

No. 25-170

In the
Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC.; SUNCOR ENERGY SALES
INC.; EXXON MOBIL CORPORATION,
Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY; CITY
OF BOULDER,
Respondents.

**On Writ of Certiorari to the
Colorado Supreme Court**

**BRIEF OF *AMICUS CURIAE* SAVE OUR
STATES IN SUPPORT OF PETITIONERS**

STEVEN A. ENGEL
DECHERT LLP
1900 K Street, NW
Washington, DC 20006

MICHAEL H. MCGINLEY
Counsel of Record
BRIAN A. KULP
ANTHONY R. JADICK
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
(215) 994-2463
michael.mcginley@dechert.com

Counsel for Amicus Curiae

May 21, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE*..... 1

INTRODUCTION AND
SUMMARY OF ARGUMENT 2

ARGUMENT..... 4

I. The Constitution Forbids Extraterritorial
State Regulation..... 4

 A. The Concept of Territorial Jurisdiction
 Predates the Founding 4

 B. The Constitution Perpetuated the
 Territorial Limits of State Jurisdiction..... 7

 C. This Court Has Consistently Enforced the
 Territorial Limits of State Jurisdiction..... 10

II. The Decision Below Enables Colorado to
Regulate Impermissibly Beyond Its Borders. 15

CONCLUSION 20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alden v. Maine</i> , 527 U.S. 706 (1999)	2
<i>Am. Elec. Power Co. v. Connecticut</i> , 564 U.S. 410 (2011)	15-17
<i>Am. Ins. Ass’n v. Garamendi</i> , 539 U.S. 396 (2003)	14
<i>Baldwin v. G. A. F. Seelig, Inc.</i> , 294 U.S. 511 (1935)	8, 12
<i>Banco Nacional de Cuba v. Sabbatino</i> , 376 U.S. 398 (1964)	14
<i>BMW of N. Am., Inc. v. Gore</i> , 517 U.S. 559 (1996)	2, 11, 16
<i>Bonaparte v. Tax Court</i> , 104 U.S. 592 (1881)	4, 12
<i>Brown v. Fletcher’s Estate</i> , 210 U.S. 82 (1908)	12
<i>Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.</i> , 476 U.S. 573 (1986)	11
<i>Burnet v. Brooks</i> , 288 U.S. 378 (1933)	4, 12
<i>Burton’s Lessee v. Williams</i> , 16 U.S. (3 Wheat.) 529 (1818)	8
<i>Buvot v. Barbut</i> , 25 Eng. Rep. 777 (Ch. 1737).....	6

<i>C & A Carbone, Inc. v. Town of Clarkstown</i> , 511 U.S. 383 (1994)	11
<i>Camps Newfound/Owatonna, Inc. v.</i> <i>Town of Harrison</i> , 520 U.S. 564 (1997)	9
<i>City of Milwaukee v. Illinois</i> , 451 U.S. 304 (1981)	3
<i>City of New York v. Chevron Corp.</i> , 993 F.3d 81 (2d Cir. 2021)	15-17, 19
<i>Coyle v. Smith</i> , 221 U.S. 559 (1911)	10
<i>Denver Pub. Co. v. Bueno</i> , 54 P.3d 893 (Colo. 2002)	18
<i>Edgar v. MITE Corp.</i> , 457 U.S. 624 (1982)	12
<i>Franchise Tax Bd. of Cal. v. Hyatt</i> , 587 U.S. 230 (2019)	7, 8, 12, 13
<i>Fuld v. Palestine Liberation Org.</i> , 606 U.S. 1 (2025)	2, 11, 16, 17
<i>Georgia v. Pa. R.R. Co.</i> , 324 U.S. 439 (1945)	12
<i>Georgia v. Tenn. Copper Co.</i> , 206 U.S. 230 (1907)	18
<i>Healy v. Beer Inst., Inc.</i> , 491 U.S. 324 (1989)	11, 16
<i>Hines v. Davidowitz</i> , 312 U.S. 52 (1941)	14
<i>Home Ins. Co. v. Dick</i> , 281 U.S. 397 (1930)	12

<i>Hudson v. Guestier</i> , 10 U.S. (6 Cranch) 281 (1810).....	5
<i>Huntington v. Attrill</i> , 146 U.S. 657 (1892)	11
<i>Illinois v. City of Milwaukee</i> , 406 U.S. 91 (1972)	3
<i>Int’l Paper Co. v. Ouellette</i> , 479 U.S. 481 (1987)	18
<i>Kansas v. Colorado</i> , 185 U.S. 125 (1902)	12
<i>Kurns v. R.R. Friction Prods. Corp.</i> , 565 U.S. 625 (2012)	18
<i>McIlvaine v. Coxe’s Lessee</i> , 8 U.S. (4 Cranch) 209 (1808).....	4
<i>Murphy v. NCAA</i> , 584 U.S. 453 (2018)	7
<i>N.Y. Life Ins. Co. v. Head</i> , 234 U.S. 149 (1914)	11
<i>Nat’l Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023)	3, 17
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932)	17
<i>Nielsen v. Oregon</i> , 212 U.S. 315 (1909)	12
<i>Osborn v. Ozlin</i> , 310 U.S. 53 (1940)	19
<i>Pennoyer v. Neff</i> , 95 U.S. (5 Otto) 714 (1877).....	11

<i>Pollard v. Hagan</i> , 44 U.S. (3 How.) 212 (1845).....	10
<i>PPL Mont., LLC v. Montana</i> , 565 U.S. 576 (2012)	2
<i>Rhode Island v. Massachusetts</i> , 37 U.S. (12 Pet.) 657 (1838)	10, 13
<i>Rose v. Himely</i> , 8 U.S. (4 Cranch) 241 (1807).....	5
<i>San Diego Bldg. Trades Council v. Garmon</i> , 359 U.S. 236 (1959)	18
<i>Seila Law LLC v. CFPB</i> , 591 U.S. 197 (2020)	4
<i>State Farm Mut. Auto Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003)	3
<i>Tex. Indus., Inc. v. Radcliff Materials, Inc.</i> , 451 U.S. 630 (1981)	13, 18
<i>The Antelope</i> , 23 U.S. (10 Wheat.) 66 (1825)	5
<i>The Schooner Exch. v. McFaddon</i> , 11 U.S. (7 Cranch) 116 (1812)	4-7
<i>Triquet v. Bath</i> , 3 Burr. 1478 (K.B. 1764)	6
<i>United States v. Belmont</i> , 301 U.S. 324 (1937)	14
<i>United States v. Bevans</i> , 16 U.S. (3 Wheat.) 336 (1818)	10
<i>United States v. Pink</i> , 315 U.S. 203 (1942)	14

<i>Ware v. Hylton</i> , 3 U.S. (3 Dall.) 199 (1796).....	7
<i>Watson v. Emps. Liab. Assurance Corp.</i> , 348 U.S. 66 (1954)	12
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980)	12
<i>Zschernig v. Miller</i> , 389 U.S. 429 (1968)	14
Constitutional Provisions	
U.S. Const. art. I, § 8, cl. 3	9
U.S. Const. art. I, § 10	7, 12
U.S. Const. art. IV, § 2, cl. 2	8
U.S. Const. art. IV, § 3, cl. 1	9
U.S. Const. art. VI, cl. 2	8
U.S. Const. amend. XIV, § 1	8
Other Authorities	
4 William Blackstone, <i>Commentaries on the Law of England</i> (1769)	6
Thomas M. Cooley, <i>A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power of the States of the American Union</i> (1868)	10, 11
Declaration of Independence (U.S. 1776)	4
Environmental Protection Agency, <i>Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act</i> , 74 Fed. Reg. 66,496 (Dec. 15, 2009)	15

Katherine Florey, <i>State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law & Legislation</i> , 84 Notre Dame L. Rev. 1057 (2009)	9
Jack L. Goldsmith & Curtis A. Bradley, <i>The Current Illegitimacy of International Human Rights Litigation</i> , 66 Fordham L. Rev. 319 (1997)	6
1 James Kent, <i>Commentaries on American Law</i> (William M. Lacy ed., 1889)	7
Douglas Laycock, <i>Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law</i> , 92 Colum. L. Rev. 249 (1992)	9
Letter from Thomas Jefferson to Mr. Wythe (Sept. 16, 1787), in 2 <i>Memoirs, Correspondence, and Private Papers of Thomas Jefferson</i> 228 (Thomas Jefferson Randolph ed., 1829).....	13
Gillian E. Metzger, <i>Congress, Article IV, and Interstate Relations</i> , 120 Harv. L. Rev. 1468 (2007)	8
William Rawle, <i>A View of the Constitution of the United States of America</i> (1825)	6
Donald H. Regan, <i>Siamese Essays: (I) CTS Corp. v. Dynamics Corp. of America and Dormant Commerce Clause Doctrine; (II) Extraterritorial State Legislation</i> , 85 Mich. L. Rev. 1865 (1987)	9

Joseph Story, <i>Commentaries on the Conflict of Laws</i> (1834)	5
Zephyr Teachout, <i>Defining and Punishing Abroad: Constitutional Limits on the Extraterritorial Reach of the Offenses Clause</i> , 48 Duke L.J. 1305 (1998)	6
The Articles of Confederation of the United Colonies of New England (May 19, 1643), The Avalon Project, bit.ly/3OMfKJh	7
The Federalist No. 6 (Alexander Hamilton) (Clinton Rossiter ed., 2003).....	8
The Federalist No. 39 (James Madison) (Clinton Rossiter ed., 2003).....	2
The Federalist No. 42 (James Madison) (Clinton Rossiter ed., 2003).....	9, 13
The Federalist No. 45 (James Madison) (Clinton Rossiter ed., 2003).....	2
The Federalist No. 80 (Alexander Hamilton) (Clinton Rossiter ed., 2003).....	13, 14
Emer de Vattel, <i>The Law of Nations</i> (Joseph Chitty ed., 1883)	4-6

INTEREST OF *AMICUS CURIAE*¹

Save Our States Action (“Save Our States”) is a project of People for Opportunity, a 501(c)(4) non-profit. The project is devoted to protecting freedom for Americans through federalism. To that end, Save Our States has focused its advocacy and educational initiatives on issues where the balance between local control and national powers is essential. From defending the Electoral College to protecting our economy, elections, and health care from government overreach, Save Our States works to ensure that America’s system serves citizens, not special interests or distant bureaucracies.

Save Our States has a significant interest in this case. Our Constitution creates a system of horizontal federalism in which the States are coequal sovereigns. From that bedrock principle, it follows that each State’s sovereignty is confined to its borders. The Framers thus understood that no State can regulate beyond its territorial limits. But the decision below authorizes just that. It allows a single State—indeed, a single Colorado municipality—to “prosecute state-law claims that will both effectively regulate interstate air pollution and have more than an incidental effect on foreign affairs.” Pet.App.25a (Samour, J., dissenting). Save Our States submits this brief to explain why the Constitution forbids that state exercise of extraterritorial authority.

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Federalism is a defining feature of our Republic. This “system established by our Constitution preserves the sovereign status of the States.” *Alden v. Maine*, 527 U.S. 706, 714 (1999). And, pursuant to that design, each State retains “numerous and indefinite” powers to promote “the internal order, improvement, and prosperity of the State.” The Federalist No. 45, at 289 (James Madison) (Clinton Rossiter ed., 2003).

At the same time, these broad state police powers are subject to strict geographic limits. The States can legislate only “within their respective spheres.” The Federalist No. 39, at 241 (James Madison). And “[t]he Constitution confers upon the Federal Government—and it alone—both nationwide and extraterritorial authority.” *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 15 (2025). In that way, “[s]tate sovereign authority is bounded by the States’ respective borders.” *Id.* at 14. Indeed, that concept of territorial jurisdiction predates and is embedded in our constitutional design.

As a result, no State can deploy its lawmaking power within its territorial boundaries to dictate policy on global issues for the fifty “coequal sovereigns” that make up the United States. *PPL Mont., LLC v. Montana*, 565 U.S. 576, 591 (2012). Nor can any State regulate beyond its jurisdiction to “impose its own policy choice on neighboring States”—whether through prospective legislation or retroactive damages awards. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571–72 & n.17 (1996). Instead, “each State may make its own reasoned judgment about what

conduct is permitted or proscribed within its borders.” *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003).

Those foundational principles should resolve this case. The City of Boulder has brought this suit as a means to regulate the emission of greenhouse gases all over the world. Using Colorado state law, the City seeks to punish Petitioners for the role that their fossil-fuel activities allegedly played in climate change. But, as all agree, climate change presents an issue of “global import.” Pet.App.1a. As such, “state law cannot be used” to impose liability for the out-of-state conduct alleged here. *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) (“*Milwaukee II*”). Rather, federal law is the “necessary” and exclusive source for asserting “the environmental rights of a State against improper impairment by sources outside its domain.” *Illinois v. City of Milwaukee*, 406 U.S. 91, 107 n.9 (1972) (“*Milwaukee I*”) (citation omitted).

The lower court’s contrary decision enables Colorado to regulate beyond its borders. And that transgresses the “territorial limits of state authority under the Constitution’s horizontal separation of powers.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023). The Constitution thus preempts this suit, regardless of whether the Clean Air Act does the same.

This Court should reverse.

ARGUMENT

I. The Constitution Forbids Extraterritorial State Regulation.

This Court has long held that “[n]o State can legislate except with reference to its own jurisdiction.” *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881). That geographic limit on sovereignty—known as “territorial jurisdiction”—traces back to pre-Founding understandings of the law of nations. *The Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 137 (1812) (Marshall, C.J.). And that concept took on heightened importance when the Framers “split the atom of sovereignty’ itself into one Federal Government and the States.” *Seila Law LLC v. CFPB*, 591 U.S. 197, 223 (2020) (citation omitted). “The bond of the Constitution qualifies th[e] jurisdiction” of the States even further than the law of nations otherwise would. *Burnet v. Brooks*, 288 U.S. 378, 401 (1933).

A. The Concept of Territorial Jurisdiction Predates the Founding.

1. The territorial limits of the States’ authority derive from the eighteenth-century law of nations. After all, “[t]he law of nations is the law of sovereigns.” Emer de Vattel, *The Law of Nations*, bk. 1, ch. 1, § 12 (Joseph Chitty ed., 1883). And the States “became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign states.” *McIlvaine v. Coxe’s Lessee*, 8 U.S. (4 Cranch) 209, 212 (1808). That is, they could “do all . . . Acts and Things which Independent States may of right do” consistent with the law of nations. Declaration of Independence ¶ 32 (U.S. 1776).

By the Founding, the law of nations had developed to recognize the equality of sovereign states. As Emer de Vattel explained, “[e]very nation that governs itself, under what form soever, without dependence on any foreign power, is a Sovereign State.” Vattel, *supra*, at bk. 1, ch. 1, § 4 (italics omitted). And “[i]ts rights are naturally the same as those of any other state.” *Id.* That means that no sovereign state could “naturally lay claim to any superior prerogative,” and “[p]ower or weakness [did] not in this respect produce any difference.” *Id.* at intro., § 18, bk. 2, ch. 3, § 36. Indeed, “[n]o principle of general law [was] more universally acknowledged” during the Founding-era than this “perfect equality of nations.” *The Antelope*, 23 U.S. (10 Wheat.) 66, 122 (1825) (Marshall, C.J.).

From this basic principle of coequal sovereignty, it followed that no nation could “rightfully impose a rule on another.” *Id.* “Each legislates for itself, but its legislation can operate on itself alone.” *Id.* As a result, “all the laws made by a sovereign have no force or authority except within the limits of his domains.” Joseph Story, *Commentaries on the Conflict of Laws* 8 (1834). And “no state or nation can, by its laws, directly affect, or bind property out of its own territory, or persons not resident therein.” *Id.* at 21. “The jurisdiction of the nation within its own territory is necessarily exclusive and absolute.” *Schooner Exchange*, 11 U.S. (7 Cranch) at 136; *see also Rose v. Himely*, 8 U.S. (4 Cranch) 241, 279 (1807) (“[T]he legislation of every country is territorial; that beyond its own territory, it can only affect its own subjects or citizens.”), *overruled on other grounds by Hudson v. Guestier*, 10 U.S. (6 Cranch) 281, 285 (1810).

This territorial understanding of sovereignty pervaded international law by the Founding era. So much so that “extraterritorial regulation would have been unthinkable in the eighteenth century.” Jack L. Goldsmith & Curtis A. Bradley, *The Current Illegitimacy of International Human Rights Litigation*, 66 *Fordham L. Rev.* 319, 361 (1997). Jurisdiction “almost never extended beyond a nation’s borders.” Zephyr Teachout, *Defining and Punishing Abroad: Constitutional Limits on the Extraterritorial Reach of the Offenses Clause*, 48 *Duke L.J.* 1305, 1317 (1998). The “few exceptions” were for cases involving ambassadors, “[m]aritime jurisdiction, consent, and some cases of treachery abroad” by a nation’s citizens. *Id.* Absent these “peculiar circumstances”—in which the theoretical basis for territorial jurisdiction broke down—the sovereigns of the world had “absolute and complete jurisdiction within their respective territories.” *Schooner Exchange*, 11 U.S. (7 Cranch) at 136; *see also* Vattel, *supra*, at bk. 2, ch. 7, § 84.

2. The law of nations heavily influenced the Framers. It was widely regarded as “part of the law of England.” *Triquet v. Bath*, 3 Burr. 1478, 1481 (K.B. 1764) (quoting *Buvot v. Barbut*, 25 Eng. Rep. 777, 778 (Ch. 1737)). And it was “adopted in its full extent by the common law” as “the law of the land.” 4 William Blackstone, *Commentaries on the Law of England* 67 (1769). This acceptance of the law of nations enabled England to “be a part of the civilized world.” *Id.*

That embrace carried over to the United States. *See, e.g.*, William Rawle, *A View of the Constitution of the United States of America* 104 (1825). In fact, it took root in the colonies long before independence.

The New England colonies, for instance, specifically endorsed the principle of territorial jurisdiction in 1643, agreeing that each “shall have . . . peculiar jurisdiction and government within their limits.” The Articles of Confederation of the United Colonies of New England § 3 (May 19, 1643), The Avalon Project, bit.ly/3OMfKJh. Then, “[w]hen the United States declared their independence, they were bound to receive the law of nations, in its modern state of purity and refinement.” *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 281 (1796) (Wilson, J.); accord 1 James Kent, *Commentaries on American Law* 1–2 (William M. Lacy ed., 1889). That included the doctrine of territorial jurisdiction. See *Schooner Exchange*, 11 U.S. (7 Cranch) at 136.

B. The Constitution Perpetuated the Territorial Limits of State Jurisdiction.

1. The Constitution embraced this geographic understanding of sovereign authority in the relations of each of the United States to the other. Indeed, “[t]he Constitution *limits* state sovereignty” even further than the law of nations “in several ways.” *Murphy v. NCAA*, 584 U.S. 453, 470 (2018) (emphasis added). Article I, Section 10 “directly prohibits the States from exercising some attributes of sovereignty,” including on the international stage. *Id.* (citing U.S. Const. art. I, § 10). Article IV “imposes duties on the States not required by international law.” *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 245 (2019). Certain “grants of power to the Federal Government” create “implicit restrictions on the States.” *Murphy*, 584 U.S. at 470. And the Supremacy Clause subordinates state

law to the duly enacted “laws of the United States.” U.S. Const. art. VI, cl. 2.

Those limits on state sovereignty were necessary to transform “the States from a loose league of friendship into a perpetual Union.” *Hyatt*, 587 U.S. at 246. The Framers had learned from experience of the States’ inclination “to aggrandize themselves at the expense of their neighbors.” The Federalist No. 6, at 54 (Alexander Hamilton) (citation omitted). And so, “happily for our domestic harmony, the power of aggressive operation against each other [was] taken away.” *Burton’s Lessee v. Williams*, 16 U.S. (3 Wheat.) 529, 538 (1818). Upon ratification, the States “no longer relate[d] to each other solely as foreign sovereigns.” *Hyatt*, 587 U.S. at 245. Instead, they framed a Republic “upon the theory that the peoples of the several states must sink or swim together.” *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511, 523 (1935).

2. Consistent with that design, nothing in the Constitution *expands* the States’ powers to regulate beyond their borders. If anything, “[t]he principle that states are territorially bound . . . permeates the Constitution.” Gillian E. Metzger, *Congress, Article IV, and Interstate Relations*, 120 Harv. L. Rev. 1468, 1520 (2007). The Extradition Clause, for example, presupposes territorial limits on State authority when it speaks of the “State having Jurisdiction of the Crime.” U.S. Const. art. IV § 2, cl. 2. The Fourteenth Amendment prohibits the States from “deny[ing] to any person *within its jurisdiction* the equal protection of the laws.” U.S. Const. amend. XIV, § 1 (emphasis added). The New States Clause protects the States

from having to cede territory “within the[ir] Jurisdiction.” U.S. Const. art. IV, § 3, cl. 1. And the Commerce Clause “restrain[s]” the “authority of the States” to regulate commerce that crosses their borders. The Federalist No. 42, at 263 (James Madison); see U.S. Const. art. I, § 8, cl. 3. So does the Import-Export Clause—at least as that Clause was originally understood. See *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 621–37 (1997) (Thomas, J., dissenting).

These specific provisions reflect more “general structural principles of horizontal federalism.” Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law & Legislation*, 84 Notre Dame L. Rev. 1057, 1060 (2009). That is, the “extraterritoriality principle” is “one of those foundational principles of our federalism” that we can “infer from the structure of the Constitution as a whole.” Donald H. Regan, *Siamese Essays: (I) CTS Corp. v. Dynamics Corp. of America and Dormant Commerce Clause Doctrine; (II) Extraterritorial State Legislation*, 85 Mich. L. Rev. 1865, 1885 (1987).

Other sources of law reinforce that understanding. Most States have “territorial definitions” that “are specified in state organic acts” and “enabling acts.” Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 Colum. L. Rev. 249, 317 (1992). And “for the older states,” these boundaries are expressed “in treaties, territorial cessions, and royal grants.” *Id.* at 317–18. Thus, “territory is part of the very definition of the state[s].” *Id.* at 316. Their territorial

boundaries define the limits of their sovereignty. And that is the way the States have governed alongside one another since the dawn of our Republic.

C. This Court Has Consistently Enforced the Territorial Limits of State Jurisdiction.

1. This Court first recognized the territorial limits of state authority nearly two centuries ago. In *Rhode Island v. Massachusetts*, the Court explained that in our constitutional system, no State can “have any right beyond its territorial boundary.” 37 U.S. (12 Pet.) 657, 733 (1838). The Court thus held, “without hesitation, [that] the jurisdiction of a state is coextensive with its territory.” *Id.* (quoting *United States v. Bevans*, 16 U.S. (3 Wheat.) 336, 386–87 (1818)).

Just a few years later, the Court reiterated that core tenet of horizontal federalism. It emphasized that every State is “entitled to the sovereignty and jurisdiction over all the territory within her limits.” *Pollard v. Hagan*, 44 U.S. (3 How.) 212, 228 (1845). But that sovereignty runs out at the border—at which point another State’s sovereignty takes over. To hold otherwise would deny neighboring States their “equal footing” in the Union. *Id.* at 229. And that would jeopardize “the harmonious operation of the scheme upon which the Republic was organized.” *Coyle v. Smith*, 221 U.S. 559, 580 (1911).

These territorial limits of state sovereignty became firmly entrenched by the Civil War. As one influential treatise explained, “[t]he legislative authority of every State must spend its force within the territorial limits of the State.” Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the*

Legislative Power of the States of the American Union 127–28 (1868). No State can “make laws by which people outside the State must govern their actions.” *Id.* at 128.

2. Nothing has changed since. Shortly after the Civil War, this Court reaffirmed that “[t]he several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others.” *Pennoyer v. Neff*, 95 U.S. (5 Otto) 714, 722 (1877). As such, “the laws of one State have no operation outside of its territory.” *Id.* In *Huntington v. Attrill*, this Court again held that “[l]aws have no force of themselves beyond the jurisdiction of the State which enacts them, and can have extra-territorial effect only by the comity of other States.” 146 U.S. 657, 669 (1892). So too in *New York Life Insurance Co. v. Head*, where the Court explained that it “would be impossible to permit the statutes of [one State] to operate beyond the jurisdiction of that State.” 234 U.S. 149, 161 (1914).

To allow such an extraterritorial assertion of state power would “throw[] down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends.” *Id.* “This is so obviously the necessary result of the Constitution that it has rarely been called in question.” *Id.* And an unbroken line of this Court’s decisions confirms this understanding. *See, e.g., Fuld*, 606 U.S. at 14; *Gore*, 517 U.S. at 571; *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 393 (1994); *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989); *Brown-Forman Distillers Corp. v. N.Y. State Liquor*

Auth., 476 U.S. 573, 583–85 (1986); *Edgar v. MITE Corp.*, 457 U.S. 624, 642–43 (1982) (plurality op.); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980); *Watson v. Emps. Liab. Assurance Corp.*, 348 U.S. 66, 70 (1954); *Baldwin*, 294 U.S. at 521; *Burnet*, 288 U.S. at 404; *Home Ins. Co. v. Dick*, 281 U.S. 397, 410 (1930); *Nielsen v. Oregon*, 212 U.S. 315, 321 (1909); *Brown v. Fletcher’s Estate*, 210 U.S. 82, 89 (1908); *Bonaparte*, 104 U.S. at 594.

The upshot of these decisions is simple: In our federalist system, each State may regulate only “with reference to its own jurisdiction.” *Bonaparte*, 104 U.S. at 594. And no State has the “power to project” its law into another to control or punish conduct beyond its borders. *Baldwin*, 294 U.S. at 521. Such an exercise of extraterritorial power would violate the “equal dignity and sovereignty” of other States that is central to our constitutional scheme. *Hyatt*, 587 U.S. at 245.

3. A corollary of the States’ territorial jurisdiction is that *federal* law must govern disputes concerning interstate matters. After all, “[t]he traditional methods available to a sovereign for the settlement” of such cross-border disputes “were diplomacy and war.” *Georgia v. Pa. R.R. Co.*, 324 U.S. 439, 450 (1945). But the Constitution explicitly stripped the States of those sovereign tools. See U.S. Const. art. I, § 10. The States cannot “make war upon each other,” nor can they “enter upon diplomatic relations” through interstate compacts absent the consent of Congress. *Kansas v. Colorado*, 185 U.S. 125, 143 (1902). And States cannot exercise “raw power to apply their own law to such matters” either. *Hyatt*, 587 U.S. at 246.

Rather, the authority to govern interstate matters is reserved to the federal government. That is an indispensable element of horizontal federalism: “[O]ur federal system does not permit [a] controversy to be resolved under state law” where “the interstate . . . nature of the controversy makes it inappropriate for state law to control.” *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). Instead, “[w]hatever practices may have a tendency to disturb the harmony between the States are proper objects of federal superintendence and control.” The Federalist No. 80, at 476 (Alexander Hamilton). Or, as Thomas Jefferson put it in 1787, in describing the proposed Constitution: The States may “severally preserve their sovereignty in whatever concerns themselves alone,” but “whatever may concern another State, or any foreign nation, should be made a part of the federal sovereignty.” Letter from Thomas Jefferson to Mr. Wythe (Sept. 16, 1787), in 2 *Memoirs, Correspondence, and Private Papers of Thomas Jefferson* 228, 230 (Thomas Jefferson Randolph ed., 1829).

Accordingly, these cross-jurisdictional “subjects that were decided by pure ‘political power’ before ratification now turn on federal ‘rules of law.’” *Hyatt*, 587 U.S. at 246 (quoting *Rhode Island*, 37 U.S. (12 Pet.) at 737).

4. This rule has particular force for subjects with global implications. “If we are to be one nation in any respect, it clearly ought to be in respect to other nations.” The Federalist No. 42, at 260 (James Madison). To that end, the Framers devised a system in which sovereign “[p]ower over external affairs is not

shared by the States.” *United States v. Pink*, 315 U.S. 203, 233 (1942). That authority is instead “vested in the national government exclusively.” *Id.*; see also *United States v. Belmont*, 301 U.S. 324, 330 (1937). And it must “be left entirely free from local interference.” *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941).

Given that division of authority, state “regulations must give way if they impair the effective exercise of the Nation’s foreign policy.” *Zschernig v. Miller*, 389 U.S. 429, 440 (1968). And the federal government need not have expressed a formal policy for this preemption to apply. The “absence of a treaty” or federal statute will not salvage a state law that “may disturb foreign relations” nevertheless. *Id.* at 441; see also *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 424–27 (1964). That is because preemption flows from the very structure of the Constitution itself—from its “allocation of the foreign relations power to the National Government.” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413 (2003).

This structural limit on state authority ensures that when “embracing our relations with foreign nations, we are but one people, one nation, one power.” *Hines*, 312 U.S. at 63 (citation omitted). “The Union will undoubtedly be answerable to foreign powers for the conduct of its members.” The Federalist No. 80, at 475 (Alexander Hamilton). And the “peace of the whole ought not to be left at the disposal of a part.” *Id.* (capitalization altered). Only a uniform federal rule of decision can apply.

II. The Decision Below Enables Colorado to Regulate Impermissibly Beyond Its Borders.

A. The decision below defies these basic principles of our constitutional order. The City of Boulder seeks to hold Petitioners liable for “the role that [their] production, promotion, refining, market, and sale of fossil fuels has allegedly played in exacerbating climate change.” Pet.App.2a. The Colorado Supreme Court allowed those claims to “proceed under state law.” Pet.App.1a. But those claims are beyond Colorado’s constitutional reach. They are, after all, “based on harms the State of Colorado has allegedly suffered as a result of *global* climate change.” Pet.App.25a (Samour, J., dissenting). Nothing about that global phenomenon is specific to the Centennial State. In fact, the claims here seek “damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet.” *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021).

That is the very nature of a challenge, like this one, premised on the environmental effects of greenhouse gas emissions. “Greenhouse gases once emitted ‘become well mixed in the atmosphere.’” *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 422 (2011) (quoting Environmental Protection Agency, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496, 66,514 (Dec. 15, 2009)). And Colorado is not sealed off from the world by a bubble. Carbon emissions from China, Cambodia, or Canada affect climate change in Colorado (and

elsewhere) just like emissions from California, Colorado, or Connecticut. *See id.*

The “practical effect” of this lawsuit is therefore “to control conduct beyond the boundaries of the state.” *Healy*, 491 U.S. at 336. Indeed, the only way to avoid the City’s theory of liability is to reduce—or even completely halt—the production and sale of fossil fuels “across every state (and country).” *City of New York*, 993 F.3d at 92. No matter whether such activities are lawful in other cities beyond Boulder. No matter whether such activities are lawful in other States beyond Colorado. And no matter whether such activities are lawful in other countries beyond the United States. Colorado seeks to regulate those activities across the entire globe through state tort law.

That assertion of raw power far exceeds the limits of Colorado’s territorial jurisdiction. Colorado “may not impose economic sanctions” through its own laws to “chang[e] [Petitioners’] lawful conduct in other States.” *Gore*, 517 U.S. at 572. And it certainly cannot do so to deter and punish lawful activities performed in other countries. Only the federal government may exert this “nationwide and extraterritorial authority.” *Fuld*, 606 U.S. at 15.

To be clear, this constitutional limitation does not leave Colorado powerless to regulate Petitioners’ statewide activities or to reduce greenhouse gas emissions within Colorado’s territory—to the extent not preempted by federal legislation. “It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic

experiments” to promote the transition away from fossil fuels. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Those state-level experiments could eventually prompt (or dissuade) federal legislation to curtail the use of fossil fuels. But if Colorado wants to conduct such an experiment, then it must do so “without risk to the rest of the country” or our international relations—by limiting the scope of its rule and punishment to the State’s own jurisdiction. *Id.* It cannot impose its view of environmental policy on the world by exceeding the “territorial limits of state authority.” *Pork Producers*, 598 U.S. at 376 n.1. The lower court erred in holding to the contrary.

B. The lower court’s rejoinders lack merit. The court started off by noting that the passage of the Clean Air Act “displaced the federal common law of nuisance.” Pet.App.10a. But such displacement is irrelevant to the constitutional division of authority between the federal and state governments. Colorado “state law does not suddenly become . . . competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one.” *City of New York*, 993 F.3d at 98. Federal statute or not, Colorado’s sovereign authority remains “bounded by [its] borders.” *Fuld*, 606 U.S. at 14. The decision below elides that key point.

Nor does anything else in the lower court’s decision make up for that mistake. The majority appeared to admit that federal law must govern “suits brought by one State to *abate* pollution emanating from another State.” Pet.App.17a (quoting *Am. Elec. Power*, 564

U.S. at 421). The States “by their union made the forcible abatement of outside nuisances impossible to each.” *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907). But, the majority emphasized, the City of Boulder wants a different remedy here. Its suit “seeks *damages*” for “harms stemming from the production and sale of fossil fuels.” Pet.App.17a (emphasis added).

That is an empty distinction. After all, “[r]egulation can be as effectively exerted through an award of damages as through some form of preventive relief.” *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959). In tort law, an “obligation to pay compensation” is indeed “*designed to be*” a “potent method of governing conduct and controlling policy.” *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (emphasis added; citation omitted). The monetary liability “deters the socially wrongful conduct in the first place.” *Denver Pub. Co. v. Bueno*, 54 P.3d 893, 898 (Colo. 2002). And it serves to alter the defendant’s behavior going forward. *See id.*

This case proves the point. If damages are awarded here, then Petitioners will have to “change [their] methods of doing business and controlling pollution to avoid the threat of ongoing liability.” *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 495 (1987). The City’s damages remedy thus cannot mask the regulatory aims of this lawsuit. Nor can it change the fact that the “interstate or international nature of [this] controversy makes it inappropriate for state law to control.” *Tex. Indus.*, 451 U.S. at 641.

Finally, the lower court believed that the City’s “claims do not seek to regulate [greenhouse gas]

emissions” at all, because the complaint “focus[es] on defendants’ upstream production” of fossil fuels. Pet.App.21a. But the City’s “[a]rtful pleading” in this regard “cannot transform [its] complaint into anything other than a suit over global greenhouse gas emissions.” *City of New York*, 993 F.3d at 91. “It is precisely *because* fossil fuels emit greenhouse gases” around the world—which are alleged to have collectively brought about climate change—that “the City is seeking damages.” *Id.*; *see also* Pet.App.33a (Samour, J., dissenting) (“[T]he bottom line is that this suit is about the *alleged [greenhouse gas] emissions from the energy companies*, even if the energy companies are actually a few steps removed from the physical release of the pollutants.”).

In any event, the City’s feigned focus on upstream activities makes no difference in the constitutional calculus. If anything, attacking Petitioners’ upstream production activities only underscores the extraterritoriality problem. As “multinational” companies, Petitioners’ upstream production activities span the globe. *See, e.g.*, JA14 (“Suncor Energy is the parent company of a multinational, integrated oil and gas enterprise[.]”); JA21 (“Exxon is a multinational, vertically integrated, fossil fuel company.”).

Those multinational upstream activities fall well outside Colorado’s territorial jurisdiction—just like the global greenhouse gas emissions that this lawsuit is really about. Either way, Colorado has “reached beyond her borders to regulate a subject which was none of her concern because the Constitution has placed control elsewhere.” *Osborn v. Ozlin*, 310 U.S.

53, 62 (1940). That it cannot do. The Constitution preempts the City's claims.

CONCLUSION

This Court should reverse.

Respectfully submitted,

STEVEN A. ENGEL
DECHERT LLP
1900 K Street, NW
Washington, DC 20006

MICHAEL H. MCGINLEY
Counsel of Record
BRIAN A. KULP
ANTHONY R. JADICK
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
(215) 994-2463
michael.mcginley@dechert.com

Counsel for Amicus Curiae

May 21, 2026