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 ADVANCING AMERICAN FREEDOM; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS; JCCWATCH.ORG; LANDMARK LEGAL FOUNDATION; YANKEE INSTITUTE; TIM JONES, FORMER SPEAKER, MISSOURI HOUSE, FOUNDER, LEADERSHIP FOR AMERICA INSTITUTE; JENNY BETH MARTIN, HONORARY CHAIRMAN, TEA PARTY PATRIOTS ACTION; TAXPAYERS PROTECTION ALLIANCE; AND HON. WILLIAM WAGNER (RET), DISTINGUISHED PROFESSOR OF LAW EMERITUS IN SUPPORT OF PETITIONERS

J. Marc Wheat
Counsel of Record
Timothy Harper (Admitted in DC)
Advancing American Freedom, Inc.
801 Pennsylvania Avenue, N.W.
Suite 930
Washington, D.C. 20004
(202) 780-4848
MWheat@advancingamericanfreedom.com
Counsel for Amici Curiae

May 21, 2026

QUESTIONS PRESENTED

Whether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Other Authorities

STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes American prosperity depends on ordered liberty and self-government.[3] AAF files this brief on behalf of its 155,355 members nationwide.

Amici International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Landmark Legal Foundation; Yankee Institute; Tim Jones, Former Speaker, Missouri House, Founder, Leadership for America Institute; Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action; Taxpayers Protection Alliance; and Hon. William Wagner (Ret), Distinguished Professor of Law Emeritus believe that the Constitution and the ideas that underly it are

---

[1] No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee* 212 (Green Hill Publishers, Inc. 1983).

[3] Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/.

essential to the preservation of the freedom of the people.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Since 2017, as many as sixty local governments have sued energy companies that produce and sell fossil fuels seeking billions of dollars in damages allegedly caused by their contributions to "global climate change." Pet. at 2. Allowing municipalities to engage in regulation-by-litigation to create energy policy for the entire nation would be a perversion of the federalist system adopted by the People in the Constitution.

In April 2018, the County Commissioners of Boulder County and the city of Boulder sued international energy companies Exxon and Suncor in state court. Boulder sought damages from the companies "purportedly arising under state law" for their production, promotion, refining, marketing, and sale of fossil fuels which Boulder alleged exacerbated climate change, which, in turn, harmed Boulder's property and residents. Pet. at 3.

Under this Court's precedent, "the interstate or international nature of" certain issues make them "inappropriate for state law to control." *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). The "interstate pollution" produced by energy companies, which is overwhelmingly an interstate industry, is just such an issue. Pet. at 3.

Boulder, however, contends that because The Clean Air Act (CAA) displaced federal common law and because the CAA does not explicitly preempt

Boulder's suit, the suit is not preempted. As the dissenting justices below recognized, such a precedent would give cities "'the green light to act as [their] own republic' by regulating on an interstate and international level." Pet. at 4.

The Constitution was designed to leave most powers to the states, as demonstrated both by the limited enumeration of federal powers and the express statement of reserved powers in the Tenth Amendment. The Framers knew that local control was preferable wherever it was possible,[4] and that allowing each state to regulate most issues for itself would create what Justice Brandeis would later describe as laboratories of governance in which each state has the power to address the issues it faces in unique ways. *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) (Brandeis, J., dissenting).

National regulation, on the other hand, can be desirable or even necessary where fifty different approaches to a particular issue would be untenable. State regulation of such national and international issues would undermine the equality of the states essential to constitutional federalism.

Faced with the costs, uncertainty, and reputational risks of protracted litigation in dozens of jurisdictions, energy companies like Petitioners here

---

[4] *See* The Federalist No. 10, at 47 (James Madison) (George W. Carey and James McClellan, eds., The Liberty Fund 2001) (explaining that under the Constitution, "the great and aggregate interests" of the nation should be "referred to the national [legislature], the local and particular to the state legislatures.").

would face enormous pressure to settle. These settlements would inevitably include production commitments, operational restrictions of conduct fully legal under federal law, and financial concessions that effectively impose regulatory obligations on national producers. No individual locality has constitutional authority to impose such obligations.

The 1998 Master Settlement Agreement between state attorneys general and the major tobacco companies stands as a cautionary tale. Coordinated state tort litigation yielded an agreement imposing national restrictions on advertising, marketing, and sales practices. These were restrictions that no individual state legislature had enacted and that Congress had never authorized. The result was national regulatory policy made outside the legislative process, without democratic accountability, and insulated from the ordinary checks that govern agency rulemaking. The energy litigation campaign now underway threatens a similar result: national constraints on fossil fuel production achieved not through the legislative process but through litigation in state courts.

The Framers and ratifiers of the Constitution knew from experience that states would pursue their own interests at the expense of one another and of the Union as a whole if given the opportunity. Among the "[v]ices of the [p]olitical [s]ystem of the United States," according to James Madison, was the states' propensity to impose laws that "trespass" on the authority of one another.

Boulder's litigation, if allowed to proceed, would do just that, imposing the significant costs of its

idiosyncratic regulatory agenda on the entire nation and on virtually every American. America's energy sector is both national in scope and crucial to American prosperity. One state, much less one locality, cannot usurp the authority of all the others represented in the federal government.

Boulder's litigation must not be allowed to proceed.

ARGUMENT

I. Those Who Framed and Ratified the Constitution Knew Both the Importance of National Regulation in Some Areas and the Danger of States Pursuing Their Perceived Self-Interest at the Expense of Other States.

The purpose of the Constitution was to empower a federal government that would be sufficient to advance the critical interests of the United States while restraining the powers of the new government so that it would neither threaten the liberty of the people nor unduly limit the powers of the state governments.

A major concern among antifederalists was that the government to be created by the proposed Constitution would swallow up the powers of the states. Thus, Brutus argued:

> It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being

> executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government.[5]

The antifederalists did not want the power of the states to disappear under an ever-expanding federal government.

The Constitution's defenders, on the other hand, insisted that those powers vested in the federal government were only those necessary to protect the interests of the nation as a whole, while the power to regulate issues of local concern would remain with the states. Hamilton said as much in Federalist No. 17. Responding to the contention that the Constitution "would tend to render the government of the Union too powerful, and to enable it to absorb those residuary authorities, which it might be judged proper to leave to the States for local purposes," Hamilton argued that "the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction."[6]

The Framers thought that the federal government would not be concerned with those things left to the states' governments. They knew from experience, on the other hand, that state governments would seek to

---

[5] Brutus, No. 1 *in* 1 *The Founders' Constitution* at 260 (Liberty Fund 1987) (1787).

[6] Federalist No. 17, at 81 (Alexander Hamilton) (George Carey & James McClellan eds., 2001).

extend their power into areas of national and international concern.[7] Vesting certain powers in the federal government was thus not a threat to state authority, but actually a protection of it.

In his *Vices of the Political System of the United States*, published in 1787, Madison complained of the "Trespasses of the States on the rights of each other."[8] Among theses were laws such as that of "Virginia restricting foreign vessels to certain ports—of Maryland in favor of vessels belonging to her own citizens—of N. York in favor of the same."[9] These "alarming symptoms" were representative of the "practice of many States in restricting the commercial intercourse with other States, and putting their productions and manufactures on the same footing with those of foreign nations."[10] While "not contrary to the federal articles," these laws were "adverse to the spirit of the union" and led to "retaliating regulations, no less expensive & vexatious in themselves, than they [were] destructive of the general harmony."[11]

As Hamilton later wrote, the:

---

[7] Barry Friedman & Daniel T. Deacon, *A Course Unbroken: The Constitutional Legitimacy of the Dormant Commerce Clause*, 97 Va. L. Rev. 1877, 1884-86 (2011).

[8] James Madison, *Vices of the Political System of the United States*, *in* 1 *The Founders' Constitution* at 167 (Liberty Fund 1987) (1787).

[9] *Id.*

[10] *Id.*

[11] *Id.*

> [U]nneighborly regulations of some States, contrary to the true spirit of the union, have, in different instances, given just cause of umbrage and complaint to others, and it is to be feared that examples of this nature, if not restrained by a national control, would be multiplied and extended till they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the Confederacy.[12]

It could thus be expected that, "from the gradual conflicts of State regulations, that the citizens of each would at length come to be considered and treated by the others in no better light than that of foreigners and aliens."[13]

Empowering the federal government in its proper sphere was thus "essential to the security of the people of America . . . against competitions and wars among the different states."[14] It is through "the federal government, then" that "the united republics communicate with foreign nations, and with each other."[15]

---

[12] Federalist No. 22, at 105 (Alexander Hamilton) (George Carey & James McClellan eds., 2001).

[13] *Id.*

[14] Federalist No. 45, at 238 (James Madison) (George Carey & James McClellan eds., 2001).

[15] St. George Tucker, *Blackstone's Commentaries*, *in* 5 *The Founders' Constitution* at 404 (Liberty Fund 1987) (1803).

This Court has long recognized "that our Nation 'was and is a union of States, equal in power, dignity and authority,'" and that "the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized." *Shelby County v. Holder*, 570 U.S. 529, 544 (2013) (internal quotation marks omitted) (quoting *Coyle v. Smith*, 221 U.S. 559, 567, 580 (1911)).

This state equality principle applies to economic regulation. As the Court has recognized, "if a state law discriminates against out-of-state goods or nonresident economic actors, the law can be sustained only on a showing that it is narrowly tailored to '[a]dvance a legitimate local purpose.'" *Tennessee Wine and Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 518 (2019) (alteration in original) (quoting *Dept. of Revenue of Ky. v. Davis*, 553 U.S. 328, 128 (2008)).

If Boulder's litigation at issue here and other similar litigation that has been brought around the country is allowed to proceed, the localities that bring that litigation would benefit at the significant expense of other states' residents and businesses.

If any one state retains the power to engage in such national and international regulation and exercises it, then all the others will be forced to either see their interests disadvantaged or to retaliate. That is bad enough. What is worse is that it would be hard to know how other states could protect their interests if lawsuits like this one were allowed to proceed and were ultimately successful.

How could states like Texas and Louisiana protect the interests not only of the oil companies that operate in those states and employ many of their residents, but also the interests of its residents generally in purchasing fuel at a market rate and not a price manipulated by the regulation of other states? Such states would have little if any recourse while the localities that brought successful litigation would be enriched by large payouts, the cost of which having been passed on to those in other states.

Allowing this type of litigation to proceed would not be a win for state authority. Instead, it would be a significant loss for state authority and would lead inexorably to harm to and thus retaliation from other states. In this case, national power protects the interests of the states. This litigation, which seeks to implement national and even international policy through state courts, cannot be allowed to proceed if the fundamental equality, and thus authority, of every state is to be respected.

II. If the Sort of State Court Litigation at Issue Here is Allowed to Proceed, Localities Like Boulder Could Effectively Impose their Preferred Regulatory Agendas on Other States and the Nation as a Whole, to the Great Detriment of Americans with no Recourse.

The energy sector does not operate within state lines. Crude oil extracted in Texas is refined in Louisiana, transported through pipelines crossing a dozen states, and ultimately sold as gasoline around the country. Natural gas produced in Texas and New Mexico in the Permian Basin heats homes in the Northeast. The national electricity grid interconnects

generation, transmission, and distribution assets across virtually every state in the Union. If all states are to be equal, no one state can adopt regulations or legislation designed to benefit itself at the significant expense of the energy policy and interests of the other states. State courts are in even less of a position to adopt such policies.

Boulder seeks to nationalize its energy policy though it is not the nation's leader in energy employment, nor is it even among the top three states, which combine for 27.5 percent of all U.S. energy jobs. The top three consist of Texas, California, and Michigan, which in 2024 were home to 11.7 percent, 11.1 percent, and 4.7 percent respectively of all U.S. energy jobs.[16] By contrast, Colorado represented less than 2 percent of all U.S. energy jobs.[17]

Similarly, the state's economy is less dependent on energy jobs than other states that contribute a similar percentage to total national energy employment. Energy jobs in Louisiana, contributing to 1.9 percent of the national total, represent 8.4 percent of state employment compared to 5.5 percent in Colorado.[18] Similarly, energy jobs in Oklahoma constitute 1.7 percent of all U.S. energy jobs and 8.2 percent of total state employment.[19]

---

[16] U.S. Department of Energy & Employment, State Reports at 25, 133, 259 (2025) available at https://www.energy.gov/documents/2025-useer-state-reports.

[17] *Id.* at 31.

[18] *Id.* at 31, 109.

[19] *Id.* at 31, 217.

In 2024, the energy sector represented 16.2 percent of statewide employment in Wyoming.[20] In North Dakota during the same period, the energy industry employed 13.7 percent of the state's workers.[21] And in West Virginia, energy accounted for 12.3 percent of the state's employment.[22]

If Boulder may sue energy producers for damages arising from global greenhouse-gas emissions, then so may thousands of other counties, municipalities, and cities across the country, regardless of how miniscule their share of the energy sector may be, each imposing its own idiosyncratic liability regime on industries whose operations span the continent. And this litigation wave poses an immediate risk beyond the employees of the states' energy industries.

Eleven U.S. states and dozens of city, county, and tribal governments across California, Colorado, Hawaii, Illinois, Maryland, New Jersey, New York, Oregon, Pennsylvania, Washington, and Puerto Rico currently have active lawsuits seeking to hold major oil and gas companies liable for alleged climate damages.

The financial exposure these suits create is enormous. Multnomah County, Oregon, has demanded a $50 billion abatement fund plus $1.5 billion in future damages to 'weatherproof' the county

---

[20] *Id.* at 301.

[21] *Id.* at 205.

[22] *Id.* at 289.

against future heat events like the 2021 heat dome.[23] New York's Climate Change Superfund Act, signed into law on December 26, 2024, imposes $75 billion in assessments on major fossil fuel producers over 25 years, regardless of whether those companies currently operate within the state.[24] Dozens of additional suits seek compensatory damages, disgorgement of profits, and abatement funds from the same producers.

A peer-reviewed study tracking 108 climate lawsuits against publicly listed energy companies over fifteen years found that capital markets treat this litigation as a genuine financial threat. The shares in the largest fossil fuel producers dropped measurably each time a new suit was filed and fell even more when courts ruled against them.[25] Lenders have responded in kind by pricing climate lawsuit exposure directly into loan terms by raising interest rates, shrinking credit lines, and shortening repayment periods.

Companies forced to set aside massive litigation reserves and contend with tighter credit conditions would curtail capital investment in exploration and production. This would tighten domestic energy

---

[23] *Multnomah County's $51 Billion Lawsuit against Big Oil & Gas*, Reynolds & Steindorf, LLP (Oct. 14, 2024).

[24] *New York Passes Climate Superfund Legislation*, Vinson & Elkins (Mar. 25, 2026).

[25] Misato Sato, et al., *Impacts of Climate Litigation on Firm Value*, 7 Nature Sustainability 146, 1461 (2024).

supply and drive prices higher for every American household and business.

The scale of the fuel industry's national footprint is difficult to overstate. The oil and natural gas industry's total contribution to gross domestic product (GDP) exceeds $2.1 trillion annually, including direct, indirect, and induced economic activity across all sectors of the economy,[26] accounting for 7.4 percent of national output.[27] The industry directly employs 2.5 million workers earning $372.4 billion in wages, salaries, benefits, and proprietors' income.[28] When the full supply chain is counted (from wellhead through pipelines, refineries, and distribution networks), employment tied to the oil and natural gas industry totals 10.6 million jobs.[29] Independent producers alone generated $488 billion in GDP in 2024 and paid $129 billion in federal, state, and local taxes, royalties, and related payments.[30] These jobs consistently pay wages well above the all-industry average. For example, oil and gas extraction workers

---

[26] American Petroleum Institute, *Contribution of the Oil and Natural Gas Industry to the US Economy in 2023* 4 (2025) available at https://www.api.org/-/media/Files/Energy-Economics/API-Studies/2025/The-Oil-and-Gas-Industrys-Contribution-to-the-US-Economy.pdf.

[27] *Id.* at 4.

[28] *Id.*

[29] *Id.*

[30] RystadEnergy, *Economic Impact of US Independent Operators* 9 (2025) available at https://axpc.org/wp-content/uploads/2025/09/Rystad-Energy-Economic-Impact-of-Independent-Operators-August-2025.pdf.

earn an annual mean wage of $114,750,[31] roughly double the national median. The industry's total tax contribution to federal, state, and local governments reached $570.1 billion in 2023, accounting for 7.4 percent of all government tax receipts nationwide.[32] A litigation environment that systematically impairs this industry's viability would hollow out the tax base of energy-producing states and localities while raising costs for consumers and businesses throughout the country.

Permitting individual localities to use state tort law as a de facto regulatory instrument over conduct that is national and international in scope would unravel the national energy system. And this litigation is an effort at national and international regulation. David Bookbinder, a former counsel of record in the Boulder County lawsuit itself, acknowledged in October 2025 that the litigation strategy functions as "an indirect carbon tax."[33]

As well as benefitting American workers through higher wages and contributing to the government's tax income, a positive relationship exists between energy access and prosperity. Surveying public health

---

[31] Bureau of Labor Statistics "Occupational employment and wages in oil and gas industries, May 2024" at https://www.bls.gov/opub/mlr/2026/article/occupational-employment-and-wages-in-oil-and-gas-industries-may-2024.htm.

[32] American Petroleum Institute, *supra* note 23, at 4.

[33] The Federalist Society, *Can State Courts Set Global Climate Policy*, at 32:58 (YouTube Oct. 10, 2025) https://www.youtube.com/watch?v=1wyxaE4TC-A.

outcomes, life expectancy, child mortality, and broader measures of environmental health, a forthcoming paper from Advancing American Freedom's Institute for Statistical Policy Analysis found that "a consistent pattern emerges: greater access to affordable and reliable energy is closely associated with improved living standards."[34] Specifically, "as economies gain access to more abundant and reliable energy, they are able to produce more goods and services per person, supporting higher incomes and broader improvements in material well-being."[35] A healthy energy sector increases access to affordable energy, which improves the lives of American families.

Energy costs are also embedded in virtually every sector of the national economy: manufacturing, agriculture, transportation, healthcare, and housing. Litigation-imposed liability would therefore function as a regressive tax on the cost of every good and service that depends on affordable energy to produce and deliver.

Any litigation-driven increase in energy prices disproportionately harms the lowest-income Americans. For the poorest American households, home utility bills and transportation fuel costs consume roughly one dollar in every six they earn. That is a share of income more than three times what a typical American household pays.

---

[34] Kevin Dayaratna, Kat Miller, *Energy Abundance and Human Flourishing: A Data-Driven Global Analysis*, Advancing American Freedom (forthcoming 2026).

[35] *Id.*

Virtually every American would thus bear the burden of this litigation were it allowed to proceed, while only the residents of the localities that engage in such regulation-by-litigation could hope, though not necessarily expect, to benefit from the litigation.

States and localities have no authority to set national and international policy. The Constitution exists to ensure the liberty of the people. As the Framers and ratifiers understood, leaving most power to the states and granting only limited power to the federal government was the best way to ensure that liberty. But as they also understood from experience, some powers needed to be vested in the federal government alone lest those powers be used by some states as a bludgeon against their sister states, leading to retaliation and the ultimate breakdown of the union.

Boulder's litigation must not be allowed to proceed.

CONCLUSION

The Court should rule for Petitioners.

Respectfully submitted,

J. Marc Wheat
Counsel of Record
Timothy Harper (Admitted in DC)
Advancing American Freedom, Inc.
801 Pennsylvania Avenue, N.W. Suite 930
Washington, D.C. 20004
(202) 780-4848
mwheat@advancingamericanfreedom.com

Counsel for Amici Curiae