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 FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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May 21, 2026

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INTEREST OF THE AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a strong interest in the legal and policy issues that underlie this case, including issues relating to climate change. The global climate is changing, and human activities contribute to those changes. There is much common ground on which all sides could come together to address climate change with policies that are practical, flexible, predictable, and durable, maintaining the national and international competitiveness of U.S. industry and ensuring consistency with free enterprise and free trade principles. *See* U.S. Chamber of Commerce, *Our Approach to Climate Change* (Apr. 19, 2020), https://www.uschamber.com/climate-change/our-approach-to-climate-change. Durable climate change policy must be made by the federal government, which should encourage innovation and investment to reduce emissions and improve economic resilience and clean

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

energy deployment across the globe. Governmental policies aimed at achieving these goals should not be made by the courts, much less by a patchwork of actions under state law that would do more harm than good.

Climate change is an interstate and international challenge, and putative state-law claims that would impose liability for climate change must necessarily be resolved by federal law. The cross-border nature of climate change implicates "uniquely federal interests" for which a uniform federal policy and the application of federal law are essential.

In the limited range of circumstances in which uniquely federal interests arise, the relevant legal questions often intersect with the interests of many of the Chamber's members, as they rely on the predictability and uniformity of federal policy. This case falls within that limited range: the Chamber and its members have a strong interest in ensuring that claims for which a uniform federal standard is necessary are governed by federal law, and not by a patchwork of state laws applied in piecemeal fashion.

SUMMARY OF ARGUMENT

I. Allowing each State and municipality to regulate nationwide and global emissions is simply unworkable. The decision below is just the tip of the iceberg: there are approximately 30 similar lawsuits currently making their way through state courts. Companies like petitioners thus face potentially overlapping and conflicting decisions in dozens of state courts regarding the same fundamental conduct—with possible remedies ranging from injunctions of various stripes to many millions or billions of dollars in damages.

Under such a fractured regime, compliance with emissions control measures emanating from dozens (or hundreds) of county courthouses would be expensive, uncertain, and quite likely impossible. Companies would be forced to dramatically limit products and services that are essential to ordinary citizens' everyday lives, driving up energy costs for consumers.

In addition, such a regime threatens to fragment our country in ways that evoke the troubled days of the Articles of Confederation. It does not take much imagination to appreciate the havoc arising from putting the regulation of national and global emissions in the hands of each State and each local government. Some States and municipalities, particularly those without significant in-state industrial emissions, have not resisted the temptation to impose all kinds of restrictions and costs on out-of-state entities. Indeed, that is evident from the so-called "climate Superfund" laws that New York and Vermont have already enacted based on the same impermissible and preempted theory of liability as these cases. Other States, meanwhile, have responded by seeking to *protect* in-state industry from claims based on other States' and

municipalities' assertions of extraterritorial authority to regulate greenhouse gas emissions. "[S]uch an irrational system of regulation" that "lead[s] to chaotic confrontation between sovereign states" is antithetical to the Constitution and federal law. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987) (citation omitted).

II. In cases implicating "uniquely federal interests," there is no room for state law to apply. This is such a case. Respondents' lawsuit is fundamentally about *global* climate change—a cross-border, multinational problem. A phenomenon of this nature, which affects (and is affected by) not just every State but every nation in the world, requires uniform regulation that the laws of individual States simply cannot provide. The law of a single State, or an order from a single state court, is ill-equipped to govern the effects on every State and every nation from greenhouse gas emissions emanating from all States and all nations, which routinely cross interstate and international borders.

Solutions to the challenges posed by climate change can be achieved only on a national and international basis—which, within the United States, means through federal law and the federal government acting on behalf of the country as a whole. That is a consequence of our constitutional structure, which ensures that only federal law governs interstate disputes of this kind. Reinforcing that limitation, the Due Process Clause prohibits States from regulating transactions or behavior with which they have insufficient contact to support legislative jurisdiction.

The need for a uniform federal standard in cases concerning cross-border emissions is why this Court has long recognized that state law cannot supply a rule

of decision for disputes about "air and water in their ambient or interstate aspects." *Illinois v. City of Milwaukee*, 406 U.S. 91, 103 (1972) (*Milwaukee I*) (citation omitted). Those disputes must be resolved by federal law; indeed, where no federal statute exists, federal common law has governed such disputes.

Congress may displace federal common law by statute, which then serves as the exclusive source of remedies for the claim; if Congress displaces federal common law but provides no private remedy, then there is none. Whether the law governing these matters is common law or statutory law, it is *federal* law that governs. Displacement of federal common law remedies does not mean that federal law disappears from the field—much less that it allows fifty States and their associated municipalities to rush into a uniquely federal arena.

The Court should return this interstate and international issue to the *national* government's domain, where our constitutional structure, as well as the Clean Air Act, places it.

ARGUMENT

I. A 50-state patchwork of greenhouse-gas-emissions regulation is unworkable and encourages states to impose costs on out-of-state consumers and businesses.

1. This case is one of at least *33* lawsuits filed by state, local, and tribal governments since 2017 that seek competing remedies for overlapping claims alleging harm arising from emissions outside the borders of

the plaintiff governments' respective jurisdictions.[2] And two States have now enacted so-called climate

[2] *Cnty. of San Mateo v. Chevron Corp.*, No. 17CIV03222 (Cal. Super. Ct. July 17, 2017); *City of Oakland v. BP p.l.c.*, No. RG17875889 (Cal. Super. Ct. Sept. 19, 2017); *City of Santa Cruz v. Chevron Corp.*, No. 17CV03243 (Cal. Super. Ct. Dec. 20, 2017); *Cnty. of Santa Cruz v. Chevron Corp.*, No. 17CV03242 (Cal. Super. Ct. Dec. 20, 2017); *City of N.Y. v. BP p.l.c.*, No. 18-cv-182 (S.D.N.Y. Jan. 9, 2018); *City of Richmond v. Chevron Corp.*, No. C18-00055 (Cal. Super. Ct. Jan. 22, 2018); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.), Inc.*, No. 2018CV30349 (Colo. Dist. Ct. Apr. 17, 2018); *King Cnty. v. BP p.l.c.*, No. 18-2-11859-0 (Wash. Super. Ct. May 9, 2018); *Rhode Island v. Chevron Corp.*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018); *Mayor & City Council of Balt. v. BP p.l.c.*, No. 24-C-18-004219 (Md. Cir. Ct. July 20, 2018); *Massachusetts v. Exxon Mobil Corp.*, No. 1984CV03333 (Mass. Super. Ct. Oct. 24, 2019); *City & Cnty. of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (Haw. Cir. Ct. Mar. 9, 2020); *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct. June 24, 2020); *Dist. of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 002892 B (D.C. Super. Ct. June 25, 2020); *City of Hoboken v. Exxon Mobil Corp.*, No. HUD-L-003179-20 (N.J. Super. Ct. Sept. 2, 2020); *City of Charleston v. Brabham Oil Co.*, No. 2020CP1003975 (S.C. Ct. Com. Pleas Sept. 9, 2020); *Delaware v. BP Am. Inc.*, No. N20C-09-097 (Del. Super. Ct. Sept. 10, 2020); *Connecticut v. Exxon Mobil Corp.*, No. HHDCV206132568S (Conn. Super. Ct. Sept. 14, 2020); *Cnty. of Maui v. Sunoco LP*, No. 2CCV-20-000283 (Haw. Cir. Ct. Oct. 12, 2020); *City of Annapolis v. BP p.l.c.*, No. C-02-CV-21-000250 (Md. Cir. Ct. Feb. 22, 2021); *Anne Arundel Cnty. v. BP p.l.c.*, No. C-02-CV-21-000565 (Md. Cir. Ct. Apr. 26, 2021); *Vermont v. Exxon Mobil Corp.*, No. 21-CV-02778 (Vt. Super. Ct. Sept. 14, 2021); *Platkin, Att'y Gen. of N.J. v. Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct. Oct. 18, 2022); *Mun. of Bayamon v. Exxon Mobil Corp.*, No. 3:22-cv-1550 (D.P.R. Nov. 22, 2022); *Cnty. of Multnomah v. Exxon Mobil Corp.*, No. 23CV25164 (Or. Cir. Ct. June 22, 2023); *People v. Exxon Mobil Corp.*, No. CGC23609134 (Cal. Super. Ct. Sept. 15, 2023); *Mun. of San Juan v. Exxon Mobil Corp.*, No. 3:23-cv-01608 (D.P.R. Dec. 13, 2023); *Shoalwater Bay Indian Tribe v. Exxon Mobil Corp.*, No. 23-2-25215-2 (Wash. Super. Ct. Dec. 20, 2023); *Makah Indian Tribe*

"Superfund" statutes that likewise seek to impose liability on energy producers for global greenhouse gas emissions, prompting suits by the Chamber, the United States, and other parties challenging the statutes as precluded and preempted by federal law, among other grounds for invalidation. *See Chamber of Commerce of the U.S.A. v. Moore*, No. 24-cv-1513 (D. Vt.); *Chamber of Commerce of the U.S.A. v. James*, No. 25-cv-1307 (N.D.N.Y.); *United States v. Vermont*, No. 25-cv-463 (D. Vt.); *United States v. New York*, No. 25-cv-3656 (S.D.N.Y.); *West Virginia v. James*, No. 25-cv-168 (N.D.N.Y.).

If the 30-plus actions (and counting) similar to the one permitted by the Colorado Supreme Court are allowed to proceed, and if States and municipalities succeed in applying their laws to claims of cross-border pollution originating all over the world, the growth of "conflicting disputes, increasing assertions[,] and proliferating contentions would seem to be inevitable." *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted).

Intensifying that chaos, other jurisdictions have taken the diametrically opposing approach. Reacting to the extraordinary (and extraterritorial) assertions of authority by jurisdictions like Boulder that seek to hold energy companies liable under state law for the effects of global greenhouse gas emissions, others—including two of Colorado's neighboring States—have

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v. Exxon Mobil Corp., No. 23-2-25216-1 (Wash. Super. Ct. Dec. 20, 2023); *City of Chi. v. BP p.l.c.*, No. 2024CH01024 (Ill. Cir. Ct. Feb. 20, 2024); *Bucks Cnty. v. BP p.l.c.*, No. 2024-01836-0000 (Pa. Ct. Com. Pl. Mar. 25, 2024); *Maine v. BP p.l.c.*, No. PORSC-CV24-442 (Me. Super. Ct. Nov. 26, 2024); *Hawaii v. BP p.l.c.*, No. 1CCV-25-717 (Haw. Cir. Ct. May 1, 2025).

sought to immunize energy companies against such state-law claims.

Oklahoma, for example, enacted a law prohibiting anyone in the State from bringing a lawsuit against an energy company that "seeks relief of any kind arising out of or relating to, climate change, the alleged effects of climate change, or greenhouse emissions," including "any cause of action for fraud, misrepresentation, deception, or failure to warn, whether statutory or at common law." Okla. S.B. 1439, § 1(C)(1), (D)(1) (2026 Reg. Sess.). Similarly, Utah enacted a law providing that a person may not be held liable "for damage or injury from any actual or potential effect on climate caused wholly or partly by greenhouse gas emissions, unless a court finds by clear and convincing evidence that the person has" violated the express terms of a permit or a statutory restriction on emissions within Utah. Utah H.B. 222, § 1(2)(a) (2026 Gen. Sess.); *see* Iowa Code § 673B.2 (2026) (law similar to Utah's). Indeed, the Tennessee Energy Freedom Act makes it a "substantive right" to produce, transport, sell, manufacture, refine or combust fossil fuels in Tennessee, and prohibits anyone from bringing a lawsuit "in any forum" seeking to impose liability in connection with emissions from such activities. Tenn. H.B. 2070, § 2 (114th Gen. Assemb.). Other States are considering similar statutes. *See, e.g.*, La. H.B. 804 (2026 Reg. Sess.). Yet Boulder would penalize energy companies for engaging in conduct that is perfectly lawful—or even a protected right—under the laws of other States.

2. The dysfunction of such a regime is obvious. States with little or no fossil fuel production have every incentive to impose costs on out-of-state producers, pursuing windfalls at the expense of other States' citi-

zens. This cost-externalization dynamic is well known. "Quite simply, dividing the nation into fifty geographic zones makes it almost inevitable that some pollution problems will be generated by out-of-staters," and "these issues promise politicians on the state level the equivalent of a free lunch—'tough' legislation allows them to garner public credit for bringing a benefit to *their* constituents at somebody else's expense." E. Donald Elliott, Bruce A. Ackerman & John C. Millian, *Toward a Theory of Statutory Evolution: The Federalization of Environmental Law*, 1 J. L. Econ. & Org. 313, 329 (1985).

State law, dominated as it is by parochial concerns, is inherently ill-suited for the regulation of national and global emissions. Take Vermont, for instance, which has both sued oil companies in litigation parallel to this one, *Vermont v. Exxon Mobil Corp.*, No. 21-CV-02778 (Vt. Super. Ct.), *and* enacted a Climate "Superfund" Act "to secure compensatory payments from responsible parties based on a standard of strict liability," 10 Vt. Stat. Ann. § 597(1). Vermont has few qualms in pursuing such far-reaching policies because it "has no fossil energy reserves," "no crude oil … production" or "petroleum refineries," and "does not have any coal mines, coal reserves, or coal-fired power plants." U.S. Energy Info. Admin., *Vermont*, https://www.eia.gov/states/VT/analysis (updated Jan. 15, 2026).

And take New York State, which has enacted "Superfund" legislation similar to Vermont's. Again, New York "produces only a small amount of crude oil," "does not have any … economically recoverable coal reserves, and the state no longer has any coal-fired electricity generation." U.S. Energy Info. Admin., *New York*,

https://www.eia.gov/states/NY/analysis (updated Feb. 19, 2026). Indeed, a coalition of 20-plus states argues that "New York intends to wring funds from producers and consumers in *other* States to subsidize certain New-York-based 'infrastructure' projects," and that "[b]illions of dollars in fines will negatively impact energy production and drive-up energy costs in other States, especially those States that rely heavily on the fossil-fuel-related energy sector." Am. Compl. ¶¶ 1, 12, *West Virginia v. New York*, No. 25-cv-168 (N.D.N.Y. Apr. 7, 2025), ECF No. 125.

Moreover, compliance with a hodgepodge of state and local efforts to regulate greenhouse gas emissions is extremely inefficient—and likely impossible. If companies are continually walloped by claim after claim of staggering liability across hundreds of jurisdictions, they will cease to offer the products and services that the market (and the country) needs. Or, just as troubling, they will pass those costs onto consumers who depend on these essential products to live their lives. "Imposing damages liability on the oil-and-gas industry for every ill plausibly connected to climate change would function like a massive excise tax, driving up the costs of gasoline and home heating for ordinary consumers." Thomas W. Merrill, *The New Public Nuisance: Illegitimate and Dysfunctional*, 132 Yale L.J. Forum 985, 1007 (2023). As the various state-law suits work their way through dozens of state courts, businesses will lose the ability to predict where, when, and how they will be permitted to operate.

That is not a rational or workable system. As Judge Wilkinson has explained in an analogous context, the "balkanization of clean air regulations and a confused patchwork of standards" work "to the detri-

ment of industry and the environment alike." *North Carolina ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 312 (4th Cir. 2010). And this Court has refused to interpret similar provisions of the Clean Water Act as enabling "such an irrational system of regulation" that "would lead to chaotic confrontation between sovereign states." *Ouellette*, 479 U.S. at 496-97 (citation omitted). The only sensible solution is to recognize that this national and global issue belongs in the national government's exclusive domain and is governed by federal law, as the structure of the Constitution and the Clean Air Act each demand.

This Court should reverse the deeply flawed decision below.

II. Under our federal structure and the Clean Air Act, state law may not impose liability for the climate effects of emissions that originate all over the world.

Federal law precludes state-law claims for relief for harm to the Earth's climate that is attributed to interstate and international greenhouse-gas emissions. Because greenhouse gas emissions originate all over the world, intermix in the global atmosphere, and cross state and national borders, the laws of a single State cannot possibly resolve a dispute like this one.

The Colorado Supreme Court incorrectly held that respondents can pursue state-law claims for harms that are allegedly caused by global greenhouse gas emissions. To the extent that federal law would ordinarily control in this area, the court reasoned, the Clean Air Act (CAA) displaced federal common law without providing any federal statutory cause of action,

and thus somehow opened the door for state law to seize the wheel.

That is incorrect. Claims like respondents' must be brought under federal law—not because federal statutory law shoved state law aside, but because the nature of such claims *requires* a federal rule of decision. Congress displaced federal common law through the Clean Air Act and limited remedies to those available under that Act. That deliberate choice does not somehow deputize *state* law to control this uniquely federal dispute.

A. Only federal law can govern disputes like this one, which implicates interstate and international interests.

There are certain controversies that "our federal system does not permit … to be resolved under state law," where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). In a multi-state Union of equals, a single State's power to address interstate air pollution or air quality issues must respect state borders. Thus, it is no surprise that federal law limits a State's authority to regulating emissions from within the State. Disputes, like this one, over the impacts of air emissions originating in other States or countries are exactly the type of controversy that individual States lack the power to address. The state supreme court erred in refusing to recognize that it was therefore "inappropriate for state law to control." *Id.*

1. Federal law must govern when "there is an overriding federal interest in the need for a uniform rule of decision or where the controversy touches basic inter-

ests of federalism." *Milwaukee I*, 406 U.S. at 105 n.6. The areas where that is true include the areas where this Court has allowed for the development of federal common law—in other words, the areas where the *only* constitutionally permissible rules of decision are federal ones. Thus, this Court has made clear that federal common law, in its modern form, "addresses 'subjects within national legislative power where Congress has so directed' or where the basic scheme of the Constitution so demands." *Am. Elec. Power Co. v. Connecticut* (*AEP*), 564 U.S. 410, 421 (2011) (quoting Henry J. Friendly, *In Praise of* Erie*—and of the New Federal Common Law*, 39 N.Y.U. L. Rev. 383, 408, 421-22 (1964)). Federal law can supply such a "uniform rule of decision" in those areas; state law cannot.

Courts have applied federal common law in cases involving interstate water disputes,[3] tribal land rights,[4] interstate air carrier liability,[5] and foreign relations.[6] In such cases, federal law must govern: the structure of the Constitution does not allow States to engage in the cross-border regulation necessary to resolve such controversies. *See Tex. Indus.*, 451 U.S. at

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[3] *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 109-10 (1938); *Kansas v. Colorado*, 206 U.S. 46, 95-96 (1907).

[4] *Cnty. of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 235-36 (1985).

[5] *Treiber & Straub, Inc. v. UPS, Inc.*, 474 F.3d 379, 384 (7th Cir. 2007) (discussing the Fifth Circuit's "extensive analysis of the history of federal common law liability of common carriers" in *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 925-29 (1997)).

[6] *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425-27 (1964); *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1088-89 (9th Cir. 2009); *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1233 (11th Cir. 2004).

641. Moreover, "local law will not be sufficiently sensitive to federal concerns, it is not likely to be uniform across state lines, and it will develop at various rates of speed in different states." 19 Wright & Miller, Fed. Prac. & Proc., Juris. § 4514 (3d ed. 2022).

One archetypal area in which the basic scheme of the Constitution requires a federal rule concerns "the environmental rights of a State against improper impairment by sources outside its domain." *Milwaukee I*, 406 U.S. at 107 n.9 (citation omitted). In such cases, where there is no federal statutory rule, "[f]ederal common law and not the varying common law of the individual States is . . . necessary" to provide a "uniform standard" for such disputes. *Id.* (citation omitted). Accordingly, this Court has held that "[w]hen we deal with air and water in their ambient or interstate aspects, there is a federal common law." *AEP*, 564 U.S. at 421 (quoting *Milwaukee I*, 406 U.S. at 103).

Claims regarding transboundary emissions implicate "uniquely federal interests." Accordingly, when *Milwaukee I* held that cases regarding interstate air and water emissions "should be resolved by reference to federal common law[,] the implicit corollary of this ruling was that state common law was preempted." *Ouellette*, 479 U.S. at 488; *see Milwaukee I*, 406 U.S. at 107 n.9.

2. Climate change is an international and interstate phenomenon. Greenhouse gas emissions are released into the Earth's atmosphere, where they intermix, from all over the world, and their effects are just as global.

The Amended Complaint in this case does not mince words about the scope of its allegations. It re-

peatedly states that it seeks to hold petitioners responsible for their worldwide "fossil fuel products" that "release CO2 and other GHGs into the *atmosphere*, and contribute to changes in the *planet's climate*." J.A. 21, 24-25 (¶¶ 70, 85) (emphases added); J.A. 34 (¶ 123) (alleging that "the emission of GHGs into the atmosphere … has increased the concentration of those gases in the atmosphere, trapping heat in the climate system, and warming the planet"); J.A. 98 (¶ 383) ("Exxon is one of the largest sources of GHG emissions both globally and historically."); J.A. 102 (¶ 399) ("Suncor is one of the largest sources of GHG emissions both globally and historically."). Respondents even seek to hold petitioners responsible for emissions by others. The Amended Complaint acknowledges that both the emissions and the harms alleged (and the atmospheric phenomena that are indispensable causal links between the emissions and the harms) span the entire globe.

Respondents' claims thus implicate uniquely federal interests, in multiple respects. It would be sufficient that they concern "air and water in their ambient or interstate aspects," which "undoubtedly" calls for a federal rule of decision, *AEP*, 564 U.S. at 421 (citation omitted); *Milwaukee I*, 406 U.S. at 103. But there is more: they also implicate foreign policy and the United States' sovereign interests. The "international nature of the controversy" is another reason why it is "inappropriate for state law to control." *Tex. Indus.*, 451 U.S. at 641.

Notably, many state courts agree—and reject the contrary view of the Colorado Supreme Court in this case. Most recently, the Supreme Court of Maryland firmly rejected an attempt by Baltimore and other Maryland local governments to sue 26 multinational oil

and gas companies under state tort law, seeking to recover damages purportedly caused by global greenhouse gas emissions. *Mayor & City Council of Balt. v. B.P. P.L.C.*, 353 A.3d 1142, 1150 (Md. 2026). The court held that such claims fall squarely within the inherently federal areas of interstate pollution and foreign affairs and may therefore only be brought under federal law." *Id.* at 1175. "Such a sprawling case is simply beyond the limits of state law." *Id.* at 1174 (brackets and citation omitted). The court built on an earlier decision by the Second Circuit rejecting similar claims by New York City. That court correctly understood that federal law governs in this area, leaving no role for state law, because this "is an interstate matter raising significant federalism concerns," in no small part since "a substantial damages award like the one requested by the City would effectively regulate the [defendants'] behavior far beyond New York's borders." *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021). As these decisions recognize, claims like these ask state courts to exceed the role that our federal system allows them.

3. The necessity of a uniform federal approach in mitigating climate change is accentuated by the difficult policy choices inherent in balancing the United States' environmental and energy needs. There are important trade-offs to consider, all of which have enormous consequences. As this Court has explained, "[t]he appropriate amount of regulation in any particular greenhouse gas-producing sector" requires "informed assessment of competing interests": "Along with the environmental benefit potentially achievable, our Nation's energy needs and the possibility of economic disruption must weigh in the balance." *AEP*, 564 U.S. at 427.

The federal government has been grappling with this dilemma for decades. Congress undoubtedly takes national energy needs very seriously, including by providing for oil and gas production. *E.g.*, 43 U.S.C. § 1802(1) ("establish[ing] policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf … to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade").

Indeed, by enacting the CAA, Congress has designated the Environmental Protection Agency (EPA) "as primary regulator of greenhouse gas emissions." *AEP*, 564 U.S. at 428. As EPA has recently explained, its regulatory authority under the CAA is "a critical part of the comprehensive framework of regulating air pollution." *Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act*, 91 Fed. Reg. 7686, 7696 (Feb. 18, 2026). In part for that reason, EPA has recently reaffirmed its position that the CAA "continues to preempt state common-law claims and statutes that seek to regulate out-of-state emissions," even though EPA has determined that the CAA does not authorize it to prescribe certain greenhouse gas emission standards based on global climate change concerns. *Id.* at 7739.

Even beyond the CAA, Congress has repeatedly taken legislative action in this area. In the Inflation Reduction Act of 2022, for example, the term "greenhouse gas" appears no fewer than 147 times. Pub. L. No. 117-169, 136 Stat. 1818. That term appears another 35 times in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021). And

Congress recently recalibrated its climate policy with the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025), which "makes significant alterations to public incentives for climate and energy-related investments." Mia Beams & Akkshath Subrahmanian, *Congress's "One Big Beautiful Bill" Will Shrink Renewable Energy Investments—Yet Some Technologies Are Preserved*, Council on Foreign Relations (Aug. 4, 2025), https://www.cfr.org/article/congresss-one-big-beautiful-bill-will-shrink-renewable-energy-investments-yet-some.

Against this backdrop, the overriding federal interest is clear. Subjecting companies' "global operations to a welter of different states' laws," as the Second Circuit cogently explained, "would further risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other." *City of New York*, 993 F.3d at 93. In fact, "[a]llowing each of the 50 states (and the countless individual local governments located within them) to impose their own preferred policy solutions for climate change—with each state naturally focused on *local* rather than national or international impacts, would create a plainly 'irrational system of regulation' that would lead to 'chaotic confrontation between sovereign states.'" *Baltimore*, 353 A.3d at 1176 (quoting *Ouellette*, 479 U.S. at 496-97).

In short, this is a case in which "there is an overriding federal interest in the need for a uniform rule of decision or where the controversy touches basic inter-

ests of federalism." *Milwaukee I*, 406 U.S. at 105 n.6. Federal law must therefore control.

4. The structural limitations that the Constitution imposes on the application of state law to quintessentially national issues are reinforced by the Due Process Clause. That Clause likewise limits the authority of States to regulate matters that are insufficiently connected to the State. *See Gerling Glob. Reinsurance Corp. of Am. v. Gallagher*, 267 F.3d 1228, 1237-38 (11th Cir. 2001); *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025); *Home Ins. Co. v. Dick*, 281 U.S. 397, 407-08 (1930); *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1881) (State may not legislate "except with reference to its own jurisdiction"). This Court has referred to these "territorial limits of state authority" as "the Constitution's horizontal separation of powers." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 & n.1 (2023).

Respondents seek to regulate transactions far beyond their municipal borders (and even Colorado's), demanding that business practices and communications that occur elsewhere conform to their preferred standards—or be penalized. In doing so, they seek to control lawful activities in other States and effectively override the energy policies of sister States, as well as those of the federal government. Respondents' theory is in serious tension with the constitutional limits on any one State's authority to prescribe legal rules beyond its own borders.

B. Respondents' packaging of their claims makes no difference to the conclusion that the claims are preempted by federal law.

Regardless whether respondents seek to enjoin greenhouse gas emissions directly, they certainly do seek to regulate such emissions. As the Tenth Circuit recognized in an earlier phase of this litigation, this suit is, at least in part, a suit "for damages allegedly caused by climate change." *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1248 (2022). The Amended Complaint demands that petitioners "pay[] their share of the costs Plaintiffs have incurred and will incur because of Defendants' contribution to alteration of the climate." J.A. 3 (¶ 6). It is a truism that "'regulation can be . . . effectively exerted through an award of damages,' and '[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.'" *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)) (brackets in original); *see also City of New York*, 993 F.3d at 92 (same conclusion in similar climate suit); *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 719 (8th Cir. 2023) (Stras, J., concurring) (recognizing that similar climate suit sought to "change the companies' behavior on a global scale").

It makes no difference that respondents have framed this dispute as arising, in part, from misleading marketing relating to climate change. The point is that respondents accuse petitioners of causing greenhouse gas emissions (both from the use of their own products and from other sources entirely), and that

they contend that global greenhouse gas emissions are the source of harm to them and the basis for an award of judicial relief. It is "the interstate or international *nature of the controversy* [that] makes it inappropriate for state law to control," *Tex. Indus.*, 451 U.S. at 641 (emphasis added), not the precise causes of action pleaded. Here, the gravamen of the dispute is the oil companies' alleged responsibility for climate change impacts attributed to greenhouse gas emissions. That dispute must be governed by federal law, for the reasons given above. *See* pp. 12-19, *supra*.

As the Second Circuit held in rejecting a similar argument in a parallel climate suit by New York City, "[a]rtful pleading cannot transform the City's complaint into anything other than a suit over global greenhouse gas emissions." *City of New York*, 993 F.3d at 91. The Maryland Supreme Court reached the same conclusion regarding much the same allegations brought by Baltimore and other municipalities: "No amount of creative pleading can masquerade the fact that the local governments are attempting to utilize state law to regulate global conduct that is purportedly causing global harm." *Baltimore*, 353 A.3d at 1173. "To state the obvious," that court continued, "global warming is created by global consumption"—and "[t]he local governments' police powers do not extend beyond their respective borders, and certainly do not authorize the policing of global conduct." *Id.* at 1174. Such a suit must be governed by federal law.

C. The displacement of federal common law by federal statute does not authorize state law to regulate a uniquely federal area.

1. The Colorado Supreme Court's principal reason for concluding that respondents' state-law claims are not preempted is that federal common law related to greenhouse gas emissions has been "displaced by the federal legislation authorizing EPA to regulate carbon-dioxide emissions," *AEP*, 564 U.S. at 423, and therefore "that common law no longer exists." Pet. App. 17a. The majority below echoed the Hawaii Supreme Court's reasoning that "displaced federal common law plays no part in this court's preemption analysis." Pet. App. 20a (quoting *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1199 (Haw. 2023), *cert. denied*, 145 S. Ct. 1111 (2025)).

That reasoning cannot be reconciled with "the federalism concerns undergirding the entire rationale of federal common law." *Baltimore*, 353 A.3d at 1177. As both the Second Circuit and Maryland Supreme Court explained, "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *City of New York*, 993 F.3d at 98. "Such an outcome is too strange to seriously contemplate." *Id.* at 98-99; *see Baltimore*, 353 A.3d at 1177 (same).

The Second Circuit, in turn, embraced the reasoning of the Seventh Circuit in *Illinois v. City of Milwaukee (Milwaukee III)* that, despite *Milwaukee II*'s holding that the federal common law recognized in *Mil-*

waukee I was displaced, "[t]he very reasons … for resorting to federal common law in *Milwaukee I* are the same reasons why the state claiming injury cannot apply its own state law to out-of-state discharges now." 731 F.2d 403, 410 (7th Cir. 1984).

2. The Colorado Supreme Court criticized the Second Circuit's "preemption analysis" as "'backwards reasoning.'" Pet. App. 19a (quoting *Honolulu*, 537 P.3d at 1199). But there is nothing "backwards" about it. The Second Circuit—as well as the Maryland Supreme Court and Seventh Circuit—correctly applied the basic rule that "if federal common law exists, it is because state law cannot be used." *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) *(Milwaukee II)*; *see Tex. Indus.*, 451 U.S. at 641 & n.13 (federal law governs where the nature of the claim "makes it inappropriate for state law to control"); *Baltimore*, 353 A.3d at 1177 n.22 (same).

That Congress displaced federal common law simply means that the federal *courts* are no longer in the business of formulating federal standards. *See AEP*, 564 U.S. at 423-24 (explaining that "it is primarily the office of Congress, not the federal courts, to prescribe national policy in areas of special federal interest"). Displacement in no way eliminates or undermines the overriding federal interest in the dispute, much less throws open the door for the courts of the fifty different States to engage in their own piecemeal resolution of these distinctly federal issues under a variety of competing and conflicting state and local laws. State law was incompetent to address the issue before congressional action, and it remains so after it.

Precisely because of the need for uniformity—the reason why federal common law was necessary in the first place—a displacing federal statutory scheme must provide the authoritative answer on what remedies are available, even if the answer is "none." Thus, "'resorting to state law' on a question previously governed by federal common law is permissible only to the extent 'authorized' by federal statute." *City of New York*, 993 F.3d at 99 (brackets omitted) (quoting *Milwaukee III*, 731 F.2d at 411); *see Baltimore*, 353 A.3d at 1177 (same).

Under the reasoning of the Colorado and Hawaii Supreme Courts, however, congressional attempts to supply a *uniform* federal standard by statute would bring to life the very same *disuniform* state-law rules that were, and remain, incompetent to address this national problem. That would be so even if that federal legislation were to "adopt[] verbatim a judge-made common law rule." *City of New York*, 993 F.3d at 98-99. Congress could enact statutes codifying the very same court-supplied rules governing interstate water rights, interstate air carrier liability, and interstate disputes over intangible property, *see* p. 13, *supra*, and according to the Colorado and Hawaii Supreme Courts (and respondents), state law claims on those subjects would suddenly become viable, triggering the very same problems that initially prompted the formulation of a federal rule.

That makes no sense. Federal problems remain federal problems, regardless of whether the necessary uniform, federal standard to deal with them is supplied by federal courts or federal statute. In the (few) areas where federal common law would apply but for displacement by Congress, "the implicit corollary" is that

"state common law [is] preempted." *Ouellette*, 479 U.S. at 488.

D. The Clean Air Act also preempts respondents' state-law claims.

Respondents' claims also conflict with, and are preempted by, the CAA itself. The CAA "delegate[s]" authority to EPA to "deci[de] whether and how to regulate" greenhouse gas emissions, and "entrusts" to EPA the "complex balancing" of "competing interests." *AEP*, 564 U.S. at 426-27. For example, Title II of the CAA gives EPA authority to determine whether to establish emissions standards for the transportation sector, including vehicles, aircraft, locomotives, motorcycles, and nonroad engines and equipment. 42 U.S.C. §§ 7521(a)(1)-(2), (a)(3)(E), 7571(a)(2)(A), 7547(a)(1), (a)(5). The CAA also provides EPA with authority to determine whether emissions of a pollutant from "stationary sources," such as power plants, refineries, and oil and gas wells, should be regulated and at what levels. *AEP*, 564 U.S. at 426; *see* 42 U.S.C. § 7411(b)(1)(A)-(B), (d). "If EPA does not set emissions limits for a particular pollutant or source of pollution, States and private parties may petition [EPA] for a rulemaking on the matter … [but there is] no room for a parallel track." *AEP*, 564 U.S. at 425.

Moreover, the CAA's "Good Neighbor Provision," 42 U.S.C. § 7410(a)(2)(D)(i), is a specific attempt "[t]o tackle the problem" of "air pollution emitted in one State, but causing harm in other States." *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 495 (2014); *see Oklahoma v. EPA*, 605 U.S. 609, 616 (2025) (explaining that the CAA's Good Neighbor Provision "accounts for the 'externality' that 'because air currents

can carry pollution across state borders, emissions in upwind States sometimes affect air quality in downwind States.'" (brackets omitted; quoting *Ohio v. EPA*, 603 U.S. 279, 283–284 (2024)). The Good Neighbor Provision is premised on the assumption that "downwind States … lack authority to control" out-of-state pollution. *EME Homer City Generation*, 572 U.S. at 495. The CAA thus "contemplates no role for states reaching out and applying their law in other states." *Baltimore*, 353 A.3d at 1179.

The citizen-suit savings clause of the CAA, 42 U.S.C. § 7604(e), preserves a "slim reservoir of state common law" for suits brought under the law of the State that is the *source* of the emissions. *City of New York*, 993 F.3d at 99-100. But that narrow carveout underscores that the CAA leaves *no other* avenue for state law claims with respect to air pollution for which the authority to regulate has been delegated to EPA. In *Ouellette*, this Court analyzed parallel provisions of the Clean Water Act and held that the statute "precludes a court from applying the law of an affected State against an out-of-state source" but permits "a nuisance claim pursuant to the law of the *source* State." 479 U.S. at 494-497. The same is true of the CAA. *See City of New York*, 993 F.3d at 100.

Respondents complain of emissions from all over the planet, not emissions originating in Colorado—yet they seek to hold petitioners liable under Colorado law. Such claims are preempted by the CAA's comprehensive regulatory scheme.

CONCLUSION

The judgment should be reversed.

Respectfully submitted.

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May 21, 2026