

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*
ROBERT S. TAYLOR
IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICUS CURIAE*

Robert S. Taylor served as the Principal Deputy General Counsel of the Department of Defense (“DoD”) from March 2009 until January 20, 2017, and twice during that period served as the Acting General Counsel of the Department, from January 1, 2013, through October 25, 2013, and from June 2015 through June 14, 2016. His previous government service included Deputy General Counsel (Environment and Installations) from May 1995 through December 2001, spanning both the Clinton Administration and the first year of the George W. Bush Administration. In addition, Mr. Taylor served as the Acting Deputy General Counsel (Environment, Energy, and Installations) during the last several months of the Biden Administration. Mr. Taylor served under seven General Counsels and eight Secretaries of Defense, and he was awarded the Distinguished Public Service Award—the Department’s highest civilian honor—six times. He is a 1972 graduate of Harvard College and a 1975 graduate of Harvard Law School, where he was a member of the Harvard Law Review.¹

Energy security was a recurring focus of *amicus*’s work throughout his DoD career. In 1995 he served as stood up the Office of the Deputy General Counsel for Environment and

¹Pursuant to Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and that no party, party’s counsel, or any person other than *amicus curiae* or his counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties received timely notice of *amicus*’s intent to file this brief, as required by this Court’s Rules.

Installations, later renamed to reflect the growing importance of energy to the office’s mission; and in his subsequent roles as Principal Deputy and twice Acting General Counsel, he worked closely with offices across the Department—including the Office of the Secretary of Defense, the Defense Logistics Agency, and the military departments—on energy and energy security matters. Between his two major periods of service, *amicus* served on the Defense Science Board task force that produced the 2008 report “More Fight – Less Fuel,” which examined how DoD’s dependence on fossil fuels affects operational risk, force structure, and mission effectiveness, and which urged the Department to treat fuel demand as a first-order factor in acquisition and operational planning.

Amicus writes to offer the Court the perspective of a former senior DoD lawyer who spent much of his career on the relationship between energy, energy security, and national defense. He does so principally in response to the brief filed in this Court by General (Ret.) Richard B. Myers and Admiral (Ret.) Michael G. Mullen in support of Petitioners. *See* Br. of *Amici Curiae* Gen. (Ret.) Richard B. Myers & Adm. (Ret.) Michael G. Mullen in Support of Pet’rs (Sept. 5, 2025)(“Myers/Mullin Br.”). *Amici* Myers and Mullin invoke the military’s interest in fuel security as a reason to displace state law. *Amicus* does not question *amici*’s distinguished service or the sincerity of their views. He does, respectfully, believe their brief conflates two different things: the genuine and long-standing importance of a secure fuel supply to the armed forces, and the very different—and unsupported—proposition that the armed forces, or the national security

more broadly, have any interest in shielding fossil-fuel companies from liability for what they told the public, or failed to tell the public, about the climate consequences of that dependence.

SUMMARY OF ARGUMENT

This case concerns whether federal law forecloses Respondents' state-law claims arising from Petitioners' public relations practices relating to the production and sale of fossil fuels. *Amicus* writes only to address a distinct argument raised by *amici* General Myers and Admiral Mullen: that this Court should displace Respondents' claims because of a supposed national-security interest in an assured, uninterrupted supply of fossil fuels for the armed forces. That argument fails, for three independent reasons.

First, the claims at bar do not pose any plausible threat to the fossil fuel supply to the armed forces. The component of Respondents' claims resting on Petitioners' alleged concealment and misrepresentation of the climate consequences of their own products targets the information provided (or failed to be provided) about fossil fuels Respondents sold in Colorado, not the production, sale, or emission of fossil fuels themselves. And the notion that the resolution of Respondents' sales and production claims could somehow set in motion some chain of events that results in the armed forces being unable to procure fossil fuels is absurd, as the armed forces consume a miniscule percentage of the fossil fuels consumed in the marketplace and have extraordinary legal protections to guarantee their access to supply.

Second, *amici* Myers and Mullen substantially overstate, and in key respects mischaracterize, the military's actual interest in this litigation. The armed forces have a genuine interest in energy security—*amicus* spent much of his career working on precisely that problem—but that interest lies in reducing DoD's dependence on a fragile fuel-supply chain and in ensuring an accurate public understanding of the risks of that dependence, not in protecting fossil-fuel companies (or any particular energy source, supplier, or group of suppliers) from liability for distorting the public's understanding of those risks. *Amici*'s own account of fossil fuels' supposed indispensability, moreover, omits inconvenient facts, including the naval reactor program that has freed the Navy's aircraft carriers and its entire submarine force from dependence on any fossil fuel at all, and DoD's own repeated findings—dating to at least the 2008 Defense Science Board report on which *amicus* served—that the Department's fuel dependence created serious operational risk. An accurate marketplace of information about fossil fuels' role in climate change serves the interests of every decision maker who relies on it, public and private, including the armed forces.

Third, treating deception and production-based claims as functionally equivalent, for preemption purposes, to regulation of emissions and other pollutants under the Clean Air Act would prove far too much. It would place at risk the same body of state common law that has allowed the government itself, and individual service members, to recover from manufacturers who concealed the dangers of harmful products used on military installations and in military

operations. There is no principled way to immunize Petitioners' alleged concealment here without also calling into question that body of law—a result flatly at odds with the very interest in a well-functioning, well-informed armed forces that *amici* invoke.

ARGUMENT

I. RESPONDENTS' CLAIMS HAVE NO NEXUS TO THE ARMED FORCES AND POSE NO THREAT TO THE AVAILABILITY OF ANY FUELS FOR NATIONAL DEFENSE

A. The Deception Claims Rest on Alleged Misrepresentation and Concealment, Not on any Effort to Regulate Emissions

The decision under review describes Respondents' amended complaint in detail. Respondents allege that Petitioners "knowingly caused and contributed to the alteration of the climate by producing, promoting, refining, marketing and selling fossil fuels at levels that have caused and continue to cause climate change, while concealing and/or misrepresenting the dangers associated with fossil fuels' intended use," and that, "through their advertising," Petitioners "have for decades intentionally misled the public about the impacts of climate change and the role that [Petitioners'] fossil fuel products have played in exacerbating those impacts." *Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, 2025 CO 21, ¶3, 586 P.3d 161, 165–66. Respondents' civil-conspiracy count alleges that Petitioners "acted in concert" to maintain fossil-fuel usage levels "while misrepresenting and failing to disclose material information concerning these activities." *Id.* ¶9.

Critically, as the Colorado Supreme Court expressly found, Respondents "[do] not... seek to enjoin any oil and gas operations or sales in Colorado or elsewhere. Nor do[] [they] seek to

enforce emissions controls of any kind.” *Id.* ¶10. Petitioners do not dispute this characterization of the relief Respondents seek.

That distinguishes the deception-based component of Respondents’ claims from the claims this Court and the courts of appeals have analyzed in the run of climate-preemption cases, each of which has concerned suits seeking, in one framing or another, to hold energy producers liable for the atmospheric consequences of the fossil fuels they extracted, refined, and sold. See, e.g., *American Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011) (public-nuisance claim seeking abatement of defendants’ carbon-dioxide emissions); *City of New York v. Chevron Corp.*, 993 F.3d 81, 85, 91–92 (2d Cir. 2021) (claims seeking damages for “the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet”). Compare *City & Cnty. of Honolulu v. Sunoco LP*, 153 Hawai‘i 326, 537 P.3d 1173 (2023) (The Hawai‘i Supreme Court, addressing claims materially similar to Respondents’ deception claims, emphasized that the claims before it rested on the defendants’ “deceptive promotion” and their concealment of “the climate impacts of their fossil fuel products,” not on the volume of fossil fuels the defendants produced or sold. *City & Cnty. of Honolulu*, 537 P.3d at 1181. Accord, e.g., *Mayor & City Council of Baltimore v. BP p.l.c.*, 31 F.4th 178, 234 (4th Cir. 2022) (rejecting the proposition that all conduct touching the “production and sale” of fossil fuels is federally significant conduct, and observing that “the unrestrained production and use of Defendants’ fossil-fuel products ... is not the source of tort liability” in a case resting on alleged concealment).

Every State has enacted, and for far longer has recognized at common law, causes of action for fraud, deceit, negligent misrepresentation, and unfair or deceptive trade practices. These doctrines do not become suspect, or presumptively displaced, merely because the speaker happens to participate in an industry—like energy production—in which the federal government also has an interest. If that were the rule, state law tort claims could not be brought against pharmaceutical manufacturers who are subject to federal regulatory regimes. *Wyeth v. Levine*, 555 U.S. 555, 581 (2009) (state-law tort claims against brand-name drug manufacturers aren't impliedly preempted by FDA approval).

“There is no federal pre-emption *in vacuo*, without a constitutional text or a federal statute to assert it.” *Puerto Rico Dep’t of Consumer Affs. v. Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988); accord *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019) (plurality opinion) (Atomic Energy Act does not preempt Virginia's ban on uranium mining, reasoning that “Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law.”); *Alpharma, Inc. v. Pennfield Oil Co.*, 411 F.3d 934, 938–39 (8th Cir. 2005) (adjudicating claim concerning representation that a product is FDA-approved (when it is not) does not require a court to interpret any FDA regulation).

The deception-based component of Respondents’ claims—the component squarely implicated by *amici* Myers’s and Mullen’s national-security argument—raises no federal preemption question of the kind *amici* and Petitioners describe, because it does not touch,

even indirectly, the physical production, sale, or emission of any fossil fuel. Any ruling on the broader preemption questions Petitioners raise should make that distinction clear.

B. The Production Claims Pose No Threat to Fossil Fuel Supplies to the Armed Forces

Amici imply that our armed forces use such an enormous volume of fossil fuels that our national defense will be irreparably imperiled if the prosecution of the claims in this action lead, through one machination or another, to a lesser volume of fossil fuels being produced or consumed. This is not a plausible scenario, much less a basis for federal preemption.

1. The Armed Forces’ Modest Share of Overall Energy Consumption Cannot Plausibly Turn this into a Federal Case

Amici make several references to how “large” the DoD consumption of fuel is. *See, e.g.*, Myers/Mullen Brief at 13 (“*significant* portions of our Nation’s fuel supply”); *id.* at 16 (armed forces required “*large* quantities of oil and gas” during World War II) (emphasis added). But *amici* make no attempt to quantify what “significant” or “large” actually means. In a vacuum, these words mean absolutely nothing.

Here are some actual numbers. In recent years, the Defense Department has consumed approximately 600 trillion (or 0.6 quadrillion) British Thermal Units (“BTUs”) of energy per

year.² While “600 trillion” of anything, no doubt, seems like “a lot,” it needs to be put in perspective. The entire world consumes approximately 700 *quadrillion* BTUs, and the United States consumes approximately 94 quadrillion BTUs, of energy per year.³ United States DoD consumption, then, amounts to approximately one tenth of one percent of world energy consumption, and approximately six tenths of one percent of domestic consumption. Those figures do not even amount to the proverbial “drop in the bucket.”

Notably, not only is total DoD consumption a very *small* fraction of world consumption, it is a fraction that has been (generally, if not necessarily every year) shrinking (along with total federal government consumption) since such statistics began being kept in 1975:

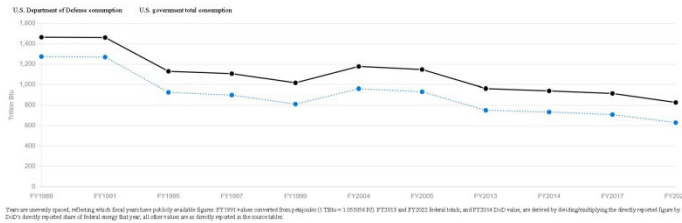
² In FY2022, DoD consumed 628.59 trillion British thermal units (Btu) of energy. See *Annual Energy Performance, Resilience, and Readiness Report, Fiscal Year 2023*, U.S. Dept. of Defense, (cleared for public release July 29, 2024)(“AEPRR FY23”), at 1, available online at:

<https://www.acq.osd.mil/eie/ero/ier/docs/aepr/FY23-AEPRR-Report.pdf>

³ *Primary Energy Consumption; International*, U.S. Energy Information Administration (FY 2022 Data, accessed July 16, 2026), available online at:

<https://www.eia.gov/tools/faqs/faq.php?id=87&T=1> .

DOD and Total US Federal Government Energy Consumption, FY 1989-2022, in Trillions of BTUs



DoD has greatly reduced its energy consumption, including the consumption of fossil fuels over the past 40 years (roughly coinciding with the period of the conduct attributed to the Petitioners in this case) even as world consumption has steadily increased.

Thus only a minor percentage of world fossil fuel consumption can be traced to the US DoD and the mere fact that the US DoD is a fossil fuel consumer (among literally billions of them) cannot somehow make this a federally preempted case.

2. Although DoD Accounts for Less than 1% of U.S. Energy Consumption, It Enjoys Special Protection to Ensure it Has Access to Energy in any Circumstance

Amici suggest that a damages award, or other favorable outcome for Respondents, will inevitably lead to the military being turned away at the pumps. *See, e.g., Myers/Mullen Br. At 11* (“any future damages award will necessarily restrict fuel supply, and, in turn, will take from

the military”), But not only is this factually implausible; it is legally *impossible*.

Under Title I of the Defense Production Act of 1950 (the “DPA”),⁴ the President can require contractors to contracts or orders supporting approved national defense programs. The Defense Priorities and Allocations System (“DPAS”) established by federal regulation,⁵ in turn, lets DoD and other approved programs place “rated orders” on contracts, requiring the contractor to prioritize that order over unrated commercial business — in order to make sure critical defense, energy, and infrastructure needs get filled first during supply crunches.⁶ DOD has reported that it includes a priority rating as a standard clause in virtually all eligible contracts and orders for items under DOC’s resource jurisdiction.⁷

The priorities the DoD enjoys are not a last resort reserved for extraordinary circumstances, and have, in fact, been implemented many times. During the 1970s oil shock, the DoD and Department of the Interior used the DPA to get “priority performance of petroleum for military use and to expedite completion of the Trans-

⁴ 50 U.S.C. § 4511 *et seq.*

⁵ 15 C.F.R. Part 700

⁶ *Defense Priorities and Allocation System (DPAS)*, U.S. Dept. of Commerce, Bureau of Industry and Security, accessed July 22, 2026 at <https://www.bis.gov/about-bis/bis-leadership-and-offices/SIES/defense-priorities-allocations-system-program-dpas>

⁷ See Alexandra G. Neenan, *The Defense Production Act of 1950: History, Authorities, and Considerations For Congress*, Congressional Research Service (updated Oct. 6, 2023) DoD “routinely deploys” contract provisions, subject to affording it priority over other purchasers in “virtually all” such contracts), available online at: <https://www.congress.gov/crs-product/R43767>

Alaska pipeline.”⁸ In January 2001, President Clinton invoked Title I of the DPA to order natural gas suppliers to sell through prioritized contracts to Pacific Gas & Electric (“PG&E”), with the rationale resting partly on the impact a PG&E collapse would have on defense installations in California, including NASA facilities.⁹ Quite recently, in April 2026, during the ongoing conflict with the Islamic Republic of Iran, President Trump signed a series of presidential determinations invoking Section 303 of the DPA, deploying it five times in a single day, covering petroleum production and refining, coal supply chains, natural gas transmission and LNG capacity, grid infrastructure, and large-scale energy infrastructure. This came as a set of five Title III determinations issued April 20, 2026.¹⁰

Thus, the *hypothetical* energy deprivation of DoD this action will cause is worse than speculative – it is utter nonsense. Our nation has

⁸ Todd N. Tucker, *Priorities And Allocations: How the Defense Production Act Allows Government to Mobilize Industry to Ensure Popular Well-Being*, Roosevelt Institute (Jan. 2022), available online at: https://rooseveltinstitute.org/wp-content/uploads/2022/01/RI_Priorities_and_Allocations_202201.pdf

⁹ *Timeline of Events: 2001*, U.S. Dept. of Energy, Office of Legacy Management, accessed July 22, 2026, at <https://www.energy.gov/lm/timeline-events-2001>

¹⁰ Gabe Arrington, “The Defense Production Act’s Expanding Role in Energy,” Rice University, Baker Institute for Public Policy, Center for Energy Studies (May 14, 2026), available online at: <https://www.bakerinstitute.org/research/defense-production-acts-expanding-role-energy>

experienced *actual* energy crises and wars and the DoD has never had to do without energy supplies.

**II. *AMICI* MYERS AND MULLEN
MISTAKE THE ARMED FORCES'
INTEREST IN ENERGY SECURITY
FOR A NONEXISTENT INTEREST IN
SUPPRESSING ACCURATE
INFORMATION ABOUT FOSSIL
FUELS OR A PREFERENCE FOR
FOSSIL FUELS OVER
ALTERNATIVES**

**A. The Military's Interest Lies In a
Secure and Resilient Energy
Supply, Not In Prioritizing
Particular Energy Sources or
Insulating Producers From
Liability**

Amici Myers and Mullen are right that the armed forces have long depended on petroleum products and that energy security has been, and remains, a serious institutional concern. *Amicus* does not dispute that history; he spent much of his career working on it. But *amici*'s brief moves, without any argument connecting the two, from that unremarkable premise to a strikingly different conclusion: that this history of dependence gives the armed forces, and by extension the federal government, an interest in shielding Petitioners from liability for what they told the public—or did not tell the public—about the climate consequences of that same dependence.

The Armed Forces simply have no institutional preference for, or interest in promoting, one fuel source over another. Armed

forces are agnostic. No such interest exists, and *amici* identify none.

To begin with, no party disputes that this suit would not require DoD to obtain one fewer gallon of jet fuel, aviation gasoline, or diesel. As the Colorado Supreme Court found, Respondents do “not ... seek to enjoin any oil and gas operations or sales,” 2025 CO 21, ¶10, and neither Petitioners nor *amici* identify any relief Respondents seek that would constrain the volume, price, or availability of fuel to DoD or to anyone else. *Amici*’s suggestion that a “patchwork” of state-court actions will “constrict[]” the availability of fuel and imperil “fuel security,” Myers/Mullen Br. 20–23 (Sept. 5, 2025), rests entirely on the premise—borrowed from Justice Samour’s dissent below—that a damages verdict here would function as *de facto* emissions regulation. See Pet. App. (Samour, J., dissenting) (“Boulder’s requested relief will inevitably impose a limitation on GHG emissions.”). But a jury verdict for Respondents would not require Petitioners to produce one drop less fuel;¹¹ it requires only that they tell the truth about what they know and pay damages for the harm they have caused by failing to tell the truth.

**B. DoD’s Own Studies Have Long
Recognized That Unexamined
Dependence On Fossil Fuels
Creates Serious Operational
Risk—A Risk That An
Undistorted Public**

¹¹ See Brief for Respondents at 4 (citing Pet. App. 4a) (“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”).

Understanding Can Only Help Address

Amici's brief also presents a considerably rosier picture of fossil fuels' role in national defense than the Department's own internal studies have offered. In February 2008, the Defense Science Board Task Force on DoD Energy Strategy, on which *amicus* served, issued a report titled "More Fight – Less Fuel."¹² The Task Force concluded that "unnecessarily high and growing battlespace fuel demand" was compromising "operational capability and mission success," requiring "an excessive support force structure at the expense of operational forces," and "creat[ing] more risk for support operations than necessary." *Id.*

The Task Force's concerns were not academic. As the report explained, the logistics required to deliver fuel to forward-deployed forces in Iraq and Afghanistan involved dozens of continuous convoys exposed to hostile attack, at a direct cost in lives, equipment, and mission effectiveness; the report noted, for example, that "approximately 80 convoys travel[ed] continuously between Kuwait and Iraq" to sustain those forces, and it catalogued the substantial diversion of combat forces to convoy protection that this fuel-intensive logistics architecture required. *Id.* at 15, ch. IV. In Afghanistan, moreover, fuel convoys were among the deadliest logistics operations, with roughly one casualty per

¹² *Report of the Defense Science Board Task Force on DoD Energy Strategy: More Fight – Less Fuel*, Defense Science Board (Feb. 2008) ("2008 DSB Report") at 3.

24 convoys.¹³ None of that vulnerability arose from any shortage of fossil fuel or from any legal constraint on its production. It arose from the military's dependence on a fuel-intensive logistics architecture that the Task Force urged DoD to reduce nearly two decades ago. And that risk has since increased exponentially with the advent of modern drone warfare.

Amici's brief does not mention any of this.

Nor does it mention the Armed Forces' considerable investment in, and implementation of, alternatives to fossil fuels.

These undertakings are not new. The Navy has, for half a century, powered its aircraft carriers and its entire submarine fleet with nuclear reactors rather than fossil fuel—a choice that eliminated, for those platforms, precisely the refueling vulnerability and endurance limitations that a fossil-fuel-dependent fleet would otherwise face.

In recent years, DoD has expanded nuclear power initiatives to contexts well beyond aircraft carriers and submarines. Following a 2016 Defense Science Board study, DoD launched Operation Pele to design and demonstrate a prototype mobile nuclear reactor, and in September 2024 Idaho National Laboratory broke ground on a transportable high-temperature gas-cooled microreactor designed to ship in standard shipping containers with the goal of fielding one of the first advanced reactors to operate in the

¹³ As of 2009. *Sustain the Mission Project: Casualty Factors for Fuel and Water Resupply Convoys - Final Technical Report* U.S. Army, Environmental Policy Institute, (Sept. 2009), at i, available online at: <https://apps.dtic.mil/sti/pdfs/ADB356341.pdf>

United States.¹⁴ The reactor is designed to connect to INL's microgrid and produce 1 to 5 megawatts of electrical power, transportable in 20-foot shipping containers.

Project Pele has since evolved into the Army's Janus Program, launched in October 2025 to build microreactors, building on Project Pele. The Army has selected nine candidate bases: Fort Benning, Fort Bragg, Fort Campbell, Fort Drum, Fort Hood, Fort Wainwright, Holston Army Ammunition Plant, Joint Base Lewis-McChord, and Redstone Arsenal, while the Air Force is planning its first microreactor at Eielson Air Force Base in Alaska with Oklo's sodium-cooled Aurora design.¹⁵

The Army has set aside more than \$2 billion over five years to develop and build first-of-a-kind reactors, and notably the goal extends beyond military use — the Army's nuclear projects are designed to help commercial vendors develop mass-producible reactors sellable on the open market.¹⁶

¹⁴ *Department of Defense Breaks Ground on Project Pele Microreactor*, U.S. Dept. of Energy, Office of Nuclear Energy (Sept. 24, 2024), available online at: <https://www.energy.gov/ne/articles/departement-defense-breaks-ground-project-pele-microreactor>

¹⁵ *Small Modular Reactors and Microreactors Under Development in the United States*, U.S. Energy Information Administration (Apr. 27, 2026), available online at:

<https://www.eia.gov/todayinenergy/detail.php?id=67584>

¹⁶ Kenneth Luongo, *How Military Microreactors May Lead the Nuclear Energy Revolution*, *The National Interest* (June 19, 2026) (quoting Mr. Jeff Waksman, the Army's director of reactor projects), available online at: <https://nationalinterest.org/blog/energy-world/how->

In February 2026, the Pentagon and Energy Department airlifted a 5-megawatt microreactor without nuclear fuel from March Air Reserve Base in California to Hill Air Force Base in Utah,¹⁷ and in June 2026, Antares Nuclear completed a zero-power criticality test for its Mark-0 demonstrator reactor at Idaho National Laboratory, part of a push under Executive Order 14301 for at least three advanced reactors to reach criticality by July 4, 2026.¹⁸

In addition to continuing its longstanding and robust commitment to nuclear power, DoD has also invested in and implemented many renewable energy initiatives.

DoD has installed an enormous volume of solar capacity across its bases. Nellis Air Force Base's original 14 MW array, and second 19 MW array covering 140 acres, are among the largest.¹⁹ In 2023, the Edwards Air Force Base project

[military-microreactors-may-lead-the-nuclear-energy-revolution](#)

¹⁷ *US military airlifts small reactor as Trump pushes to quickly deploy nuclear power*, Associated Press (Feb. 21, 2026), available online at:

<https://www.npr.org/2026/02/21/nx-s1-5721761/us-military-airlifts-small-reactor>

¹⁸ *Department of Energy and U.S. Army Reach a Major Milestone on Advanced Microreactors*, U.S. Army Dept. of Public Affairs, (June 5, 2026), available online at:

https://www.army.mil/article/293057/department_of_energy_and_u_s_army_reach_a_major_milestone_on_advanced_microreactors

¹⁹ Michael Hasenauer, *Nellis AFB Reduces Greenhouse Gas Emission through Solar Energy*, U.S. Air Force 57th Wing Public Affairs (Oct. 24, 2021), available online at:

<https://www.af.mil/News/Article-Display/Article/2819757/nellis-afb-reduces-greenhouse-gas-emission-through-solar-energy/>

became the largest public-private collaboration in DoD history. With almost 2 million solar panels installed, it will produce up to 1,300 megawatts (MW) of power.²⁰ DoD recently partnered with Duke Energy on two solar projects to supply five military installations in North and South Carolina with carbon-free electricity.²¹

Many bases now run microgrids (Fort Bragg is a notable example²²) that blend solar, grid power, and backup generators, and can island themselves from the commercial grid during outages or attacks.²³

Renewable energy is not only a major part of energy supply on the base, it is also part of the battlefield landscape. Marines and soldiers deploy portable solar-and-battery power systems designed to be silent and have no thermal signature, letting special operations and

²⁰ *Largest Private-Public Collaboration in Department of Defense History Reflects Commitment to Clean Energy*, U.S. Air Force, 12th Test Wing Public Affairs, (Feb 6, 2023), available online at: <https://www.edwards.af.mil/News/Article/3289170/largest-private-public-collaboration-in-department-of-defense-history-reflects/>

²¹ Joseph Clark, *DOD Forges Clean Energy Pathway With Carbon Pollution-Free Electricity Contract*, DOD News (June 18, 2024), available online at: <https://www.war.gov/News/News-Stories/Article/Article/3811465/dod-forges-clean-energy-pathway-with-carbon-pollution-free-electricity-contract/>

²² *Army Floating Solar Array is the Largest Floating System in the Southeast* U.S. Army Public Affairs, (June 2022), available online at: <https://www.army.mil/article/257375/army-floating-solar-array-is-the-largest-floating-system-in-the-southeast>

²³ See AEPRR FY23 at 13.

reconnaissance units power gear like night vision and radios without giving away their position.

The Marine Corps' Ground Renewable Expeditionary Energy System, a mature project that was launched in 2008, is a 300-watt, photovoltaic/battery system that provides a continuous 300-watt output, enough to power a battalion command post.²⁴ Today, generating resilient and quiet power on the battlefield is a major part of battlefield planning. “During the 2024 Joint Pacific Multinational Readiness Center (JPMRC) rotation, the 2d Mobile Brigade Combat Team, 25th Infantry Division executed a brigade-sized experiment in contested logistics with a focus on hybrid power,” including portable solar units, and the system “enabled continuous use of radios, drones, and mission-critical electronics in remote locations while maintaining a low signature—no noise, no heat, and no movement required for resupply.”²⁵ The driving logic is fuel-convoy risk.²⁶

The DoD is also focused on developing geothermal power, and continues to lay the groundwork to deploy new geothermal technologies across military installations to

²⁴ *Solar Energy Powers Marines on Battlefield*, U.S. Navy, Office of Naval Research, (Dec. 7, 2009), available online at:

<https://www.onr.navy.mil/media-center/news-releases/solar-energy-powers-marines-battlefield>

²⁵ *Best Practices on Operationalizing Battlefield Energy: Power Generation, Storage, and Distribution in LSCO*, U.S. Army, Center for Army Lessons Learned (Aug. 2025), available online at:

<https://api.army.mil/e2/c/downloads/2025/08/18/032e9022/no-25-1085-best-practices-on-operationalizing-battlefield-energy-aug-25.pdf>

²⁶ See discussion of fuel convoy risks, at 17-18, *supra*.

support mission assurance and support increased power generation to meet the growing demand for energy. This initiative ultimately aims to de-risk geothermal development and catalyze geothermal power plant construction across DoD installations to provide round-the-clock power — a critical need as DoD installations and national electrical grids face growing threats from wildfires, extreme weather, cyberattacks, power shortages, and other disruptions.²⁷

The consistent logic across all of DoD's renewable and alternative energy initiatives is to enhance energy security and because grid fossil fuel lines are vulnerable to disruption. Cyberattacks (such as the 2021 DarkSide ransomware attack that shut down the Colonial Pipeline for about six days) are a real and growing concern. Approximately 1,162 cyberattacks hit U.S. utilities between January and August 2024 alone.²⁸ Renewables paired with storage let bases operate independent of the civilian grid, while mobile reactors could eventually provide a base's energy security independent of the civilian grid.

The federal government (of which DoD spending is the largest component) increased

²⁷ *Department of Defense Expands Geothermal Initiative To Support Mission Assurance*, U.S. Dept. of Defense, Defense Innovation Unit, (Aug. 12, 2025), available online at: <https://www.diu.mil/latest/departments-of-defense-expands-geothermal-initiative-to-support-mission>

²⁸ *Cyberattacks on U.S. Utilities Surged 70% This Year, Says Check Point*, Reuters (Sept. 11, 2024), available online at: <https://www.reuters.com/technology/cybersecurity/cyberattacks-us-utilities-surged-70-this-year-says-check-point-2024-09-11/>

renewable electricity use six-fold between 2010 and 2023.²⁹

Amici's description of fossil fuels as indispensable to "our warfighting capabilities," Myers/Mullen Br. 5, is considerably overstated by that omission. The omission illustrates the very point of this brief: an incomplete public account of fossil fuels' true costs, benefits, and alternatives—whether offered by *amici* or by Petitioners themselves—does a disservice to the policymakers, procurement officials, and members of the public who depend on accurate information to make sound decisions, including decisions about how quickly to develop and field the very alternatives the Task Force urged the Department to pursue.

Amicus does not ask the Court to wade further into climate policy, which, as DoD's own 2021 Climate Risk Analysis recognized, poses its own set of "new security challenges for U.S. interests." U.S. Dep't of Defense, Department of Defense Climate Risk Analysis 1 (Oct. 2021). The narrower point is simply that DoD does not have any institutional preference for any one energy source, much less some sort of national security or institutional interest in preserving the primacy of fossil fuels.

III. TREATING ALL STATE LAW CLAIMS RELATING TO ENERGY PRODUCTS AS THE FUNCTIONAL EQUIVALENT OF EMISSIONS REGULATION UNDER THE CLEAN AIR ACT

²⁹ *Federal Agency Use of Renewable Electric Energy*, U.S. Dept. of Energy, (accessed July 16, 2026), available online at: <https://www.energy.gov/cmei/femp/federal-agency-use-renewable-electric-energy>

**WOULD JEOPARDIZE A BODY OF
LAW THAT HAS SERVED, RATHER
THAN DISSERVED, THE
GOVERNMENT'S OWN INTERESTS**

If this Court were to accept *amici* Myers's and Mullen's invitation to treat any suit implicating a nationally significant commodity, or a commodity regularly purchased by the federal government, as federally preempted whenever a defendant can point to some connection, however attenuated, to national security or foreign policy, that holding would not stop at Respondents' fossil-fuel claims. State common law tort doctrines such as duty to exercise care, fraud, failure to warn, and misrepresentation that have permitted the government itself, and individual service members, to obtain relief in a wide variety of cases.

In *Hencely v. Fluor Corp.* 146 S. Ct. 1086, ____ U.S. ____ (2026), an action brought by a disabled army veteran alleging he was harmed by the negligence of a contractor, this Court reaffirmed the leading case of *Boyle v. United Technologies Corp.*, 487 U.S. 500, (1988), vacated lower court decisions and rejected the Fourth Circuit's "battlefield preemption" doctrine, which had categorically barred state-law tort suits against contractors acting under military command. 146 S. Ct. at 1099.

Claims that manufacturers of defoliants (such as Agent Orange) used in Vietnam concealed known health risks likewise proceeded on similar state-law theories, notwithstanding the products' unquestionably military end use. See, e.g., *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398-400 (5th Cir. 1998).

In an action still pending, an MDL court has sustained state law claims relating to aqueous film-forming firefighting foam, used for decades on military airfields and installations nationwide. The DoD's own installations, and the communities surrounding them, are among the parties alleging harm by the manufacturer's alleged concealment of the foam's health and environmental risks. The MDL court held that the defendants were not immune from suit under state law tort theories. See *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, MDL No. 2873, 2022 WL 4291357, at *14 (D.S.C. Sept. 16, 2022).

In *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 474 F.Supp.3d 1231 (N.D. Fla. 2020), a MDL court held that federal law did not preempt state law design defect and failure-to-warn claims concerning earplugs employed by military personnel. *Id.* at 1260.

Thus, even in instances in which persons are alleging *direct* harm by a product produced pursuant to a contract with the government, their claims do not automatically become federal claims. The government has never treated the fact that a harmful product was manufactured for, sold to, or used by the armed forces as a reason to immunize the manufacturer's alleged concealment from state tort liability. To the contrary, the government has been a beneficiary of the same body of law Petitioners now ask this Court to displace. *Amici's* theory—that any suit touching a nationally significant, defense-relevant industry must yield to federal law because a “patchwork” of state verdicts might affect that industry's operations, Myers/Mullen Br. 20–23—draws no principled line between

Respondents' claims here and the government's own recoveries in cases like these. If accepted, it would place at risk the very body of law that has allowed the government, and the service members who depend on it, to hold accountable those who concealed a product's true dangers from the people who used it, merely because the product also happened to matter to national defense.

Here, the federal nexus is considerably more attenuated, as Respondents are alleging misrepresentations and not harm by a product, and the underlying product is used by virtually everyone, public and private, unlike, say, Agent Orange, which was used only by the military.

The same caution applies here with particular force. Expanding federal preemption to reach ordinary state common law tort and equitable claims, simply because the deceiving party happens to operate in a nationally significant industry, would not protect the interests *amici* invoke; it would undermine them, by calling into question the same state-law remedies that have allowed the government itself, and the service members who rely on it, to hold accountable those who concealed a product's true dangers.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Respondents' brief, this Court should reject *amici* Myers's and Mullen's invitation to treat this case as raising a national-security or military-readiness concern warranting preemption of Respondents' claims. The nexus between Respondents' claims and national security is tenuous at best, as those claims

present no plausible threat to our national security.

Respectfully submitted,

August 3, 2026 /s/ Charles J. LaDuca
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