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* SENIOR FOREIGN AFFAIRS OFFICIALS MICHAEL R. POMPEO, JAMES ADDISON BAKER III, NIKKI HALEY, AND HERBERT R. MCMASTER IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici are former senior foreign policy officials of the United States. In these roles, they saw firsthand the nature of international negotiation and the paramount importance of the United States speaking with one voice when engaging with other countries.

Michael R. Pompeo served as the 70th United States Secretary of State from 2018 to 2021. Before his service as Secretary of State, Mr. Pompeo served as the 6th Director of the Central Intelligence Agency from 2017 to 2018 and represented the Fourth District of Kansas in the United States House of Representatives from 2011 to 2017.

James Addison Baker III served as the 61st United States Secretary of State from 1989 to 1992 and the 67th United States Secretary of the Treasury from 1985 to 1988. Both before and after his service in those roles, Mr. Baker served as White House Chief of Staff, first for President Ronald Reagan from 1981 to 1985, and then President George H.W. Bush from 1992 to 1993.

Nikki Haley served as the 29th United States Ambassador to the United Nations from 2017 to 2018. Before her service in that role, Ms. Haley served as the Governor of South Carolina from 2011 to 2017.

Herbert R. McMaster served as the 25th United States National Security Advisor from 2017 to 2018. He is a retired Lieutenant General in the U.S. Army.

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[1] Per Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in any part, and that no person or entity other than *amicus* or its counsel made a monetary contribution to fund its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below defies our Constitution's text, structure, and history, along with this Court's precedents.

The Constitution vests power over foreign affairs exclusively in the federal government. In defending our national charter and urging its ratification, the Founders made clear that, on issues related to foreign powers, our nation must be united and speak with one voice. And as this Court has long held, our Constitution's text and structure establish the "plenary and exclusive power … of the federal government in the field of international relations." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936). The President and Congress thus together have the power to tackle the "important, complicated, delicate, and manifold problems" that arise in the "vast external realm." *Id.* at 319.

Like our Founders, this Court has recognized that our Constitution establishes a system of government "such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left *entirely free* from local interference." *Hines* v. *Davidowitz*, 312 U.S. 52, 63 (1941) (emphasis added). That means "state laws and policies" must "yield before the exercise of the external powers of the United States." *United States* v. *Pink*, 315 U.S. 203, 232 (1942). Accordingly, when a state law is likely to "produce something more than incidental effect in conflict with express foreign policy of the National Government," the Constitution "require[s] preemption of the state law." *Am. Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 420 (2003).

Boulder's lawsuit plainly does just that. It necessarily intrudes on the United States' foreign affairs power and undermines the national government's ability to address the issues of global climate change on the international stage—the only arena in which these matters can be realistically and equitably handled. The suit's premise is that Boulder has been damaged by global climate change. See Pet. App. 1a-2a (seeking damages "for the role that [petitioners'] production, promotion, refining, marketing, and sale of fossil fuels has allegedly played in *exacerbating climate change*." (emphasis added)). Thus, the physical mechanism that is allegedly injuring Colorado—the prevalence of greenhouse gases in Earth's atmosphere—is not a local one, but a global one caused by everyone's emissions everywhere on the planet. The emissions targeted by Boulder's suit, moreover, are the worldwide emissions of particular companies in relation to all emissions that have historically occurred globally. See Pet. App. 2a (noting that Boulder alleges injury from "the impacts of climate change").

Boulder's action thus seeks relief from particular American companies based on the extent to which each company's actions *worldwide* have contributed to *global* climate change. Under this regime, Colorado state court juries will determine what share of global climate change each American company should be held responsible for—as opposed to, say, China's roughly 1,100 coal-fired power plants, Russia's high-methane emissions, or Brazil's carbon-intensive deforestation and agricultural practices. Allowing local state juries to make decisions regarding—and impose liability for—American companies' relative contributions to global climate change plainly impairs the federal government's ability to address issues related to global greenhouse gas emissions and climate change

through international collaboration and coordination, and interferes with the United States' longstanding policy that "[c]limate change, with its potential to impact every corner of the world, is an issue that must be addressed by the world." George W. Bush, *President Bush Discusses Global Climate Change* (June 11, 2001), https://tinyurl.com/BushOnClimate.[2]

Within this diplomatic process, it is the national government's role to frame and advance a national position on relative responsibility for climate change and a fair means of addressing it, and to negotiate bilateral and multilateral agreements to effectuate those national objectives. Permitting individual states to frame their own regimes for regulating global emissions and local juries to allocate the proportionate responsibility of American companies undercuts the President's ability to engage in "effective diplomacy" by "compromis[ing] the very capacity of the President to speak for the Nation with one voice in dealing with other governments." *Crosby* v. *Nat'l Foreign Trade Council*, 530 U.S. 363, 381 (2000).

Amici urge the Court to reverse the decision below and to reaffirm that, where state law is likely to produce "something more than incidental effect in conflict with express foreign policy of the National Government," the Constitution "require[s] preemption of the state law." *Garamendi*, 539 U.S. at 420.

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[2] See William J. Clinton, *Remarks at the National Geographic Society* (Oct. 22, 1997), https://tinyurl.com/ClintonOnClimate ("The countries of the world [must] work together to cut the emission of greenhouse gases."); Barack Obama, *Remarks by the President at U.N. Climate Change Summit* (Sept. 23, 2014), https://tinyurl.com/ObamaOnClimate ("We can only succeed in combating climate change if we are joined in this effort by every nation.").

ARGUMENT

I. POWER OVER FOREIGN AFFAIRS IS VESTED EXCLUSIVELY IN THE FEDERAL GOVERNMENT.

As this Court has long recognized, the Constitution's text, structure, and history entrust the federal government "with full and exclusive responsibility for the conduct of affairs with foreign sovereignties." *Hines* v. *Davidowitz*, 312 U.S. 52, 63 (1941); see U.S. Const. art. I, § 10, cl. 1. "Government power over internal affairs" is, of course, "distributed between the national government and the several states." *United States* v. *Belmont*, 301 U.S. 324, 330 (1937). But in the realm of foreign affairs, both the "origin and essential character" of "federal power" is "different." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936).

When the colonies, "acting as a unit," separated from Great Britain, "the powers of external sovereignty passed from the Crown … to the Union." *Id.* at 316-17. "[S]ince the states severally never possessed international powers, such powers could not have been carved from the mass of state powers." *Id.* at 316. "Government[] power over external affairs" thus is "not distributed, but is vested exclusively in the national government." *Belmont*, 301 U.S. at 330; see *Fuld* v. *Palestine Liberation Org.*, 606 U.S. 1, 15 (2025) ("The Constitution confers upon the Federal Government—and it alone—both nationwide and extraterritorial authority.").

The Framers' persistent defense of the need for exclusive federal control over foreign affairs only underscores this understanding. James Madison made clear that "[i]f we are to be one nation in any respect, it clearly ought to be in respect to other nations," The Federalist No. 42 (J. Madison), and emphasized "the

advantage of uniformity in all points which related to foreign powers," The Federalist No. 44 (J. Madison). The United States "will undoubtedly be answerable to foreign powers for the conduct of its members," Alexander Hamilton recognized, and "the WHOLE ought not be left at the disposal of PART." The Federalist No. 80 (A. Hamilton); see Letter from Thomas Jefferson to James Madison (Feb. 8, 1786), in 1 The Republic of Letters: The Correspondence between Thomas Jefferson and James Madison 1776-1826, at 409, 410 (James Morton Smith ed., 1995) (emphasizing that it is "indispensably necessary that with respect to every thing external we be one nation only, firmly hooped together").

Indeed, the system of government enshrined in our Constitution "is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left *entirely free* from local interference." *Hines*, 213 U.S. at 63 (emphasis added). This Court—like our Founders—has recognized that, "[i]f state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be thwarted" and "serious consequences might ensue." *Pink*, 315 U.S. at 232; see The Federalist No. 4 (J. Jay) ("If [foreign nations] find us either destitute of an effectual government (each State doing right or wrong, as its rulers may seem convenient) … what a poor, pitiful figure will America make in their eyes!").[3]

[3] While the President and Congress share this exclusive federal power, in this "vast external realm, with its important, complicated, delicate, and manifold problems, the President alone has the power to speak or listen as a representative of the nation." *Curtiss-Wright*, 299 U.S. at 319. The President's authority to conduct foreign affairs involves "the very delicate, plenary and exclusive power … as the sole organ of the federal government in the

In the end, text, structure, and history all demand that the "external powers of the United States are to be exercised without regard to state laws or policies." *Belmont*, 301 U.S. at 331.

II. FOREIGN AFFAIRS PREEMPTION APPLIES WHERE A STATE LAW INTERFERES WITH THE FEDERAL GOVERNMENT'S CONDUCT OF FOREIGN RELATIONS.

From the federal government's exclusive power over foreign relations flows the doctrine of foreign affairs preemption. The core of foreign affairs preemption is "beyond dispute": "[A]t some point an exercise of state power that touches on foreign relations must yield to the National Government's policy." *Garamendi*, 539 U.S. at 413. Although the precise contours of this doctrine have long been debated, this Court has made clear that "state laws 'must give way if they impair the effective exercise of the Nation's foreign policy.'" *Id.* at 419 (quoting *Zschernig* v. *Miller*, 389 U.S. 429, 440 (1968)); *Pink*, 315 U.S. at 230-31.

When a state law intrudes in an exclusively federal domain, the "conflict with federal policy need not be as sharp as that which must exist for ordinary pre-emption when Congress legislates 'in a field which the States have traditionally occupied.'" *Boyle* v. *United Tech. Corp.*, 487 U.S. 500, 507 (1988) (quotation omitted); see *Hencely* v. *Fluor Corp.*, 608 U.S. ----, 146 S. Ct. 1086, 1103 (2026) (Alito, J., dissenting) (explaining that "[p]reemption based on constitutional structure"

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field of international relations—a power which does not require as a basis for its exercise an act of Congress." *Id.* at 320; see *Chicago & Southern Air Lines, Inc.* v. *Waterman S. S. Corp.*, 333 U.S. 103, 109 (1948) ("The President … possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs.").

is "especially important" when state law intrudes on the federal government's "exclusive authority to conduct relations with other nations"). Accordingly, where state law is likely to "produce something more than incidental effect in conflict with express foreign policy of the National Government," the Constitution "require[s] preemption of the state law." *Garamendi*, 539 U.S. at 420.

Time and again, the Court has applied this doctrine to set aside state laws that interfere with the federal government's conduct of foreign relations by standing in the way of the federal government's diplomatic objectives expressed through compacts, executive agreements, and foreign affairs policies.[4]

1. In *United States* v. *Belmont*, 301 U.S. 324 (1937), the Court held that diplomatic compacts entered into by the President, even without Senate ratification, trigger foreign affairs preemption. The Court held that, because government power "over external affairs … is vested exclusively in the national government," "the external powers of the United States are to be exercised without regard to state law or policies." *Id.* at 330-31. The supremacy of "all international compacts and agreements" flows "from the very fact that complete power over international affairs is in the national government and is not and cannot be subject

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[4] The Court has likewise held that federal law preempts state laws that intrude on the powers that the Constitution confers exclusively on the federal government. See *M'Culloch* v. *Maryland*, 4 Wheat. 316 (1819); *Osborn* v. *Bank of United States*, 9 Wheat. 738 (1824); cf. *United States* v. *Standard Oil Co. of Cal.*, 332 U.S. 301, 307 (1947) (recognizing that *M'Culloch* and *Osborn* identified fields that are "exclusively federal, because made so by constitutional or valid congressional command," or because they "so vitally affect[ ] interests, powers and relations of the Federal Government as to require uniform national disposition").

to any curtailment or interference on the part of the several states." *Id.* at 331. The Court ultimately rejected New York's public policy against recognizing confiscation of private property by foreign governments in categorical fashion, concluding that it is "inconceivable" that any state law "can be interposed as an obstacle to the effective operation of a federal constitutional power." *Id.* at 332.

In *United States* v. *Pink*, 315 U.S. 203 (1942), the Court reaffirmed and extended *Belmont*, holding that such executive agreements have "a similar dignity" to treaties as the supreme law of the land under the Supremacy Clause. The Court reasoned that "state law must yield when it is inconsistent with or impairs the policy or provisions of a treaty or of an international compact or agreement." *Id.* at 230-31. And the Court once again expressed a sweeping understanding of federal exclusivity in the area of foreign affairs: "No State can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively." *Id.* at 233.

In *Zschernig* v. *Miller*, 389 U.S. 429 (1968), this Court further expanded foreign affairs preemption, adopting a form of structural field preemption rooted not in any executive policy, but in the Constitution's allocation of foreign affairs power to the federal government. There, the Court analyzed an Oregon probate statute that allowed nonresident aliens to inherit from Oregon estates only if their home country granted reciprocal inheritance rights. The Court held that the state law was preempted, reasoning that "the history and operation of this Oregon statute make clear that [it] is an intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress." *Id.* at 432. The

Court noted that the state law "illustrate[d] the dangers which are involved if each State, speaking through its probate courts, is permitted to establish its own foreign policy." *Id.* at 441. Notably, the Court recognized that even state regulations in areas of "traditional competence" (like probate law) "must give way if they impair the effective exercise of the nation's foreign policy." *Id.* at 440, 459.

2. More recently, in *Crosby* v. *National Foreign Trade Council*, 530 U.S. 363 (2000), the Court held invalid under the Supremacy Clause a Massachusetts law that imposed restrictions on the ability of Massachusetts and its agencies to purchase goods from companies that did business with Burma because the state law threatened to frustrate Congress's objectives in a federal statute imposing mandatory and conditional sanctions on Burma. *Id.* at 368.

Although the federal statute lacked an express preemption provision, the Court reasoned that the state law "undermine[d] the intended purpose and 'natural effect'" of "at least three provisions of the federal Act," including "the President's intended authority to speak for the United States among the world's nations in developing a 'comprehensive multilateral strategy" related to Burma. *Id.* at 373-74, 380. Notably, the Court recognized that "Congress's explicit delegation to the President … to take the initiative for the United States among the international community invested him with the maximum authority of the National Government, *in harmony with* the President's own constitutional powers." *Id.* at 381 (emphasis added) (citing U.S. Const., art. II, § 2, cl. 2; § 3).

Even more, the Court reiterated that the state law "undermine[d] the President's capacity" for "effective diplomacy" by "compromis[ing] the very capacity of the President to speak for the Nation with one voice in

dealing with other governments." *Id.* The Court noted that it "need not get into any general consideration of limits of state action affecting foreign affairs to realize that the President's maximum power to persuade rests on his capacity to bargain for the benefits of access to the entire national economy without exception for enclaves fenced off willy-nilly by inconsistent political tactics." *Id.* When state laws interfere with the President's "capacity to present a coherent position on behalf of the national economy," the Court explained, the President "is weakened … not only in dealing with" one foreign nation, "but in working together with other nations in hopes of reaching common policy and a 'comprehensive' strategy." *Id.* at 382.

To be sure, *Crosby* involved statutory preemption of state law. But as the Court explained just a few years later, the Court "in *Crosby* [was] careful to note that the President possesses considerable independent constitutional authority to act on behalf of the United States on international issues," and that "conflict with the exercise of that authority is a comparably good reason to find preemption of state law." *Garamendi*, 539 U.S. at 424 n.14. So too, "[g]iven the President's independent authority 'in the areas of foreign policy and national security, … congressional silence is not to be equated with congressional disapproval.'" *Id.* at 429 (quoting *Haig* v. *Agee*, 453 U.S. 280, 291 (1981)); see *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 610-11 (1952) (Frankfurter, J., concurring) (recognizing that the President possesses the "vast share of responsibility for the conduct of our foreign relations"); cf. *Learning Res., Inc.* v. *Trump*, 146 S. Ct. 628, 715 (2026) (Kavanaugh, J., dissenting) (same).

3. Finally, in *American Insurance Association* v. *Garamendi*, 539 U.S. 396 (2003), the Court held that executive agreements and presidential foreign policy—

even without explicit congressional authorization—preempted conflicting state law. There, California's Holocaust Victim Insurance Relief Act of 1999 (HVIRA) required any insurer doing business in California to disclose information about insurance policies sold in Europe between 1920 and 1945 under penalty of loss of the insurer's state business license. *Id.* at 401. The federal government argued that this state law scheme "interfere[d] with foreign policy of the Executive Branch, as expressed principally in the executive agreements with Germany, Austria, and France," which established a voluntary framework for resolving Holocaust-era insurance claims through diplomatic consensus rather than state coercion. *Id.* at 413.

The Court began by recognizing that, "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," "at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy." *Id.* at 413 (quoting *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 427 n.25 (1964)). Nor could there be "any question" that the President has "authority to decide what that policy should be." *Id.* at 414; see *Youngstown*, 343 U.S. at 635-36 n.2 (Jackson, J., concurring in judgment and opinion of Court) (the President can "act in external affairs without congressional authority").

This authority has—"since the early years of our Republic"—included the power "to make executive agreements with other countries, requiring no ratification by the Senate or approval by Congress." *Garamendi*, 539 U.S. at 415 (collecting cases). Indeed, "Presidents from Washington to Clinton," and Bush to Obama, and Biden to Trump "have made many thousands of

agreements … on matters running the gamut of U.S. foreign relations." L. Henkin, *Foreign Affairs and the United States Constitution*, 219, 496 n.163 (2d ed. 1996).[5] Against this backdrop, the Court concluded that "valid executive agreements are fit to preempt state law, just as treaties are." *Garamendi*, 539 U.S. at 416.

The executive agreements in *Garamendi*, however, included no preemption provisions. So the federal government's claim of preemption rested on "asserted interference with the foreign policy those agreements embody." *Id.* at 417. After canvassing its foreign-affairs-preemption cases, the Court reasoned that state laws "must give way if they impair the effective exercise of the Nation's foreign policy," and that "the likelihood that state legislation will produce something more than incidental effect in conflict with express foreign policy of the National Government would require preemption of the state law." *Id.* at 419-20 (citation omitted). The Court further explained that courts should "consider the strength of the state interest, judged by standards of traditional practice, when deciding how serious a conflict must be shown before declaring the state law preempted." *Id.* at 420 (citing

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[5] The Court explained that, although the executive agreements at issue in *Garamendi* differed from past agreements in that they dealt with claims "against corporations" rather than "foreign governments," this "distinction does not matter." *Id.* at 416. While a "sharp line" works for many purposes in the domestic law, insisting on the same line in defining the legitimate scope of the Executive's international negotiations "would hamstring the President in settling international controversies." *Id.*; see *Pink*, 315 U.S. at 234-42 (Frankfurter, J., concurring) (noting the unsoundness of transplanting "judicial subtleties" of domestic law into "the solution of analogous problems between friendly nations").

Southern Pacific Co. v. *Arizona ex rel. Sullivan*, 325 U.S. 761, 768-69 (1945).

In applying this test, the Court recognized that vindicating victims injured by acts in wartime is "within the traditional subject matter of foreign policy" that the federal government has addressed. *Id.* at 420-21. And the state statute—like the Massachusetts law in *Crosby*—employed "a different, state system of economic pressure" that "undercuts the President's diplomatic discretion and the choice he has made exercising it." *Id.* 423-24. While the President's exercise of authority required "flexibility in wielding 'the coercive power of the national economy' as a tool of diplomacy," the state law—if upheld—would leave "the President [with] less to offer and less economic and diplomatic leverage as a consequence." *Id.* (quoting *Crosby*, 530 U.S. at 377). The state law thus "compromise[d] the very capacity of the President to speak for the Nation with one voice in dealing with other governments" in conducting foreign affairs. *Id.* at 424 (citation omitted).

The Court also concluded that the state statute "threaten[ed] to frustrate the operation of the particular mechanism the President has chosen." *Id.* In particular, the Court pointed to letters from California state officials showing "well enough how the portent of further litigation and sanctions has in fact placed the Government at a disadvantage in obtaining practical results from persuading foreign government and foreign companies to participate voluntarily" in the framework established through executive agreements. *Id.* (quotation omitted). At bottom, the state statute stood as "an obstacle to the success of the National Government's chosen 'calibration of force' in dealing with" foreign nations using its chosen approach. *Id.* at 425 (quoting *Crosby*, 530 U.S. at 380).

This "express federal policy" and the "clear conflict" raised by the California statute were "alone enough to require state law to yield." *Id.* But the Court also noted the "weakness of the State's interest" in "regulating disclosure of European Holocaust-era insurance policies." *Id.* In the end, the Court explained, California sought "to use an iron fist where the President has consistently chosen kid gloves." *Id.* at 427. The Court made clear that preemption does not turn on the "wisdom of the National Government's policy." *Id.* Rather, the "question relevant to preemption" is conflict, and a state law must fall when it "stands in the way of [the President's] diplomatic objectives." *Id.* (quoting *Crosby*, 530 U.S. at 386). In the end, the Court held that the California statute "interferes with the National Government's conduct of foreign relations" and thus "is preempted." *Id.* at 401.[6]

III. PRESIDENTIAL AND CONGRESSIONAL ACTIONS ACROSS DECADES DEMONSTRATE A CONCERTED POLICY DECISION TO ADDRESS INTERNATIONAL GREENHOUSE GAS EMISSIONS WITH FOREIGN GOVERNMENTS.

For the past five decades, addressing global greenhouse gas emissions has been a foreign affairs issue dealt with by the President and Congress—not states.

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[6] The Court's decision in *Medellin* v. *Texas*, 552 U.S. 491 (2008), does not undermine *Garamendi* or its foreign-affairs-preemption decisions in *Pink* and *Belmont*. In *Medellin*, the Court simply reiterated that the "President's authority to act" must "stem either from an act of Congress or from the Constitution itself," 552 U.S. at 524 (quotation omitted), and clarified that the President cannot unilaterally transform non-self-executing international obligations into domestic law that overrides state criminal proceedings.

Often, this has resulted in the United States spearheading international collaboration on the issue. But just as critically, it has also required the federal government to oppose international efforts adverse to United States interests.

1. *Presidential Action.* Since the early 1970s, the President and Executive Branch officials have led the charge in working with foreign nations to address issues related to the effects of global greenhouse gas emissions.

In 1972, President Nixon sent a delegation to the United Nations Conference on the Human Environment held in Stockholm, Sweden, the U.N.'s first attempt to encourage international cooperation to preserve natural resources and the environment. That conference culminated in 26 principles developed to guide coordinated international responses to potential environmental threats. Critically, those principles announced a resolve to develop "international law regarding liability and compensation" for harm caused "by activities within the jurisdiction or control of such [Nations] to areas beyond their jurisdiction." United Nations, *Report of the United Nations Conference on the Human Environment*, 5 (1973), https://tinyurl.com/StockholmDecl (Principle 22). Nixon hailed the Stockholm Conference as a multilateral success, noted that the U.S. "achieved practically all of its objectives at Stockholm," and declared that the United States, working alongside fellow members of the United Nations, would take "a leading role in international environmental cooperation." Richard M. Nixon, *Statement About the United Nations Conference on the Human Environment in Stockholm, Sweden* (June 20, 1972), https://tinyurl.com/NixonOnStockholm.

In the late 1980s, President Reagan directed the United States' instrumental role in the negotiation

and adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer, an international treaty that bound signatory nations to freeze— and, later, to reduce—certain greenhouse gas emissions believed to be eliminating Earth's ozone layer. Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, S. Treaty Doc. No. 100-10, 1522 U.N.T.S. 3. The Montreal Protocol, unanimously ratified by the Senate in 1988, has—perhaps more than any other diplomatic agreement—guided the United States' and United Nations' responses to global greenhouse gas emissions.

Its legacy is astonishing—it was the first treaty in United Nations' history to be ratified by every member state. As President Reagan put it, the Montreal Protocol is a "model of cooperation" and the product "of the recognition and international consensus" that addressing global emissions "is a *global* problem." Ronald Reagan, *Statement on Signing the Montreal Protocol on Ozone-Depleting Substances* (Apr. 5, 1988), tinyurl.com/RgnMtrlPrtcl (emphasis added). Unanimous consensus in international affairs is rare, but on this the world agrees: Solving this global problem will require a globally concerted solution.

In the Montreal Protocol's wake, President George H.W. Bush and Secretary of State James Baker orchestrated the United States' involvement in negotiations at the 1992 Earth Summit in Rio De Janeiro. Before the Summit, President H.W. Bush reportedly forecast that the "American way of life" would not be "up for negotiation." *A Greener Bush*, THE ECONOMIST (Feb. 13, 2003), tinyurl.com/BushRio. This remark demonstrates the delicate balance presidents must strike while participating in international efforts to address global issues. See *Curtiss-Wright*, 299 U.S. at 319 (recognizing that in the "vast external realm [of foreign affairs], with its important, complicated,

delicate, and manifold problems, the President alone has the power to speak or listen as a representative of the nation").

The 1992 Earth Summit led to the Rio Declaration, which included yet another commitment that the international community would develop "international law regarding liability and compensation for adverse effects" on the environment "caused by activities within [a nation's] jurisdiction or control to areas beyond their jurisdiction." United Nations, *Report of the United Nations Conference on Environment and Development*, Vol. I, at 5 (June 13, 1992), tinyurl.com/RioDec (Principle 13). Following the Earth Summit, the United Nations established the UNFCCC, a forum for international collaboration with which presidents have occasionally had uneasy relationships (even without the added complication of an intermeddling state impairing the ability of the President to speak clearly and decisively for the country).[7]

In the late 1990s, President Clinton was charged with responding to a signature UNFCCC effort, the Kyoto Protocol. Although President Clinton never presented the Kyoto Protocol for Senate ratification, and so it never received the federal government's full imprimatur, he directed Vice President Al Gore to sign it on the United States' behalf. The Clinton administration, moreover, shaped the Protocol's substance in negotiations over its terms. 162 Cong. Rec. S1886 (daily ed. Apr. 12, 2016) (statement of Sen. Inhofe) (noting Clinton and Gore's influence on the Kyoto Protocol).

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[7] See, e.g., *Withdrawing the United States from International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States* (Jan. 7, 2026), https://tinyurl.com/TrumpUNFCCC (ordering "all executive departments and agencies . . . to take immediate steps to effectuate the withdrawal of the United States from" the UNFCCC).

Years later, President Bush took a different approach to the Kyoto Protocol. Consistent with the Senate's opposition—expressed in the 1997 Byrd-Hagel resolution,—to treaties that exempted major emitters and threatened the United States' economy's prosperity, see infra Part III.2, President Bush announced early in his Presidency that the United States would not ratify, implement, or endorse the Kyoto Protocol. In remarks explaining that decision, President Bush alluded to the foreign affairs challenges presented by emissions, including the need to hold nations like China accountable for the emissions they produce and the vital importance of "work[ing] cooperatively" with other nations "to reduce greenhouse emissions and maintain economic growth." George W. Bush, *President Bush Discusses Global Climate Change* (June 11, 2001), https://tinyurl.com/BushOnClimate.

President Obama's approach placed the United States at the forefront of coordinating a global response to worldwide emissions. In a 2013 speech at Georgetown University that announced his "national" plan to combat greenhouse gas emissions, President Obama proclaimed that "no nation can solve this challenge alone," that the United States should "lead international efforts to combat" excessive emissions, and that because the international community "looks to America to lead" on this issue and many others, his administration would "redouble [its] efforts" to "reach[] a new *global* agreement" to reduce greenhouse gas emissions. Barack Obama, *Remarks by the President on Climate Change*, (June 25, 2013), tinyurl.com/ObamaGeorgetown (emphasis added). He further acknowledged that, although American emissions had decreased during the preceding year, global emissions had risen to an all-time high—owing in large part to "[d]eveloping nations," including

"China—the world's largest emitter," continuing to use "more and more energy." *Id.* He therefore called for other nations to "step[] up to the plate as well," and highlighted an "important agreement" with President Xi of China,[8] which marked a "significant step in the reduction of carbon emissions" globally. *Id.*

President Biden took a similar approach. The Biden administration recognized the need for the United States to drive the global body politic toward sensible approaches to balancing the need for reliable energy production with the efforts to limit unnecessary greenhouse gas emissions. When conflict broke out in Ukraine, the Biden administration acted swiftly to preserve the United States' ability to meet its own energy needs, as well as those of our allies, in the face of disruptions to traditional global supply chains. See, e.g., Joseph R. Biden & Ursula von der Leyen, *Joint Statement by President Biden and President Ursula von der Leyen of the European Commission on European Energy Security* (June 27, 2022), https://tinyurl.com/BidenOnEnergy (noting Russian efforts to use "natural gas as a political and economic weapon" had "threatened global energy security"). President Biden promoted increased "U.S. [liquefied natural gas ("LNG")] exports to Europe," which had "nearly tripled" since 2021, and which he said were vital to enabling Europe and the United States to "end [their] reliance on Russian energy."

President Trump, both during his first term and through his current administration, has taken forceful action designed to ensure that all nations can reduce

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[8] President Obama was referring to an agreement to "phase down the production and consumption" of certain products covered by the Montreal Protocol. See *United States and China Reach Agreement on Phase Down of HFCs* (Sept. 6, 2013), https://tinyurl.com/ObamaOnCFCs.

their reliance energy from countries like Russia and China and instead turn toward the United States. Just last month, the Department of Energy announced a key Memorandum of Understanding related to the "Trump Peace Pipeline Framework" designed to continue to demonstrate that the United States is "a reliable partner" for nations aiming to "strengthen[] energy security." U.S. Dep't of Energy, *Secretary Wright Signs Agreements To Grow American LNG Exports, Advances 'Trump Peace Pipelines Framework'* (Apr. 28, 2026), https://tinyurl.com/TrumpPeacePipelines.

President Trump has also negotiated a host of trade deals that demonstrate his foreign policy objective of increasing energy production. For instance, he has obtained pledges from nations around the world committing those nations to purchase substantial quantities of LNG from American manufacturers, thereby decreasing other nations' reliance on the United States' adversaries to meet their energy needs. See, e.g., U.S. Dep't of Energy, *ICYMI: Energy Secretary Chris Wright Delivers Remarks in Riyadh Following U.S.-Saudi Energy Cooperation MOU Announcement*, (Apr. 15, 2025), https://tinyurl.com/TrumpSaudiMOU (noting the United States and Kingdom of Saudi Arabia's agreement to "work together in cooperation" to increase global energy production). Such commitments are vital to foreign trade policy, the national defense, and preserving and promoting multilateral coordination.

In sum, the actions of presidents across the last several decades have left no doubt that the Executive Branch understands that global greenhouse emissions are a foreign affairs issue that demands a global solution. To lead the world rather than follow it, the "sole organ" of the nation's foreign affairs authority must retain the flexibility to promulgate and execute uniform

national policy developed by the federal government in response to dynamic global conditions.

2. *Congressional Action.* Congress has also taken an active role in directing the United States' response to issues related to global greenhouse gas emissions. The United States Senate did not sit idly by, for instance, while President Clinton shaped negotiations over the Kyoto Protocol in 1997. Rather, with astonishing *95-0* unanimity, the Senate passed the Byrd-Hagel Resolution, which categorically opposed *any* treaty that would exempt "Developing" nations—China among them—from binding commitments to reduce greenhouse gas emissions or that would have a deleterious effect on the United States economy. S. Res. 98, 105th Cong. (1997). The Senate's action sent a clear message: Any foreign-policy efforts that would let other countries off the hook for their share of emissions was dead on arrival. Just years before, the Senate had approved of the UNFCCC as a mechanism for addressing the problem of global emissions. *Id.* But once the Senate determined that its proposal for doing so was "inconsistent with the need for *global* action" to check greenhouse gas emissions, it was quick to express its disapproval. *Id.* (emphasis added).

The Clean Air Act similarly demonstrates that Congress's role in shaping the federal government's response to regulations targeting greenhouse gas emissions leaves no room for contrary state opinion. In the Act, Congress categorically forbade "State[s] or any political subdivision thereof" from "adopt[ing] or attempt[ing] to enforce any standard relating to the control of [vehicle] emissions," 42 U.S.C. § 7543(a), unless the EPA administrator issues the state a waiver after determining that any state effort is consistent with "Federal standards," *id.* § 7543(b). Although California has received many such waivers and Congress has

permitted other states to adopt efforts identical to those it has approved in parallel, the Act is clear that State efforts to regulate emissions are permissible *only* if they receive federal approval. See Benjamin M. Barczewski, Kathryn G. Kynett & Emily N. Peterson, CONG. RSCH. SERV., R48168, *California and the Clean Air Act (CAA) Waiver: Frequently Asked Questions* (2025), https://tinyurl.com/CAAWaiverCRS.

More recently, Congress has supported presidential efforts to promote domestic energy production and signal to international partners that the United States can be counted on to assist nations that need to scale up energy consumption. In the One Big Beautiful Bill Act, for example, Congress established the Energy Dominance Financing Program to guarantee loans for projects that "secure [and] strengthen American energy assets," see U.S. Dep't of Energy, *Office of Energy Dominance Financing,* tinyurl.com/DOEEDF (last visited May 13, 2026), and rolled back regulations that unduly restrict domestic producers from meeting the nation's energy needs and those of our international partners. See U.S. Dep't of the Interior, *Interior Dep't Advances Energy Dominance Through the One Big Beautiful Bill Act*, (July 22, 2025), https://tinyurl.com/DOIEnergyDominance (announcing the Department will implement "key changes" made by the One Big Beautiful Bill Act to "promote U.S. energy production").

IV. STATE LAWS REGULATING U.S. COMPANIES' ALLEGED CONTRIBUTIONS TO GLOBAL EMISSIONS INTERFERE WITH THE FEDERAL GOVERNMENT'S CONDUCT OF FOREIGN RELATIONS.

State laws that regulate the alleged contribution of global greenhouse emissions by domestic energy companies—like the Colorado laws here—interfere with

the federal government's express foreign policy and conduct of foreign relations and thus are preempted.

As the decision below recognizes, Boulder's suit under state law "presents substantial issues of global import," seeking damages (and other remedies) "for the role that [petitioners'] production, promotion, refining, marketing, and sale of fossil fuels has allegedly played in exacerbating climate change." Pet. App. 1a-2a. Indeed, Boulder seeks damages for the allegedly "substantial role" petitioners play "in causing, contributing to and exacerbating alteration of the climate." *Id.* at 2a; see *id.* (alleging that petitioners "have caused and continue to cause climate change"). A suit that targets an oil-and-gas company (or set of companies) for the alleged "role" that company "played in exacerbating climate change" plainly seeks to hold that company liable for its alleged role in producing greenhouse gas emissions and contributing to global climate change. *Id.*; see *City of New York* v. *Chevron*, 993 F.3d 81, 91 (2d Cir. 2021) ("Artful pleading cannot transform the … complaint into anything other than a suit over global [GHG] emissions. It is precisely *because* fossil fuels emit [GHGs]—which collectively 'exacerbate global warming'—that the City is seeking damages.") (emphasis original, citation omitted).

This state-law regime plainly "interferes with the National Government's conduct of foreign relations" related to global greenhouse gas emissions and global climate change, including the express foreign policy—embodied in presidential and congressional actions across decades—that addressing issues related to the effects of global greenhouse gas emissions must be handled on the world's stage by working with foreign nations. *Garamendi*, 539 U.S. at 401. The physical mechanism that is allegedly injuring Boulder—the prevalence of greenhouse gases in Earth's

atmosphere—is a global one that is caused by everyone's emissions everywhere on the planet. And Boulder's suit seeks damages not for emissions that have occurred in Colorado, but for the worldwide emissions of particular companies in relation to all emissions that have historically occurred globally.

Allowing state court juries to determine what share of global climate change each American company should be held responsible for impairs the President's "capacity to present a coherent position on behalf of" the [Nation], thereby "weaken[ing]" the United States' ability to "work[ ] together with other nations in hopes of reaching common policy and 'comprehensive' strategy" to address greenhouse gases and global climate change. *Crosby*, 530 U.S. at 381-82 (citation omitted). The President's power to persuade on the world's stage "rests on his capacity to bargain" on behalf of the entire nation "without exception[s] for" states engaging in "inconsistent political tactics," including state lawsuits—no matter whether dressed in the garb of tort, nuisance, consumer protection, or antitrust—that seek damages for energy companies' supposed contributions to global climate change. *Id*. at 381.

At no point during *Amici*'s tenure in office did federal interests in foreign policy yield to those of individual states. Credibility is key to international negotiations, especially on the issue of global greenhouse gas emissions, and the United States' credibility is critically damaged by State lawsuits that "undermine the President's capacity" for "effective diplomacy" on this critical foreign affairs issue. *Id.* Colorado's laws and other state laws like them thus "compromis[e] the very capacity of the President to speak for the Nation with one voice in dealing with other governments" in conducting foreign affairs. *Garamendi*, 539 U.S. at 424 (quoting *Crosby*, 530 U.S. at 381).

At bottom, the Constitution—its text, structure, and history—entrust power over foreign affairs exclusively in the federal government. When state law is likely to produce "something more than incidental effect in conflict with express foreign policy of the National Government," the Constitution "require[s] preemption of the state law." *Id.* at 420. Boulder's suit seeking damages for allegedly "exacerbating climate change," Pet. App. 1a-2a, flunks this test, "weaken[s]" the United States' ability to "work[] together with other nations in hopes of reaching common policy and [a] 'comprehensive' strategy" to address the effects of greenhouse gas emissions and global climate change, *Crosby*, 530 U.S. at 381-82 (quoting *Dames & Moore* v. *Regan*, 453 U.S. 654, 673-74 (1981)), and is preempted.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

Respectfully submitted,

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