARM FROM GLOBAL CLIMATE CHANGE ARE GOVERNED BY FEDERAL LAW

In allowing the climate claims below, the Colorado Supreme Court made several legal errors that this Court should correct in affirming that climate-related claims are not appropriate for state law governance. The constitutional principles this Court identified in *AEP* with respect to interstate and international emissions and the U.S. Constitution's structure on the limited scope of state authority are not so fragile as to be swayed by Boulder's reframing. The Court should issue a ruling that underscores the basic truths about climate litigation, reaffirming what it said in *AEP*.

***Climate litigation, regardless of how it is framed, is inherently about interstate and international emissions, not any underlying conduct or product.*** The heart of Boulder's claims, as in *AEP*, is that Defendants exacerbated global climate change by increasing carbon emissions through their conduct and products. The Colorado Supreme Court distinguished these claims from *AEP*. It accepted Boulder's

reframing that it "has not brought an action against a pollution emitter to abate pollution. Rather, it seeks damages from upstream producers for harms stemming from the production and sale of fossil fuels." 2025 CO 21, ¶50. As the Second Circuit stated, picking a differing part in the emissions process to target "cannot transform [the lawsuit] into anything other than a suit over global greenhouse gas emissions." *City of New York*, 993 F.3d at 91. Plaintiffs cannot "have it both ways": "disavowing any intent to address emissions" while "identifying such emissions as the singular source" of the harm they allege. *Id*.

To be clear, the state-law liability theories here are fig leaves. *See Mayor and City Council of Baltimore*, 2026 WL 809501, at *28 ("each of the local governments' claims fail to state legally cognizable claims under Maryland common law"). Global climate change is not the result of Defendant's GHG emissions in Colorado, but of everyone, everywhere for more than 200 years. Also, the narrative that there is some widespread "campaign of deception" is undermined by the litigation itself. Complaints recognize the global knowledge of and public discourse over climate change began in the 1960s and has increased over the past 60 years.[9] These cases are not about who knew, said or

[9] *See, e.g.*, 15 U.S.C. § 2901 (establishing a "national climate program" in 1978 to increase knowledge about the climate "through research, data collection, assessments, information dissemination, and international cooperation") and 15 U.S.C. §§ 2931 to 2939 (enacting Global Changes Research Act of 1990). Indeed, since 1989, the United Nations has researched and published reports on the state of the knowledge about climate change, its causes, and its impacts. *Cf.* Charlie Melancon, *Bipartisan Action, Not Litigation, Is Key to Solving Climate Change*, Power, Apr. 19, 2021 ("[T]here has always been an understanding that climate

did what and when, whether the suits name utilities or producers of energy, or which conduct or attributes the governments assert are the bases for their liability theories. These cases are about global emissions.

***Federal law exclusively governs interstate and international GHG emissions, and the Court did not open the door in AEP for these claims to be repackaged under state law***. As the Court held in *AEP*, climate litigation—as with all interstate and international pollution cases—is necessarily governed by federal law and, if a cause of action is allowed, the dispute must be determined by federal common law. The Court continued that Congress displaced this federal common law when it gave the EPA the authority to make determinations with respect to these emissions in the Clean Air Act. The Colorado Supreme Court, along with other courts, have twisted this displacement ruling, holding that if federal common law has been displaced, then these claims can now suddenly be decided by any state court. The Second Circuit described this theory as "too strange to seriously contemplate." *City of New York*, 993 F.3d at 99. It is.

Indeed, the entire argument that this Court in *AEP* left open the potential for state litigation is premised on a false reading of *AEP*. In *AEP*, the Court acknowledged the plaintiffs had also sought relief under state laws where the power plants were located but those claims were not part of the appeal to this Court. The Court then noted that the availability of any such suit would depend, *inter alia*, on the preemptive effect of the Clean Air Act. *See AEP*, 564 U.S. at

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change is a problem and action is needed to address its risks. The problem has been agreeing on the best path forward given the philosophical and regional differences on energy policy.").

429. However, the Colorado Supreme Court and others ignore the parenthetical following this statement, which cabined the availability of any such state cases to those applying the "law of the *source* State.'" *Id.* (emphasis in original). Thus, the Court in *AEP* did not, in any way, authorize applying Colorado law to GHG emissions in other states and countries. That assertion is patently false and should be corrected.

***Allowing Colorado to impose state liability over interstate and international emissions would be an unconstitutional form of state regulation by giving Colorado the authority to regulate conduct with no nexus to Colorado.*** The Colorado Supreme Court is wrong that state liability is not a form of state regulation subject to this Court's rulings. *See* 2025 CO 21, ¶10 ("Boulder does not, however, seek to enjoin any oil and gas operations or sales in Colorado or elsewhere. Nor does it seek to enforce emissions controls of any kind."). A core tenet of liability is to define conduct that is unlawful, require defendants to compensate those harmed by that unlawful conduct, and instruct defendants and others not to engage in any such unlawful conduct. The Court should reaffirm its long-held view that liability is "a potent method of governing conduct and controlling policy." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959). Liability regulates conduct.

Boulder admittedly seeks to impose liability on and govern conduct almost exclusively outside of Colorado, thereby impermissibly regulating conduct in other states and countries. Under this theory, each state could impose its "own climate standards" on other states and countries. Bill Schuette, *Energy, Climate Policy Should be Guided by Federal Laws,*

*Congress, Not a Chaotic Patchwork of State Laws*, Law.com, Apr. 25, 2024 (Schuette was Michigan Attorney General from 2011-2019). The result would be "a chaotic mix of state approaches [that] risks interfering with an effective, unified process to solve the climate problems the plaintiffs seek to abate." Donald Kochan, *Supreme Court Should Prevent Flood of State Climate Change Torts*, Bloomberg Law, May 20, 2024. The Court should make clear that frustration with Congress, EPA, and international bodies for not adopting policies some people prefer, including imposing a carbon penalty or reducing fossil fuel use, does not provide a state law basis for this litigation.

***Any decision to impose a national carbon penalty must result from a public policy determination in Congress, not state liability law.*** As discussed above, this litigation is premised on the fact that "forcing companies to raise the price of the energy they don't like, like fossil fuel energy, will make it too expensive for people and businesses thus decreasing the amount used." Danielle Zanzalari, *Government Lawsuits Threaten Consumers' Pockets and Do Little to Help the Environmen*t, USA Today, Nov. 1, 2023. Legislative direction is needed here. Deciding whether to impose this cost, on whom, how much, and where the money should be spent involves factors beyond the disputes of these parties—including energy affordability, economic impacts of raising energy costs, national security, and the impacts of shifting energy production to less environmentally conscience countries.

For example, state courts do not control the global energy markets. As the *New York Times* has reported, when manufacturers that sell energy in the United States slow production, "that doesn't mean the world

will have less oil." Clifford Krauss, *As Western Oil Giants Cut Production, State-Owned Companies Step Up*, N.Y. Times, Oct. 14, 2021. "[T]he Middle East, North Africa and Latin America are taking advantage of the cutbacks . . . by cranking up" production and making America "more dependent on . . . authoritarian leaders and politically unstable countries . . . that are not under as much pressure to reduce emissions." *Id.* The result could actually make emissions worse and hinder the U.S. in responding to international crises, as with the situations in Ukraine and Iran.[10]

Further, this litigation ignores state sovereignty and the needs of other states to pay for and address their own climate needs, which is one reason 26 U.S. states filed a brief *opposing* this litigation campaign. *See Amici* Brief of Alabama and 25 Other States, *Suncor Energy (U.S.A.) Inc. v. County Commr's of Boulder County*, No. 25-170 (U.S., filed Sept. 26, 2025). As a local leader said in response to Hoboken's suit: "Hoboken is sticking the rest of us with [their] bill" as its case "will make it much more expensive for us to put gas in our cars and turn on our lights." Michael Thulen, *Why Hoboken's Climate Change Lawsuit Is Bad for New Jersey*, NJBiz, Oct. 11, 2021 (Thulen served as President of the Point Pleasant Borough Council).

***This litigation is legally unprincipled, as it seeks to create massive liability based on political decisions, not objective standards.*** Because there are innumerable sources of GHG emissions in every state and country—and have been for more than

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[10] *See, e.g.,* Kate Abnett & Alexander Chituc, *EU Plans Emergency Measures to Curb Energy Costs as Iran War Hits Markets*, Reuters, Mar. 16, 2026 (noting plans to make more carbon emissions permits available to ease restrictions on fuels).

200 years—Respondents could have named innumerable combinations and permutations of entities, including entirely different companies in entirely different industries. Indeed, this litigation campaign has targeted utilities and automakers in addition to an ever-changing list of companies that produce fuel products. The advocates behind this campaign could just as readily have focused on agricultural operations such as farming, building construction, forestry and other land uses, or countless industrial activities that involve significant GHG emissions. *See generally* William F. Lamb et al., *A Review of Trends and Drivers of Greenhouse Gas Emissions by Sector from 1990 to 2018*, 16 Env't Res. Lett. 073005 (2021).

Instead, they made a political decision as to whom to sue for climate change that aims to bypass Congress and put themselves "in the position of picking winners and losers in the global climate change" policy debate. Victor E. Schwartz et al., *Does the Judiciary Have the Tools for Regulating Greenhouse Gas Emissions?*, 46 Val. U. L. Rev. 369, 385 (2012). This litigation may advance some people's preferred response to climate change, but it is not the role of state courts to impose these changes on an ad hoc basis and outside of the legislative process. The Court should recognize that imposing liability for climate change on any group of defendants is wholly unprincipled and end this unsound litigation once and for all.

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Ultimately, *amicus* believes the best way to address the impact of energy on the climate is for federal and local governments to work with manufacturers and others to develop public policies and technologies that can reduce emissions and mitigate damages. *See*

Ross Eisenberg, *Forget the Green New Deal. Let's Get to Work on a Real Climate Bill*, Politico, Mar. 27, 2019.

## CONCLUSION

For these reasons, *amicus curiae* respectfully requests that this Court reverse the decision below and hold that federal law precludes state-law claims for alleged injuries caused by global climate change.

Respectfully submitted,

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