

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 MULTINATIONAL ENERGY,
TRANSPORTATION, AND MANUFACTURING
COMPANIES AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF THE *AMICI CURIAE*¹

Amici curiae are multinational companies in the energy, transportation, and manufacturing sectors.

Airbus SAS (Airbus), a French company, is one of the world's leading manufacturers of large commercial aircraft and provider of related services. The Airbus product line comprises families of jetliners ranging in capacity from 100 to more than 400 seats. Airbus products are used extensively in the United States and internationally.

Hapag-Lloyd Aktiengesellschaft (Hapag-Lloyd) is a German leading global liner shipping company. Hapag-Lloyd's services connect major international trade routes and ports, including throughout the United States.

Shell plc (Shell), headquartered in the United Kingdom, is a global group of energy and petrochemical companies, employing around 85,000 people across more than 70 countries. Shell's activities include oil and gas exploration and production, and the marketing of fuels, lubricants, and chemical products. Shell also offers low-carbon energy products and solutions.²

Amici have faced, or are concerned by, a growing wave of lawsuits in the United States and abroad that—like this one—attempt to impose plaintiffs'

¹ Pursuant to Rule 37.6, counsel for *amici 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 *amici curiae* or their counsel, made a monetary contribution to the preparation or submission of the brief.

² The companies in which Shell plc directly and indirectly owns investments are separate legal entities. In this context, "Shell," "Shell Group," and "Group" are sometimes used for convenience to reference Shell plc and its subsidiaries in general.

climate policy preferences through litigation against private companies seeking extraordinary remedies relating to global climate change.

Amici's cross-border operations and exposure in multiple jurisdictions to the risks posed by this litigation give them a distinct perspective on the pitfalls of courts in individual jurisdictions becoming arbiters of global climate policy. As companies in highly regulated industries, amici have a substantial interest in operating in predictable legal and regulatory environments. That predictability is threatened by lawsuits that seek to impose after-the-fact liability for lawful products and services that have been and remain essential to daily life and global economic development. Amici also have a substantial interest in ensuring that the world's climate challenges—including how to advance an equitable, orderly, secure, and resilient transition away from fossil fuels while meeting the energy needs of people around the world now and tomorrow—are resolved through national and intergovernmental policymaking, not piecemeal litigation that singles out a small handful of companies and fails to balance all the critical interests and trade-offs involved.

SUMMARY OF ARGUMENT

Amici submit this brief to provide the Court with global context for this case.

Respondents seek to use Colorado law to hold selected energy companies liable for the effects of global climate change. Dozens of similar suits asserting extraordinary damages claims are playing out in state courts nationwide. But the effort to enlist local courts to shape global climate policy is not limited to the

United States. Plaintiffs abroad have brought claims with even broader theories of liability and more sweeping forms of relief. These suits target not only traditional energy companies but also companies in energy-intensive industries and industries producing goods whose customers consume large amounts of energy. And they seek not only damages for climate impacts but also worldwide emissions-reduction injunctions that would likewise regulate the cross-border emissions of defendants and their customers alike, reshaping entire industries in the process.

Amici bring these cases to the Court's attention to make two points.

First, the cases outside the United States are overt attempts to regulate greenhouse gas emissions across borders, and the legal theories relied upon and the extraordinary relief sought plainly intrude upon sovereign choices about energy stability, economic prosperity, and national security. But Respondents' claim for unbounded damages against energy companies based on their and their customers' worldwide emissions, if successful, would invite the same result: piecemeal, local judicial regulation of emissions far beyond the forum. The foreign cases thus illustrate the pitfalls of individual courts adjudicating claims that have the practical object and effect of regulating emissions globally.

Second, the foreign cases bring into focus the fundamental reason Respondents' claims should not be allowed to proceed: Individual courts may not set climate policy for the rest of the world.

This Court has recognized that "air and water in their ambient or interstate aspects" are "meet for federal law governance." *Am. Elec. Power Co. v. Connecticut* ("AEP"), 564 U.S. 410, 421, 422 (2011). The

inherently cross-border nature of greenhouse gas emissions, and the tensions and trade-offs intrinsic in the modern energy system, show why. Because energy is indispensable to modern life, society must at all times balance the three objectives of ensuring energy is (i) available, (ii) affordable, and (iii) environmentally sustainable. The World Energy Council calls this the “energy trilemma.” Nations balance these often-competing objectives through forward-looking regulations and by deciding whether, and to what extent, to commit to frameworks like the Paris Agreement. National governments have the political accountability, institutional competence, and policy tools to balance these objectives. Judges and local juries do not. They are not responsible for ensuring affordable, secure energy, and they have no obligation to support the many forms of economic development that energy makes possible. In effect, Respondents and other climate policy plaintiffs ask courts to reduce the energy trilemma to a single, overriding element—the environmental interest—and subordinate energy availability and affordability to that interest, with no accountability for the consequences.

Climate change represents an urgent global challenge. But judges and local juries are neither entitled nor equipped to regulate cross-border emissions. This Court should make clear that our constitutional structure does not permit state courts to use state law to set climate policy for the Nation or the world.

ARGUMENT

I. This Case Is Part of a Global Movement to Set Climate Policy Through Piecemeal Litigation.

Respondents' suit is one of scores of cases worldwide that use litigation to attempt to dictate the global response to climate change through claims seeking sweeping remedies against selected companies.

A. Climate Policy Litigation in the United States.

Early U.S. climate change lawsuits unsuccessfully targeted car companies and power companies. *See, e.g., California v. Gen. Motors Corp.*, 2007 WL 2726871, at *2 (N.D. Cal. Sept. 17, 2007); *Connecticut v. Am. Elec. Power Co.*, 406 F. Supp. 2d 265, 269 (S.D.N.Y. 2005), *vacated and remanded*, 582 F.3d 309 (2d Cir. 2009), *rev'd*, 564 U.S. 410 (2011). Today, many plaintiffs—including Respondents—target energy companies even further up the supply chain, seeking to hold them liable for alleged climate harms even though, as the Second Circuit observed in dismissing one such suit, “every single person who uses gas and electricity . . . contributes to global warming.” *City of New York v. Chevron Corp.*, 993 F.3d 81, 86–87 (2d Cir. 2021).

The underlying allegations remain the same, but the causes of action are proliferating. While most pending cases assert state-law tort claims, several seek statutory penalties under consumer protection statutes for the same alleged conduct. *See, e.g., Compl., District of Columbia v. Exxon Mobil Corp.*,

No. 2020 CA 002892 B (D.C. Super. Ct. June 25, 2020); Compl., *State v. Exxon Mobil Corp.*, No. 21-CV-02778 (Vt. Super. Ct. Chittenden Unit Sept. 14, 2021). In the last year, the theory also has been extended to a wrongful death suit, *see* Compl., *Leon v. Exxon Mobil Corp.*, No. 25-2-15986-8 SEA (Wash. Super. Ct. King Cnty. May 29, 2025); a consumer class action, *see* Compl., *Kennedy v. Exxon Mobil Corp.*, No. 25-cv-02378 (W.D. Wash. Nov. 25, 2025); and a case under federal and Michigan antitrust law, *see* Compl., *Michigan v. BP P.L.C.*, No. 26-cv-254 (W.D. Mich. Jan. 23, 2026). And alongside the litigation, several States have attempted to impose the same basic liability through legislation levying retroactive penalties on energy companies for their historic worldwide fossil-fuel production. *See, e.g.*, Climate Superfund Act, Vt. Stat. Ann. tit. 10, §§ 596–599c (2025) (enacted by Act No. 122 (2024)); Climate Change Superfund Act, N.Y. Env’t Conserv. Law §§ 76-0101 to 76-0105 (Consol. 2026) (enacted by S.2129-B/A.3351-B (2024)).

The requested damages in any one case could reach into the billions of dollars. The parallel legislative efforts are of the same scale: New York’s Climate Change Superfund Act, for example, directs state officials to collect \$75 billion from energy companies over a 25-year period to pay for climate-adaptation projects. Climate Change Superfund Act, N.Y. Env’t Conserv. Law § 76-0103 (Consol. 2026).

B. Climate Policy Litigation Outside the United States.

Outside the United States, climate policy lawsuits overtly seek to regulate global greenhouse gas emissions. Like Respondents, foreign plaintiffs ask courts

to derive company-specific climate duties from generalized legal principles—including tort law, civil codes, and human rights principles—rather than from laws and regulations directed at the regulation of emissions. But the claims go further in both the targeted industries and the relief sought. The breadth of these claims is striking.

1. European climate policy litigation largely began with claims against governments. In 2019, the Supreme Court of the Netherlands held that the Dutch State had not sufficiently addressed climate change and ordered it to reduce national greenhouse gas emissions by 25% by 2020 (compared to 1990 levels).³ Since then, climate cases against sovereigns have been brought in other jurisdictions, including Germany, Austria, and Switzerland.⁴ Those claims were directed at the State—the entity with the political accountability, regulatory authority, and territorial control to make climate policy.

2. In the years since, however, plaintiffs in Europe and elsewhere have targeted an ever-broadening array of private companies.

Since 2019, Shell has defended against climate suits in the Netherlands brought by the Dutch NGO Milieudefensie. RWE AG, the German electricity

³ See HR 20 december 2019, ECLI:NL:HR:2019:2006 (Stichting Urgenda/Staat der Nederlanden) (Neth.).

⁴ See BVerfG, 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, Mar. 24, 2021, http://www.bverfg.de/e/rs20210324_1bvr265618en.html; Verfassungsgerichtshof [VfGH] [Constitutional Court], June 27, 2023, ECLI:AT:VFGH:2023:G123.2023, G 123/2023-12 (Austria); *Verein KlimaSeniorinnen Schweiz v. Switzerland*, App. No. 53600/20 (Apr. 9, 2024), <https://hudoc.echr.coe.int/eng?i=001-233206>.

company (and one of the world’s leading generators of renewable electricity), has faced separate suits in the German courts brought by Peruvian and Pakistani farmers. The Pakistani farmers’ suit also named a non-energy company as a defendant—the German building materials company Heidelberg Materials. Climate suits have also been brought (for example) against Mercedes-Benz and BMW, in Germany; against the financial services firms ING Group and ING Bank, in the Netherlands; against the Swiss building materials and solutions company Holcim, in Switzerland; against seven New Zealand agricultural, energy, manufacturing, and primary industry companies; and against 10 major Japanese thermal power companies.

3. The remedies sought in the foreign cases, like those sought in the United States, would regulate cross-border emissions. Beyond seeking damages for alleged climate impacts,⁵ however, many foreign plaintiffs are explicit in seeking specific emissions-reduction obligations under standards no legislature or regulator has imposed.

Milieudéfensie v. Shell illustrates this trend. In 2019, the NGO Milieudéfensie and other environmental organizations sued Shell in the Netherlands, alleging that the global greenhouse gas emissions Shell reports—including those of its customers worldwide—

⁵ See, e.g., Oberlandesgericht Hamm [OLG Hamm] [Higher Regional Court of Hamm] May 28, 2025, 5 U 15/17 (Ger.); Eur. Ctr. for Const. & Hum. Rts., Pakistan Climate Cost Case, <https://www.ecchr.eu/en/case/pakistan-climate-cost-case> [<https://perma.cc/N6KK-MVM5>] (last visited May 17, 2026) (explaining farmers from Sindh, Pakistan filed lawsuit against RWE and Heidelberg Materials at German Regional Court in Heidelberg on December 22, 2025).

constituted unlawful endangerment under the Dutch Civil Code. In 2021, the Hague District Court ordered Shell to reduce its and its customers' aggregate global emissions, by net 45% by 2030 (against a 2019 baseline).⁶ Although the Court of Appeal overturned the District Court's extraordinary judgment in its entirety, and the case is pending before the Supreme Court of the Netherlands, Milieudefensie was not deterred. In April 2026, Milieudefensie filed a new claim, this time asking the Dutch courts to block Shell from developing any new oil and gas fields worldwide, among other things.⁷ In essence, Milieudefensie asks one country's courts to assume the power to rewrite a global energy company's business plan, dictate where and how energy is produced, and regulate emissions far beyond that country's borders—overriding the decisions of companies, consumers, and governments worldwide.

Other suits follow a similar playbook. The claims against Mercedes-Benz and BMW sought to dictate the future composition of the global automobile market by barring the defendants from selling passenger cars with internal-combustion engines worldwide

⁶ See Rb. Den Haag, 26 mei 2021, ECLI:NL:RBDHA:2021:5339 (Milieudefensie/Royal Dutch Shell plc) (Neth.), *rev'd*, Hof Den Haag 12 november 2024, ECLI:NL:GHDHA:2024:2100.

⁷ The new claim also sought, among other things, to prevent Shell from reaching Milieudefensie's requested emissions targets through divestments of oil and gas assets and carbon credits, and from selling or transferring the rights to new oil and gas fields. Summons at 209, 211, 242, Rb. Amsterdam (Milieudefensie/Shell plc) (filed Apr. 21, 2026) (Neth.), <https://en.milieudefensie.nl/news/summons-second-climate-case-shell> [<https://perma.cc/3PKH-498B>].

after 2030.⁸ The suit against ING Group and ING Bank seeks to halt their worldwide financing of new fossil fuel projects and to compel them to impose climate-related conditions on all of their clients, across sectors and jurisdictions.⁹ The suit against Holcim—brought by inhabitants of the Indonesian island Pari—seeks reductions in the worldwide greenhouse gas emissions reported by Holcim; damages; and funding for flood-protection and adaptation measures on Pari.¹⁰ The suit against the New Zealand companies seeks group-wide emissions reductions across sectors.¹¹ So do the claims against the Japanese thermal power companies.¹²

4. Despite existing legislation and regulation aimed at reducing greenhouse gas emissions in these jurisdictions,¹³ the legal theories in the foreign

⁸ See Bundesgerichtshof [BGH] [Federal Court of Justice] Mar. 23, 2026, VI ZR 334/23, ECLI:DE:BGH:2026:230326UVIZR334.23.0 (Ger.); Bundesgerichtshof [BGH] [Federal Court of Justice] Mar. 23, 2026, VI ZR 365/23, ECLI:DE:BGH:2026:230326UVIZR365.23.0 (Ger.).

⁹ See Summons at 266–68, 299–302, Rb. Amsterdam (Milieudefensie/ING Group and ING Bank) (filed Mar. 28, 2025) (Neth.), <https://en.milieudefensie.nl/news/summons-ing> [<https://perma.cc/4RB5-C2QQ>].

¹⁰ See Kantonsgericht Zug [Cantonal Ct. Zug] Dec. 17, 2025, A1 2023 9.

¹¹ *Smith v. Fonterra Co-Operative Grp. Ltd.* [2025] NZSC 1605 (N.Z.).

¹² See Compl., Youth Climate Case Japan for Tomorrow, Nagoya Chihō Saibansho [Nagoya D. Ct.] (filed Aug. 6, 2024) (Japan).

¹³ See, e.g., Council Regulation (EU) 2023/857 of Apr. 19, 2023, Amending Regulation (EU) 2018/842 on Binding Annual Greenhouse Gas Emission Reductions by Member States, 2023 O.J. (L 111) 1; Council Directive 2003/87/EC of 13 October 2003, Establishing a Scheme for Greenhouse Gas Emission Allowance

cases—like those here—are rooted in broad, general legal principles that openly invite judicial policymaking. The Pari islanders rely on Swiss tort law and Article 28 of the Swiss Civil Code, which allows “[a]ny person whose personality rights are unlawfully infringed [to] petition the court for protection against all those causing the infringement.”¹⁴ The Japanese youth plaintiffs ground their claims in the Japanese Constitution’s rights to life (Article 13), property (Article 29), and “minimum standards to wholesome and cultured living” (Article 25).¹⁵ Milieudéfensie’s claims against Shell invoke, among other things, soft law instruments such as human rights principles and non-binding guidelines.¹⁶ And the individual plaintiff suing the New Zealand agricultural and energy companies alleges that their global emissions constitute a

Trading Within the Community and Amending Council Directive 96/61/EC, 2003 O.J. (L 275) 32; Council Regulation (EU) 2019/631 of 17 April 2019, Setting CO₂ Emission Performance Standards for New Passenger Cars and for New Light Commercial Vehicles, and Repealing Regulations (EC) No 443/2009 and (EU) No 510/2011, 2019 O.J. (L 111) 13; Bundes-Klimaschutzgesetz [KSG] [Federal Climate Change Act], Dec. 12, 2019, BGBl I at 2513, last amended by Bundes-Klimaschutzgesetz [KSG], July 15, 2024, BGBl I at 235 (Ger.) (setting sector-specific annual emissions budgets); Climate Change Response Act 2002 (N.Z.) (establishing New Zealand’s Emissions Trading Scheme).

¹⁴ See Schweizerisches Zivilgesetzbuch [ZGB], Code civil [CC], Codice civile [CC] [Civil Code] Dec. 10, 1907, SR 210, RS 210, art. 28 (Switz.).

¹⁵ See Compl. at 21, 67, Youth Climate Case Japan for Tomorrow, Nagoya Chihō Saibansho [Nagoya D. Ct.] (filed Aug. 6, 2024) (Japan).

¹⁶ Rb. Den Haag, ECLI:NL:RBDHA:2021:5339, ¶ 3.2.

public nuisance and negligence and violate a novel duty to cease contributing to climate change.¹⁷

5. Many courts have rightly rejected these expansive, nebulous claims. The Dutch Court of Appeal, for example, held that, although Shell has a general obligation to reduce emissions, there was no legal basis to order Shell to reduce its emissions by a specific percentage (45%) by 2030.¹⁸ Similarly, the German Federal Court of Justice—the first national apex court to address the merits of a climate policy lawsuit against individual companies¹⁹—held that German tort law did not impose on BMW and Mercedes-Benz an obligation to phase out their non-electric vehicles by 2030, given EU regulation contemplating sales at least until 2035.²⁰ The court emphasized that “the responsibility for . . . future climate legislation lies with the legislator,” because “[o]nly legislation provides the appropriate framework to act with democratic responsibility to reconcile climate protection and its tension with any conflicting interests,” and explained that it is not “the task of the courts to infer” from “the open formulation of Article 20a of the Basic Law” “specifically quantifiable limits for global warming and corresponding emission levels or reduction requirements.”²¹

¹⁷ *Smith v. Fonterra Co-Operative Grp. Ltd.*, [2025] NZSC 1605 (N.Z.).

¹⁸ See Hof Den Haag, ECLI:NL:GHDHA:2024:2100, ¶¶ 7.68–7.96, 7.111.

¹⁹ The Supreme Court of the Netherlands’ consideration of *Milieudefensie v. Shell* will make it the second.

²⁰ See BGH, VI ZR 334/23, ¶¶ 37–40 (Ger.); BGH, VI ZR 365/23, ¶¶ 36–39, 42–46 (Ger.).

²¹ Press Release No. 054/2026, Federal Court of Justice, *No right to early combustion engine phase-out* (Mar. 23, 2026), <https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/EN/2026/2026054.html> [<https://perma.cc/2SWC-JY3K>].

But other claims have proceeded or paved the way for future plaintiffs. The Supreme Court of New Zealand allowed the claims against the agricultural and energy companies to proceed past that country’s motion-to-dismiss equivalent.²² And although the German Hamm Higher Regional Court dismissed the Peruvian farmer’s claims in *Lliuya v. RWE*—finding the farmer failed to prove a sufficiently concrete and immediate danger to his property—the court also held that the German Civil Code could support cross-border climate-change tort claims.²³ Remarkably, the court found the fact that RWE’s emissions occurred in Germany did not preclude a claim for damages allegedly incurred in Peru, and that if a claimant could demonstrate a credible threat of climate-related damages, courts could require corporate emitters to take “appropriate” preventive measures.²⁴

²² See *Smith v. Fonterra Co-Operative Grp. Ltd.*, [2024] NZSC 5 at [173] (N.Z.). New Zealand’s government has since proposed legislation to bar civil climate-change claims against businesses that comply with the country’s emissions framework, reflecting the same judgment that climate policy should be set by generally applicable legislation, not case-by-case litigation against selected companies. See Press Release, Hon. Paul Goldsmith, Minister of Justice, *Government brings certainty to climate change tort law* (May 12, 2026), <https://www.beehive.govt.nz/release/government-brings-certainty-climate-change-tort-law> [<https://perma.cc/RY8U-3KRW>].

²³ OLG Hamm, 5 U 15/17, 28, 82 (Ger.).

²⁴ See *id.* at 21, 35. Similar to New Zealand, the State of Bavaria has proposed a German national law to protect companies against climate lawsuits as long as they comply with public law. See Press Release, Bavarian State Government, *Bericht aus der Kabinettsitzung vom 12. Mai 2026* (May 12, 2026), <https://www.bayern.de/bericht-aus-der-kabinettsitzung-vom-12-mai-2026/> [<https://perma.cc/8GFK-MZY3>].

Amici bring these cases to the Court’s attention not to ask it to decide questions of foreign law, but because they expose the monumental implications of Respondents’ position. In this case, the Colorado Supreme Court accepted that Respondents “do not seek to regulate [greenhouse gas] emissions” because they did not sue “a pollution emitter to abate pollution,” but rather only claim damages “from upstream producers for harms stemming from the production and sale of fossil fuels.” *County Comm’rs of Boulder County v. Suncor Energy USA, Inc.*, 586 P.3d 161, 171, 173 (Colo. 2025). Respondents’ claim for unbounded damages from hand-picked companies for the local effects of a global phenomenon belies that contention. See *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (recognizing that “regulation can be . . . effectively exerted through an award of damages’ and ‘[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy” (alteration in original) (quoting *S.D. Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959))). And the foreign cases show where Respondents’ theory leads. If courts may use one jurisdiction’s law to impose liability for worldwide activities on companies whose products or services generate greenhouse gas emissions, it is difficult to discern a principled limit on either the private companies and

industries that could be targeted or the liability that could be imposed.

II. Effective Energy Policy Must Be Set by Sovereign Policymaking and Government-to-Government Cooperation, Not Fragmented Litigation.

Beyond showing the reach of climate policy litigation, the foreign cases also bring into focus the central reason cases like this one should not be allowed to proceed: individual courts may not set climate policy for the world. They lack the political accountability, institutional competence, and policy tools to balance the competing needs of affordable and secure energy, economic development, and environmental sustainability. And when they are improperly asked to resolve those trade-offs, they risk doing more harm than good—creating uncertainty, distorting investment, and displacing the policy judgments of sovereign governments.

A. Individual Jurisdictions' Courts Are Institutionally Unsited to Set Global Energy Policy.

Petitioners detail the doctrinal reasons why federal law precludes and preempts Respondents' claims for damages based on alleged climate-change-related injuries. *See* Pet'rs' Br. 21–47. This conclusion is reinforced by the inherently cross-border nature of greenhouse gas emissions, the structure of the global

energy system, and the experience of climate litigation outside the United States.

Amici recognize the reality of climate change and the need for a just and orderly transition to a lower-carbon future. At the same time, energy is essential to all aspects of human activity. Companies in energy and energy-intensive industries—including amici—must continue to help meet the energy and economic development needs of a global population that has more than doubled in the last 50 years, is set to grow by 1.5 billion people by 2050, and still includes over 2 billion people without access to the modern energy many of us take for granted.²⁵ The current Administration’s energy priorities underscore the point. The President has declared it national policy to promote “America’s affordable and reliable energy and natural resources,” Exec. Order No. 14154, 90 Fed. Reg. 8353, 8353 (Jan. 20, 2025), and directed federal policy toward “expand[ing] all forms of reliable and affordable energy production” to support manufacturing, artificial intelligence, national security, and economic growth, Exec. Order No. 14213, 90 Fed. Reg. 9945, 9945 (Feb. 14, 2025).

The World Energy Council uses the concept of the “energy trilemma” or “energy triangle” to frame the tensions and trade-offs in confronting these challenges.²⁶ This trilemma involves striking a balance between three important objectives: energy security, energy equity, and environmental sustainability.

²⁵ See Int’l Energy Agency [IEA], *World Energy Outlook 2025* at 23, 42, 449 (2025).

²⁶ See World Energy Council, *World Energy Trilemma Framework*, <https://www.worldenergy.org/transition-toolkit/world-energy-trilemma-framework> [<https://perma.cc/CY7Q-J4WS>] (last visited May 17, 2026).

Energy security reflects the need for energy supply to satisfy demand and to “bounce back swiftly from system shocks with minimal disruption to supplies.”²⁷ Energy equity seeks to ensure “universal access to affordable, fairly priced and abundant energy.”²⁸ And environmental sustainability “[r]epresents the transition of a country’s energy system towards mitigating and avoiding potential environmental harm and climate change impacts.”²⁹

Each country must continuously balance these three issues for itself. A country committed only to environmental sustainability may undermine its citizens’ continuous access to secure, affordable energy. A country committed only to security of supply may over-rely on readily available fuels while neglecting environmental consequences. And a country committed only to affordability may under-invest in resilience, cleaner infrastructure, or long-term supply. At the same time, disasters can disrupt a country’s energy mix overnight, as in Japan, where the 2011 Fukushima nuclear accident led to an urgent need for alternative energy sources.³⁰ And geopolitical conflict (like Russia’s invasion of Ukraine or the closure of the Strait of Hormuz) and economic shocks (like the COVID pandemic) can expose the risks of dependence on particular sources of energy and sharply impact supply and demand. Through it all, a country’s energy

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Daniel B. Poneman & Clara Gillispie, *Japan’s Energy Picture Fifteen Years Post-Fukushima*, Council on Foreign Relations (Mar. 18, 2026), <https://www.cfr.org/articles/japans-energy-picture-fifteen-years-post-fukushima> [https://perma.cc/QE8P-ABQP].

policy must be dynamic, forward-looking, and accountable to the public.

Sovereign governments have built intergovernmental frameworks to navigate precisely these challenges. But participation in those frameworks is itself a sovereign political choice: Each Nation decides whether to enter an agreement, what commitments to undertake, and how to implement them domestically. Political decisions therefore can alter national climate commitments and regulatory priorities—as illustrated by the United States’ entry, withdrawal, re-entry, and re-withdrawal from the Paris Agreement.

The Paris Agreement reflects that sovereign design. It does not impose a uniform emissions pathway on all Nations. Instead, it contemplates that each country sets its own Nationally Determined Contributions in light of its own energy mix, resources, stage of development, and domestic priorities.³¹ That structure allows each Nation to balance security, equity, and sustainability through the policy tools available to governments to regulate emissions—including cap-and-trade systems, renewable mandates, subsidies, emissions standards, permitting decisions, and sector-specific regulation—and to adjust course as technology, economics, and geopolitics evolve.

By contrast, judges and local juries are not equipped to weigh these competing interests and make the inevitable trade-offs between them. In this case, for example, Respondents’ claims cannot be adjudicated without requiring a state court to resolve the very trilemma that sovereign policymakers must

³¹ See Paris Agreement to the United Nations Framework Convention on Climate Change, art. 2(2), Dec. 12, 2015, T.I.A.S. No. 16-1104.

balance, especially in light of ever-changing geopolitical developments. But unlike governments or legislatures, courts have neither the mandate to ensure the availability of secure energy nor the public accountability to weigh these competing interests. They cannot recalibrate a static damages award in response to changed diplomatic, technological, or economic circumstances. And they cannot coordinate relief with the federal government’s energy, climate, trade, and foreign policies.

Other courts and judges have recognized these institutional constraints. The German Federal Court of Justice reasoned that the “complex balance of competing ecological, social, societal, economic, fiscal and other political collective and individual interests” requires “difficult decisions,” and that “[o]nly legislation provides the appropriate framework to act with democratic responsibility to reconcile climate protection and its tension with any conflicting interests.”³² The Second Circuit similarly explained that allowing suits like Respondents’ to proceed would “risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other.” *City of New York*, 993 F.3d at 93. And the Maryland Supreme Court has recognized that allowing each State and local government to impose its preferred climate policy would create an “irrational system of regulation” and risk “chaotic confrontation

³² Press Release No. 054/2026, Federal Court of Justice, *No right to early combustion engine phase-out* (Mar. 23, 2026), <https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/EN/2026/2026054.html> [<https://perma.cc/2SWC-JY3K>].

between sovereign states.” *Mayor & City Council of Baltimore v. B.P. P.L.C.*, 2026 WL 809501, at *22 (Md. Mar. 24, 2026) (citation omitted).

The judgments implicated by Respondents’ suit—how much energy to produce, or make available for the public to use, at what cost, and with what environmental trade-offs—belong to politically accountable sovereigns and to the national and international institutions they have built to address precisely these questions. They do not belong to local judges and juries.

B. Climate Policy Litigation Like Respondents’ Action Threatens a Secure and Resilient Energy Transition.

Respondents’ case and other climate policy lawsuits are not only improper; they also threaten to impede, rather than advance, the intergovernmental cooperation needed to address climate change.

Amici recognize the urgency of that challenge and are investing in low-carbon energy solutions while helping customers decarbonize. But transforming the global energy system requires coordinated changes in both supply and demand, the flexibility to adapt to evolving technology and geopolitics, and the ability to balance competing interests across sectors and Nations. Piecemeal litigation against individual companies does not and cannot provide any of this. To the contrary, claims like Respondents’ create uncertainty, discourage investment, and ignore the realities of energy supply and demand.

The most immediate consequence of allowing claims like Respondents’ to proceed is the patchwork of conflicting obligations that would result. The

Maryland Supreme Court and the Second Circuit recognized this risk. See *Baltimore*, 2026 WL 809501, at *22; *City of New York*, 993 F.3d at 87 (rejecting City of New York’s attempt to replace “carefully crafted” international frameworks “with a patchwork of claims under state nuisance law”). And the inconsistent rulings in the foreign cases—some of which have allowed climate tort claims to proceed, while others have not—already demonstrate this reality. Permitting state courts in this country to add their own layer of obligations on top of this fractured landscape would compound the inconsistency—subjecting multinational companies to a web of conflicting requirements that no rational business could navigate.

That uncertainty has a chilling effect on the long-term investments essential to meeting the world’s energy needs. Energy infrastructure projects—pipelines, refineries, nuclear power plants, hydrogen production facilities, liquefied natural gas (LNG) terminals, electric transmission and distribution lines, electric vehicle charging networks, and the transportation and industrial infrastructure needed to support a lower-carbon economy—are planned and financed over decades. Those commitments require stable rules. Yet claims like Respondents’ would expose lawful, heavily regulated conduct to retroactive, open-ended liability under the laws of 50 different States, on top of existing federal and international regulatory regimes. And because plaintiffs may choose among defendants, industries, and jurisdictions without any clear limiting principle, these claims invite arbitrary and selective enforcement. Companies facing that risk will be less able to assess exposure, allocate capital, or plan projects needed for both energy security and decarbonization—thwarting

development and economic activity, and jeopardizing both the choices available to American consumers and the millions of jobs amici and their industries support in the United States.

Nor is it clear these lawsuits would actually reduce emissions. Court-imposed supply-side restrictions on individual companies, whether through forward-looking injunctions or boundless damages awards, do not reduce underlying demand for energy. They simply shift demand to other producers. The Dutch Court of Appeal recognized this in *Milieudefensie v. Shell*, explaining that ordering Shell to reduce the emissions it reports by a specific percentage would not reduce global emissions because other suppliers would continue to supply the still-remaining demand for oil and gas.³³

Recent events confirm the point. When gas becomes less available or more expensive, consumers and industries often turn to coal—a fuel that emits roughly twice as much CO₂ per unit of energy as natural gas when generating electricity. After Russia reduced gas supplies to Europe following its invasion of Ukraine, several European countries—including Germany, which was in the midst of a coal phaseout—increased their coal consumption.³⁴ And in the first half of 2026, coal shipments to Japan, South Korea, and the European Union reportedly rose 27% year-on-year as countries sought alternatives to disrupted gas

³³ See Hof Den Haag, ECLI:NL:GHDHA:2024:2100, ¶¶ 7.97–7.111.

³⁴ See IEA, *Coal 2022: Analysis and Forecast to 2025* at 26–27 (Dec. 2022).

supplies due to conflict in the Middle East.³⁵ An injunction or damages award that effectively restricts an individual supplier's operations could produce the same result.

Finally, claims like Respondents' ignore that the energy transition will not—and cannot—proceed at the same pace everywhere. A nation that still depends on coal for electricity cannot decarbonize on the same timeline as a nation with mature natural gas, nuclear, solar, wind, and hydroelectric infrastructure. The same is true across sectors. Electricity may decarbonize more quickly as wind and solar become cost-competitive, but harder-to-abate sectors—steel, cement, shipping, heavy-duty transport, and aviation—depend on energy-intensive, high-temperature processes or energy-dense fuels for which lower-carbon alternatives do not yet exist at commercial scale.³⁶ Blunt, static judicial remedies—whether damages allegedly calibrated to a company's share of global emissions or injunctions requiring across-the-board emissions reductions—cannot account for these differences.

These are precisely the kinds of trade-offs that courts in individual jurisdictions should not be asked to resolve. They require prospective policymaking by governments that are accountable for and can appropriately balance important interests in energy security, affordability, economic development, and environmental sustainability.

³⁵ See Alice Hancock et al., *Coal Shipments Jump as Countries Seek Alternatives to Disrupted Gas Supplies*, Fin. Times (May 11, 2026), <https://tinyurl.com/4tda8vrx>.

³⁶ See IEA, *Breakthrough Agenda Report 2025: Accelerating Sector Transitions Through Stronger International Collaboration*, at 12–13, 33, 38 (Oct. 2025).

CONCLUSION

The Court should hold that federal law precludes and preempts state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse gas emissions on the global climate. In doing so, the Court should affirm that setting climate and energy policy must be left to politically accountable bodies and international frameworks, not piecemeal litigation.

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