

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 *AMICUS CURIAE* DAVE JONES IN
SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

INTEREST OF THE <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
I. The insurance crisis unfolding is the increasing unavailability and unaffordability of home insurance.	4
A. Extreme weather caused by climate change is causing unprecedented property loss and will continue to do so.	4
B. Homeowners, not insurers, are ultimately bearing the costs of climate change.....	9
1. Insurance is best understood as the business of risk transfer.	9
2. Insurers are protecting themselves from the increasing risk associated with climate change.....	10
3. Insurers are managing their own risk by increasing premiums and not renewing policies, leaving homeowners to bear the brunt of losses attributable to climate change.	14
C. If unremedied and unchecked, climate- driven property losses will lead to economy- wide financial disaster.	17
II. A viable insurance market depends on the survival of tort claims.	21

III. Insurer <i>Amici</i> focus on protecting fossil fuel producers rather than policyholders.	24
A. The vast majority of the policyholders served by the Insurer <i>Amici</i> 's members are homeowners, car owners, and small businesses.	25
B. Insurer <i>Amici</i> ask this Court to interfere in the insurance market to remove uncertainty.....	28
C. Insurers, including members of the Insurer <i>Amici</i> associations, are financially entangled with fossil fuel producers.....	29
CONCLUSION	32

TABLE OF AUTHORITIES

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**BRIEF OF DAVE JONES AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

INTEREST OF THE *AMICUS CURIAE*¹

Amicus curiae Dave Jones is the director of the Climate Risk Initiative at the University of California, Berkeley's Center for Law, Energy and the Environment (CLEE) and an international leader and expert on climate risk and insurance regulation. He submits this brief in his individual capacity.

Mr. Jones served as California's Insurance Commissioner from 2011 through 2018, regulating the largest insurance market in the United States. During that time, he oversaw the implementation of the National Association of Insurance Commissioners (NAIC) Insurer Climate Risk Disclosure Survey, an insurer reporting mechanism that provides regulators with a window into how insurers assess and manage risks related to climate change; and the launch of the Climate Risk Carbon Initiative, which requires companies with over \$100 million in annual premiums to disclose investments in coal, oil, and gas. After serving as Insurance Commissioner, Mr. Jones served as the senior director for environmental risk at The Nature Conservancy and as a member of Governor Gavin Newsom's California Climate Risk Disclosure Advisory Group.

Mr. Jones submits this brief to bring to the Court's attention the rapidly escalating impact of cli-

¹ No party's counsel authored this brief in whole or in part, and nobody other than *amicus* and his counsel made any monetary contribution intended to fund its preparation or submission.

mate change on the home insurance market and the broader economy, including the housing sector. *Amicus* also seeks to convey the importance of state tort law, including loss recovery through tort, to viable insurance markets.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case asks whether federal law precludes states, counties, and municipalities from bringing claims against oil and gas companies to recover some of the financial burden associated with the altered climate caused by such companies' tortious conduct. *Amicus* respectfully urges this Court to hold that it does not. While Respondents have thoroughly briefed the legal arguments in support of that position, *amicus* writes separately to illuminate the scope of the climate crisis and its impact on property insurance and housing markets.

Climate change is not just tomorrow's scourge. It is today's reality. And while climate-driven catastrophes vary in severity and frequency across the United States, there is virtually no place in the country that is not experiencing worsening extreme weather events and suffering the costs that an altered climate imposes on state and local governments. The resulting increase in losses has caused insurers to stop renewing and writing home insurance policies in many parts of the United States and to dramatically raise premiums for property insurance, including home insurance, everywhere else. Higher rates and less underwriting, in turn, reduce access to mortgages and other forms of credit because lenders require borrowers to have and maintain insurance. These obstacles to homeownership and higher rents (as landlords pass

insurance costs on to renters) are exacerbating the housing crisis and will continue to do so, causing tangible in-state harms that require redress.

Amicus also writes to address the *amicus* brief submitted in support of Petitioners by three trade associations: the American Property and Casualty Insurance Association, Complex Insurance Claims Litigation Association, and Reinsurance Association of America (“Insurer *Amici*”).² Citing no data or other support, the Insurer *Amici* warn that their members’ own financial health and the availability and affordability of insurance in the energy sector are at risk if the Court does not interfere in matters of state law here and now.³ These *amici* fail to identify the true insurance crisis we face—the growing unavailability and unaffordability of home insurance amidst escalating climate impacts—or acknowledge their members’ role in embedding climate-related financial risk in our broader economic system. Nor do *amici* disclose their members’ financial stake in fossil fuel production. Leading U.S. insurance companies do not simply insure energy projects. They invest their reserves and surplus, which are made up of the premiums paid by homeowners and other insureds, in fossil fuel exploration and production.

ARGUMENT

Insurance is the climate crisis’s “canary in the coal mine.” While states, localities, and the federal govern-

² Brief for Am. Prop. and Casualty Ins. Ass’n et al. as Amici Curiae Supporting Petitioners, *Suncor Energy Inc. v. Cnty. Comm’rs of Boulder Cnty.* (No. 25-170), 2026 WL 1482687 [hereinafter “Insurer *Amici* Br.”].

³ See, e.g., *id.* at *3–4.

ment can and should implement policy initiatives to help make insurance more affordable and more available, those initiatives will work primarily as stop-gap solutions that will be outrun by the growing magnitude of losses attributable to climate change. Enabling states and localities to recover against those whose tortious conduct is the underlying cause of the loss is essential.

I. The insurance crisis unfolding is the increasing unavailability and unaffordability of home insurance.

As climate change fuels extreme weather events, property damage and loss is occurring on an unprecedented scale. Insurers are responding to climate change by withdrawing from or charging more to the customers who need them most: homeowners. Uninsurability will, in turn, have devastating effects on the housing market and broader economy.

A. Extreme weather caused by climate change is causing unprecedented property loss and will continue to do so.

There is strong expert consensus that global temperatures are on track to rise over two degrees Celsius above preindustrial levels, potentially by as early as 2029.⁴ Climate scientists warn about approaching “tipping points” that will accelerate changes in cli-

⁴ Seth Wynes et al., *Perceptions of Carbon Dioxide Emission Reductions and Future Warming Among Climate Experts*, 5 Comm’n Earth & Env’t, Sept. 2024, no. 498, at 2; Madeleine Cuff, *The World Could Experience a Year Above 2°C Of Warming by 2029*, New Scientist (May 28, 2025), <https://perma.cc/2T24-T7VX>.

mate and related catastrophic events.⁵ And even if all greenhouse-gas emissions ceased today, substantial climate change has been baked into our climatic system.⁶ Already we are experiencing the impacts: more frequent and intense extreme weather events, such as wildfires, hurricanes, tornadoes, droughts, extreme heat, river and coastal floods, and severe convective storms. These climate-driven catastrophes will kill and injure more people, damage and destroy more property, render entire geographies unlivable, undermine agricultural production, and potentially result in mass migration.⁷

Climate change is also expanding losses from perils that were not historically major sources of loss. Rising global temperatures result in larger amounts of water vapor in the atmosphere, which, coupled with changing weather patterns, enable “atmospheric rivers” of water vapor to stay over a particular geography for longer periods of time.⁸ Severe convective storms

⁵ See Raymond Zhong & Mira Rojanasakul, *How Close Are the Planet’s Climate Tipping Points?*, N.Y. Times (Aug. 11, 2024), <https://perma.cc/X6GN-W46X>.

⁶ See M.T. Dvorak et al., *Estimating the Timing of Geophysical Commitment to 1.5 and 2.0°C of Global Warming*, 12 *Nature Climate Change* 547, 549 (2022).

⁷ See Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* 51 (2023), <https://perma.cc/G2JE-6DLV>; Gaia Vince, *Where We’ll End Up Living as the Planet Burns*, Time (Aug. 31, 2022), <https://perma.cc/6KK2-RZ2C>.

⁸ See Michael D. Warner, Clifford F. Mass & Eric P. Salathé, *Changes in Winter Atmospheric Rivers Along the North American West Coast in CMIP5 Climate Models*, 16 *J. Hydrometeorology* 118, 124–26 (2015); Esprit Smith, *Climate Change May Lead to Bigger Atmospheric Rivers*, NASA (May 24, 2018),

characterized by heavy rain, sometimes with hail and wind, are landing across the United States in historically unprecedented ways.⁹ Globally, such storms accounted for at least forty-one percent of insured natural-catastrophe losses in 2024.¹⁰

The effects of climate change are not limited to states historically prone to wildfires (like California) or hurricanes (like Louisiana and Florida). For example, wildfires are not only intensifying in the West but are also occurring in New England and the Southeast.¹¹ Meanwhile, the Gulf and Atlantic states are being hit with more intense hurricanes and wind.¹²

Extreme weather is causing property loss—particularly damage and destruction of homes—at unprecedented levels.¹³ Storms in areas traditionally understood to be disaster-prone are more frequent and more

<https://perma.cc/4MN2-76K6>; *How Climate Change Is Fueling Extreme Weather*, Earthjustice (July 28, 2025), <https://perma.cc/7YNH-XRQC>.

⁹ Chandan Banerjee et al., *Natural Catastrophes: Insured Losses on Trend to USD 145 Billion in 2025*, Swiss Re Inst. 7 (Apr. 2025), <https://perma.cc/5J6K-7QH9>.

¹⁰ Steve Bowen, Brian Kerschner & Jin Zheng Ng, *Natural Catastrophe and Climate Report: 2024*, Gallagher Re 6 (Jan. 2025), <https://perma.cc/H4N3-QM7V>.

¹¹ See, e.g., Olivia Gieger, *Could the Northeast Burn Again?*, Inside Climate News (Feb. 18, 2025), <https://perma.cc/QVT3-X5CN>.

¹² Shreya Vuttaluru & Jack Prator, *More Hurricanes Are Slamming the Gulf Coast. Is This the New Normal?*, Tampa Bay Times (May 31, 2025), <https://perma.cc/4CQ9-Z2WQ>.

¹³ Dave Jones, *The Uninsurable Future: The Climate Threat to Property Insurance, and How to Stop It*, 135 Yale L.J. Forum 181, 182 (2025), <https://perma.cc/8QGJ-ZTE2>.

severe,¹⁴ and the incidence of severe storms in regions that were previously understood to be relatively safe is on the rise.¹⁵ The situation is equally dire with respect to wildfire risk. Rising housing costs and housing demand in the 1990s and early 2000s pushed development out from major metropolitan areas into areas where houses and wildland vegetation meet and intermingle.¹⁶ Those areas are now at greater risk of wildfires today than they were thirty-five years ago.¹⁷

Globally, insurers covered over \$137 billion in weather-related catastrophe losses (payments to policyholders) in 2024—significantly exceeding the ten-

¹⁴ Jeff Masters, *Global warming is making the strongest hurricanes stronger*, Yale Climate Connections (Apr. 15, 2026), <https://perma.cc/Y24C-L7GL> (reporting on numerous studies showing that “human-caused ocean warming has intensified recent hurricanes”); Abigail Bottar, *Tornadoes are breaking records in new Midwest states this year as Tornado Alley moves east*, IPM Newsroom (July 13, 2026), <https://perma.cc/ATP7-4VF7>.

¹⁵ See, e.g., *id.*; see also Sharon Cornelissen et al., *Overburdened: The Dramatic Increase in Homeowners Insurance Premiums and Its Impacts on American Homeowners*, Consumer Fed’n Am. (2025), at 8, <https://perma.cc/2CFE-SU8F> [hereinafter “*Overburdened*”] (“[A] rise in extreme weather events is impacting almost all parts of the country.”); *Prepare for the growing risk of damaging hail*, Zurich Am. Ins. Co. (Jan. 12, 2026), <https://perma.cc/63F8-MMFF> (explaining that “increasingly frequent severe convective storms are the leaders in property damage”).

¹⁶ Volker C. Radeloff et al., *Rapid Growth of the US Wildland-Urban Interface Raises Wildfire Risk*, 115 PNAS 3314, 3314 (2018).

¹⁷ *Id.* (explaining that the wildland–urban interface (or “WUI”) grew rapidly from 1990 to 2019 and that “WUI growth often results in more wildfire ignitions, putting more lives and houses at risk.”)

year average of \$98 billion.¹⁸ Swiss Re, one of the world’s largest and oldest reinsurers, reports that global insured losses are averaging a five to seven percent annual increase.¹⁹ If 2026 reflects the long-run trend, Swiss Re predicts that insurance losses this year will total \$148 billion.²⁰ In a peak-year loss scenario, of which there is a one-in-ten chance, that number could reach \$320 billion.²¹ And, as risk exposure continues to accumulate, a peak-loss year in 2030 could cause as much as \$400 billion in global insured losses.²²

The situation in the United States is consistent with these global trends. Indeed, the “defining disasters” of 2025 were the Palisades and Eaton fires in Los Angeles County, which resulted in combined insured losses of \$40 billion—“by far the largest global insured wildfire loss events to date.”²³

¹⁸ Banerjee et al., *supra* note 9, at 2.

¹⁹ Lucia Bevere et al., *Natural catastrophes in 2025: the persistent rise of wildfire and storm risk*, Swiss Re Inst. 2 (Nov. 2026), <https://perma.cc/AB4B-RNGM>.

²⁰ *Id.*

²¹ *Id.* Peak-year loss scenarios are ones in which “the natural catastrophe insured loss exceeds trends by at least one standard deviation.” *Id.* at 2 n.2.

²² *Id.* at 2.

²³ *Id.* at 6. Globally, North America is experiencing the highest growth in losses due to wildfires. *Id.* at 15. The region’s historical loss growth is driven primarily by wildfire and severe convective storms, which is “an umbrella term for a range of hazards including tornadic and straight-line winds,” as well as large hailstones. *Id.* at 2 n.1, 16.

B. Homeowners, not insurers, are ultimately bearing the costs of climate change.

1. Insurance is best understood as the business of risk transfer.

Insurance serves as a financial instrument that protects against risk and loss.²⁴ A private sector insurance company remains profitable by pricing and spreading risk and excluding or limiting coverage for losses and risks that are so high that the insurer is likely to lose money covering them.²⁵ Property insurance is no exception to these fundamental principles, which are crucial to understanding the nature of the insurance crisis we now face.

Insurers “underwrite” the risk of loss or damage to a property by writing or renewing a property-insurance policy, usually for a year’s duration, in which the insurer agrees to cover and make payments for certain losses or damage to the property up to a coverage limit and subject to exclusions and terms set forth in the insurance policy. Property-insurance companies use several methods to evaluate, price, and underwrite risk for properties, including catastrophe models.

In addition to spreading risk across a pool of insureds, insurance companies transfer risk to global capital markets through a financial product known as

²⁴ See Kenneth S. Abraham, *Distributing Risk: Insurance, Legal Theory, And Public Policy* 1–2 (1986); see also Peter Zweifel, Roland Eisen & David L. Eckles, *Insurance Economics* 1–4 (2d ed. 2021).

²⁵ See Abraham, *supra* note 24, at 1–2; Paula Jarzabkowski et al., *Disaster Insurance Reimagined: Protection in a Time of Increasing Risk* 5–6 (2023).

“reinsurance,” which can be generally characterized as insurance for insurance companies.²⁶ Insurers also mitigate their losses through the practice of subrogation. When insurers have paid policyholder claims, they can sue to recover losses from third parties whose actions or inactions are responsible for the damage, in whole or in part. See *infra* Section II.

2. Insurers are protecting themselves from the increasing risk associated with climate change.

Insurer *Amici* suggest that the Court’s intervention to create “consistent standards of liability for GHG emissions” is necessary to “preserve [the] solvency” of insurers and “a viable insurance market.” Insurer *Amici* Br. at *10–11. That is not borne out by the facts.

As the Insurer *Amici* themselves explain, climate litigation risk already “fall[s] outside commercial general liability [] insurance.” *Id.* at *3–4 (noting that commercial general liability policies “bar coverage for damage caused by [greenhouse gas] emissions”).²⁷ Un-

²⁶ See *N. River Ins. Co. v. Ace Am. Reinsurance Co.*, 361 F.3d 134, 137 (2d Cir. 2004) (describing reinsurance as “a contract by which one insurer insures the risks of another insurer”) (quoting *People ex rel. Cont’l Ins. Co. v. Miller*, 70 N.E. 10, 12 (N.Y. 1904)).

²⁷ See, e.g., *AES Corp. v. Steadfast Ins. Co.*, 725 S.E.2d 532, 536, 538 (Va. 2012) (ruling in favor of an insurer who declined to defend its policyholder in an action seeking liability for allegedly damaging a community by contributing to climate change through its GHG emissions because the climate-related harm was alleged to be a natural and probable consequence of the policyholder’s intentional GHG-emitting acts and therefore not an “accident” or “occurrence” covered by its commercial general lia-

like homeowners, both insurers and oil and gas conglomerates have had every opportunity to contract around the very threat of which they now complain (i.e., liability from lawsuits that allege climate-destructive and wrongful or deceptive conduct caused harm) through specialized policies that “address exposures, including [to] climate risks.” *Id.* at *3. To the extent Petitioners misconstrue the claims at issue here as challenging GHG-emitting conduct,²⁸ any liability arising from harm caused by such conduct would typically fall under a pollution exclusion or not qualify as an accident or occurrence within the scope of commercial general liability coverage. Moreover, liability for wrongful conduct or intentional torts is generally not insurable.²⁹ Thus, the various claims Petitioners face in this and similar suits are not a matter

bility policy); *Aloha Petrol., Ltd. v. Nat’l Union Fire Ins. Co. of Pittsburgh*, 557 P.3d 837, 841 (Haw. 2024) (finding that greenhouse gases “are ‘pollutants’ under the insurance policies’ pollution exclusion clause” and thus that the policies “bar[red] coverage for emitting (or misleading the public about emitting)” such gases).

²⁸ That characterization is incorrect. See Respondents’ Br. at 4 (“Respondents request only damages and do not ‘seek to enjoin any oil and gas operations or sales’ or ‘seek to enforce emissions controls of any kind.’”).

²⁹ A contract of insurance to indemnify a person for damages resulting from willful or intentional misconduct is generally void as against public policy. See *Swan Consultants, Inc. v. Travelers Prop. Cas. Co.*, 360 F. Supp. 2d 582, 591 (S.D.N.Y. 2005); 3A Steven Plitt et al., *Public Policy Against Coverage for Intentional or Willful Misconduct*, Couch on Ins. § 101:22 (3d ed. 2026). Indeed, several states have legislated to preclude insurance coverage for the insured’s own willful or wrongful acts. For instance, in both California and North Dakota, “[a]n insurer is not liable for a loss caused by the willful act of the insured . . .” Cal. Ins. Code § 533 (West 2026); N.D. Cent. Code § 26.1–32–04.

for insurance. It is therefore hard to understand how the underlying lawsuits here could pose a threat to the insurance companies the Insurer *Amici* represent. Insurer *Amici* present no evidence that the prospect of state-law tort liability for fossil fuel companies has any bearing on access to insurance in the energy sector, let alone on the viability of the entire insurance market or the “insurability of climate risk itself.” *Id.* at *11–12.

Further, the property and casualty insurance industry—which includes providers of auto insurance, home insurance, and workers’ compensation and basic liability insurance for businesses—is currently enjoying record profits.³⁰ In 2024, “industry profits were about double their typical annual profits”—a 15.6% return on revenue—and “dividends to shareholders were higher than other types of stock.”³¹ While the industry collected \$1.03 trillion in premiums in 2024, “after paying claims, it had \$383 billion left over.”³²

Some of those profits are attributable to the fact that insurers are paying proportionally *less* to policyholders today than they were forty years ago. In the 1980s and 1990s, for every \$1 collected in premiums, the average amount insurers spent to cover claims ex-

³⁰ Brian Shearer, *How to Lower the Insurance “Tax” by \$150 Million* 5, Vand. Pol’y Accelerator (2026), <https://perma.cc/S7LC-X9BY>.

³¹ *Id.*

³² *Id.* at 8.

ceeded \$0.80.³³ Today, they spend only \$0.62.³⁴ Insurers’ record profits are also driven in part by the fact that “insurance companies earn a significant portion of their profits by investing customers’ premiums and the surplus capital they hold.”³⁵ In 2024, property and casualty insurers earned more than \$164 billion by investing cash-on-hand in the markets.³⁶ Insurers who point to underwriting losses to argue that they are not making a profit are hiding the ball: because underwriting profit excludes investment income, framing insurer solvency or profitability as a sole function of underwriting profit “fundamentally misrepresents the profitability of the business.”³⁷

³³ *Id.* at 9 (citing Shaun S. Wang et al., *U.S. Property-Casualty: Underwriting Cycle Modeling and Risk Benchmarks*, 5 *Cas. Actuarial Soc’y* 91, 93 (2012)).

³⁴ *Id.* at 5 (citing Nat’l Ass’n of Ins. Comm’rs, *2024 Market Share Reports for Property/Casualty Groups and Companies by State and Countrywide* 4 (June 2025), <https://perma.cc/MRC9-FXVY> [hereinafter “2024 Market Share Reports”] (reflecting a 61.8% loss ratio)).

³⁵ *Overburdened*, *supra* note 15, at 8.

³⁶ Nat’l Ass’n Ins. Comm’rs, *U.S. Property & Casualty and Title Insurance Industries – 2024 Full Year Results* 1 (2025), <https://perma.cc/NL3Y-TKPW> [hereinafter “2024 Full Year Results”].

³⁷ *Overburdened*, *supra* note 15, at 8; see also Shearer, *supra* note 30, at 18 (explaining that property and casualty insurers’ “primary source of returns is investing the trust fund that is capitalized with the premiums and used to pay out claims”).

3. *Insurers are managing their own risk by increasing premiums and not renewing policies, leaving homeowners to bear the brunt of losses attributable to climate change.*

Insurers have responded to increased climate-related losses in two principal ways. First, they have been increasing the price of insurance. Second, they have been reducing their exposure to losses by not renewing insurance policies and not writing new insurance policies. Both responses are evident in recent data.

Home insurance premiums in the U.S. grew by almost 50% between 2020 and 2024—more than double the rate of inflation.³⁸ From 2021 to 2024 alone, they rose by an average of 24%.³⁹ But rate hikes were much more extreme in certain areas: premium rates rose 59% in Utah, 50% in Illinois, 48% in Arizona, and 44% in Pennsylvania.⁴⁰ While annual premiums increased by an average of \$648 during the same period, homeowners in Florida, Louisiana, and Kentucky were hit much harder, with average rate increases of \$2,118, \$1,775, and \$1,426, respectively.⁴¹ Industry groups are quick to attribute that increase to “challenges from economic inflation and natural catastrophes over

³⁸ Shearer, *supra* note 30, at 4; 2024 Market Share Reports, *supra* note 34, at 4.

³⁹ *Overburdened*, *supra* note 15, at 5.

⁴⁰ *Id.*

⁴¹ *Id.*

the past few years,”⁴² but the dramatic rise in premiums cannot be explained by those factors alone.⁴³

At the same time, insurers are declining to renew home and small-business owners’ property insurance and reducing the issuance of new insurance policies in localities across the United States.⁴⁴ Since 2018, more than 1.9 million home insurance contracts nationwide have been dropped.⁴⁵ In more than 200 counties, the

⁴² 2024 Full Year Results, *supra* note 36, at 2.

⁴³ See Shearer, *supra* note 30, at 4–5 (explaining that increased premiums are also paying for advertising, higher commission payments to independent agents, and high dividends to investors). As the National Association of Insurance Commissioners reported in 2025: “[N]et income over the last two decades has aided the growth in surplus, resulting in a positive trend in writings leverage, leaving P&C insurers well positioned to grow and withstand large scale losses.” 2024 Full Year Results, *supra* note 36, at 3.

⁴⁴ Christopher Flavelle, *Insurers Are Deserting Homeowners as Climate Shocks Worsen*, N.Y. Times (Dec. 18, 2024) <https://perma.cc/E72E-E9P9>. Unsurprisingly, higher premiums are correlated with higher nonrenewal rates. Staff of S. Comm. on the Budget, 118th Cong., *Next to Fall: The Climate-Driven Insurance Crisis Is Here—And Getting Worse* 24–25 (Comm. Print 2024), <https://perma.cc/AR44-P8UD> [hereinafter “Next to Fall”]. Both increasing premiums and higher nonrenewal rates reflect insurers’ attempts to avoid or reduce liability for loss in areas with relatively high expected losses from climate-related destruction. Steve Koller, *California’s Homeowners Insurance Market Is a National Bellwether*, Harv. Joint Ctr. for Hous. Stud. (May 27, 2025), <https://perma.cc/X94U-KQE2> (describing nonrenewal rates and “sharply rising” premiums as “two signs of instability in private residential insurance markets”).

⁴⁵ Flavelle, *supra* note 44. Nonrenewal rates “surged by nearly 30 percent from 2018 to 2022,” totaling more than 620,000 a year. Todd C. Frankel, *California isn’t the only place where insurers are dropping homeowners*, Wash. Post (Jan. 18, 2025), <https://perma.cc/46SL-9SD2>.

nonrenewal rate has tripled or more.⁴⁶ This strategy is particularly evident in California, where major national insurance companies announced in 2023 that they would stop writing insurance policies for new customers and would increase their selective nonrenewal of homes and businesses perceived as too risky.⁴⁷ But insurers are adopting this tactic nationwide.⁴⁸

The growing unavailability of property insurance offered by traditional licensed private insurance companies forces homeowners to (1) buy insurance from less regulated and more expensive “surplus lines” insurers⁴⁹ or from “residual markets” established by states as insurers of last resort,⁵⁰ (2) accept “force-placed” policies selected by mortgage lenders to serve their interests, or (3) go without insurance entirely.

Federal Reserve Chairperson Jerome Powell addressed the looming crisis caused by nonrenewal during his semiannual testimony before Congress, confirming that “financial institutions and insurance pro-

⁴⁶ Flavelle, *supra* note 44.

⁴⁷ Jones, *supra* note 13, at 196–97.

⁴⁸ Bill Ainsworth & Susan Milligan, *Climate change is upending homeowners insurance nationwide*, Harv. Bus. Sch. Inst. for Bus. in Glob. Soc’y (Aug. 21, 2025), <https://perma.cc/BG9D-DHAQ> (“Some insurance companies have announced they will leave certain markets because it’s too expensive to cover homeowners in areas with a high risk of natural disasters.”).

⁴⁹ In 2024, the surplus-lines market made up twelve percent of the direct premiums written within the overall property and casualty market in the United States. *Surplus Lines*, Nat’l Ass’n Ins. Comm’rs (Oct. 27, 2025), <https://perma.cc/YU44-D59H>.

⁵⁰ See Alfonso Pating & Rob Moore, *Can FAIR Plans Help Build a More Resilient Future?*, Nat’l Res. Def. Council (Jan. 15, 2025), <https://perma.cc/3VC4-UAL9>.

viders are increasingly avoiding areas prone to wildfires, hurricanes,” and other climate-driven risks.⁵¹ He went on: “If you fast-forward 10 or 15 years, there are going to be regions of the country where you can’t get a mortgage.”⁵²

C. If unremedied and unchecked, climate-driven property losses will lead to economy-wide financial disaster.

For most American homeowners, their house is not only their home but also their largest financial asset.⁵³ As a result, forgoing insurance puts them “at risk of losing everything in just one disaster.”⁵⁴ Taxes and insurance account for more than half of the monthly mortgage payment for 9% of single-family mortgages.⁵⁵ The increased prices and decreased availability of property insurance thus burden not just homeowners but also local communities and the economy at large. That burden is heavy: as of 2024, one in thirteen U.S. homeowners—equivalent to 6.1 million people—were uninsured.⁵⁶ And a recent study found that most homeowners lack sufficient insurance coverage to

⁵¹ Matthew Sellers, *Insurance Could Kill Mortgages in Some of the US* — Powell, *Ins. Bus. Mag.* (Feb. 12, 2025), <https://perma.cc/7NWW-5YD8>.

⁵² *Id.*

⁵³ *Overburdened*, *supra* note 15, at 5.

⁵⁴ *Id.*

⁵⁵ Ainsworth & Milligan, *supra* note 48. In 2014, that number was 4%. *Id.*

⁵⁶ Sharon Cornelissen, Douglas Heller & Michael DeLong, *Exposed: A Report on 1.6 Trillion Dollars of Uninsured American Homes*, *Consumer Fed’n Am.* (2024), at 4, <https://perma.cc/JC3M-DYZD>.

fully rebuild their homes after a total loss.⁵⁷ The resulting burden falls not just on individual homeowners, but also on local governments and municipalities that face increased demand for public services just as their property tax revenue base shrinks.⁵⁸

The Federal Reserve Bank of Dallas recently found that in areas where insurance prices are rising due to losses from climate-driven events, there is a corresponding increase in mortgage-payment delinquencies and defaults.⁵⁹ A recent analysis of the impact of climate change on U.S. housing markets over the next 25 years found that homes may decrease in value by over one trillion dollars across the country.⁶⁰ Increased insurance costs and decreased availability of

⁵⁷ J. Anthony Cookson, Emily A. Gallagher & Philip Mulder, *Coverage Neglect in Homeowners Insurance 2* (Fed. Resrv. Bank of Philadelphia, Working Paper 25-09, 2025), <https://perma.cc/J8FF-G74Y>.

⁵⁸ Adam G. Levin, IF12557: *Local Fiscal Effects of Disasters*, Cong. Rsch. Serv. (Dec. 21, 2023), <https://perma.cc/65R4-A2VM>. A 2021 report found that major hurricanes “reduced local government revenues by 7% over the ensuing 10 years” and that “[e]xpenditures on public services—including water, sewer, trash, and public transit—declined by 13% over the same period.” *Id.* Maui County’s mayor proposed a series of budget cuts, including to the Maui Fire and Public Safety Department, following the August 2023 wildfires on the island. *Id.*

⁵⁹ Shan Ge, Stephanie Johnson & Nitzan Tzur-Ilan, *Climate Risk, Insurance Premiums, and the Effects on Mortgage and Credit Outcomes*, Fed. Rsrv. Bank of Dall. 5–7 (Jan. 2025), <https://perma.cc/8RD2-UPYN>.

⁶⁰ *The 12th National Risk Assessment: Property Prices in Peril*, First St. 38 (Feb. 2025), <https://perma.cc/JJD7-X9UY>.

insurance will reduce the ability to obtain a mortgage and reduce demand for housing.⁶¹

Owners and operators of affordable housing and rental homes are also getting squeezed by insurance price increases.⁶² Affordable-housing owners and operators cannot raise rents to cover higher insurance costs, increasing the potential for defaults on loans and discouraging the development of new, permanently affordable housing.⁶³ And as owners and operators of market-rate rental housing raise rents to cover increased insurance costs, rental housing becomes even more unaffordable, exacerbating the nation's housing crisis.⁶⁴ Increased pricing of property insurance thus falls hardest on low-income house-

⁶¹ See *id.* at 8–9, 18, 30–31; see also Evan M. Eastman, Kyeonghee Kim & Tingyu Zhou, Homeowners Insurance and Housing Prices 37 (Apr. 2025) (unpublished manuscript), <https://perma.cc/4733-KAQV> (finding that a 10% increase in the price of homeowners insurance is associated with a 6.5% decline in home values).

⁶² Christina Spicher & Libby Starling, *Rising Property Insurance Costs Stress Multifamily Housing*, Fed. Rsrv. Bank Minneapolis (Mar. 4, 2025), <https://perma.cc/X8XB-T9BF>.

⁶³ *Id.*

⁶⁴ See Emma Waters, *Rising Insurance Costs and the Impact on Housing Affordability*, Bipartisan Pol'y Ctr. (June 25, 2024), <https://perma.cc/57GP-4DPD>. Rent increases have major impacts on the almost half of American renter households who spend more than 30% of their income on housing. See U.S. Census Bureau, Nearly Half of Renter Households Are Cost-Burdened, Proportions Differ by Race, Press Release No. CB24-150 (Sep. 12, 2024), <https://perma.cc/ELX4-3FFR>.

holds, who have limited or no ability to cover increased home-insurance or rent costs.⁶⁵

The dwindling availability of mortgages and affordable housing is just one example of the systemic risk that climate change poses for the financial system through the impact of climate-driven losses on insurers. The data is clear: Economic losses and physical impacts from weather-related events will negatively impact local economies, which will affect employment opportunities and people’s ability to continue living in areas hit by disasters.⁶⁶ Climate-related migration will reduce housing demand in these geographies, which, in turn, will further drive down housing values.⁶⁷ There is potential for a runaway effect—lower property values also squeeze local-government budgets, which rely on property taxes as their primary revenue source,⁶⁸ thus degrading the quality of local services and reducing the ability to service or issue debt necessary to finance local public-infrastructure projects.

Without insurance, households and businesses cannot recover or rebuild in the wake of more climate-driven disasters.⁶⁹ But the impact is not limited to high-risk areas. As losses mount, we can expect to see

⁶⁵ Matthew Oakley & James Kirkup, Insurance and the Poverty Premium, Soc. Mkt. Found. 3–5 (Mar. 2023), <https://perma.cc/SCH3-U8SN>.

⁶⁶ See *The 12th National Risk Assessment: Property Prices in Peril*, *supra* note 60, at 27–29.

⁶⁷ *Id.* at 30.

⁶⁸ *How Local Governments Raise Their Tax Dollars*, Pew Charitable Tr. (July 27, 2021), <https://perma.cc/5MBQ-55NE>.

⁶⁹ See Pilita Clark, *Meltdown: How the Next Financial Crisis Starts*, *Fin. Times* (June 26, 2025), <https://perma.cc/96BE-JQBX>.

more unaffordable insurance price increases, and more insurers declining to write or renew insurance, all of which will negatively impact credit availability and asset values, which, in turn, will harm the real economy.⁷⁰

It is difficult to overstate the risks that climate change imposes on our communities and housing markets, including within specific states and localities. A recent report from the U.S. Senate Budget Committee described the economic consequences of the insurance crisis as “2008 all over again”—except with more permanent results.⁷¹

II. A viable insurance market depends on the survival of tort claims.

Tort law and the right to loss recovery are fundamental to the efficient operation of the insurance market. Preempting state tort law for climate-related injuries will force property owners—including public entities acting on their own behalf and for

⁷⁰ Next to Fall, *supra* note 44, at 5–7. The U.S. housing market, which is valued at over \$55 trillion, is central to the economy. See Treh Manhertz, *U.S. Housing Market Value Hits \$55.1 Trillion*, Zillow (Sep. 8, 2025), <https://perma.cc/FHE9-VD6J>. Home values constitute over 25% of the total net worth of American households, and in a typical year, spending on housing accounts for over 15% of U.S. gross domestic product. See Lida R. Weinstock, Cong. Rsch. Serv., IF11327, Introduction to U.S. Economy: Housing Market 1–2 (2025), <https://perma.cc/V3C3-86FS>.

⁷¹ Next to Fall, *supra* note 44, at 7 (“In the event that such a large-scale climate-driven decline in property values were to occur, the economic damage would not be confined to affected coastal communities. Across the United States, people would lose jobs, economic activity would contract, and retirement investments would lose value.”).

their residents—to rely exclusively on insurance and taxpayer funds to remediate property damage. Those same limits could prevent insurers from utilizing the longstanding practice of subrogation to recoup losses paid to policyholders. Thus, disallowing the state law claims at issue here could interfere with insurance business practices, introducing federal constraints on an area that, like tort law, is typically left to the states.

Subrogation is an important tool for the insurance sector to recover losses from responsible parties⁷² that exists under almost all insurance contracts and in the overwhelming majority of states.⁷³ Insurance companies have recognized the importance of subrogation and opposed any restrictions on their exercise of the right.⁷⁴ Beyond

⁷² See Johnny C. Parker, *The Made Whole Doctrine: Unraveling the Enigma Wrapped in the Mystery of Insurance Subrogation*, 70 Mo. L. Rev. 723, 723 (2005) (“Subrogation exists in the law as a mechanism for insurers to recover the costs of reimbursing injured insured parties.”).

⁷³ See *Fifty-State Compilation of Subrogation-Related Laws for Property Claims*, White & Williams LLP (Jan. 2025) (describing the subrogation laws of each state), <https://perma.cc/W7B2-6AKM>. Subrogation enables insurers to stand in the shoes of their policyholder and sue third parties to recover the insurance proceeds paid to the policyholder. See, e.g., *Allied Mut. Ins. Co. v. Heiken*, 675 N.W.2d 820, 824–25 (Iowa 2004); *Frazier v. Workers’ Comp. Appeal Bd. (Bayada Nurses, Inc.)*, 52 A.3d 241, 248 n.10 (Pa. 2012); *Sullivan v. Naiman*, 32 A.2d 589, 590 (N.J. 1943); *Allstate Ins. Co. v. Mel Raption, Inc.*, 92 Cal. Rptr. 2d 151, 156 (Cal. Ct. App. 2000).

⁷⁴ Gia Snape, *Push for subrogation bans for utilities could undermine insurance markets: NAMIC CEO*, Ins. Bus. (Jul 24, 2025), <https://perma.cc/Y5VB-85HD>; see also *State Government – Public Welfare Actions – Determinations and Settlements: Hearing on*

loss recovery for the insurer, subrogation helps minimize premium increases for policyholders.⁷⁵ As discussed above, home insurance premiums are rising at unsustainable rates.

Insurers have utilized their right to subrogation to recoup at least part of their losses resulting from catastrophic events. For example, \$11 billion of the over \$12 billion California insurers paid to the victims of the 2018 Camp Fire was recovered through subrogation claims against the entity responsible for starting the fire, Pacific Gas & Electric.⁷⁶ The Complex Insurance Claims Litigation Association has submitted *amicus* briefs in cases supporting insurers exercising the right of subrogation.⁷⁷

The Insurer *Amici* concede that “traditional tort doctrines” are “the essential framework within which insurers can model risk.” Insurer *Amici* Br. at

H.B. 922 Before the H. Comm. on the Judiciary, 2024 Leg., 446th Sess. 2 (Md. 2024) (statement of Nancy J. Egan, State Gov’t Rels. Counsel Am. Prop. Casualty Ins. Ass’n), <https://perma.cc/MWK7-2DDB>.

⁷⁵ Joseph Du Bray, *A Response to the Anti-Subrogation Argument: What Really Emerged from Pandora’s Box*, 41 S.D. L. Rev. 264, 274 (1996) (“[s]ubrogation costs not recovered are thus reflected in and spread over future premiums among the issuing insurer”); John D. Ingram, *Priority between Insurer and Insured in Subrogation Recoveries*, 3 Conn. Ins. L.J. 105, 125 (1996) (“insurers [that] maximize their subrogation recoveries usually charge lower premiums and offer better terms and availability of coverage than do those insurers who ignore or do not maximize subrogation opportunities”).

⁷⁶ *PG&E Settles Wildfire Claims with Insurers for \$11 Billion*, Reuters (Sep. 13, 2019), <https://perma.cc/S2XV-NJQ8>.

⁷⁷ See, e.g., *Millennium Holdings LLC v. Glidden Co.*, 53 N.E.3d 723, 723 (N.Y. 2016); *Cargill, Inc. v. Ace Am. Ins. Co.*, 784 N.W.2d 341, 343 (Minn. 2010).

11. Those doctrines apply to property and casualty insurance as well as commercial liability insurance. The exercise of the right of subrogation is primarily predicated on the assertion of state-based tort claims.⁷⁸ The availability of recovery utilizing tort law is therefore an important factor in underwriting property and casualty insurance and has a bearing on the functioning of the insurance market and premiums charged to customers. Despite their recognition of the importance of traditional tort doctrines to the insurance sector, Insurer *Amici* are asking the Court to limit recourse to such doctrines to address a significant and growing source of loss for communities and insurers: fossil fuel companies' tortious conduct and its climate consequences. This would create more unpredictability, not less, in the insurance market.

III. Insurer *Amici* focus on protecting fossil fuel producers rather than policyholders.

In promotional materials, *amicus* American Property Casualty Insurance Association says its members “insure what matters most,”⁷⁹ protecting the interests of families, businesses, and communities across the country. In the Insurer *Amici*'s brief to this Court, however, what matters most is “the availability and affordability of liability insurance for the energy sector.” Insurer *Amici* Br. at 13. In-

⁷⁸ Stephen J. Spurr, *Subrogation and its Consequences for Tort Litigation*, 67 Int'l Rev. L. & Econ., Sept. 2021, no. 106002, at 1–2), <https://perma.cc/6SVH-A6MT> (discussing generally).

⁷⁹ APCIA, *What Matters Most – Landing Page*, <https://perma.cc/ZCZ9-GUCS>.

surer *Amici* do not discuss the mounting risk that the climate crisis poses to insurance availability and affordability for tens of millions of homeowners and to the insurance industry itself; their brief addresses the risk that the fossil fuel companies driving climate change will be held accountable. That focus does not reflect the insurance crisis confronting homeowners who make up the vast majority of their members' clientele, nor does it reflect the real source of "unpredictability and uncertainty" upending insurance: climate change. Insurer *Amici* Br. at 14.

A. The vast majority of the policyholders served by the Insurer *Amici*'s members are homeowners, car owners, and small businesses.

The American Property Casualty Insurance Association promotes itself as "the primary national trade association for home, auto, and business insurers, representing companies that protect families, businesses, and communities."⁸⁰ The Complex Insurance Claims Litigation Association and the Reinsurance Association of America are also trade associations of property and casualty insurance and reinsurance companies. Insurer *Amici* Br. at 2. AP-CIA represents 66% of the U.S. property casualty insurance market, Insurer *Amici* Br. at 1, and has more than 1,200 individual insurance companies as

⁸⁰ See, e.g., Ltr. from Jonathan Schreiber, Assoc. Vice President of State Gov't Rels., Am. Prop. Casualty Ins. Ass'n, to Sen. Robert Britto, Chair, R.I. Sen. Committee on Commerce (Mar. 31, 2026), <https://perma.cc/F59Y-LTRG>.

members.⁸¹ APCIA repeatedly claims to “Insure What Matters Most” and, in doing so, works with its members “to provide peace of mind to families and communities.”⁸² In valuing what matters most, APCIA’s promotional material emphasizes that its members have protected 98 million homes, 234 million vehicles, invested \$208 million in communities, and, in 2025, paid out \$614 billion in claims.⁸³ APCIA and RAA have avowed their commitment to “[their] policyholders and American consumers,” affirming that “[i]nsurers’ core business is protecting people and helping them recover from catastrophic losses to their homes, cars, and businesses.”⁸⁴

Yet the Insurer *Amici* brief makes no mention of homeowners’ insurance, families, or communities. Insurer *Amici*’s only reference to the “public” is to the insurers themselves preserving their solvency by “spread[ing] the costs of uncertainty across the insurance-buying public.” Insurer *Amici* Br. at 10. Instead, the brief focuses exclusively on the well-being of the fossil fuel sector—the primary driver of climate change—and its access to liability insurance.

In 2024, the size of the combined U.S. and Canadian home insurance market in terms of premium

⁸¹ APCIA, *About Us – Mission, Vision, and Guiding Principles*, <https://perma.cc/HTC4-P2RU>.

⁸² APCIA 2027 *Emerging Leaders Conference – Landing Page*, <https://perma.cc/DC8C-SPSS>.

⁸³ APCIA, *What Matters Most – Landing Page*, <https://perma.cc/ZCZ9-GUCS>.

⁸⁴ Am. Prop. Casualty Ins. Ass’n & Reinsurance Ass’n of Am., *Factors Influencing Insurance Availability and Affordability for Consumers* 30 (Dec. 2023), <https://perma.cc/2G5V-N2ND> [hereinafter “Factors Influencing Ins. Availability”].

value was \$173.15 billion.⁸⁵ The combined North American oil and gas insurance market in 2025 was valued at \$14.9 billion.⁸⁶ The market for home insurance was 12 times larger than the oil and gas industry insurance market.

Elsewhere, Insurer *Amici* have paid lip service to the severity of climate-related losses and implications for insurance.⁸⁷ Here, however, they largely ignore the mounting risk of climate *impacts* and focus instead on the risk of climate *accountability*. Speculation about the *potential* risk Respondents' claims could pose to a subset of energy companies should not eclipse evidence of the *actual* risk that climate change poses to the vast majority of insurance policyholders and the American public and the actual harms it is already inflicting due to insurers not renewing or writing insurance for homes.

Likewise, concern about the “erosion of affordable coverage” for the energy sector, Insurer *Amici* Br. at 12, pales in comparison to the broader coverage gap. Insurer *Amici* assert, without clear attribution of the source data, that the *global* protection gap for the energy sector is estimated at \$60 billion. Insurer

⁸⁵ 2024 Market Share Reports, *supra* note 34, at 151.

⁸⁶ Data Intelo, *Oil and Gas Insurance Market Outlook 2025-2034*, “Key Takeaways” (Apr. 2026), <https://perma.cc/9ZS2-LTHR> (including Canada and the United States in North America but Mexico in Latin America).

⁸⁷ See, e.g., Factors Influencing Ins. Availability, *supra* note 84, at 2, 16; Reinsurance Ass’n Am., *Climate Change*, <https://perma.cc/YGL9-5MW7> (“Climate change is a significant issue to insurers. Damages from climate change are expected to have a tremendous impact on flood insurance, fire insurance, crop insurance, D&O insurance, and general liability coverage.”).

Amici Br. at 14.⁸⁸ That is just a fraction of the overall natural catastrophe protection gap, estimated, in 2025, to be \$424 billion globally and \$140 billion in North America alone.⁸⁹ Affordability and access to insurance are major problems for homeowners in the U.S. See *supra* p. 15.

B. Insurer *Amici* ask this Court to interfere in the insurance market to remove uncertainty.

Physical risk and physical impacts from climate change, not liability risk from pending climate litigation, is driving uncertainty in the insurance market—including in the energy sector. Nonrenewals and increased premiums in the home insurance market track exposure to climate impacts, not climate litigation.⁹⁰ Likewise, as Insurer *Amici* admit,

⁸⁸ The source of the \$60 billion figure is not stated in the citation provided by Insurer *Amici*. See Insurer *Amici* Br. 14–15 n.8 (citing *Navigating insurance coverage challenges in the energy sector*, KPMG, <https://perma.cc/257G-LALT>). It is not clear whether the \$60 billion refers to an average for a period of time or to the protection gap at a set time. Furthermore, the \$60 billion does not appear to be actuarial data, sourced from regulatory filings, or located in peer-reviewed literature.

⁸⁹ Swiss Re Inst., *Natural Catastrophes*, <https://perma.cc/2DAZ-QURB>. Other commentators estimate the protection gap in the U.S. to be \$571 billion for the 10 years from 2015–2024. Holly Turner, *The climate adaptation imperative: tackling the protection gap for climate insurance*, Schrodgers (Aug. 20, 2025), <https://perma.cc/X39G-D3ZZ>.

⁹⁰ The Federal Insurance Office, in partnership with the NAIC, published data in January 2025 covering 246 million homeowners policies showing that, over a period of years, nonrenewal rates in the highest climate-risk ZIP codes were 80% higher than

climate-related extreme weather events are driving insured losses in the energy sector. Insurer *Amici* Br. at 14.

Even if financial exposure to climate litigation were a factor bearing on an energy company’s insurability, it is a matter for the market to price. Whether government intervention is necessary to eliminate an entire category of risk—one to which only a subset of the energy sector is exposed, namely fossil fuel companies—is a policy question for legislators and regulators, not courts.

C. Insurers, including members of the Insurer *Amici* associations, are financially entangled with fossil fuel producers.

In 2016, the California Insurance Commissioner (then, *Amicus* Dave Jones) required insurers to disclose publicly their investments in coal, oil, gas and utilities as part of the State’s Climate Risk Carbon Initiative.⁹¹ Those disclosures subsequently demonstrated, in 2019, that total investment in fossil fuel-related assets by the insurance sector (i.e., all insurance lines) amounted to \$536 billion.⁹²

The top 10 U.S. property and casualty insurers, in 2019, held \$63.2 billion in fossil fuel-related in-

in the lowest-risk ZIP codes—a pattern that tracks physical risk exposure, not pending litigation. U.S. Dep’t of Treasury, *U.S. Dep’t of the Treasury Report: Homeowners Insurance Costs Rising, Availability Declining as Climate-Related Events Take Their Toll* (Jan. 16, 2025), <https://perma.cc/EHK3-2WTB>.

⁹¹ Cal. Dep’t of Ins., *Ins. Protection for All Californians*, <https://perma.cc/3VCC-RNDX>.

⁹² CERES, *Changing Climate for the Insurance Sector: Research and Insights*, 13 (Aug. 22, 2023), <https://perma.cc/4N7G-G7U3>.

vestments.⁹³ The top two property and casualty insurers, Berkshire Hathaway and State Farm, had (as of 2019) \$19.3 billion and \$20.4 billion dollars, respectively, invested in fossil fuel-related investments including coal.⁹⁴ Chubb, as of 2019, had \$3.0 billion.⁹⁵ In 2023, fossil fuels made up 4.4% of the insurance industry’s investment portfolio, up from 3.8% in 2014.⁹⁶ The same year, the value of fossil-fuel holdings by the property-and-casualty industry totaled \$84.6 billion.⁹⁷

Notwithstanding the profound impacts of climate change on homeowners and the unprecedented rise in insurance claims that its members are paying, APCIA has downplayed climate risk and its impact on the insurance sector.⁹⁸ APCIA has opposed climate disclosure regulation efforts at both the federal and state levels and suggested that climate-re-

⁹³ *Id.* at 21.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Shane Shifflett & Jean Eaglesham, *The Two Big Insurers Still Betting on Fossil Fuels*, Wall St. J. (Sep. 25, 2024), <https://perma.cc/DF66-4GKC>.

⁹⁷ *Id.*

⁹⁸ See, e.g., Int’l Ass’n of Ins. Supervisors, *Comments received from first public consultation on climate risk supervisory guidance, 16 March 2023 to 16 May 2023*, at 3, <https://perma.cc/QX3R-JG2S> (“We don’t necessarily agree with the broad characterization that climate risk has interconnection and amplification characteristics.”); *id.* at 63 (“There is little evidence to suggest that climate risk can result in a liquidity shock or any other systemic risk triggers . . .”).

lated insurance risk regulation is unnecessary.⁹⁹ APCIA has also opposed climate change mitigation legislation providing for the mandatory phased divestment of fossil fuel holdings by insurance companies and the cessation of underwriting of expansionary fossil fuel projects.¹⁰⁰

* * *

Insurer *Amici* warn that the potential uncertainty caused by state tort claims against fossil fuel companies would undermine the insurance market. That concern is not only unsupported by the facts, but also not reflective of how the industry functions. Uncertainty is the core of an insurer's business: without uncertainty the insurance sector would cease to exist.¹⁰¹ The real threat to insurance and to the policyholders and members of the public who rely on it comes not from efforts to make responsible

⁹⁹ *Id.*; see also Ltr. from Jonathan Schreiber, Assoc. Vice President of State Gov't Rels., Am. Prop. Casualty Ins. Ass'n, to Donna Bailey & Kristi Mathieson, Joint Standing Comm. on Health Coverage, Ins. & Fin. Servs., Me. State House, re: *LD.1674 – An Act to Require Insurers to Address Climate Risk in Their Business Activities* (Apr. 25, 2025), <https://perma.cc/J79C-82D5> (opposing legislation that would have required insurance companies doing business in Maine to account for and address climate-related risks in their operations and business activities).

¹⁰⁰ See, e.g., Apr. 25, 2025, Ltr. from Jonathan Schreiber, *supra* note 99; Mar. 31, 2026, Ltr. from Jonathan Schreiber, *supra* note 80.

¹⁰¹ “The crux is that the insurance industry is relevant thanks to the existence of uncertainty, and as such, increasing uncertainty accentuates the relevance of this industry even more!” Olivier Macq, KPMG, *30 Voices on 2030: The Future of Insurance* 3 (2023), <https://perma.cc/5NWN-LN9L>.

parties pay for climate harm, but from climate change itself.

CONCLUSION

The judgment of the Supreme Court of Colorado should be affirmed.

Respectfully submitted,

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August 3, 2026