

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.

On Writ of Certiorari
to the Supreme Court of Colorado

**BRIEF OF BRADY CENTER TO PREVENT GUN
VIOLENCE AND GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE AS AMICI CURIAE
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICI CURIAE¹

Amici curiae Brady Center to Prevent Gun Violence (Brady) and Giffords Law Center to Prevent Gun Violence (Giffords Law Center) are nonprofit organizations dedicated to reducing and eliminating gun violence.

Founded in 1974, Brady is the nation's most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, legal advocacy, and political action. Brady works across Congress, courts, and communities, uniting gun owners and non-owners alike to take action to prevent gun violence. The organization has a substantial interest in ensuring that the Constitution is construed to protect Americans' fundamental right to live. Brady has filed amicus curiae briefs in many cases involving constitutional questions that implicate gun violence prevention.

Giffords Law Center is a survivor-led nonprofit organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities. It was founded more than 30 years ago following a gun massacre at a San Francisco law firm and renamed Giffords Law Center in 2017 after joining with the gun-safety organization founded by former Arizona Congresswoman Gabrielle Giffords. The Center has contributed technical exper-

¹ Amici certify that no counsel for a party authored this brief in whole or in part, and no person or entity, other than amici or their counsel, has made a monetary contribution to the preparation or submission of this brief.

tise and informed analysis as *amicus curiae* in numerous cases involving constitutional principles affecting gun policy.

Among the litigation that amici have filed and supported are lawsuits against gun manufacturers for certain conduct alleged to constitute a public nuisance at common law. Amici submit this brief in support of respondents to discuss those suits and other exercises of the States' police powers through litigation, as well as traditional limitations on such suits that have long preserved the balance of power between the state and federal governments and among the several States.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners ask this Court to hold that the Constitution categorically prohibits state and local governments from using state tort law to address harms caused by interstate or international greenhouse gas emissions. But the Framers of the Constitution expressly entrusted the States—and, through them, their political subdivisions—with primary responsibility for protecting the public welfare. *See, e.g.*, The Federalist No. 45, pp. 292-93 (C. Rossiter ed. 1961). And tort litigation is an important means through which state and local governments of all political stripes have long exercised that traditional power.

In advancing a novel constitutional rule that would curtail state tort litigation, petitioners make dire predictions of jurisdictional chaos and runaway jury verdicts. Their concerns are overblown. Longstanding legal doctrines and coordination tools already do much of the work that petitioners want their rule of constitutional preclusion to accomplish, and they do so without shutting the door on suits that

have long been a critical component of the States’ police powers.

In Part I, amici speak from firsthand knowledge in describing the important role that state and local government suits have played in addressing the predictable harms of guns and gun violence, and they discuss the use of similar suits to remedy the harms that tobacco, opioids, and other products inflict on communities. Part II identifies some of the mechanisms that police the boundaries of state tort suits and that should allay any fear of unchecked litigation. Among these tools are rules governing personal jurisdiction and choice of law, which ensure that defendants and controversies have a sufficient connection to the forum State. In addition, statutory preemption guards against claims that conflict with federal prerogatives and protects the primacy of federal policy where Congress has spoken. The examples in this brief illustrate the operation of these safeguards and show that there is no need to disturb the existing balance and curtail the traditional power of States to address complex threats to the welfare of their communities.

ARGUMENT

I. States and Municipalities Have Historically Used Common-Law Suits To Protect Their Residents from a Range of Public Threats.

1. This Court has long respected the “general power of governing, possessed by the States but not by the Federal Government.” *National Fed’n of Indep. Bus. v. Sebelius (NFIB)*, 567 U.S. 519, 536 (2012); see *Plumley v. Massachusetts*, 155 U.S. 461, 471 (1894). “Public safety, public health, morality, peace and quiet, law and order . . . are some of the more conspic-

uous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it.” *Berman v. Parker*, 348 U.S. 26, 32 (1954). “The concept of the public welfare is broad and inclusive[.]” *id.* at 33, as are the powers reserved to the States to protect the “lives, health, and property of the citizens,” *Boston Beer Co. v. Massachusetts*, 97 U.S. 25, 33 (1877). Common-law damages actions have traditionally been among the ways States exercise this power and protect the interests of their residents. *Cf. Cipollone v. Liggett Grp.*, 505 U.S. 504, 518 (1992) (acknowledging state common-law actions as an exercise of the police power); *Fertilizing Co. v. Hyde Park*, 97 U.S. 659, 667 (1878) (noting that “[t]o regulate and abate nuisances is one of [the] ordinary functions” of the police power long held by the States).

By establishing a default that reserves these broad powers to the States, “[t]he Framers thus ensured that powers which ‘in the ordinary course of affairs, concern the lives, liberties, and properties of the people’ [a]re held by governments more local and more accountable than a distant federal bureaucracy.” *NFIB*, 567 U.S. at 536 (quoting *The Federalist* No. 45, at 293 (J. Madison)). Consistent with the foundational nature of the power reserved to the States, this Court has “read carefully” those powers conferred on the federal government “to avoid creating a general federal authority akin to the police power.” *Id.* And in various contexts, including state-law tort suits, the Court has “start[ed] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Wyeth v. Levine*, 555

U.S. 555, 565 (2009) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).

2. States and their political subdivisions have long used common-law actions to protect their residents from major threats. “The judicial power to enjoin public nuisance at the instance of the Government has been a commonplace of jurisdiction in American judicial history.” *United Steelworkers of Am. v. United States*, 361 U.S. 39, 61 (1959) (Frankfurter, J., concurring) (citing state-court decisions). And like much of American law, this tradition derived from longstanding English practice. “Beginning at least as early as the sixteenth century the English courts have issued injunctions to abate public nuisances.” *Id.* at 60 (citing *Bond’s Case*, Moore 238 (1587); *Jacob Hall’s Case*, 1 Ventris 169, 1 Mod. 76 (1671); *The King v. Betterton*, 5 Mod. 142 (1696); *Baines v. Baker*, 3 Atk. 750, 1 Amb. 158 (1752); *Mayor of London v. Bolt*, 5 Ves. 129 (1799)). Here, respondents seek only damages, see Resps. Br. 49, which English law also allowed for in suits by those who had “suffer[ed] some extraordinary” harm from the nuisance, 3 William Blackstone, *Commentaries* *219-20.

Eventually, “[p]ublic nuisance arrived in the United States with the rest of the English common law and continued to evolve.” Leslie Kendrick, *The Perils & Promise of Public Nuisance*, 132 Yale L.J. 702, 718 (2023). Throughout the nineteenth and early twentieth centuries, “States and localities used public nuisance to address an array of disorderly or immoral conduct.” *Id.* at 719 (citing *Engle v. State*, 90 P.2d 988, 989 (Ariz. 1939) (gambling); *State ex rel. Wilcox v. Gilbert*, 147 N.W. 953, 954 (Minn. 1914) (bawdyhouses); *State ex rel. Att’y Gen. v. Canty*, 105 S.W. 1078, 1078 (Mo. 1907) (bullfighting); *Brown v. Perkins*, 78 Mass.

(12 Gray) 89, 90 (1858) (illegal sale of liquor)). Some early suits sought to redress in-state harms caused by out-of-state conduct. *See, e.g., State v. Lord*, 16 N.H. 357, 359 (N.H. 1844) (“The nuisance complained of being within this State, it is not important that the dam which occasioned it was in the State of Maine.”).

Contrary to petitioners’ view, that many of the problems state-law suits seek to redress are sufficiently serious and entrenched that they affect communities across the country (and even the globe) provides more reason, not less, to allow States and municipalities to continue to use their traditional authorities—including common-law suits—to address the local effects of these issues. A harm is no less real for a community simply because the cause is complex and other communities are suffering in the same way. And common-law litigation is no less important in these circumstances as a tool for addressing state and local harms—as the following examples show.

a. *Firearms*. The growing incidence of gun-related injuries is a matter of utmost concern for States and municipalities. In the last decade, at least 1.2 million Americans have been shot, and 416,708 have died from gun violence. Giffords Law Center, *Gun Violence Statistics*.² In 2022 alone, more than 48,000 people—or about 132 people per day—died from firearm-related injuries. Centers for Disease Control & Prevention (CDC), *Fast Facts: Firearm Injury & Death* (July 5, 2025).³ For each person shot and killed, two more are shot and survive, often suffering significant and lasting consequences. *See id.*; Giffords Law Center,

² <https://giffords.org/lawcenter/resources/gun-violence-statistics/> (last visited July 27, 2026).

³ <https://www.cdc.gov/firearm-violence/data-research/facts-stats/index.html>.

Gun Violence Statistics. Gun deaths take an average of twenty-four years of life from their victims—more than the average number of years lost as a result of any of the ten leading causes of death in the United States. Giffords Law Center, *Gun Violence Statistics*. Guns are also the leading cause of death for American children, as well as the leading cause of death by suicide. *Id.* From 2020-24, an average of 73 people died of gun suicide each day in the United States. Everytown for Gun Safety, *Gun Suicide* (analyzing CDC data).⁴ Active service members and veterans are disproportionately affected by gun suicide. Brady, *The Truth About Suicide & Guns* 12.⁵ State and local governments have a clear interest in protecting their residents from this profound threat to health and safety.

These governments have long relied on public nuisance theories to combat and redress the harms caused by guns and gun violence. For example, in the eighteenth and nineteenth centuries, many state and local governments considered the storage of gunpowder and firearms loaded with gunpowder to constitute a public nuisance due to the threat of fire that these items posed. *See* Heidi Li Feldman, *What It Takes to Write Statutes that Hold the Firearms Industry Accountable to Civil Justice*, 133 Yale L.J. Forum 717, 740-41 (2024).

Municipal governments continued to exercise this power in the twentieth century by bringing nuisance suits against gun manufacturers, distributors, and dealers to address the local effects of their conduct. In these cases, cities generally alleged that the firearms

⁴ <https://www.everytown.org/issues/gun-suicide/> (last visited July 27, 2026).

⁵ <https://assets.bradyunited.org/production/files/Gun-Suicide-Prevention.pdf?dm=1716461310> (last visited July 27, 2026).

industry “created and maintained a public nuisance by manufacturing, marketing, distributing, and selling firearms in ways that unreasonably interfere with the public health, wealth, and safety” of their cities. *City of Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1141 (Ohio 2002); *see also, e.g., City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1108-09 (Ill. 2004); *City of Gary ex rel. King v. Smith & Wesson Corp.*, 801 N.E.2d 1222, 1231 (Ind. 2003).⁶

After some of these lawsuits met with early success, Congress enacted the Protection of Lawful Commerce in Arms Act (PLCAA), Pub. L. No. 109-92, 119 Stat. 2095 (2005) (codified at 15 U.S.C. §§ 7901-7903). The Act generally precludes suits seeking relief from firearms manufacturers, distributors, and dealers for harm caused by the “criminal or unlawful misuse” of their products by “a third party.” 15 U.S.C. §§ 7902(a), 7903(5)(A); *see Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 285-

⁶ Courts in different States reached different results with respect to the merits of these claims. *Compare City of Gary*, 801 N.E.2d at 1241 (holding the City of Gary’s allegations “sufficient to give rise to a public nuisance generated by all defendants”), *and City of Cincinnati*, 768 N.E.2d at 1143-44 (sustaining a claim based on allegations that the defendants “created a nuisance through their ongoing conduct of marketing, distributing, and selling firearms in a manner that facilitated their flow into the illegal market”), *with City of Chicago*, 821 N.E.2d at 1148 (rejecting the contention that the City of Chicago could hold the defendants responsible for the “aggregate result of numerous unforeseeable intervening criminal acts by third parties not under defendants’ control”), *and Camden Cnty. Bd. of Chosen Freeholders v. Beretta, U.S.A. Corp.*, 273 F.3d 536, 540 (3d Cir. 2001) (declining to allow New Jersey’s “public nuisance claim to proceed against manufacturers for lawful products that are lawfully placed in the stream of commerce”).

86 (2025). At the same time, Congress expressly excluded certain actions from that grant of immunity, keeping “open[] a path to making a gun manufacturer civilly liable for the way a third party has used the weapon it made.” *Smith & Wesson*, 605 U.S. at 286. PLCAA’s “predicate exception,” for instance, permits suits alleging that a seller or manufacturer knowingly violated a state or federal statute “applicable to the sale or marketing of the product” and the violation was a proximate cause of the harm. 15 U.S.C. § 7903(5)(A)(iii).

Working within this framework, state and local governments have continued to bring and maintain suits against gun manufacturers, sellers, and distributors in a variety of circumstances. Just recently, Minnesota entered into a consent agreement after asserting state-law public-nuisance and other tort claims against defendants who it alleged knew or should have known that their stores were selling guns to straw purchasers. *Minnesota v. Fleet Farm LLC*, No. 22-CV-2694, 2025 WL 2802243, at *15-16 (D. Minn. Oct. 1, 2025); Consent Judgment, *Minnesota v. Fleet Farm LLC*, No. 22-CV-2694 (D. Minn. March 13, 2026), Dkt. 256. The City of Baltimore also successfully litigated public nuisance and negligence claims against a gun dealer and a manufacturer of unserialized, largely untraceable firearms, known as ghost guns, with settlement terms that included injunctive relief to promote public safety. See Office of the Mayor, City of Balt., *Mayor Brandon M. Scott and the City of Baltimore Reaches Settlement in “Ghost Gun”*

Lawsuit (Apr. 20, 2026);⁷ Ian Round, *Ghost gun retailer settles with Baltimore for \$2M*, The Daily Rec. (Apr. 21, 2026). Previously, New York City brought a series of public-nuisance suits against out-of-state gun dealers for facilitating illegal straw purchases. *See, e.g., City of New York v. A-1 Jewelry & Pawn, Inc.*, 501 F. Supp. 2d 369, 374 (E.D.N.Y. 2007). And it reached settlements with the dealers requiring them to change their business practices to prevent illegal sales. *See* Daniel W. Webster & Jon S. Vernick, *Spurring Responsible Firearms Sales Practices Through Litigation*, in *Reducing Gun Violence in America* 123, 126-27 (2013).

Private plaintiffs have also succeeded in certain state-law actions after PLCAA. Plaintiffs prevailed in a suit under Maryland tort law alleging that Walmart sold a gun to someone who it knew was mentally ill and had suicidal ideation. *See Brady v. Walmart Inc.*, No. 8:21-CV-1412, 2022 WL 2987078, at *6 (D. Md. July 28, 2022); Verdict Form, *Brady v. Walmart Inc.*, No. 8:21-CV-1412 (D. Md. Jan. 22, 2026), Dkt. 155. And other plaintiffs successfully stated a claim in connection with the mass shooting in Sandy Hook, Connecticut, ultimately reaching a settlement. *See Soto v. Bushmaster Firearms Int’l, LLC*, 202 A.3d 262 (Conn. 2019); Jacob D. Charles, *Sandy Hook Gun Settlement Marks a Turning Point*, Bloomberg Law (Feb. 28, 2022).

b. *Tobacco products.* State and local governments have also relied on state-law actions to address the overwhelming harm that tobacco products have vis-

⁷ <https://www.baltimorecity.gov/mayor/news-media/press-releases/2026-04-20-mayor-brandon-m-scott--and-the-city-of-baltimore-reaches-settlement-in-ghost-gun-lawsuit>.

ited on their communities. The major tobacco companies undertook a decades-long campaign to deceive consumers about the health risks of smoking. See *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1119-21 (D.C. Cir. 2009). As this Court has recognized, efforts to “prevent the deception of consumers” are at the core of the States’ “police powers,” *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146 (1963), especially where they are “directly addressed to protection of the public health,” *Head v. New Mexico Bd. of Exam’rs in Optometry*, 374 U.S. 424, 428 (1963). While the tobacco companies perpetrated these harms on a global scale, that in no way diminished the magnitude of the local effects—both in terms of the injury to residents and the attendant healthcare burdens for the States.

Despite significant declines in smoking following the publication of the first Surgeon General’s report on the subject in 1964, two-and-a-half decades later there remained more than 56 million smokers in the United States—many of them children. See CDC, *Reducing the Health Consequences of Smoking—25 Years of Progress—A Report of the Surgeon General* iii-iv (1989). By 1987, about 1 in 5 high school seniors still smoked daily, and more than 3,000 American teenagers started smoking each day, *id.* at vi, with catastrophic consequences for their health.

Beginning in the early 1990s, the States exercised their police powers through state tort suits to remedy these serious public health harms. Florida, Minnesota, Mississippi, and Texas led the way, and more than forty state attorneys general ultimately filed suits against the major tobacco manufacturers to recover costs associated with the local harms wrought by the tobacco companies’ global deceit. See U.S. Gov’t

Accountability Off., GAO-01-851, *Tobacco Settlement: States' Use of Master Settlement Agreement Payments* 3, 8 (June 29, 2001). The suits proceeded on a variety of state-law tort theories to address the tobacco companies' deceptive marketing practices and the catastrophic harms that result when their products are used as intended. See Cong. Rsch. Serv., RL33719, *Tobacco: Selected Legal Issues* 1 (2013). In 1998, the parties entered the Master Settlement Agreement, resolving these claims for \$206 billion and imposing significant restrictions on the defendants' marketing and other practices to mitigate future harms. *Master Settlement Agreement* §§ III, IX(b)-(c) (Nov. 23, 1998).⁸ Among other terms, the settlement prohibited the tobacco companies from using cartoons in their marketing or otherwise targeting youth. See *id.* at § III(a)-(b).

These suits led to a “steep decline” in youth smoking rates. CDC, *The Health Consequences of Smoking—50 Years of Progress—A Report of the Surgeon General* 718 (2014). But they did not mark the end of tobacco-related health crises.

As conventional cigarette use declined, the use of e-cigarettes rose dramatically, particularly among young people. See CDC, *E-Cigarette Use Among Youth and Young Adults—A Report of the Surgeon General* iii (2016). The products' small size and limited odor make them easy for students to conceal. See CDC, *Surgeon General's Advisory on E-Cigarette Use Among Youth* 1 (2018). By 2017, Juul had become the most popular of these devices. *Id.* at 1-2. “A typical

⁸ <https://www.naag.org/wp-content/uploads/2020/09/2019-01-MSA-and-Exhibits-Final.pdf>.

JUUL cartridge, or ‘pod,’ contains about as much nicotine as a pack of 20 regular cigarettes,” and the use of nicotine salts “allow[s] particularly high levels of nicotine to be inhaled more easily and with less irritation,” further enhancing their appeal to new users. *Id.* at 2. In December 2018, the Surgeon General stated that e-cigarette use “ha[d] become an epidemic among our nation’s young people,” with more than 3.6 million U.S. youth using those products, including 1 in 5 high school students and 1 in 20 middle school students. *Id.* at 1-2. And he called for “aggressive steps to protect our children from these highly potent products that risk exposing a new generation of young people to nicotine.” *Id.* at 2.

A bipartisan coalition of State and local governments again answered the call. In 2019, cities, counties, and school districts, among others, brought state-law public-nuisance and other common-law tort claims against Juul. Public Health L. Ctr., *Juul Litigation & Settlements (Frequently Asked Questions)* 7-8 (July 2023). These were ultimately organized in a multidistrict litigation (MDL) in the Northern District of California. *See In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, 396 F. Supp. 3d 1366, 1367 (J.P.M.L. 2019). Related actions brought in California state court were organized in Judicial Council Coordinated Proceedings (JCCP No. 5052)—the state-law analog of an MDL. *See In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 19-MD-02913, 2024 WL 1122420, at *3, *5 (N.D. Cal. Mar. 14, 2024) (approving settlement of MDL and JCCP claims). In December 2022, Juul reached a global resolution to settle the thousands of cases in these proceedings, including over 1,500 cases brought by government entities. Altria, *Altria Announces*

Agreement to Resolve Vast Majority of JUUL-Related State and Federal Litigation (May 10, 2023).⁹ Among other relief, the settlement provided resources to school districts, cities, and counties to abate youth nicotine addiction in their communities. See Public Health L. Ctr., *supra*, at 7-8. Separate from these proceedings, nearly every State investigated or brought suit against Juul, leading to significant settlements. See Public Health L. Ctr., *Juul Litigation Settlement—List*.¹⁰

c. *Opioids*. States, counties, and municipalities represented by officials from across the political spectrum have also filed public-nuisance suits seeking redress for the opioid epidemic, see Kendrick, *supra*, at 731-32, “one of the largest public health crises in this nation’s history,” *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024) (quotation marks omitted). In the 1990s, opioid prescriptions began to rise following the development of new medications (such as OxyContin) and “an influential pain advocacy campaign.” Johnathan H. Duff et al., Cong. Rsch. Serv., IF12260, *The Opioid Crisis in the United States: A Brief History* 1 (2022). By 2010, opioids were prescribed at a rate of 81.2 prescriptions per 100 persons. Gery P. Guy Jr. et al., *Vital Signs: Changes in Opioid Prescribing in the United States, 2006-2015*, 66 Morbidity & Mortality Wkly. Rep. 697, 698 (2017). And between 1999 and 2023, over 800,000 Americans died from opioid overdoses, both from prescription opiates and the waves of illicit substitutes that followed.

⁹ <https://investor.altria.com/press-releases/news-details/2023/Altria-Announces-Agreement-to-Resolve-Vast-Majority-of-JUUL-Related-State-and-Federal-Litigation/default.aspx>.

¹⁰ <https://www.publichealthlawcenter.org/resources/juul-litigation-settlement-list> (last visited July 31, 2026).

CDC, *Understanding the Opioid Overdose Epidemic* (June 9, 2025).

During President Trump’s first term, the federal government declared the opioid epidemic a public-health emergency, U.S. Gov’t Accountability Off., GAO-18-685R, *Opioid Crisis: Status of Public Health Emergency Authorities* 1 (2018), as nonmedical use of opioids led not only to fatal overdoses but also “to death, disease and suffering from many other causes with devastating medical, social and economic consequences.” Nora D. Volkow & Carlos Blanco, *The Changing Opioid Crisis: Development, Challenges and Opportunities*, 26 *Molecular Psychiatry* 218, 218 (2020).¹¹

Significant litigation followed, with a wide variety of plaintiffs suing those responsible for manufacturing, distributing, and prescribing opioids. All fifty States and myriad local governments brought suit, relying primarily on nuisance theories. *See* Kendrick, *supra*, at 705-07. Roughly 3,000 suits were organized into one of the largest MDL litigations in history. *Id.* at 709 & n.25, 732. These suits have faced a range of challenges, with mixed outcomes. Some resulted in significant judgments, later overturned, *see, e.g., State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021), while others were dismissed, only later

¹¹ Estimates of those economic consequences are staggering. In 2017 alone, the opioid crisis cost the United States over a trillion dollars in health care consumption, lost productivity, crime-related damage, and loss-of-life costs. Curtis Florence et al., *The Economic Burden of Opioid Use Disorder & Fatal Opioid Overdose in the United States, 2017*, 218 *Drug & Alcohol Dependence* 108350, 2-5 (2021).

to be revived, *see, e.g., City of Huntington v. AmerisourceBergen Drug Corp.*, 157 F.4th 547 (4th Cir. 2025).

Purdue Pharma, the manufacturer of OxyContin, was the target of many of these suits, initially from especially hard-hit States like West Virginia and Kentucky. *See Kendrick, supra*, at 731-32. Alongside other manufacturers and distributors, Purdue later faced public-nuisance claims across the country. *See id.* Many courts, including in Alaska, Tennessee, and Massachusetts, allowed these claims to proceed. *See, e.g., State v. Purdue Pharma L.P.*, No. 3AN-17-09966CI, 2018 WL 4468439, at *4 (Alaska Super. Ct. July 12, 2018); *State v. Purdue Pharma L.P.*, No. 1-173-18, 2019 WL 2331282, at *5-6 (Tenn. Cir. Ct. Feb. 22, 2019); *Commonwealth v. Purdue Pharma, L.P.*, No. 1884-cv-01808, 2019 WL 5495866, at *4-5 (Mass. Super. Ct. Sept. 17, 2019). Other courts, however, dismissed these claims based on issues of standing, causation, and other state-law limitations. *See, e.g., City of New Haven v. Purdue Pharma, L.P.*, No. X07HHDCV176086134S, 2019 WL 423990, at *3-6 (Conn. Super. Ct. Jan. 8, 2019); *State ex rel. Jennings v. Purdue Pharma L.P.*, No. CV N18C-01-223, 2019 WL 446382, at *11-13 (Del. Super. Ct. Feb. 4, 2019). Ultimately, Purdue, Johnson & Johnson, and other MDL defendants settled with many of these plaintiffs. *See Kendrick, supra*, at 733-35.

To date, opioid settlements with government entities exceed \$58 billion. Christine Minhee, *Opioid Settlement Tracker*.¹² States and their subdivisions are using that money to fund “a wide variety of strategies

¹² <https://www.opioidsettlementtracker.com/globalsettlementtracker> (last visited July 28, 2026).

to fight the opioid crisis.” Office of the Tex. Att’y Gen., *Global Opioid Settlement*.¹³ Plaintiffs also secured injunctive terms as part of those settlements, *see id.*, which continue to provide an important tool for state and local governments to redress the local effects of this national crisis.

The examples discussed above are just a few of the many instances in which state and local governments have exercised the police power through tort suits to protect their residents from far-reaching harms often caused by out-of-state conduct. Other recent examples include cases brought by States, cities, school districts, and private plaintiffs alleging that “social media platforms are defective because they are designed to maximize user screen time, which can encourage addictive behavior in adolescents.” *In re Social Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 637 F. Supp. 3d 1377, 1378 (J.P.M.L. 2022); *see also Moody v. NetChoice, LLC*, 603 U.S. 707, 768 (2024) (Alito, J., concurring in judgment) (noting that “research suggests that social media are having a devastating effect on many young people, leading to depression, isolation, bullying, and intense pressure to endorse the trend or cause of the day”). A number of States have also brought suits alleging that the videogame company, Roblox, designed and marketed its product in ways that facilitate harms to children. *See, e.g.*, Office of the Ala. Att’y Gen., *Attorney General Marshall Announces \$12.2 Million Settlement with Roblox to Ensure Child Safety* (Apr. 21, 2026); Office of the Neb. Att’y Gen., *Nebraska Attorney General Hilgers Files Lawsuit Against Roblox for Enabling*

¹³ <https://www.texasattorneygeneral.gov/globalopioidsettlement> (last visited July 28, 2026).

Child Exploitation & Deceptive Safety Practices (Mar. 4, 2026).¹⁴ And States have filed public-nuisance claims against Kia and Hyundai alleging that the companies’ failure to include certain anti-theft measures in their vehicles led to increased crime, unsafe roads, and a related diversion of public resources. *See In re Kia Hyundai Vehicle Theft Litig.*, No. 8:22-ML-03052, 2023 WL 8126870, at *7-8 (C.D. Cal. Nov. 17, 2023).

II. Longstanding Safeguards Obviate the Need for Novel Constitutional Limits on State and Local Governments’ Ability To Exercise the Police Power Through Litigation.

As the foregoing discussion shows, there is a long history of state and local governments across the country exercising their police powers through affirmative litigation to redress local harms caused by conduct carried out on a nationwide scale. Petitioners in this case, however, seek to wrest from state and local governments authority to use this means of protecting their citizens from the serious harms of climate change—with potentially significant consequences for other assertions of the police power down the road. Petitioners fear that affirming the decision below will “unleash[]” countless plaintiffs to establish “conflicting” policies and will empower “a single jury” in one jurisdiction “to impose ruinous liability,” despite having only a tenuous connection to the alleged misconduct. *Petr.* Br. 5. But petitioners offer no legal basis

¹⁴ <https://www.alabamaag.gov/attorney-general-marshall-announces-12-2-million-settlement-with-roblox-to-ensure-child-safety/>; <https://ago.nebraska.gov/nebraska-attorney-general-hilgers-files-lawsuit-against-roblox-enabling-child-exploitation-and>.

for the novel conclusion that the Constitution implicitly carves out for exclusive federal regulation problems that States have traditionally regulated. Existing law is more than “competent to govern” these claims and address petitioners’ concern. *Contra id.* at 21.

A variety of protections constrain common-law actions against out-of-state actors while leaving space for the exercise of traditional police powers to address serious threats to States’ residents. These longstanding limits on the reach of state-court authority and state-law causes of action have thus far averted the “chaos” that petitioners portend, despite the widespread use of state law to address the local effects of far-reaching harms. Petrs. Br. 5. These safeguards refute the contention of petitioners’ amici that “California could impose tort liability on every out-of-state firearms manufacturer and dealer, regardless of whether those firearms—lawful under the laws of every other State—ever found their way into California.” Consumers’ Research Br. 31. A variety of tools are also available to help manage and resolve the issues that potentially arise when suits across multiple jurisdictions seek to address the same problem, further allaying petitioners’ concerns of unwieldy litigation and runaway liability.

1. Constitutional limits on the exercise of personal jurisdiction over out-of-state defendants ensure that suits proceed only against parties with a sufficient connection to the forum State. In general, a state court may exercise jurisdiction over a nonresident defendant only if the defendant has “minimum contacts” with the forum state such that the exercise of jurisdiction “does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v.*

Washington, 326 U.S. 310, 316 (1945) (quotation marks omitted). Where an out-of-state defendant’s contacts with the forum are not “so continuous and systematic as to render them essentially at home in the forum State,” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quotation marks omitted), personal jurisdiction will lie only if there is a sufficient “affiliation between the forum and the underlying controversy.” *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 262 (2017). These requirements “are a consequence of territorial limitations on the power of the respective States.” *Id.* at 263.

Applying these principles, the *Bristol-Myers Squibb* Court held that “[t]he mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—d[id] not allow the State to assert specific jurisdiction over the nonresidents’ claims” when “the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California.” 582 U.S. at 264-65. In *Walden v. Fiore*, 571 U.S. 277 (2014), the Court likewise emphasized that, “[r]egardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum in a meaningful way.” *Id.* at 290. “What is needed” in each case “is a connection between the forum and the specific claims at issue.” *Bristol-Myers Squibb*, 582 U.S. at 265.

Constitutional choice-of-law constraints further limit the reach of state law. “[F]or a State’s substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.” *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981) (plurality opinion). “[I]f a State has only an insignificant contact with the parties and the occurrence or transaction, application of its law is unconstitutional.” *Id.* at 310-11. Applying that principle, the Court held in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822 (1985), that a Kansas court violated the Due Process and Full Faith and Credit Clauses in applying Kansas law to all claims asserted by a nationwide class arising from gas leases in multiple States when many of those claims had no connection to Kansas whatsoever. The Court emphasized that, “while a State may . . . assume jurisdiction over the claims of plaintiffs whose principal contacts are with other States, it may not use this assumption of jurisdiction as an added weight in the scale when considering the permissible constitutional limits on choice of substantive law.” *Id.* at 821.

2. Further limits on the reach of state-law actions stem from Congress’s authority to regulate matters in interstate commerce and to preclude state-law actions to the extent Congress believes they threaten interference with federal prerogatives. Congress has long calibrated the balance of state and federal power by selectively preempting state law where, in its judgment, federal interests so require. Even in areas that are subject to extensive federal regulation and significant public debate, Congress has typically detailed the specific state actions precluded by federal law rather than

broadly preempting entire fields the States have traditionally occupied.

This approach is evident in PLCAA’s limited immunity for gun manufacturers. As discussed, the Act precludes certain civil actions against firearms manufacturers arising from the unlawful misuse of firearms by third parties. 15 U.S.C. § 7903(5)(A). But rather than precluding state and local actions to redress the harms of the gun violence epidemic altogether, Congress specified certain limits on actions against gun manufacturers and distributors while leaving room for both survivors of gun violence and state and local governments to address these serious and ongoing harms. *Id.* § 7903(5)(A)(iii).¹⁵ A number of States responded by enacting laws that fit the exceptions that Congress expressly preserved. *See, e.g.*, Colo. Rev. Stat. § 6-27-101 *et seq.* (West 2024); Del. Code Ann. tit. 10 § 3930 (West 2022); Va. Code Ann. § 59.1-148.6 (West 2026); Wash. Rev. Code Ann. § 7.48.330 (West 2023). These developments underscore Congress’s ability to provide checks on state power and reveal the dynamic interplay of state and federal law.

Various federal statutes regulating tobacco products also show Congress striving to balance federal and state action. “For example, in the Comprehensive Smokeless Tobacco Health Education Act of 1986, Congress expressly pre-empted state or local imposition of a ‘statement relating to the use of smokeless tobacco products and health’ but, at the same time, preserved state-law damages actions based on those products.” *Cipollone*, 505 U.S. at 518 (citing 15 U.S.C.

¹⁵ While *amici* disagree with the particular balance Congress struck in PLCAA, they agree that congressional action (rather than constitutional implication) is the appropriate mechanism for preempting state law.

§ 4406) (footnote omitted). Congress has repeated this approach in subsequent tobacco legislation—including the Federal Cigarette Labeling and Advertising Act and its successor statute, at issue in *Cipollone*—thereby preempting state labeling requirements that would present a unique risk of patchwork regulation without further intruding on the States’ traditional authority. *See id.*

Similarly, in the Family Smoking Prevention and Tobacco Control Act, Congress generally preserved the States’ police powers in connection with the regulation of tobacco products even while giving the U.S. Food & Drug Administration (FDA) comprehensive authority to regulate such products. 21 U.S.C. §§ 387a(a), 387p(a)(1)-(2). The Act includes a narrow preemption provision precluding States from imposing “any requirement which is different from, or in addition to, any requirement under the provisions of this subchapter relating to tobacco product standards, pre-market review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.” *Id.* § 387p(a)(2)(A). But even that provision “does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products.” *Id.* § 387p(a)(2)(B).

Principles of conflict preemption can also factor in state-law tort suits. *See, e.g., PLIVA, Inc. v. Mensing*, 564 U.S. 604, 624 (2011) (holding state-law failure-to-warn claims against generic-drug manufacturers preempted because manufacturers could not comply with both state and federal law). In the opioid litigation, Purdue and other defendants argued that the plaintiffs’ claims conflicted with FDA’s approval of

opioid medications for pain treatment. *See, e.g., State ex rel. Jennings*, 2019 WL 446382, at *3. While one court accepted this argument, *State ex rel. Stenehjem v. Purdue Pharma L.P.*, No. 08-2018-CV-01300, 2019 WL 2245743, at *3-5 (N.D. Dist. Ct. May 10, 2019), most did not, even while sometimes dismissing the claims on other grounds, *see, e.g., In re National Prescription Opiate Litig.*, No. 1:17-MD-2804, 2019 WL 4178591, at *5 (N.D. Ohio Sept. 3, 2019) (rejecting the preemption argument and describing *Stenehjem* as, “by leaps and bounds, an outlier on the question of preemption”); *State ex rel. Jennings*, 2019 WL 446382, at *3-4 (likewise rejecting the preemption argument). The courts’ nuanced application of preemption principles further underscores the doctrine’s operation as a well-calibrated means of preserving the balance between federal and state prerogatives.

3. Important substantive limitations also inhere in the causes of action that form the basis for these state common-law suits. For example, where plaintiffs allege sweeping harms by multiple out-of-state actors, causation may be difficult to prove. *See generally Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 132 (2014) (“For centuries, it has been ‘a well established principle of [the common] law, that in all cases of loss, we are to attribute it to the proximate cause, and not to any remote cause.’” (quoting *Waters v. Merchants’ Louisville Ins. Co.*, 36 U.S. (11 Pet.) 213, 223 (1837))). In the context of gun litigation, this concern about the number of “steps between the conduct of the various defendants and the harms suffered by the plaintiffs” has surfaced as a defect in causation or with the plaintiffs’ standing. *Ganim v. Smith & Wesson Corp.*, 780 A.2d 98, 124 (Conn.

2001) (finding a lack of standing primarily on that basis); *see City of Chicago*, 821 N.E.2d at 1148 (concluding that plaintiffs failed to demonstrate proximate cause because the harm plaintiffs alleged was the “result of numerous unforeseeable intervening criminal acts by third parties” who were not under the control of the defendant firearms dealers).

The opioid litigation provides other examples of substantive common-law limits on public-nuisance suits. For example, the Oklahoma Supreme Court held that the requirement that a defendant must have ongoing control over the instrumentality of the nuisance in order to be required to abate it was fatal to a suit against a manufacturer that lacked control over products sold through multiple levels of distribution including wholesalers, pharmacies, hospitals, and doctors’ offices. *State ex rel. Hunter*, 499 P.3d at 727-29. And Delaware court held that the state’s public-nuisance law did not recognize suits related to products, *State ex rel. Jennings*, 2019 WL 446382, at *12, while the Ohio Supreme Court concluded that a state statute had expressly abrogated all products-related common-law public-nuisance claims, *In re National Prescription Opiate Litig.*, 265 N.E.3d 1, 9-10 (Ohio 2024) (answering a certified question from the Sixth Circuit). These inherent limitations on the reach of state law, along with “limitations on types of damages recoverable” under such theories, *City of Gary*, 801 N.E.2d at 1240, further obviate the concerns petitioners raise.

4. A variety of formal and informal coordination tools provide additional means of managing the complex litigation that arises from large-scale, cross-cutting harms like climate change and those discussed in this brief. These tools include multi-district litigation,

which streamlined the opioid litigation, as well as state-level coordinated proceedings, *supra*, pp.15-16. like the Judicial Council Coordinated Proceedings that brought order to the California e-cigarette suits, *supra*, p.13. States also frequently work together to address common issues, as they did in reaching the Master Settlement Agreement resolving claims against cigarette manufacturers, *supra*, pp.11-12, and in raising and settling claims against Juul, *supra*, pp.13-14. These mechanisms, among others, reduce the risk of inconsistent outcomes and make litigation more manageable for all parties.

Given all these protections, the Court can be assured that the law is already “competent to regulate” through state tort law local harms that also arise nationwide. *Petrs. Br. 2*. Much like the federal government, States and municipalities have “the power, capability, and institutional experience” to redress serious threats to the welfare of their residents. *Id.* at 47. And numerous features of state and federal law already impose appropriate restraints on that authority. There is simply no need to adopt the novel constitutional carve-out that petitioners press.

CONCLUSION

The judgment of the Colorado Supreme Court should be affirmed.

Respectfully submitted.

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