No. 25-170

Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC.; ET AL.,
Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY;
CITY OF BOULDER,
Respondents.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO

BRIEF OF ALABAMA, WEST VIRGINIA, AND 24 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI* STATES

Amici States are Alabama, West Virginia, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, and Wyoming.

The City and County of Boulder, Colorado, assert a power with no analogue in our Nation's history and no place in our federalist system: "the forcible abatement of outside nuisances." *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907). Like disputes over borders, disputes over cross-border emissions cannot be settled by one State alone. Rather, as the Court has recognized for over a century, "suits brought by one State to abate pollution emanating from another State" are "meet for federal law governance." *AEP v. Connecticut*, 564 U.S. 410, 421-22 (2011). Whether Congress or federal courts supply the controlling law, our Constitution does not allow two small localities like these to set national energy policy.

Suits like this one imperil *Amici* States' ability to achieve their policy prerogatives on energy production and environmental protection. To be sure, States can assign liability for conduct outside their borders in limited contexts. But the theory that *every* State can regulate *every* molecule that enters the atmosphere *anywhere* in the world is unlimited—and unjustified. After all, a "courageous" locality can "serve as a laboratory," but only "without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). When one State's power grows so far beyond its proper sphere, the rights of every other State risk withering away.

SUMMARY OF ARGUMENT

I. A State cannot apply its home-state law to interstate emissions because of the "basic interests of federalism." *Illinois v. City of Milwaukee*, 406 U.S. 91, 105 & n.6 (1972) (*Milwaukee I*). The "cardinal rule, underlying all the relations of the states to each other, is that of equality of right." *Kansas v. Colorado*, 206 U.S. 46, 97 (1907). No State can "enforce its own policy" on the others, so either Congress or "interstate common law" must provide "the rule which shall control." *Id.* at 95, 98.

The court below erred in two ways. First, because applying state law is constitutionally "impossible," *Tenn. Copper Co.*, 206 U.S. at 237, any displacement by statute of earlier federal law is irrelevant to the question presented. *Contra* Pet.App.9a-11a, 17a-20a. The Clean Air Act did not and could not alter the fact that "state law cannot be used." *City of Milwaukee v. Illinois*, 451 U.S. 304, 313 n.7 (1981) (*Milwaukee II*). Second, the Constitution does not distinguish between "an action against a pollution emitter to abate pollution" and this action for "damages from upstream producers" for the alleged cost of pollution. Pet.App.17a. Boulder tries to dodge centuries of precedent, but it can't hide the source of its alleged injury, the chain of causation it pleaded, and the likely effect of the drastic remedies it demands.

II. Cases like this one threaten the availability of affordable energy and the sovereignty of States. The Court should recognize the supremacy of federal law for resolving interstate disputes before local actors can do serious damage to the Nation's energy system and more.

ARGUMENT

I. Federalism and Precedent Foreclose State-Law Claims Based on Interstate Emissions.

By declaring independence, the Colonies laid claim "to all the rights and powers of sovereign states." *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 237-38 (2019) (citing *McIlvaine v. Coxe's Lessee*, 8 U.S. 209, 212 (1808)). "A sovereign decides by his own will, which is the supreme law within his own boundary." *Rhode Island v. Massachusetts*, 37 U.S. 657, 737 (1838). When sovereign wills conflict, they may settle their differences by treaty or war. For example, if one creates a "nuisance" "upon a navigable river like the Danube, [it] would amount to a *casus belli* for a state lower down, unless removed." *Missouri v. Illinois*, 200 U.S. 496, 520-21 (1906).

But the Colonies joined the Union, and from the origins of our federal system flow several basic tenets of constitutional law. While the Constitution "did not abolish the sovereign powers of the States," it "limits [their] sovereignty in several ways." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 470 (2018). Most obviously, "[t]he sovereignty of each State … implie[s] a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980).

Unlike "absolutely independent nations," which may resort to force, no State "can impose its own legislation" or "enforce its own policy upon the other[s]." *Kansas*, 206 U.S. at 95, 98; *see BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 (1996). "[H]appily for our domestic harmony, the power of aggressive operation against each other is taken away." *Burton's Lessee v. Williams*, 16 U.S. 529, 538 (1818). Every

State agreed to "stand[] on the same level with all the rest," *Kansas*, 206 U.S. at 97, to form "a union of states, equal in power, dignity and authority." *Coyle v. Smith*, 221 U.S. 559, 567 (1911)."[A]nd the independence of one [state] implies the exclusion of power from all others." *Brown v. Fletcher's Estate*, 210 U.S. 82, 89 (1908) (citation omitted); *see also* Letter from James Madison to Edmund Randolph (Mar. 10, 1784), in 4 *The Founders' Constitution* 517 (Philip B. Kurland & Ralph Lerner eds., 1987) (describing how one State lacks the power to punish even its own citizens for "transgressing within the pale of another."). This "historic tradition" has become a pillar of American government. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009).

Relinquishing the powers of diplomacy and war did not leave the States defenseless. What would have been political fights among sovereigns became judicial questions with answers in federal law. *Rhode Island*, 37 U.S. at 737-38, 743. By ratifying the Supremacy Clause, the States "surrendered to congress, and its appointed Court, the right and power of settling their mutual controversies." *Id.* at 737; *see Kansas*, 206 U.S. at 95; *Missouri*, 200 U.S. at 518-20; *Missouri v. Illinois*, 180 U.S. 208, 241 (1901); *see also Gibbons v. Ogden*, 22 U.S. 1, 211 (1824). The Constitution thus provided a structural solution for "bickerings and animosities … that could not be foreseen." The Federalist No. 80 at 537 (Cooke ed. 1961). "Whatever practices" that "tend[] to disturb the harmony between the States are proper objects of federal superintendence and control." *Id.*

In areas ripe for interstate conflict, the Court has maintained State equality and harmony by declining

to apply any one State's law. *See Kansas*, 206 U.S. at 95; *Missouri*, 200 U.S. at 520; *see also, e.g.*, *New Jersey v. New York*, 283 U.S. 336, 342 (1931); *Connecticut v. Massachusetts*, 282 U.S. 660, 670-71 (1931). Instead, only federal law can govern matters that implicate interstate relations. The doctrine extends even to cases involving private parties, like this one. *See, e.g.*, *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110 (1938); *Tenn. Copper Co.*, 206 U.S. at 237; *Lessee of Marlatt v. Silk*, 36 U.S. 1, 22-23 (1837).

The Court had these principles in mind when it decided *Milwaukee I*, which was also an interstate nuisance case. Illinois alleged that Milwaukee had polluted Lake Michigan, an interstate body of water. Invoking the logic of federalism, the Court held unanimously that Illinois could not force Milwaukee to abate its activity, but neither could Illinois be asked "to submit to whatever might be done." 406 U.S. at 104. Pitting two sovereign wills against each other, the "nature of the problem" created an impasse that required a neutral arbiter, *i.e.*, federal law. *Id.* at 103 n.5. Congress can legislate, or federal courts can apply common law. Either way, state law cannot govern a controversy that "touches basic interests of federalism" or that needs "a uniform rule." *Id.* at 105 n.6. "Certainly," the pollution of Lake Michigan was such a controversy. *Id.*

Likewise, the claims here cannot proceed under state law. Boulder seeks to enact a global climate policy—one that would interfere with the sovereign power of every other State to regulate energy and the environment within its borders. By pursuing devastating damages against particular targets, the city and county propose to squelch lawful conduct

occurring elsewhere—indeed, conduct that other States actively encourage. *See, e.g.*, W. Va. Code § 37B-1-2 (declaring it the public policy of West Virginia to "[f]oster, encourage and promote exploration for and development, production, and conservation of oil, natural gas and their constituents"). "This is, in effect, an interstate dispute." *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 718 (8th Cir. 2023) (Stras, J., concurring) (*API*); *contra* Pet.App.18a. Colorado law cannot resolve an interstate dispute without breaking basic tenets of federalism.

A. State law can regulate emissions within state borders but not beyond them.

1. In cases that implicate the conflicting rights of States that are not governed by a federal statute, the Court has identified and applied "interstate common law." *Kansas*, 206 U.S. at 98; *see API*, 63 F.4th at 718 (Stras, J., concurring) ("The rule of decision in [interstate disputes] has *always* been … what we now know as the federal common law."). "*Erie* did not in terms bar any judicial recognition of new substantive rules, no matter what the circumstances, and post-*Erie* understanding has identified limited enclaves in which federal courts may derive some substantive law in a common law way." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 729 (2004). So while federal *general* common law may be "bygone," *Hencely v. Fluor Corp.*, 146 S. Ct. 1086, 1098 n.3 (2026), "specialized" federal common law remains in certain areas, *AEP*, 564 U.S. at 421 (recognizing this "distinction"). *See also Tex. Indus. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 & n.13 (1981); *Milwaukee I*, 406 U.S. at 105-06; *Hinderlider*, 304 U.S. at 110.

Cases involving interstate emissions implicate the conflicting rights of States—and thus constitute one area warranting a federal rule. *See Rodriguez v. Fed. Deposit Ins. Corp.*, 589 U.S. 132, 136 (2020) (recognizing that "certain controversies between States" justify federal common law). That's no surprise, as State versus State conflict can arise whenever one State's use or regulation of natural resources could "harm the other's interest" in the resource. *Virginia v. Maryland*, 540 U.S. 56, 74 n.9 (2003); *accord Tenn. Copper Co.*, 206 U.S. at 237.

The federal judiciary has understood for well "over a century" the need for federal resolution of such interstate pollution disputes. *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021) (collecting cases); *accord Mayor & City Council of Baltimore v. B.P. PLC*, No. 11, Sept. Term, 2025, 2026 WL 809501, at *10-18 (Md. Mar. 24, 2026) (same). For example, Missouri once sued to enjoin the dumping of sewage into an Illinois river, which it alleged would deposit downstream into Missouri riverbeds and poison Missouri water. *Missouri v. Illinois*, 200 U.S. at 517. Applying principles "known to the older common law," not state law, the Court found that Missouri's claim failed for want of injury and causation. *Id.* at 522.

Air pollution is no different. When Georgia sought to enjoin a Tennessee company from "discharging noxious gas" over state lines, Georgia law did not govern. *Tenn. Copper Co.*, 206 U.S. at 236. The Court identified common-law principles to determine that a State could be "entitled to specific relief" rather than "give up quasi-sovereign rights for pay." *Id.* at 237-38. And the Court rejected a defense of laches. *Id.* at 239. None of the analysis depended on state law but

instead a federal equity jurisprudence built for interstate emissions cases.

In *Milwaukee I*, the Court recognized a general rule that claims to protect "ecological rights" against "impairment … from sources outside the State[]" have their "basis and standard in federal common law." 406 U.S. at 100. The dispositive fact was not that Lake Michigan is "bounded … by four States," one of which was polluting. *Id.* at 104 n.6. When "deal[ing] with air and water in their … interstate aspects," the "basic interests of federalism" demand the application of federal law. *Id.* at 103 n.5, 104 n.6; *see also Iowa v. Illinois*, 147 U.S. 1, 7-8, 13 (1893) (rejecting the views of dueling state courts in favor of "equality" in river rights); *Connecticut*, 282 U.S. at 669-70 (rejecting "municipal law"); *Virginia v. Tennessee*, 148 U.S. 503, 523-24 (1893) (applying public law, international law, and moral law). "The Constitution requires a distinction between what is truly national and what is truly local," and air pollution is truly national. *United States v. Morrison,* 529 U.S. 598, 617-18 (2000).

Alleging liability for emissions from sources outside Colorado, the interstate dispute at hand cannot be resolved under state law. Because Boulder's claims invoke only state and local law, those claims fail as a matter of law and must be dismissed.

The interstate emissions cases support dismissal for another reason: the "need for a uniform rule of decision." *Milwaukee I*, 406 U.S. at 105 n.6; *accord Wheeldin v. Wheeler*, 373 U.S. 647, 651 (1963) (noting how a federal common law can be justified "in view of the desirability of a uniform rule"). Only federal law, "not the varying common law of individual states," can serve as a "basis for dealing in uniform standard with

the environmental rights of [each] State." *Milwaukee I*, 406 U.S. at 108 n.9. After all, "the want of concert, arising from the want of a general authority and from clashing and dissimilar views in the States," was one of the very reasons that the Constitution came to be. The Federalist No. 22 at 140 (A. Hamilton) (Cooke ed. 1961). That rationale applies *a fortiori* to claims based on *global* emissions, which implicate *every* State, not just those with claims to a specific river or lake. In contrast to federal law, "local law will not be sufficiently sensitive to federal concerns, … is not likely to be uniform across state lines, and … will develop at various rates of speed in different states." 19 Wright & Miller, Fed. Prac. & Proc., Juris. § 4514 (4th ed. 2022). None of that will do.

Because "our economic unit is the Nation," *City of Phila. v. New Jersey,* 437 U.S. 617, 623 (1978) (citation omitted), the Court should evaluate how state-focused suits like Boulder's "may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but "many or every, State adopted similar [strategies]," *Healy v. Beer Inst.,* 491 U.S. 324, 336 (1989). The logic here doesn't hold up. It justifies a world in which the same production and sale of energy is subject to every State's regulatory and enforcement regime at once, creating unpredictable and conflicting duties. *See Wisc. Dept. of Indus. v. Gould Inc.*, 475 U.S. 282, 286 (1986) ("Conflict is imminent whenever two separate remedies … bear on the same activity." (citation modified)). Such "balkanization of clean air regulations and a confused patchwork of standards" would harm "industry and the environment alike." *North Carolina ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 296 (4th Cir. 2010) (Wilkinson, J.);

accord City of New York, 993 F.3d at 91; Pet.App.25a, 28a, 47a (Samour, J., dissenting). If every State were to regulate the same conduct, energy producers would face enormous "uncertainty," and States would risk "chaotic confrontation" with one another. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987). "[T]he confusion and difficulty with which interstate operations would be burdened under the varied system of state regulation and the unsatisfied need for uniformity in such regulation … are evident." *S. Pac. Co. v. Ariz. ex rel. Sullivan,* 325 U.S. 761, 773-74 (1945).

Confusion and difficulty are already the order of the day. Dozens of States, localities, and even private parties are prosecuting actions like this one under the aegis of state and local law.[1] These suits threaten

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[1] *See Leon v. Exxon Mobil Corp.*, No. 25-2-15986-8 (Wash. Super. Ct.); *Hawaii v. BP p.l.c.*, No. 1CCV-25-717 (Haw. Cir. Ct.); *Maine v. BP p.l.c.*, No. PORSC-CV-24-442 (Me. Super. Ct.); *City of Chicago v. BP p.l.c.*, No. 2024CH01024 (Ill. Cir. Ct.); *Metro v. Exxon Mobil Corp.*, No. 3:24-cv-19 (Or. Cir. Ct.); *Municipality of San Juan v. Exxon Mobil Corp.*, No. 3:23-cv-1608 (D.P.R.); *California v. Exxon Mobil Corp.*, CGC-23-609134 (S.F. Super. Ct.) (coordinated with *County of San Mateo v. Chevron*, No. 17-CIV-3222 (San Mateo Super. Ct.); *County of Marin v. Chevron*, No. CIV-17-2586 (Marin Super. Ct.); *County of Santa Cruz v. Chevron*, No. 17-CV-3242 (Santa Cruz Super. Ct.); *City of Imperial Beach v. Chevron*, No. MSC17-1227 (Contra Costa Super. Ct.); *City of Richmond v. Chevron*, No. MSC18-55 (Contra Costa Super. Ct.)); *County of Multnomah v. Exxon Mobil Corp.*, No. 23CV25164 (Or. Cir. Ct.); *Municipalities of Puerto Rico v. Exxon Mobil Corp.*, No. 3:22-cv-1550 (D.P.R. 2022); *Platkin v. Exxon Mobil Corp.*, No. MER-L-1797-22 (Super. Ct. N.J.); *Vermont v. Exxon Mobil Corp.*, No. 21-CV-2778 (Vt. Super. Ct.); *County of Maui v. Chevron U.S.A. Inc.*, No. 2CCV-20-283 (Haw. Cir. Ct.); *Connecticut v. Exxon Mobil Corp.*, No. HHDCV

ruinous liability for the energy industry. As cases progress around the country, it becomes more and more likely that one state court, interpreting one State's law, would "scuttle the nation's carefully created system for accommodating the need for energy production and the need for clean air." *North Carolina*, 615 F.3d at 296. As this Court has recognized, federal law "prescribe[s] [an] order of decisionmaking" because "*our Nation's* energy needs and the possibility of economic disruption must weigh in the balance." *Cf. AEP*, 564 U.S. at 427 (emphasis added). That balance can be struck—and disaster avoided—only if this Court puts a stop to the idea any one State can regulate all interstate emissions.

2. Even if controlling precedent did not mandate dismissal, our constitutional structure would. Suits like this one undermine federalism by interfering with the right of "each State [to] make its own reasoned

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206132568S (Conn. Super. Ct.); *Delaware v. B.P. Am., Inc.*, No. N20C-09-97 (Del. Super. Ct.); *City of Hoboken v. Chevron Corp.*, No. HUD-L-3179-20 (N.J. Super. Ct.); *District of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 2892 (D.C. Super. Ct.); *Minnesota v. Am. Petroleum Inst.*, No. 62-CV-20-3837 (Minn. Dist. Ct.); *City of Honolulu v. Sunoco LP*, No. 1CCV-20-380 (Haw. Cir. Ct.); *Rhode Island v. Shell Oil Prods. Co.*, No. PC-2018-4716 (R.I. Super. Ct.); *City of Oakland v. BP p.l.c.*, No. CJC-24-5310 (S.F. Super. Ct.); *but see City of New York*, 993 F.3d 81 (dismissed); *City of Charleston v. Brabham Oil Co.*, 2020-CP-10-03975 (S.C. Ct. Com. Pl.) (dismissed); *Bucks County v. BP p.l.c.*, No. 2024-01836 (Pa. Ct. Com. Pl.) (same); *Anne Arundel County. v. BP p.l.c.*, No. C-02-CV-21-565 (M.D. Cir. Ct.) (dismissed; appeal pending); *City of Annapolis v. BP p.l.c.*, No. C-02-CV-21-250 (Md. Cir. Ct.) (same); *Mayor of Baltimore v. BP p.l.c.*, No. 24-C-18-4219 (Md. Cir. Ct.) (same); *Puerto Rico v. Exxon Mobil Corp.*, No. SJ2024CV06512 (T.P.I. San Juan) (voluntarily dismissed) *King County v. BP p.l.c.*, No. 18-2-11859 (Wash. Super. Ct.) (same).

judgment about what conduct is permitted or proscribed within its borders." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003). It is axiomatic that the Constitution places "territorial limitations on the power of the respective States." *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 263 (2017). So "a statute or regulation"—including regulation by litigation—is invalid when it "violates the extraterritoriality ban." *Dean Foods Co. v. Brancel*, 187 F.3d 609, 616 (7th Cir. 1999).

While federal common law might be said to vindicate vertical federalism, this structural recognition "is a question of horizontal federalism." Ruth Mason & Michael S. Knoll, *Bounded Extraterritoriality*, 122 Mich. L. Rev. 1623, 1626 (2024). And "[t]his extraterritoriality principle is not to be located in any particular clause.[2] It is one of those foundational principles of our federalism which we infer from the structure of the Constitution as a whole." Donald H. Regan, *Siamese Essays: (i)* CTS Corp. v. Dynamics Corp. of America *and Dormant Commerce Clause Doctrine; (II) Extraterritorial State Legislation*, 85 Mich. L. Rev. 1865, 1885 (1987); see also Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law & Legislation*, 84 Notre

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[2] That said, "[n]umerous provisions [of the Constitution] reflect this reality." *Cf. Franchise Tax Bd.*, 587 U.S. at 245-48 (recognizing "implied" aspects of federalism). The Import-Export Clause, Privileges and Immunities Clause, Tonnage Clause, Commerce Clause, Full Faith and Credit Clause, and Due Process Clause, among others, all presume territorial limits on state power. *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023). Whatever specific provision it might derive from, the principle is "obviously the necessary result of the Constitution." *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914).

Dame L. Rev. 1057, 1060 (2009) (suggesting the extraterritoriality principle is "better understood as a prohibition rooted in general structural principles of horizontal federalism"). As the Court has often seen, that constitutional structure—or "blueprint"—matters. *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 751 (2002); *see also, e.g.*, *Nevada v. Hall*, 440 U.S. 410, 433 (1979) (Rehnquist, J., dissenting) ("[T]his Court has often relied on notions of a constitutional plan—the implicit ordering of relationships within the federal system.").

A territorially bounded system brings with it many salutary benefits. Among other things, this territory-focused structure ensures that those imposing the laws are accountable to those regulated by them. It avoids dueling and inconsistent obligations. And it prevents discrimination and discord that undermine our union, while still granting States the degree of independence that a non-centralized republic entails.

And this structure did not arise in a vacuum. Our constitutional system was shaped by the law of nations. John Scrudato IV, *A Constitution Fit for A Nation: The Influence of the Law of Nations on the Virginia Plan and James Madison's Constitutional Thought*, 31 Yale J.L. & Human. 169, 193 (2020). But a system in which individual States could regulate across borders would either undermine the "national jurisdiction" of the United States as a whole, *id.*, or violate the maxim that "no state or nation can by its laws directly affect or bind property out of its own territory, or bind persons not resident therein," Joseph Story, *Commentaries on the Conflict of Laws* § 20 (1834). In other words, whether the Framers saw America as a single strong nation or a loose confederation of sovereign entities, extraterritorial

regulation didn't fit with either conception. So when this Court began exploring the territorial limits on States, it too grounded them in 'principles of public law' that the Framers would have recognized. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877); *see also* Matthew P. Cavedon, *Federalism Limits on State Criminal Extraterritoriality*, 57 Ariz. St. L.J. 811, 817 (2025) (canvassing the "historical rules of territoriality that are incorporated into constitutional federalism"). The Framers and other early interpreters wanted to leave States free to pursue their own interests while still "lean[ing] on the common law and historical interpretation of the nature of [international] state sovereignty" to place guardrails on those pursuits. Tyler L. Shearer, *Locating Extraterritoriality:* Association for Accessible Medicines *and the Reach of State Power*, 100 B.U. L. Rev. 1501, 1526-33 (2020).

At the same time, States have long pursued their sovereign interests in reducing pollution through regulation, litigation, and other means. *See, e.g.*, *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 442 (1960) (a law "designed to free from pollution the very air that people breathe clearly falls within … the police power"); *Nw. Laundry v. City of Des Moines*, 239 U.S. 486, 490-92 (1916) ("no doubt" that "emission of smoke [was] within the regulatory power of the state"). For every State has "real and substantial interests" in the environment, *New Jersey*, 283 U.S. at 342, including "all the earth and air within its domain," *Tenn. Copper Co.*, 206 U.S. at 237. So the Court has sometimes been "reluctant" to "condemn" state efforts to "conserve and preserve … vital resource[s]." *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941, 956 (1982).

Preserving the environment and natural resources is a traditional aim of regulation because by "the law of nature these things are common to mankind." *Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 718 (Cal. 1983) (quoting the Code of Justinian). So it is no surprise that a sovereign might complain of "outside nuisances" and other "injuries [like] torts" emanating from beyond its borders. *Tenn. Copper Co.*, 206 U.S. at 237; *see also Missouri*, 200 U.S. at 520-21. *Amici* States don't deny that reality.

But the extraterritorial extension of state law (*i.e.*, the use of force) is not a constitutional option for dealing with outside nuisances. *See id.*; *Milwaukee I*, 406 U.S. at 103-05; *Kansas v. Colorado*, 185 U.S. 125, 140-41 (1902); *cf. Bonaparte v. Appeal Tax Ct. of Baltimore*, 104 U.S. 592, 594 (1881). A locality cannot "extend … [its] police power beyond its jurisdictional bounds" just because it's targeting conduct "it might deem harmful to the environment." *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 393 (1994). Seizing that power diminishes the power of every other State "to promote the general welfare, or to guard the public health, the public morals, or the public safety" within its borders. *Lochner v. New York*, 198 U.S. 45, 67 (1905) (Harlan, J., dissenting). So one State may not "project its legislation" into another. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521 (1935); *see also Watson v. Emps. Liab. Assur. Corp.,* 348 U.S. 66, 70 (1954) (explaining that "a state is without power to exercise 'extra territorial jurisdiction,' that is, to regulate and control activities wholly beyond its boundaries," because of due process). Were it otherwise, "the door [would] be[] opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states

to the power of the nation." *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 532 (1949).

Colorado law cannot govern the global atmosphere because our federal system allows States to pursue their own divergent policies. And they do. *Compare, e.g.*, H.F. 2527, 91st Gen. Assemb., Reg. Sess. (Iowa 2026) (enacted) (limiting liability for alleged climate change due to emissions); S.B. 1439, 60th Leg., 2d Reg. Sess. (Okla. 2026) (enacted) (similar); 2026 Tenn. Pub. Acts ch. 756 (similar); Utah Code Ann. §78B-4-515 (West) (similar); Tex. Water Code Ann. §7.257 (West) (similar) *with* Cal. Gov't Code §7513.75(a)(3) (West) (noting "the state's broad[] efforts to decarbonize"); Cal. Pub. Res. Code §25000.5(a) (West) (declaring "overdependence on … petroleum based fuels" to be "a threat"). Such variety reflects the genius of American federalism, which lets "different communities" live by "different local standards." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989); *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015); *Oregon v. Ice*, 555 U.S. 160, 171 (2009). Within its own domain, a State may "serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

But the laboratory model does not work if one State can terminate another State's experiment—or dragoon another State's citizens into its preferred project. *See* Kevin T. Frazier, *Extraterritorial Limits on States as Laboratories of AI Policy*, The Regulatory Review (Aug. 25, 2025) ("There is also no exception [to the extraterritoriality doctrine] for regulatory experimentation under the guise of states' acting as laboratories of democracy if that experiment includes

out-of-state participants."). And sometimes, "[t]he whole point of the federal scheme is to suppress states' creativity, which might consist only of creatively achieving benefits for their own citizens at the expense of nonresidents." Roderick M. Hills, Jr., *Against Preemption: How Federalism Can Improve the National Legislative Process*, 82 N.Y.U. L. Rev. 1, 5 (2007).

Just observe how these concepts play out in the energy and environment space. Alabama, for example, highly values the production and use of traditional energy. It is Alabama's policy "that the extraction of coal provides a major present and future source of energy and is an essential and necessary activity which contributes to the economic and material well-being of the state." Ala. Code §9-1-6(a); *see also id.* §9-17-1, *et seq.* (governing the development of oil and gas). Alabama has also enacted laws to protect air quality, prevent water pollution, and conserve wildlife, *see id.* §§6-5-127, 9-2-2, 22-23-47, 22-28-3, but its views on how to achieve those ends diverge sharply from those of Boulder, Colorado. *See, e.g.*, J.A. 84 (complaining that petitioners plan to "sell[] *more* fossil fuels"); *id.* at 137-38 (seeking future damages and "abatement of the hazards"). In Boulder's world, though, Boulder's view would trump.

There can be no question that Boulder's billion-dollar carbon tax (*e.g.*, *id.* at 114) would damage the efforts of other States to promote affordable and reliable energy. Yet there's no suggestion that out-of-state producers "intended to produce … detrimental effects within [Boulder]." *Strassheim v. Daily*, 221 U.S. 280, 285 (1911). So Boulder can't erase an out-of-state, preferred industry by fiat. *Cf. Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948) ("If in its application

local policy must at times be required to give way, such 'is part of the price of our federal system.").

And it's especially pernicious to greenlight lawsuits like this one by municipalities themselves. Local budgets are facing serious pressures nationwide, and these budget challenges often can get passed to States. *See* Josh Goodman, *Big Cities Face Deficits: Should States Worry?*, Pew (Aug. 5, 2025), https://tinyurl.com/2hs96pj9. With a need to fill these budget gaps, tort suits against deep-pocketed, out-of-state interests can look like magic bullets. Localities might thus begin to litigate and "legislate according to [their] estimate of [their] own interests," reinitiating the very sort of "drift toward anarchy and commercial warfare" that prompted the Framers to move toward a strong central government in the first place. *H.P. Hood & Sons, Inc.*, 336 U.S. at 533 (1949) (citation modified). "Climate compensation" would soon become an escalating battle to shift monies and liabilities among cash-strapped jurisdictions.

Our constitutional structure can happily tolerate irreconcilable differences among States—but not if every State is "bound to yield its own views" on interstate gas emissions to those of Colorado (and pay for Colorado's liabilities along the way). *Kansas*, 206 U.S. at 97. "The federal balance is, in part, an end in itself, to ensure that States function as political entities in their own right." *Bond v. United States*, 564 U.S. 211, 221 (2011). And the Court must be diligent in preserving that balance because, "to the extent that the burden of state regulation falls on interests outside the state, it is unlikely to be alleviated by the operation of those political restraints normally exerted when interests within the state are affected." *S. Pac. Co.*, 325 U.S. at 768 n.2 (1945). So too here.

At the end of the day, this constitutional design is not merely negative; it does more than simply prohibit extraterritorial regulation. It channels interstate disputes into federal institutions where every affected sovereign has a voice. *See, e.g.*, 42 U.S.C. § 7426(b) (providing avenue by which States can resolve interstate air pollution nuisances through EPA). Congress legislates on behalf of the whole Nation, with representatives from producing and consuming States alike. The Executive negotiates international commitments, including decisions to enter into or withdraw from agreements about emissions, with the interests of all States in view. And this Court decides interstate disputes under federal law, applying principles of equality rather than the will of any single sovereign. *See Kansas*, 206 U.S. at 97-98; *Connecticut*, 282 U.S. at 670-71.

Each of these institutions provides what a Colorado courtroom does not: a forum in which energy-producing States, energy-consuming States, and the affected industry can all be heard before an independent decisionmaker before a rule of general applicability is imposed. *See* 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 28 (Max Ferrand .ed., rev. ed. 1966) (quoting Madison: "[c]onfidence" cannot always "be put in the State Tribunals as guardians of the National authority and interests"); *accord* The Federalist No. 81 at 547 (A. Hamilton) (Cooke ed. 1961). In contrast, Boulder would prefer its claims to be adjudicated by a local court, applying local law, before a local jury drawn exclusively from the community seeking billions of dollars from out-of-state defendants who have no political representation in Boulder and no voice in setting the legal standards

by which they will be judged. To describe that circumstance is to indict it.

Federal law must provide the rule of decision for claims about interstate emissions like Boulder's.

B. The displacement of federal common law does not permit state law to regulate interstate emissions.

The court below and others around the country have resisted federal law's application on the ground that the federal common law governing interstate emissions "no longer exists" after the Clean Air Act and Clean Water Act.[3] Pet.App.17a; s*ee also, e.g.*,

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[3] As the *Amici* States have explained elsewhere, the Clean Air Act has its own preemptive force in this context. But the Court ultimately need not probe the scope of that preemption here, as the federal common law and constitutional constraints decide the question presented on their own. That separate force also explains why the EPA's recent rescission of the 2009 Greenhouse Gas Endangerment Finding, 91 Fed. Reg. 13,088 (Feb. 18, 2026), has no consequence here. The bar on state regulation of interstate emissions does not depend on the vigor of any particular federal regulatory program. Indeed, EPA's rescission rule recognized that the Clean Air Act "continues to preempt state common-law claims and statutes that seek to regulate out-of-state emissions, independently of CAA section 209(a)'s express preemption provision for mobile-source emissions." 91 Fed. Reg. at 13,131. And the rescission only underscores what the *Amici* States have long maintained: that the question of *how* and *whether* to regulate interstate gas emissions is one for the political branches of the federal government—not for state juries applying local tort law. *See Massachusetts v. EPA*, 549 U.S. 497 533-34 (2007) (recognizing the Executive's central role in formulating climate policy). When Congress or the Executive calibrates the scope of federal regulation—whether by expanding it or by scaling it back—that calibration is itself a federal policy choice that state-law liability schemes cannot override. *See, e.g.*,

Rhode Island v. Shell Oil Prods. Co., 35 F.4th 44, 55 (1st Cir. 2022); *Mayor of Baltimore v. BP p.l.c.*, 31 F.4th 178, 206 (4th Cir. 2022). On this view, displacement of federal common law allows "state law … [to] snap back into action unless specifically preempted by statute." *City of New York*, 993 F.3d at 98. The "snap back" approach is misguided for several reasons.

First, federal common law "exists … because state law cannot be used." *Milwaukee II*, 451 U.S. at 313 n.7. In the "enclaves" of federal common law, States are not "free to develop their own doctrines." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426 (1964). After displacement, "the need" for federal common law "disappears," Pet.App.10a, but only because a *different federal rule* took its place. And whatever form the federal law takes, it remains equally "inappropriate for state law to control." *Tex. Indus.*, 451 U.S. at 641; *see also AEP*, 564 U.S. at 422. As the Second Circuit held, "state law does not suddenly become competent to address issues that demand a unified federal standard simply because Congress … displace[d] a federal court-made standard with a legislative one." *City of New York*, 993 F.3d at 98; *accord* Pet.App.26a (Samour, J., dissenting). The underlying deficiency of state law remains because, among other things, the constitutional considerations that support the need for a federal rule continue no matter what a particular federal statute might say.

The Court addressed a similar issue in *United States v. Standard Oil*, a damages action arising from the collision of a truck with a U.S. Army soldier. 332

Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 103 (1992); *Ray v. Atl. Richfield Co.*, 435 U.S. 151, 178 (1978).

U.S. 301, 302 (1947). The truck owner's liability could not "be determined by state law" because the matter "vitally affect[ed] [federal] interests, powers, and relations … as to require uniform national disposition rather than diversified state rulings." *Id*. at 305, 307. "The only question" was "which organ of the Government is to make the determination [of] liability." *Id*. at 316. Finding that decision best left for "Congress, not for the courts," the Court effectively barred a remedy—much like *AEP* in the emissions context. But the Court did not *revisit* its choice-of-law holding as if state law might "snap back" in the absence of federal common law.

Each of these cases is an "authority supporting the proposition that once federal common law exists, the structure of the Constitution precludes the application of state law even when that common law no longer exists." *Contra* Pet.App.17a. More precisely, federal common law has supplied a rule of decision in cases where state law cannot. Repeating that federal common law "in this area" no longer exists (Pet.App.6a, 10a, 11a, 16a, 17a), the court below blinded itself to decisive precedent. What does the work is not the preemptive effect of federal common law today, but the constitutional need for its creation.

Again: the law of interstate emissions was developed because "the basic scheme of the Constitution so demands." *AEP*, 564 U.S. at 421. "The very reasons the Court gave for resorting to federal common law in *Milwaukee I* are the same reasons why … federal law must govern" even after any displacement. *Illinois v. City of Milwaukee*, 731 F.2d 403, 410-11 (7th Cir. 1984) (*Milwaukee III*). Resolving an interstate controversy under a single State's law is a violation of state sovereignty, *see supra* §I.A.2;

Kansas, 206 U.S. at 95, which no federal statute could permit.

Likewise, because "uniquely federal" interests demand "uniform federal standards," state law can never be conclusive. *Milwaukee III*, 731 F.2d at 410. "[T]he state claiming injury cannot apply its own state law to out-of-state discharges." *Id.* Illinois squarely argued in *Milwaukee III* that if federal common law were "dissipated" by statute, then "Illinois law must again control." *Id.* at 406. But the Seventh Circuit understood that under "the logic of *Milwaukee I*," state law could *never* apply to interstate pollution. *Id.* at 411. Whether common law or statute, "federal law must govern." *Id.*

So it must govern here. The federal interests are the same or even stronger. As explained in *AEP*, trial courts "issuing ad hoc, case-by-case injunctions" are not well "suited to serve as primary regulator of greenhouse gas emissions." 564 U.S. at 428. If the Clean Air Act was meant to be a better and more uniform solution, it would make no sense for state law to "snap back" and recreate the problem that *better* federal law tried to solve. Certainly, Congress didn't contemplate that result; under both the Clean Air Act and Clean Water Act, "source states, and not affected states, play the primary role in developing the regulations by which a particular source will be bound." *Bell v. Cheswick Generating Station*, 734 F.3d 188, 196 (3d Cir. 2013).

Put differently, "displacement of a federal common law right of action" is a "displacement of remedies." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 857 (9th Cir. 2012). Whether a "federal common law remedy [is] available" (Pet.App.10a) has no

bearing on the availability of another remedy under state law. Nor can state law govern just because the claim "may fail at a later stage" under federal law. *Oneida Indian Nation of N.Y. v. Oneida County*, 414 U.S. 661, 675 (1974); *cf. Ouellette*, 479 U.S. at 499-500.

To reach a contrary view, the court below misread *AEP v. Connecticut*. There, the Court left open the possibility of certain state-law claims in view of an express statutory savings clause, 564 U.S. at 429, but not the claims here. The Court noted in *dicta* (because it was not briefed) that after the Clean Water Act, a plaintiff could still bring a "nuisance claim pursuant to the law of the *source* State." *Id.* (quoting *Ouelette*, 479 U.S. at 489). That fact does not help Boulder, which brings claims under Colorado law, not that of any source State. *See Ouelette*, 479 U.S. at 495. The type of claim *AEP* left open (intrastate) never had to be governed by federal common law in the first place. By contrast, the type of claim here (interstate) has never been resolved by state law alone.

In fact, *AEP* reaffirmed that "suits brought by one State to abate pollution emanating from another State" are "meet for federal law governance." 564 U.S. at 421-22. In such suits, "borrowing the law of a particular State would be inappropriate." *Id.* The court below ignored these lines in *AEP*, Pet.App.9a-11a, as well as this Court's doubt that "a State may sue to abate any and all manner of [interstate] pollution," 564 U.S. at 421-22. If federal law, despite its virtues in this area, does not provide a judicial remedy, *id.* at 422-23, *AEP* surely did not invite state law to fill the void.

Finally, the lower court mistook petitioners to be advancing a "brooding" and "vague federal interest."

Pet.App.18a. But the horizontal separation of powers is a fundamental tenet of constitutional law. *See Nat'l Pork Producers Council*, 598 U.S. at 376. One does not need "text" (Pet.App.18a) to know what is "so obviously the necessary result of the Constitution." *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914). For example, States lack the "raw power to apply their own law" to "disputes over borders, water rights, or the interpretation of interstate compacts." *Franchise Tax Bd.*, 587 U.S. at 246 (citations omitted). So too the fact that States may not regulate the global atmosphere is "not spelled out in the Constitution" but nonetheless "implicit in its structure and supported by historical practice." *Id.* at 247. Anything else is "ahistorical literalism." *Id.*

C. This case is about interstate emissions.

If a state *statute* imposed massive fines for oil and gas sold in a neighboring State, no one would doubt the violation of the neighbor's sovereignty. *Cf. Louisiana v. Texas*, 176 U.S. 1, 27-28 (1900) (Brown, J., concurring). Boulder's attempt to impose tort liability to the same end is no different, for "State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute." *BMW*, 517 U.S. at 573 n.17. A damages remedy that is calibrated to out-of-state production is regulation of out-of-state production, whatever label the complaint applies.

Styling a State's effort "to impose its own policy choice" as a tort action does not shield it from the basic "principles of state sovereignty and comity." *Id.* at 572. Those principles would be "meaningless" if a State could do indirectly what it could not do directly. *See Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637

(2012); *Healy*, 491 U.S. at 335-36 & n.13. Thus, whether Colorado law regulates emissions through the "power to give damages rather than to enjoin," the result is still "a potent method of governing conduct and controlling policy." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959); *see also Cipollone v. Liggett Grp.*, 505 U.S. 504, 548 (1992) (Scalia, J., concurring). Especially given the size of the potential award, this case plainly contemplates "regulation … exerted through an award of damages." *Kurns*, 565 U.S. at 637.

Really, this case is *more* pernicious than an ordinary tort. Boulder's suit is not analogous to an ordinary suit in which a plaintiff seeks damages for a discrete injury traceable to a specific product or act of a specific defendant. At least in those cases, the connection between the defendant's conduct and the plaintiff's injury cabins the regulatory effect of any judgment. Here, by contrast, Boulder does not allege that any particular defendant's products caused any particular injury in Colorado. Rather, it alleges that the cumulative emissions from the global production and combustion of fuels by all producers over decades have altered the Earth's climate. The alleged tort is the entire industry's *existence*. A judgment on that theory would not regulate a defective product, commercial advertising, or any discrete course of conduct; it would impose a levy on the aggregate output of a global industry, calibrated not to any Colorado-specific harm but to each defendant's share of worldwide production. That approach—an ugly form of the "market share liability" theory that has been widely rejected—bespeaks a redistributive and parochial policy imposed under a tort label. *See, e.g.*, *Blankenship v. Gen. Motors Corp.*, 406 S.E.2d 781, 783

(W. Va. 1991) (candidly acknowledging that a court in a "small rural state" like West Virginia is "utterly powerless" to make "interstate commerce more rational," so the court should focus instead on not "punish[ing] [West Virginia's] residents").

The court below asserted that Boulder does "not seek to regulate [greenhouse gas] emissions." Pet.App.21a. But taxing emissions—*i.e.*, regulating them—is the heart of the suit. Boulder complains that petitioners "continue to conduct their fossil fuel activities" and "produce a substantial amount of [greenhouse gas] emissions." J.A. 84-85, 114. Boulder claims this is a nuisance precisely because of the emissions. For the alleged harms caused by emissions, Boulder seeks billions of dollars in damages, *id.* at 58-59, 114, and disgorgement, *id.* at 20, 24, 123. Boulder also demands "future damages and costs" to "mitigate, abate, and/or remediate the impacts of climate change." *Id.* at 136-37. In what way *doesn't* this case "implicat[e] the regulation of interstate pollution"? Pet.App.17a.

There is no way Boulder can succeed without impacting "any oil and gas operations or sales in Colorado or elsewhere." Pet.App.4a. It is "common sense and basic economics" that raising the "cost of conduct will make that conduct less common." *City of New York*, 993 F.3d at 93 (cleaned up). Any relief would be "a *de facto* regulation on greenhouse gas emissions." *Id.* at 96. Boulder cannot "hid[e] the obvious"; it seeks "a global remedy for a global issue." *API,* 63 F.4th at 719 (Stras, J., concurring). It is a "regulatory measure[] designed to benefit in-state economic interests by burdening" producers in other States. *Dep't of Rev. of Ky. v. Davis*, 553 U.S. 328, 338 (2008). While not every lawsuit against the energy

industry is an attempt to regulate emissions, that's what "this case is about." Pet.App.33a (Samour, J., dissenting).

Sometimes claimants will try to disguise their regulatory efforts by targeting purportedly misleading disclosures about the energy production (rather than the energy production activities themselves). But because Boulder deems "altering the climate" to be a public nuisance, J.A. 113, the cloak of consumer protection is not available here. The only way for energy companies to avoid liability altogether, according to the complaint, would be to halt the production, sale, and use of their products *everywhere*. And regardless of the label, forcing global energy companies to cease doing business everywhere is not among a State's constitutional powers. Colorado law can reach "persons and property within the limits of its own territory." *Hoyt v. Sprague*, 103 U.S. 613, 630 (1880). But virtually *all* the conduct Boulder targets occurred outside of Colorado, well beyond the proper regulatory sphere of state law. *See City of New York*, 993 F.3d at 92; *cf. BMW*, 517 U.S. at 573 n.20. The causal chain necessarily passes through interstate emissions at every step. No historical analogue for what Boulder is trying to do can be found, and the court below was wrong to cast this suit as a matter "of traditional state responsibility." Pet.App.23a-24a; *see* Pet.App.27a (Samour, J., dissenting).

II. If No Federal Rule Applies, The States Will Suffer.

If the Court embraces Boulder's view, then *Amici* States, their citizens, and our Nation's energy sector suffer serious damage. Boulder alone demands billions of dollars, and every decision like the one

below is a green light for future plaintiffs. At least one county in Colorado already has a copycat lawsuit. Pet.App.25a (Samour, J., dissenting). Such suits will in turn cause job losses, tax losses, and critical industry harms in States like Alabama and West Virginia that depend on traditional energy production. The Court should consider the enormous costs and uncertainty of litigation in dozens of state courts around the country when shaping the eventual rule. *See supra* n.1. Although some courts appreciate the grave constitutional problems with these suits, others do not.

While the grave threat these suits pose to equal sovereignty and our Nation's energy infrastructure are reason enough for this Court to reverse, the problem is really bigger than that. The theory used against energy producers here can be expanded to target *any* extraterritorial activity that purportedly "exacerbate[s] climate change." Pet.App.2a. And really, the same theory could be extended to justify action against any activity that produces nationwide impacts.

It's already happening. For example, New York sued "the world's largest producer of beef products, for misleading the public about its environmental impact."[4] The beef producer's pledge to reach "Net Zero by 2040" was allegedly misleading because the company "plans to grow global demand for its product," rather than "reduce production of and demand for" it. Complaint, ¶¶143-44, *New York v. JBS USA Food Co.*, No. 450682/2024 (N.Y. Super. Ct.

[4] Office of N.Y. Att'y Gen., *Attorney General James Sues World's Largest Beef Producer for Misrepresenting Environmental Impact of Their Products*, Feb. 28, 2024, tinyurl.com/28udz5pa.

filed Feb. 28, 2024). That case was tossed, given the ease of pleading that deep-pocketed companies have "exacerbate[d] climate change," Pet.App.2a, one can only expect to see more suits like these.

And the problems aren't limited to lawsuits either. Some States are pursuing legislative avenues to impose extraterritorial liability, even though "[t]he limits on a State's power to enact substantive legislation are similar to the limits on the jurisdiction of state courts." *Edgar v. MITE Corp.*, 457 U.S. 624, 643 (1982) (plurality op.). One needn't even leave New York to look for examples. That state (alongside Vermont) has passed a law that seeks to impose billions of dollars of retroactive, strict liability on out-of-state energy producers. See N.Y. Env't Conser. Law §§ 76-0101 to -0103; *see also* Vt. Stat. tit. 10, §§ 596-599c. Other states are considering similar laws. See Nat'l Caucus of Env'tl Legislators, 2025 Superfund Legislation (Climate) (2025), tinyurl.com/3enh4k2u. Just like Boulder, they blame out-of-state entities for alleged climate change. While the liability under those laws will come by way of an administrative assessment—rather than a nuisance judgment—the pain will be just the same. All these jurisdictions appear to be trying to "leverage the expense, risks, and burden to [the energy companies] of defending [themselves] in multiple jurisdictions" to secure a much-desired cash stream. *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 475 (S.D.N.Y. 2014).

The States, upon entering the Union, gave up the right to use their laws to wage this sort of interstate conflict. They gave up the right to impose their policy choices on other States and activities entirely outside the home State's jurisdiction. The Court should recognize as much and embrace a rule that generates

the uniformity and equal respect that the Founders intended in matters like these.

CONCLUSION

The Court should reverse.

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