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 HOUSE MAJORITY LEADER STEVE SCALISE AND 73 OTHER MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. 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.

2. Whether this Court has statutory and Article III jurisdiction to hear this case.

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are 74 elected Members of Congress, many of whom sit on committees with jurisdiction over energy, natural resources, and environmental matters. *Amici* have a strong and direct interest in preserving the authority vested in the federal government by the Constitution over crossborder—both interstate and international—greenhouse-gas emissions, including the fundamental power of Congress to regulate interstate and foreign commerce.

The decision below supplants the legislative prerogative of Congress and would allow a patchwork of conflicting state laws around the country to govern matters of uniquely federal concern. *Amici* file this brief to defend their role in setting energy, environmental, and foreign policy for the United States, including the regulation of crossborder emissions, and to prevent the use of state law to undermine the statutory schemes that Congress has enacted and refined for decades.

The following is the full list of *amici*:

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution intended to fund its preparation or submission.

House of Representatives

Steve Scalise
Brett Guthrie
Bruce Westerman

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Addison McDowell
John McGuire
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INTRODUCTION AND SUMMARY OF ARGUMENT

In recent years, multiple state and local governments have launched a courtroom war against the American energy industry. Unsatisfied with the laws passed by Congress, including the Clean Air Act, they attempt to wield *state* law and *state* court judgments to pursue crushing penalties against energy companies for harms allegedly caused by the effects of *global* greenhouse-gas emissions on the *global* climate. In doing so, they would dictate national energy, environmental, and foreign policy themselves. This approach upends the constitutional balance between federal and state authority and undermines the federal legislative process.

Respondents Boulder County Commissioners and the City of Boulder are among those who have taken that course. They dress their complaint in the language of state law, but they cannot escape that every claim in some way turns on global greenhouse-gas emissions. The sheer magnitude of the alleged damages would restructure the American energy industry—if not bankrupt it altogether—and cause ripple effects worldwide, especially when multiplied by the dozens of similar cases across the country.

This lawsuit fails multiple times over. It discards a century of precedent recognizing that States have no authority to regulate emissions that originate beyond their borders—i.e., "crossborder" emissions—a rule that results from a constitutional structure that created a union of equally sovereign States and one federal government. It misreads the Clean Air Act to discover an expansive new state power that Congress never conferred. And it conflicts with the longstanding

approach of Congress and Presidents of both political parties to address international emissions through cooperative, negotiated agreements and voluntary commitments rather than the unilateral, coercive liability that Respondents pursue here.

Straightforward application of precedent resolves this case on any of these grounds. This Court should reverse.

ARGUMENT

I. THIS CASE SEEKS TO REGULATE GREENHOUSE-GAS EMISSIONS AROUND THE WORLD

Respondents advance an extraordinary theory that Colorado may reach beyond its borders and apply state law to global greenhouse-gas emissions. If accepted, that theory would permit every State to project its own emissions standards to regulate conduct everywhere. And it would obstruct activities, such as the production, refining, marketing, sale, and use of oil and gas, that are lawful where they occur and often already subject to extensive federal regulation under statutes like the Clean Air Act.

No one disputes that States have some authority over emissions that originate within their borders and harm local air quality, but that is not what this case is about. Respondents instead seek relief for the purported "alteration of the climate" caused by greenhouse-gas emissions from around the world. Am. Compl. ¶¶ 1–2, 5–6, 62, 81–82, *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.), Inc.*, No. 2018CV30349 (Colo. Dist. Ct. June 11, 2018). They attribute these emissions to the worldwide oil and gas activities of Petitioners, including operations

in "the Canadian tar sands," *id.* ¶¶ 384–88, 397; "Latin America," *id.* ¶ 389; and "Angola, Canada, Qatar, Russia and the United Arab Emirates," *id.* ¶ 394.

The crossborder nature of these claims is inescapable. For perspective, only approximately 0.23% of greenhouse-gas emissions today originate in Colorado.[2] Roughly 10% originate in the United States.[3] The rest—including the vast majority of emissions that Respondents blame for their alleged harms—originate in foreign countries.

The Colorado Supreme Court reasoned that because Respondents merely "seek damages from upstream producers for harms stemming from the production and sale of fossil fuels," they "do not seek to regulate [greenhouse-gas] emissions." Pet.App.17a,

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[2] *Compare* Colo. Air Pollution Control Div., Dep't of Pub. Health & Env't, *Colorado Statewide Inventory of Greenhouse Gas Emissions and Sinks 2025, Executive Summary Report* 1 n.1, 3 (Dec. 2025), https://oitco.hylandcloud.com/POP/DocPop/DocPop.aspx?docid=57931862 (estimating 2023 Colorado emissions of 118 million metric tons of carbon-dioxide equivalent), *with Historical GHG Emissions*, ClimateWatch, https://perma.cc/2MKP-HFJE (last visited May 11, 2026) (estimating 2023 global emissions of 50.8 gigatons carbon-dioxide equivalent). Although Colorado is responsible for approximately 0.23% of emissions, it is home to only about 0.073% of the world population. *See* World Population Review, https://perma.cc/W8K8-L8FP (last visited May 21, 2026) (estimating a world population of 8,298,979,488); *Colorado*, World Population Review, https://perma.cc/HJ63-XJNS (last visited May 21, 2026) (estimating a Colorado population of 6,036,620).

[3] *See Historical GHG Emissions*, *supra* note 2 (estimating 2023 global and U.S. emissions of 50.8 and 5.44 gigatons carbon-dioxide equivalent, respectively).

21a. That is wrong. The claims here necessarily regulate greenhouse-gas emissions because they would assign liability based on the alleged effects of those emissions. Respondents thus seek to impose their own damages-backed rules on when and to what extent greenhouse-gas emissions are appropriate, regardless of whether those emissions result from conduct that Congress has permitted.

This Court has repeatedly recognized that "remedies form an ingredient of any integrated scheme of regulation," and "[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959). Thus "regulation can be as effectively exerted through an award of damages as through some form of preventive relief." *Id.* And even a "salutary effort to redress private wrongs or grant compensation for past harm" does not change that conclusion. *Id.*; *see also Montgomery v. Caribe Transp. II, LLC*, No. 24-1238, 2026 WL 1336188, at *4 (U.S. May 14, 2026); *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572–73 (1996); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 521 (1992).

The sheer magnitude of the damages sought here confirms that point. Respondents demand payment for a breathtaking array of alleged past, present, and future injuries, likely exceeding "billions of dollars." *See* Am. Compl. ¶¶ 450, 532–35, *supra* (seeking compensation to manage pest infestations; respond to wildfires; provide medical treatment for heat-induced illness; rebuild roads and bridges; design and construct "alternative" buildings; replace existing

flood control; offset reduced agricultural production and employee productivity; educate the public; and analyze and monitor impacts, among other things). Plaintiffs in a similar suit alleged a price tag of "at least $50 Billion" for a single county. Second Am. Compl. at 211, *County of Multnomah v. Exxon Mobil Corp.*, No. 23-CV-25164 (Or. Cir. Ct. Oct. 7, 2024). Damages of that scale would restructure the American energy industry, if not bankrupt it altogether when multiplied across dozens of similar suits around the country.

Reviewing similar claims, the Supreme Court of Maryland observed that the "nature and scope of the damages sought by the local governments … reflect that their claims seek to regulate conduct outside [the State] that is causing global warming." *Mayor & City Council of Baltimore v. B.P. P.L.C.*, 353 A.3d 1142, 1174 (Md. 2026). The same is true here. "No amount of creative pleading can masquerade the fact that the local governments are attempting to utilize state law to regulate global conduct that is purportedly causing global harm." *Id.* at 1173; *see also* Pet.App.32a (Samour, J., joined by Boatright, J., dissenting).

II. CROSSBORDER EMISSIONS ARE THE EXCLUSIVE DOMAIN OF FEDERAL LAW

A. Constitutional Structure and a Century of Precedent Dictate That Disputes Over Crossborder Emissions Require Federal Rules of Decision

For more than a century, this Court has consistently held that disputes over crossborder emissions are governed by federal law. States are not—and never have been—free to impose their own

law and policy preferences on emissions originating beyond their borders. That settled rule follows directly from the relationship among the States, and between the States and the federal government, established by the Constitution.

"After independence, the States considered themselves fully sovereign nations." *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 237 (2019). That changed in 1789 when the Constitution transformed "the States from a loose league of friendship into a perpetual Union based on the 'fundamental principle of *equal* sovereignty among the States,'" *id.* at 246 (quoting *Shelby County v. Holder*, 570 U.S. 529, 544 (2013)), subject to a new "national government," *New Hampshire v. Louisiana*, 108 U.S. 76, 90 (1883).

That adjustment is manifest throughout the Constitution. For example, Article I denies States "the traditional diplomatic and military tools that foreign sovereigns possess," *Hyatt*, 587 U.S. at 245, and Articles I and II vest those powers in Congress and the President, *see, e.g.*, U.S. Const. art. I, § 8, cl. 3 (Commerce Clause), cl. 4 (Naturalization Clause), cl. 10 (Define and Punish Clause), cl. 11 (Declare War Clause); *id.* art. II, § 2, cl. 2 (Treaty and Appointments Clauses). "Article IV also imposes duties on the States" towards one another that were "not required by international law." *Hyatt*, 587 U.S. at 245–46 (discussing U.S. Const. art. IV, § 1 (Full Faith and Credit Clause), § 2 (Privileges and Immunities Clause)). And Article VI subordinates state to federal law, declaring the "Constitution, and the Laws of the United States … the supreme Law of the Land." U.S. Const. art. VI, cl. 2.

This structure also "implies certain constitutional limitations on the sovereignty" of each State. *Hyatt*, 587 U.S. at 245 (cleaned up); *see, e.g.*, *id.* at 247 ("There are many other constitutional doctrines that are not spelled out in the Constitution but are nevertheless implicit in its structure and supported by historical practice[.]"); *Burnet v. Brooks*, 288 U.S. 378, 401 (1933) ("The limits of state power are defined in view of the relation of the states to each other in the Federal Union."). As relevant here, the Constitution "implicitly forbids" the application of state law when States have "conflicting rights," *Hyatt*, 587 U.S. at 246 (cleaned up), including where "the interstate or international 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); *see also* 1 St. George Tucker, *Blackstone's Commentaries*, app. note D, at 152 (1803) ("[T]he municipal laws of no one state can be resorted to as a general rule for the rest."); 3 Joseph Story, *Commentaries on the Constitution* 7–8 (1833) (explaining certain issues, such as bankruptcy, are "incapable of being redressed by the states" because of their interstate nature). Those disputes require federal rules of decision, and "[i]n absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards," i.e., federal common law. *Clearfield Tr. Co. v. United States*, 318 U.S. 363, 367 (1943).

This Court has long recognized that disputes over crossborder air and water emissions—including pollutants or effluents—are among those requiring federal rules of decision. In *Missouri v. Illinois* ("*Missouri I*"), 180 U.S. 208 (1901), Missouri filed an original action to enjoin the discharge of sewage from

Chicago into an interstate river system. This Court held the case could proceed, explaining that "[i]f Missouri were an independent and sovereign state all must admit that she could seek a remedy by negotiation, and, that failing, by force." *Id.* at 241. But "[d]iplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter"—i.e., the federal government—"would be devolved the duty of providing a remedy, and that remedy, we think, is found in the constitutional provisions" of Article III. *Id.*

The Court emphasized the need for federal law when revisiting the dispute five years later in *Missouri v. Illinois* ("*Missouri II*"), 200 U.S. 496 (1906). The controversy was an issue "of international importance," the Court explained, which "must follow and apply [federal] rules, even if legislation of one or both of the states seems to stand in the way." *Id.* at 518, 520.

The Court extended its reasoning in *Missouri I* and *Missouri II* to air emissions the very next term. *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907), involved an original action by Georgia to enjoin copper companies operating in Tennessee "from discharging noxious gas" that drifted across state lines. *Id.* at 236. The Court explained that "by their union," States "made the forcible abatement of outside nuisances impossible to each." *Id.* at 237. The Constitution, instead, provided for a "suit in this Court," governed by federal common law. *Id.* Indeed, that these early disputes over interstate air and water emissions were original actions in this Court underscores the "conflicting rights" of the States involved, *Hyatt*, 587 U.S. at 246 (cleaned up), and confirms the need for

federal rules of decision, notwithstanding any state law. *See also New York v. New Jersey*, 256 U.S. 296 (1921); *North Dakota v. Minnesota*, 263 U.S. 365 (1923); *New Jersey v. New York*, 283 U.S. 473 (1931).

Since then, "a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." *City of New York v. Chevron*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases). This Court has explained:

> Federal common law and not the varying common law of the individual States is … entitled and necessary to be recognized as a basis for dealing in uniform standard with the environmental rights of a State against improper impairment by sources outside its domain.

Illinois v. City of Milwaukee ("*Milwaukee I*"), 406 U.S. 91, 107 n.9 (1972) (quoting *Texas v. Pankey*, 441 F.2d 236, 241 (10th Cir. 1971)). That is because "[w]hen we deal with air and water in their ambient or interstate aspects," "there is an overriding federal interest in the need for a uniform rule of decision" and "the controversy touches basic interests of federalism." *Id.* at 103, 105 n.6.

This Court was clear that only federal law "can provide an adequate means for dealing with such claims," and federal common law applies "[u]ntil the field has been made the subject of comprehensive legislation or authorized administrative standards." *Id.* at 107 n.9 (quoting *Pankey*, 441 F.2d at 241). Indeed, federal common law in this area existed precisely because "state law cannot be used" given the "significant conflict between … federal policy or

interest and the use of state law" in crossborder air and water disputes. *City of Milwaukee v. Illinois* ("*Milwaukee II*"), 451 U.S. 304, 313 & n.7 (1981) (cleaned up).[4]

International Paper Co. v. Ouellette, 479 U.S. 481 (1987), affirmed these principles in detail. Surveying its case law, the Court reiterated that "regulation of interstate water pollution is a matter of federal, not state, law." *Id.* at 488. The "implicit corollary" of its holding that interstate disputes over water pollution "should be resolved by reference to federal common law," the Court explained, is that "state common law was preempted." *Id.*

The Court continued that "federal common law governed … interstate water" until Congress passed the Clean Water Act, which "now occupied the field" just as federal common law had previously. *Id.* at 487, 489. In other words, the Clean Water Act created a "comprehensive" and "all-encompassing program of water pollution regulation," and any claims under state law must be "specifically preserved" in the saving clauses of the statute. *Id.* at 492 (cleaned up).

The Court then interpreted the Clean Water Act's saving clauses to allow only claims brought "pursuant to the law of the *source* State," consistent with

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[4] In *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493 (1971), this Court declined to exercise original jurisdiction over a suit by Ohio against out-of-state chemical makers that it claimed were dumping mercury into streams that reached Lake Erie, suggesting the claims "would have to be adjudicated under state law." *Id.* at 498 n.3. That aspect of the decision was unanimously rejected the following year. *See Milwaukee I*, 406 U.S. at 102 n.3. The short-lived nature of that foray reinforces that state law cannot apply to crossborder emissions.

preexisting federal common law. *Id.* at 497–99. A contrary decision would have allowed "a number of different states to have independent and plenary regulatory authority over a single discharge," leading to a "chaotic confrontation between sovereign states" that Congress could not have intended. *Id.* at 496 (cleaned up). As a result, the Court concluded, the Clean Water Act "pre-empts state law to the extent that the state law is applied to an out-of-state point source." *Id.* at 500; *see also Milwaukee II*, 451 U.S. at 317–18.

Most recently, in *American Electric Power Co.* ("*AEP*") *v. Connecticut*, 564 U.S. 410 (2011), the Court continued this precedent in the context of a dispute about the alleged harms of greenhouse-gas emissions. Explaining that "air and water in their ambient or interstate aspects" are "meet for federal law governance," this Court was clear that "borrowing the law of a particular State" to govern disputes over crossborder emissions "would be inappropriate." *Id.* at 421–22 (cleaned up).

Throughout these cases, this Court has often compared disputes over air and water emissions to the "apportionment of interstate waters" and "questions of boundaries," subjects which indisputably require federal rules of decision (or state compacts approved by Congress). *Milwaukee I*, 406 U.S. at 105 (citing *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938); *Kansas v. Colorado*, 206 U.S. 46, 98 (1907)).[5] The Court has further explained

[5] *See also Hinderlider*, 304 U.S. at 110 ("Jurisdiction over controversies concerning rights in interstate streams is not

(continued)

what makes air and water cases unique from many other contexts—the relevant conduct "reaches, *through the agency of natural laws*, into the territory of another state," which requires a rule of decision that "will recognize the equal rights of both [States] and at the same time establish justice between them." *Kansas*, 206 U.S. at 97–98 (emphasis added) (discussing *Missouri I*, 180 U.S. 208).

These considerations and the corresponding need for federal law are even more applicable in cases about the effect of greenhouse-gas emissions on global climate. "Greenhouse gases once emitted become well mixed in the atmosphere," and "emissions in New Jersey may contribute no more to flooding in New York than emissions in China." *AEP*, 564 U.S. at 422 (cleaned up). The intermingled nature of these emissions underscores the need for a federal rule of decision, rather than allowing a patchwork of disparate state regimes.

Much of the reasoning in these cases also applies with equal force to international emissions. If States lack authority to regulate emissions originating in other States, it would be absurd to conclude they could somehow apply their state laws to emissions originating in other countries. This Court has never

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different from those concerning boundaries. These have been recognized as presenting federal questions."); *Kansas*, 206 U.S. at 97–98 (discussing *Missouri I*, 180 U.S. 208); *cf.* The Federalist No. 80, at 477–78 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("But there are many other sources, besides interfering claims of boundary, for which bickering and animosities may spring up among the members of the Union…. Whatever practices may have a tendency to disturb the harmony between the States, are proper objects of federal superintendence and control.").

suggested that nonsensical result. To the contrary, in *Milwaukee I*, this Court emphasized the "overriding federal interest in the need for a uniform rule of decision" by relying on case law about exclusive federal authority over an international matter. 406 U.S. at 105 n.6 (citing *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 421–27 (1964)). It would be passing strange if state law somehow had greater purchase in an area implicating the "exclusive authority" of the federal government "in international relations and with respect to foreign intercourse and trade." *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 15 (2025) (cleaned up); *see infra* Part III.

Crossborder emissions are thus "undoubtedly" one of the areas "where the basic scheme of the Constitution … demands" the use of federal law. *AEP*, 564 U.S. at 421–22.

B. The Clean Air Act Is a Comprehensive Scheme that Preserves Federal Authority Over Crossborder Emissions

Against that backdrop, Congress legislated the Clean Air Act as a detailed scheme "to protect and enhance the quality of the Nation's air resources." 42 U.S.C. § 7401(b)(1). To call the Act "comprehensive would be an understatement." *North Carolina ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 298 (4th Cir. 2010).

AEP held that, in regulating air emissions, Congress "displaced" the corresponding federal common law. 564 U.S. at 423–24. This confirmed the comprehensive nature of the Act. *See Milwaukee I*, 406 U.S. at 107 n.9 (explaining federal common law applies "[u]ntil the field has been made the subject of

comprehensive legislation or authorized administrative standards" (cleaned up)). The Act did not—expressly or impliedly—authorize a new and expansive role for States to regulate an area from which they have long been excluded.

1. The Clean Air Act Confirms Federal Authority Over Crossborder Emissions

Far from disrupting the traditional allocation of authority over crossborder emissions recognized by this Court, the text and structure of the Clean Air Act reinforce it. The Act retains federal authority over interstate and international air concerns, while assigning States a circumscribed role in regulating emissions that originate within their borders.

The cornerstone of the Act is Title I, 42 U.S.C. §§ 7401–7515, which directs the U.S. Environmental Protection Agency ("EPA") to set national standards for maximum levels of air pollutants as necessary to "protect the public health" and "welfare," *id.* § 7409(b). States, in turn, determine how to meet those standards within their borders, but must submit their "implementation plans" to EPA for approval. *Id.* § 7410(a), (*l*). If a State does not attain or maintain the national air quality standards, EPA can impose sanctions, *id.* § 7509; mandate plan revisions, *id.* §§ 7410(k)(5), 7502(b)–(d); or impose a federal plan, *id.* § 7410(c). Title I further regulates emissions from new or modified "stationary" sources, such as power plants, using a similar model. *Id.* § 7411.

Title V, *id.* §§ 7661–7661f, establishes a permitting program for large emissions sources that works together with Title I. EPA sets minimum

permitting standards, and States develop and implement permitting programs for in-state sources, subject to EPA approval and oversight. *Id.* § 7661a.

Congress further designed the Act to address crossborder emissions. The so-called "good neighbor" provision requires each State's implementation plan to prohibit emissions that will "contribute significantly to nonattainment in, or interfere with maintenance" of an air quality standard by another State. *Id.* § 7410(a)(2)(D)(i). States must also notify neighboring States if a proposed new source could affect their air quality. *Id.* § 7661d(a)(2); *see also id.* § 7426(a)(1) (requiring new sources to notify "all nearby States" prior to construction).

A State that believes emissions from sources in a neighboring State violate the good neighbor provision can petition EPA. *Id.* § 7426(b). If EPA agrees, it can require the neighboring State to amend its implementation plan, *id.* § 7410(k)(5), or adopt a federal plan, *id.* § 7410(c). If a State is unsatisfied with EPA's resolution, it can sue in a federal court of appeals. *Id.* § 7607(b)(1); *see, e.g.*, *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020) (challenging EPA's denial of petitions).

Relatedly, EPA can establish—on its own or by petition from a State—an "interstate … transport region" when there is "reason to believe that the interstate transport of air pollutants from one or more States" impedes another State from meeting the national air quality standards. 42 U.S.C. § 7506a(a). Each interstate transport region has a "commission," comprising representatives from EPA and each State within the region, to assess and recommend "strategies for mitigating the interstate pollution." *Id.*

§ 7506a(b). A commission can ask EPA to find that an implementation plan for a State within the region does not meet the good-neighbor requirements and must be revised. *Id.* § 7506a(c).[6] In addition, Congress provided for States to cooperatively address air concerns by entering into agreements, with certain restrictions, contingent on approval from Congress. *Id.* § 7402(c).

The Act also addresses international emissions. When the Secretary of State or an international agency informs EPA that emissions originating from a State affect a foreign country, the agency must notify the State and can require the State to revise its implementation plan to mitigate the emissions, with the affected foreign country invited to participate in related hearings. *Id.* § 7415(a)–(b). This section only applies if the foreign country gives the United States essentially the same rights in relation to emissions originating in that country. *Id.* § 7415(c).

The Act's other substantive titles address issues that inherently cross state borders and so reflect the same preeminent federal authority. Title II directs EPA to set nationwide standards for emissions from mobile sources—like cars, trucks, trains, and aircraft—that regularly transit state lines. *Id.* §§ 7521(a)(1), 7547, 7571. With one exception, States are expressly prohibited from adopting or attempting to enforce their own laws or regulations related to

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[6] Congress included additional instructions for interstate transport regions for ozone—a reactive gas with regional effects—and established a "single transport region for ozone" comprising the District of Columbia and eleven States in the northeast. 42 U.S.C. § 7511c(a).

emissions from these sources. *Id.* §§ 7543, 7573.[7] And Titles IV and VI direct EPA to oversee federal programs to reduce regional emissions that result in acid rain and to phase out substances that contribute to the global depletion of stratospheric ozone, respectively. *See id.* §§ 7651–7651o (acid rain), §§ 7671–7671q (ozone depletion). A State dissatisfied with EPA's actions in these programs can petition for rulemaking, 5 U.S.C. § 553(e); participate in EPA's administrative process, *id.* § 553(c); 42 U.S.C. § 7607(d); and, ultimately, sue in federal court, 42 U.S.C. § 7607(b)(1).

Taken together, the Act's provisions operate as "an harmonious whole" to preserve federal authority over matters that implicate multiple States or demand a national solution, while allowing States to regulate emissions originating within their own borders. *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012). Nothing in the Act, whether read alone or in combination, extends state law to crossborder emissions.

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[7] In limited circumstances, California can set its own emissions standards for some in-state vehicles and engines with EPA approval, 42 U.S.C. § 7543(b), (e)(2)(A), and other States can opt in to those standards, *id.* §§ 7507, 7543(e)(2)(B).

Title II also permits EPA to regulate fuels and fuel additives that may affect mobile source emissions. *Id.* § 7545(a). States are generally prohibited from issuing their own such regulations without EPA approval. *Id.* § 7545(c)(4)(A), (C). California, again, has a special exception. *Id.* § 7545(c)(4)(B).

2. Statutory Interpretation Confirms Congress Did Not Authorize New State Power Over Crossborder Emissions

Principles of statutory interpretation confirm the Clean Air Act did not authorize new state power over crossborder emissions. *See Bond v. United States*, 572 U.S. 844, 857 (2014) ("Congress legislates against the backdrop of certain unexpressed presumptions." (cleaned up)).

First, unless "a statutory purpose to the contrary is evident," this Court presumes that Congress does not lightly discard "long-established and familiar principles." *Texas v. United States*, 507 U.S. 529, 534 (1993) (cleaned up). Congress legislated the Act against the backdrop of the basic structure of the Constitution and longstanding precedent that disputes over crossborder emissions demand a uniform federal rule. *See, e.g.*, H.R. Rep. No. 95-294, at 329 (1977) (discussing *Tenn. Copper Co.*, 206 U.S. 230). Nothing in the Act indicates that Congress departed from that baseline. *See Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 672 (2026) (Barrett, J., concurring) ("background legal conventions and constitutional structure inform the most natural reading of a statute").

Second, to "significantly alter the balance between federal and state power," Congress must use "exceedingly clear language." *U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 621–22 (2020); *see also Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) ("If Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so *unmistakably clear* in the language of the statute."

(cleaned up) (emphasis added)). This "requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue" the asserted change in "the federal balance." *Bond*, 572 U.S. at 858 (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)). If Congress intended the Act to fundamentally change the relationship between the federal government and the States by giving States authority to regulate emissions throughout the country and around the world, then it needed to use exceedingly clear language. It did not.

The Colorado Supreme Court wrongly invoked a different interpretive principle—the "presumption against preemption"—to conclude that state law could apply in this case. Pet.App.11a–12a. But this Court's traditional framework for statutory preemption "is applicable only where the overlapping, dual jurisdiction of the Federal and State Governments makes it necessary to decide which law takes precedence." *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 610 (2019). Because "state law has never applied of its own force" to crossborder emissions, this case "does not present the ordinary question in pre-emption cases." *Id.* Each of Respondents' claims in some way turns on crossborder emissions, no matter how packaged. *See supra* Part I.

Moreover, "when the State regulates in an area where there has been a history of significant federal presence," the "'assumption' of nonpre-emption is not triggered." *United States v. Locke*, 529 U.S. 89, 108 (2000); *see also Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347–48 (2001). The field of crossborder emissions claims has always been governed by federal law—first federal common law, and now the Clean Air Act. *See Native Vill. of Kivalina*

v. ExxonMobil Corp., 696 F.3d 849, 857 (9th Cir. 2012) ("If the federal common law cause of action has been displaced by legislation, that means that 'the field has been made the subject of comprehensive legislation' by Congress." (quoting *Milwaukee II*, 451 U.S. at 314)). That leaves no room for claims under state law like those Respondents bring here.

3. The Clean Air Act's Saving Clauses Do Not Authorize Respondents' Claims

The Colorado Supreme Court invoked the Clean Air Act's "saving" clauses, 42 U.S.C. §§ 7416, 7604(e), to illustrate potential room for state law. Pet.App.14a. Those clauses do not permit anything like what Respondents attempt here.

Section 7416 provides that "nothing" in the Act—

> shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution[.]

42 U.S.C. § 7416. That text does not extend new powers to States. It is premised on existing "right[s]." *Id.* When Congress passed the Act, States had no right to enforce their own "standard," "limitation," or "requirement" for crossborder emissions, and § 7416 does not change that. *See supra* Part II.A.

If there were any doubt, the title of the provision removes it. *Dubin v. United States*, 599 U.S. 110, 120–21 (2023) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a

doubt about the meaning of a statute." (cleaned up)). Section 7416 is titled "*Retention* of State Authority." 42 U.S.C. § 7416 (emphasis added). To "retain" something is to "keep" what is already in "one's possession." *American Heritage Dictionary of the English Language* 1109 (1969). A State cannot retain a power it never possessed.

Relying on § 7604(e) fails for similar reasons. As part of the Act's section permitting citizen suits, it provides—

> Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

42 U.S.C. § 7604(e).

This text again only preserves "right[s]" that otherwise exist. *Id.* State law did not apply to crossborder emissions before the Act, and § 7604(e) does not change that. Indeed, § 7604(e) is even more limited than § 7416 because it is specifically limited to the effect of the citizen suit provision, not the Act as a whole.

Reading the saving clauses to impliedly extend state authority into a traditionally federal domain is also illogical "in their context and with a view to their place in the overall statutory scheme." *Parker Drilling*, 587 U.S. at 608 (cleaned up). Throughout the Act, Congress carefully identified the authorities allocated to States, limited States to regulating

emissions originating within their borders, and subjected state regulation to federal oversight. To conclude that two "ancillary" saving clauses tacitly authorize "in vague terms" an expansive new role for States to regulate crossborder emissions—and outside federal supervision—would be, at the very least, to "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001); *see also, e.g.*, *Cowpasture River Pres. Ass'n*, 590 U.S. at 621–22.

As this Court has observed, it is "quite unlikely that Congress would use a means so indirect as the saving clauses … to upset the settled division of authority by allowing States to impose additional unique substantive regulation" in an area otherwise committed to federal governance. *Locke*, 529 U.S. at 106. This Court should thus "decline to give broad effect to [the] saving clauses" because "doing so would upset the careful regulatory scheme established by federal law." *Id.*; *see also id.* ("Limiting the saving clauses as we have determined respects the established federal-state balance[.]").

This Court's analysis of the Clean Water Act's parallel saving clauses in *Ouellette* applies with full force here. 479 U.S. at 485, 492–96 (interpreting 33 U.S.C. §§ 1365(e), 1370); *see Merrick v. Diageo Americas Supply, Inc.*, 805 F.3d 685, 695 (6th Cir. 2015) ("What was true for the Clean Water Act holds true for the Clean Air Act."). Reading § 7416 and § 7604(e) to extend Colorado state law to crossborder emissions would "undermine" the "carefully drawn" Clean Air Act by creating "an irrational system of regulation" in which a single emissions source or operation could face "a variety" of "'vague' and 'indeterminate'" state common-law standards. *Ouellette*, 479 U.S. at 494, 496 (quoting *Milwaukee II*,

451 U.S. at 317). And it would allow States to "do indirectly what they could not do directly"—regulate emissions that originate beyond their borders—and set up a "chaotic confrontation between sovereign states." *Id.* at 495–96 (cleaned up).

The Clean Air Act's saving clauses do not authorize the use of state law that Respondents attempt here.

III. APPLYING STATE LAW TO INTERNATIONAL EMISSIONS INTERFERES WITH THE EXCLUSIVE AUTHORITY OF THE FEDERAL GOVERNMENT OVER FOREIGN AFFAIRS

Respondents do not stop at applying Colorado law to greenhouse-gas emissions originating within their State, or even within the United States. They insist that Colorado state law may govern emissions around the world. This intrudes on the exclusive authority of the federal government over foreign affairs.

The Constitution vests all authority over foreign affairs in the political branches of the federal government. *See supra* Part II.A. It then goes further and denies any such power to the States. U.S. Const. art. I, § 10, cl. 1 (prohibiting states from entering any treaty or alliance). These provisions ensure the Nation speaks "with 'one voice'" to the world. *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 414 (2003).

The Founders recognized the vital need for "uniformity in this country's dealings with foreign nations." *Id.* at 413 (cleaned up). As James Madison explained, "[i]f we are to be one nation in any respect, it clearly ought to be in respect to other nations." The Federalist No. 42, at 264. Indeed, he thought the

reasons behind denying States such powers were so obvious they "need no explanation." The Federalist No. 44, at 281.

This Court has been clear that "[n]o State can rewrite our foreign policy to conform to its own domestic policies," because "[p]ower over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942). It is thus beyond question that where "there is evidence of clear conflict between the policies adopted by" the federal government and a State in foreign affairs, "state law must give way." *Garamendi*, 539 U.S. at 421.

Congress and the President have long recognized that the "global nature" of the effects of greenhouse-gas emissions requires "international cooperation" and "a coordinated national policy." Global Climate Protection Act of 1987, Pub. L. No. 100-204, § 1102(5)–(6), 101 Stat. 1331, 1408 (codified at 15 U.S.C. § 2901 note (Global Climate Protection)). And they have agreed that "United States policy should seek to … foster cooperation among nations" and "work toward multilateral agreements." *Id.* § 1103(a)(2), (4), 101 Stat. at 1408.

Congress accordingly directed the "President, through the Environmental Protection Agency," to "be responsible for developing and proposing to Congress a coordinated national policy on global climate change," and to work through the Secretary of State "to coordinate those aspects of United States policy requiring action through the channels of multilateral diplomacy." *Id.* § 1103(b), (c), 101 Stat. at 1408–09. Although there is disagreement about the appropriate role for the President in setting such policy, this

framework—like the Clean Air Act's provisions for international emissions, 42 U.S.C. § 7415—clearly leaves no role for the States.

The political branches have thus resolved issues related to international emissions through multilateral, nation-to-nation agreements.[8] They have approached greenhouse gases the same way, opting for negotiated agreements and voluntary commitments over coercive, unilateral action. These agreements retain flexibility that allows countries—including the United States—to balance emissions policy with other priorities, such as the economy, energy independence, and national security.

For example, in 1992, President George H.W. Bush signed, and the Senate ratified, the United Nations Framework Convention on Climate Change ("UNFCCC"), which established an international forum for cooperative action on greenhouse-gas emissions. "[T]his international treaty provides the structure for collaboration and evolution of efforts over decades," but "does not … include quantitative and enforceable objectives and commitments for any Party."[9] Later Presidents have similarly entered and exited cooperative international agreements on

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[8] *See, e.g.*, Convention on Long-Range Transboundary Air Pollution, T.I.A.S. No. 10,541 (1979); La Paz Agreement, T.I.A.S. No. 10,827 (1983); Vienna Convention for the Protection of the Ozone Layer, T.I.A.S. No. 11,097 (1985); Montreal Protocol, T.I.A.S. No. 89-101 (1987); U.S.-Canada Air Quality Agreement, T.I.A.S. No. 11,783 (1991).

[9] Richard K. Lattanzio, Cong. Rsch. Serv., R46204, *The United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement: A Summary* 2 (Jan. 29, 2020), https://www.congress.gov/crs-product/R46204.

greenhouse gases, including the UNFCCC, as the priorities and policies of the United States have evolved.[10]

At the same time, Congress has rejected international efforts to impose mandatory obligations for greenhouse-gas emissions. In 1997, the Senate unanimously repudiated the Kyoto Protocol, which would have imposed "legally binding" emissions targets on the United States and similarly situated nations. S. Res. 98, 105th Cong., 143 Cong. Rec. 15808 (1997). Among other things, the Senate expressed concern over emissions requirements that could "result in serious harm to the United States economy, including significant job loss, trade disadvantages, increased energy and consumer costs, or any

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[10] In 2016, President Obama signed an executive agreement for the United States to undertake nonbinding emissions reductions targets under the UNFCCC Paris Agreement. *Remarks Announcing the Formal Entry of the United States into the UNFCCC Paris Agreement in Hangzhou, China*, 2 Pub. Papers of Barak Obama 1122, 1122–24 (Sept. 3, 2016), https://perma.cc/9K57-4YX5. The Trump Administration provided the United Nations with notice of withdrawal from the Agreement in 2019. U.S. Dep't of State, Press Release, *On the U.S. Withdrawal from the Paris Agreement* (Nov. 4, 2019), https://perma.cc/JB2G-4NWX. The Biden Administration rejoined in 2021. U.S. Dep't of State, Press Release, *The United States Officially Rejoins the Paris Agreement* (Feb. 19, 2021), https://perma.cc/XJ66-ZP6F. President Trump withdrew again in 2025. Exec. Order No. 14162, *Putting America First in International Environmental Agreements*, 90 Fed. Reg. 8455 (Jan. 30, 2025). In January 2026, President Trump announced that the United States would also withdraw from the UNFCCC. Memorandum of January 7, 2026, *Withdrawing the United States from International Organizations, Conventions, and Treaties That Are Contrary to the Interests of the United States*, 91 Fed. Reg. 2281 (Jan. 16, 2026).

combination thereof." *Id.* Congress then barred the EPA from implementing or funding the Protocol, Act of October 27, 2000, Pub. L. No. 106-377, app. A, 114 Stat. 1441, 1441A-41; *id.*, app. B, § 604, 114 Stat. at 1441A-85, and clarified the Protocol could not interfere with other national interests, such as military preparedness, *see* Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. No. 105-261, § 1232, 112 Stat. 1920, 2155 (1998). Congress made clear its position that the United States should not pursue emissions reductions at all costs, but must balance emissions policy with other national interests.[11]

Respondents would take a radically "different tack," however, and "use an iron fist where the [federal government] has consistently chosen"

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[11] Federal domestic policy has been similar, with Congress consistently opting for incentives over mandates, while accommodating other national priorities. In just the last few years, bipartisan majorities of Congress have passed dozens of provisions aimed at reducing greenhouse-gas emissions while advancing economic growth, energy independence, and national security. This includes funding research into energy storage; securing supply chains for critical minerals; and accelerating the commercialization of affordable, safe, and clean nuclear energy. *See, e.g.*, Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024, Pub. L. No. 118-67, div. B, 138 Stat. 1447, 1448–82; Energy Act of 2020, Pub. L. No. 116-260, div. Z, 134 Stat. 1182, 2418–2615; Utilizing Significant Emissions with Innovative Technologies Act, Pub. L. No. 116-260, div. S, §§ 101–102, 134 Stat. at 2243–55 (2020); Nuclear Energy Innovation and Modernization Act, Pub. L. No. 115-439, 132 Stat. 5565 (2019). And when Congress has opted for coercive regulation, it has been measured, targeted, and ultimately delayed. *See, e.g.*, 42 U.S.C. § 7436(c)–(h) (imposing a fee on emissions of methane—a greenhouse gas—above a specified threshold from a subset of oil and gas facilities).

another approach. *Garamendi*, 539 U.S. at 423, 427. Rather than embracing international cooperation and voluntary commitments that balance competing national priorities, Respondents seek to impose "a different, state system of economic pressure" that unilaterally compels global emissions reductions by penalizing the worldwide production, marketing, and sale of oil and gas. *Id.* at 423 (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 376 (2000)). They substitute their own judgment for that of Congress and the President, and attempt to dictate emissions policy not just for the United States, but for countries around the world.

The claims in this lawsuit, and others like it, have far "more than incidental effect in conflict with express foreign policy of the National Government" on crossborder emissions. *Id.* at 420. They undermine the international cooperation and national self-determination that has been the hallmark of federal emissions policy for decades. "[D]oing so undercuts … diplomatic discretion and the choice" made by Congress and the President to address international emissions in that manner, rather than through unilateral coercive action against energy producers. *Id.* at 423–24. The result is a "clear conflict" in means—if not goals—for addressing global greenhouse-gas emissions. *Id.* at 421.

The Constitution does not permit Respondents to engage in this significant, purposeful foray into foreign affairs. "Governmental power over external affairs is not distributed, but is vested exclusively in the national government." *United States v. Belmont*, 301 U.S. 324, 330 (1937). Therefore, "[o]ur system of government … imperatively requires that federal power in the field affecting foreign relations be left

entirely free from local interference." *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941). A state law that "has a direct impact upon foreign relations and may well adversely affect the power of the central government to deal with those problems" is foreclosed. *Zschernig v. Miller*, 389 U.S. 429, 441 (1968).

Respondents would sweep aside decades of delicate nation-to-nation negotiations that have balanced emissions reductions against the economy, energy policy, and national security, and would override Congress's rejection of unilateral mandatory liability schemes. And if they are allowed to proceed, more suits under other state laws would inevitably follow, each imposing its own standards. The world would hear not one national voice, but a cacophony of competing state commands. The Court should reject this attempt by Respondents to establish their "own foreign policy" from a Boulder courthouse. *Id.*

CONCLUSION

This Court should reverse the judgment below.

Respectfully submitted,

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