

No. 25-170

In the
Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., et al.,
Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, et al.,
Respondents.

**On Writ of Certiorari
to the Supreme Court of Colorado**

**BRIEF OF WASHINGTON LEGAL FOUNDATION,
NATIONAL FEDERATION OF INDEPENDENT BUSINESS
SMALL BUSINESS LEGAL CENTER, INC.,
AND NATIONAL ASSOCIATION OF WHOLESALER-
DISTRIBUTORS AS AMICI CURIAE
SUPPORTING PETITIONERS**

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May 21, 2026

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QUESTIONS PRESENTED

1. Whether federal law precludes state-law claims seeking relief for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions on the global climate.

2. Whether this Court has Article III and statutory jurisdiction to hear this case.

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INTEREST OF AMICI CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. It defends free enterprise, individual rights, limited government, and the rule of law. To that end, WLF often appears as amicus curiae to vindicate the Constitution's supremacy against unlawful judicial process. *First Choice Women's Res. Ctrs. v. Davenport*, 608 U.S. ___, 146 S. Ct. 1114 (2026); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

The National Federation of Independent Business Small Business Legal Center, Inc. is a nonprofit, public-interest law firm established to provide legal resources and be the voice for small businesses in the Nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the Nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, DC, and all 50 state capitals, the interests of its members.

National Association of Wholesaler-Distributors (NAW) is an employer and a nonprofit, non-stock, incorporated trade association that

* No party's counsel authored any part of this brief. No person or entity, other than Amici and its counsel, paid for the brief's preparation or submission.

represents the wholesale distribution industry—the essential link in the supply chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. NAW is made up of direct-member companies and a federation of national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation. The overwhelming majority of wholesaler-distributors are small-to-medium-size, closely held businesses. As an industry, wholesale distribution generates more than \$8 trillion in annual sales volume providing stable and well-paying jobs to more than six million workers.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Constitution “establish[ed]” “a more perfect Union” than the Articles of Confederation. U.S. Const., Preamble. Under the old Confederation, each State retained virtually untrammelled “power, jurisdiction, and right” to impose “duties, impositions, and restrictions” on “the privileges of trade and commerce.” Arts. of Confed., arts. II, IV, VI, IX.

This less perfect arrangement was “a firm league of friendship,” not a serious plan of government. *Id.*, art. III; Akhil Reed Amar, *America’s Constitution: A Biography* 26 (2006) (describing the old Confederation’s “basic structure as a multilateral treaty”).

It also didn’t work. The Articles invited poverty and foreign predation. So the Founders replaced

them. The superseding Constitution stood up a nationwide market in goods and services, capable of providing a launch pad to unparalleled prosperity. *Cf.* The Federalist, No. 12 (“The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares”).

To do this, the States had to surrender powers they enjoyed under the old Confederation. The States no longer could impair contractual obligations, tax trade, establish their own bankruptcy laws, or regulate interstate or international commerce. U.S. Const., art. I, §§ 8, 10. And every State had to accept that the federal Constitution and federal laws were “the supreme Law of the Land,” with “the[ir] Judges. . . bound thereby.” *Id.*, art. VI. The federal government, for its part, bound itself to protect interstate and international commerce by safeguarding property rights, ensuring due process, establishing a federal Supreme Court to superintend state courts of last resort, and guaranteeing that a republican form of government would be maintained in every State. *Id.*, arts. III, IV, amend. V.

This system—offering nationwide legal clarity to capstone business certainty—worked. The Constitution “facilitated robust economic activity within the United States and has helped generate remarkable (albeit at times uneven) economic prosperity and growth in America relative to the other nations of the world.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 404 (2023) (Kavanaugh, J., concurring in part and dissenting in part). Today’s

America has an unimaginable \$31.9 trillion national economy, backstopped by an energy industry that fuels worldwide transportation, keeps on the lights, and helps transmit market information around the planet in nanoseconds. U.S. Bureau of Economic Analysis, *Gross Domestic Product [GDP]*, Fed. Reserve Bank of St. Louis; <https://perma.cc/W75F-VDZC>. It's an "extraordinary . . . record of progress." *Ross*, 598 U.S. at 404 (Kavanaugh, J., concurring in part and dissenting in part).

But the constitutional design works only if we enforce it.

The County and City of Boulder are suing Suncor and Exxon in Colorado state court on a parade of seemingly anodyne state tort claims—public nuisance, private nuisance, unjust enrichment, trespass, the list goes on. But there's quite a wolf under that wool. The County's using the Colorado courts to "abate and regulate global emissions." Pet. App. 33a (Samour, J., dissenting) (tense altered).

A single State (let alone a municipality or county) can't do that. Federal law and the Founders' design, which—again—the state courts are constitutionally "bound" by, U.S. Const., art. VI, both forbid it. Pet. Br. 21–47. If Boulder passed a continent-spanning (let alone worldwide) regulation on greenhouse gas emitters, it would be unconstitutionally regulating interstate and international commerce. U.S. Const., art. I, § 8 (delegating commerce power to the United States); U.S. Const., amend. X (only "powers not delegated to the United States by the Constitution . . . are reserved to the States respectively, or to the people"). So it can't

use the state courts to achieve that same outcome. *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 190 (2024) (governments can't act indirectly to achieve an unconstitutional aim). There's no bank-shot exception to the Constitution, and no state court can proceed to a trial that dishonors the supremacy of the federal Constitution and federal law. *Cf.* Pet. Br. 21–47 (discussing preemptive effect of federal law).

Never mind all that, Boulder says. Time enough to deal with these defects later—after its case has been tried to verdict and copycat litigation has littered the land. For now, the County claims that this Court has neither Article III nor statutory jurisdiction to hear this case. That's wrong on both counts.

Stripping Suncor and Exxon of a slam-dunk legal defense—by denying federal supremacy—the Colorado courts have tangibly altered Petitioners' legal rights in a multi-billion-dollar tort suit. That alone suffices to show Article III injury-in-fact. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 619 (1989). But even if that wasn't so, Petitioners still have Article III standing because its constitutional right to be free of abusive judicial process is being unduly burdened. That's (independently) enough to cross the Article III threshold. *Cf. First Choice*, 146 S. Ct. at 1125.

There's more. Suncor and Exxon's only way out of this Constitution-defying bind is to settle or continue litigating. And spending money to “mitigate or avoid” unlawful state action also establishes an Article III injury. *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 82 (2026) (internal quotation marks and citation omitted); *id.* at 84 (“Pocketbook harm is a traditional Article III injury”) (Barrett and Kagan,

JJ., concurring) (citing *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 636 (2023)).

This Court also has statutory jurisdiction. 28 U.S.C. § 1257(a). The Colorado Supreme Court case below is a “self-contained,” *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 12 (2020), “judgment that terminate[d] original proceedings in a state appellate court” and is “final” for purposes of the final-judgment statute. *Fisher v. Dist. Ct. of Sixteenth Jud. Dist. of Mont.*, 424 U.S. 382, 385 n.7 (1976).

But even if that weren’t so, since Boulder’s case is so alien to the federal Constitution, the Colorado Supreme Court’s judgment is “final” within the meaning of section 1257 for the same reason that *Miami Herald v. Tornillo*, 418 U.S. 241 (1974), was properly before this Court. A state court of last resort is seeking to “seriously erode federal policy” by judicial fiat. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482–83 (1975). And not just any “federal policy,” *id.*, but perhaps the highest federal policy of all—the proper, interlocking constitutional relationship between the federal government and the States.

In short, Boulder may not have “take[n] three limbs” from each petitioner, but it’s grabbed more than enough. *First Choice*, 146 S. Ct. at 1129. The Court properly granted the writ.

And thank goodness. “Success” for the plaintiffs would be devastating to the prosperity underwritten by our constitutional order. At bottom, this litigation is custom-built to make the production and distribution of fossil fuels unprofitable. With over 90,000 local governments, fifty States and D.C., and

even 340 million Americans susceptible to some injury under Boulder’s various theories of liability, there are plenty of plaintiffs at hand to bankrupt the energy industry. If even a fraction of them sue and win multi-billion-dollar judgments (as Boulder seeks here), it would wipe out the corporate infrastructure (foreign and domestic) undergirding over 80 percent of world energy use and 83 percent of our domestic mix. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (state courts may obtain personal jurisdiction over foreign national enterprises).

And even if plaintiffs won’t prevail in the end and take the world economy with them, businesses will still have to price the risk of a plaintiff’s bar victory until that tension is finally resolved. Only this Court can do that. Until then, lawsuits-of-Damocles will freeze untold billions of dollars’ worth of investment in hydrocarbon extraction and sales (including innovation to make production and distribution cheaper, more efficient, and less-carbon-intensive). Alan Greenspan & Adrian Wooldridge, *Capitalism in America: A History* 258 (2018) (All firms “crave certainty as much as almost anything: certainty is what allows them to make long-term plans and long-term investments”).

That hesitancy to develop won’t end civilization, but it will reduce supply in a time of rising demand—and expensive energy costs always disproportionately burden the least among us. Octavio M. Aguilar & Cristina Fuentes-Albero, *Energy Consumption and Inequality in the U.S.: Who are the Energy Burdened?*, Fin. & Econ. Discussion Series – Bd. of Govs., Fed. Reserve Sys. (2025); <https://perma.cc/2M2D-S8CJ>.

The totality of the federal Constitution—intricately designed to safeguard national markets and international commerce—has something to say about the use of state courts as an instrument to stifle American prosperity. There’s only one constitutional outcome here: the immediate deletion of Boulder’s suit from the dockets of the Colorado courts.

ARGUMENT

I. THIS COURT HAS JURISDICTION.

Boulder claims that Article III and the final-judgment rule shrink this Court’s jurisdiction just enough so it can’t stop Boulder’s use of the Colorado courts to upend the American constitutional order. Not so. State courts cannot “thwart review in this Court applied for by those who . . . seek vindication in state courts of their federal constitutional rights.” *NAACP v. Ala.*, 377 U.S. 288, 301 (1964) (internal quotation marks and citation omitted).

It is, after all, “the central principle of a free society that courts have finite bounds of authority, some of constitutional origin, which exist to protect citizens from the very wrong asserted here, the excessive use of judicial power.” *U.S. Catholic Conf. v. Abortion Rts Mobilization, Inc.*, 487 U.S. 72, 77 (1988). And make no mistake: the “excessive use of judicial power” happened in Colorado, not in this Court’s decision to grant certiorari. *Id.*

Boulder says that it’s just bringing a state tort case grounded in ancient causes of action (trespass, private nuisance, public nuisance, unjust enrichment, to name a few) against a malefactor. But that’s a devil

in disguise. “[S]tripping away the amended complaint’s clever language confirms that this case is about abating and regulating global emissions . . . curb[ing] the energy companies’ conduct by hitting them where it hurts—their wallets.” Pet. App. 33–34a (Samour, J., dissenting). Yet Boulder has no writ to regulate greenhouse-gas emissions across the Nation, let alone around the world. Any municipal ordinance purporting to do so wouldn’t survive first contact with the Constitution.

For example, our national charter gives Congress, not the counties, exclusive power “[t]o regulate Commerce . . . among the several States.” U.S. Const., art. I, § 8; *The Federalist*, No. 42 (“The defect of power in the existing Confederacy to regulate the commerce between its several members, is in the number of those which have been clearly pointed out by experience”). Since only “powers *not* delegated to the United States by the Constitution . . . are reserved to the States,” U.S. Const., amend. X (emphasis supplied), Boulder, a subunit of one of “the several States,” *id.*, art. I, § 8, has zero power to regulate interstate or international commerce. Congress could pass a federal carbon tax or impose a nationwide emissions cap, but neither the County nor Colorado may do so. And even if (text and structure of the Constitution notwithstanding) Boulder somehow retained some such legislative power, Congressional enactment of the comprehensive Clean Air Act certainly took that away. Pet. Br. 29–34; 43–47.

And Boulder can’t “do indirectly” through the state courts “what [it] is barred from doing directly” by the Law of the Land. *Vullo*, 602 U.S. at 190. The County’s clever “overjudicialization of the processes of

self-governance” must be rebuffed. Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 881 (1983). There’s no “one weird trick” to circumventing the Constitution.

But Boulder asks the Court to ignore all that for now. Even if its suit is plainly unlawful, the County claims, it’s just too early to stop because this Court lacks Article III *and* statutory jurisdiction. BIO 6–17; 28 U.S.C. § 1257(a). The County’s wrong on both counts.

a. This Court has Article III jurisdiction.

Constitutional standing “consist[s] of three elements: ‘injury in fact, causation, and redressability.’” *First Choice*, 146 S. Ct. at 1121 (quoting *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 110–11 (2025)). Causation and redressability aren’t at issue here—Boulder’s claim rises and falls on its contention that Suncor and Exxon haven’t suffered an Article III injury.

“Under Article III of the Constitution, [Petitioners] must have a ‘personal stake’ in a case to have standing.” *Bost*, 607 U.S. at 76 (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024)). “In more pedestrian terms, [standing] is an answer to the very first question that is sometimes rudely asked when one person complains of another’s actions: ‘What’s it to you?’” Scalia, 17 Suffolk U. L. Rev. at 882.

What’s it to Suncor and Exxon? That’s easy. Petitioners don’t ask for “review of an advisory opinion rendered through specific mechanisms for

obtaining a hypothetical ruling from a state court or other state official.” *ASARCO*, 490 U.S. at 619. If this Court revokes the writ, Petitioners face additional litigation and ultimately a trial on Boulder’s amended complaint for untold “billions of dollars” in damages. Pet. App. 53a (“ExxonMobil earned hundreds of billions of dollars and the Suncor entities earned tens of billions of dollars in profits from fossil fuel sales”). By ruling that Suncor and Exxon can’t rely on the Constitution’s structure or the preemptive effect of federal law as a defense, the Colorado Supreme Court obviously “alter[ed]” Petitioners’ “tangible legal rights.” *ASARCO*, 490 U.S. at 619. “This proceeding constitutes a cognizable case or controversy” now—not later. *Id.* So that’s one reason Suncor and Exxon are properly before this Court.

Here’s another: every moment that Suncor and Exxon are subject to the ultra vires whims of the Colorado courts is an uncompensable harm. *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986) (Brennan, J., plurality) (The “vindicat[ion]” of the Constitution “cannot be valued solely in monetary terms”). That also gives Article III standing to Petitioners. “An injury in fact does not arise only when a [party] causes a tangible harm to [another], like a physical injury or monetary loss. It can also arise when [a party] burdens . . . [another]’s constitutional right[]” to be free from unconstitutionally coercive judicial process. *First Choice*, 146 S. Ct. at 1125.

There’s more. Unless this Court intervenes, Suncor and Exxon face a catch-22. It can either cave (making the Colorado Supreme Court’s decision forever unreviewable and yet firm precedent) or

continue to litigate. Either decision (neither of which is Suncor and Exxon’s idea, mind you) will cost money. *Bost*, 607 U.S. at 84 (“Pocketbook harm is a traditional Article III injury”) (Barrett and Kagan, JJ., concurring) (citing *Tyler*, 598 U.S. at 636). Certainly, Petitioners “cannot ‘manufacture standing by voluntarily’ incurring costs,” *id.* at 82 (quoting *Fed. Election Comm’n v. Ted Cruz for Senate*, 596 U.S. 289, 297 (2022)), but it’s different when a party is presented with a “significant and costly” highwayman’s choice of “compliance” or the courts. *Va. v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 392 (1988). Then, spending “to ‘mitigate or avoid’” the “independent harm” of unlawful judicial power ensures Article III standing. *Bost*, 607 U.S. at 82 (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013)).

So there are least three avenues by which Suncor and Exxon have Article III standing.

b. This Court has statutory jurisdiction.

Congress gave this Court power to “review[] . . . by writ of certiorari” certain “[f]inal judgments or decrees rendered by the highest court of a State.” 28 U.S.C. § 1257(a). As this Court has unanimously reaffirmed, *Atl. Richfield*, 590 U.S. at 12, “[a] judgment that terminates original proceedings in a state appellate court, in which the only issue decided concerns the jurisdiction of a lower state court, is final, even if further proceedings are to be had in the lower court.” *Fisher*, 424 U.S. at 385 n.7 (citing *Madriga v. Super. Ct.*, 346 U.S. 556, 557 n.1 (1954); *Rescue Army v. Mun. Ct.*, 331 U.S. 549,

565–68 (1947); *Bandini Co. v. Super. Ct.*, 284 U.S. 8, 14–15 (1931)).

That’s what happened here. Petitioners “initiated an original proceeding” in the Colorado Supreme Court by “fil[ing] a petition for an order to show cause.” Colo. App. R. 21(b) (capitalization altered). The state court provisionally issued that order, setting up a “self-contained case,” *Atl. Richfield*, 590 U.S. at 12, about whether the show-cause order should be made “absolute” or “discharged.” *Compare People v. Dilka*, 584 P.3d 564, 570 (Colo. 2026) (“Accordingly, we discharge the order to show cause and remand . . .”); *id.* at 574 (Gabriel, J., dissenting) (“Accordingly, I would make our order to show cause absolute . . .”) *with* Pet. App. 24a (“Accordingly, we discharge the order to show cause and remand this case . . .”); *id.* at 28a (Samour, J., dissenting) (“I would make the order to show cause absolute and nip Boulder’s state-law claims in the bud”). In discharging the show-cause order, *id.* at 24a, the Colorado Supreme Court issued a “judgment that terminate[d] original proceedings,” *Fisher*, 424 U.S. at 385 n.7, and concluded a “self-contained case.” *Atl. Richfield*, 590 U.S. at 12.

Boulder chalks all this up to so much semantics, asking this Court to set aside Colorado’s Appellate Rules because this “self-contained” original proceeding, *id.*, “bears other markings of a discretionary, interlocutory appeal.” BIO 12. That’s a little like saying that since a platypus has a bill, it must be a bird. It’s curious that for all of Boulder’s paeans to federalism, it asks the Court to ignore the State of Colorado’s own pronouncements on its own supreme court’s jurisdiction. Colo. App. R. 21.

But even if that's wrong, review doesn't conflict with the final-judgment rule. When a state proceeding vexes the Constitution, section 1257 doesn't handcuff certiorari. Rather, "the policy underlying the requirement of finality" compels an immediate determination of Suncor and Exxon's constitutional defense before "long and complex litigation which may all be for naught." *Mercantile Nat'l Bank at Dallas v. Langdeau*, 371 U.S. 555, 558 (1963). The final-judgment rule doesn't force this Court to wait out a "cornucopia of waste" before defending the national charter from an unlawful state attack. *Bowen v. Mass.*, 487 U.S. 879, 930 (1988) (Scalia, J., dissenting).

Under section 1257, the issue is not whether a case has been tried to verdict, but whether (1) "the federal issue has been finally decided in the state courts," (2) "with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds," (3) "where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action," and (4) "refusal immediately to review the state court decision might seriously erode federal policy." *Cox*, 420 U.S. at 482–83.

That's this case. The original proceeding in the Colorado Supreme Court "finally decided" whether the Constitution ousts Boulder's judicial ploy. *Id.* at 482. It's unlikely, but Suncor and Exxon can still prevail on state-law grounds below. *Id.* Overturning the decision below would kill Boulder's case in the state courts. *Id.* at 482–83. And greenlighting the County's litigation strategy will "seriously erode" the

constitutional order—“federal policy” of the highest magnitude. *Id.* at 483.

On the other hand, if Boulder is right and the final-judgment rule means this case was improvidently granted, then *Miami Herald v. Tornillo* was wrong. *Cox*, 420 U.S. at 484 (discussing *Miami Herald*). And not just that cornerstone case, either. This “Court has deemed sufficiently important the constitutional policy against double jeopardy, federal preemption of state safety rules for nuclear facilities, the Federal Arbitration Act’s preemption of state court jurisdiction, the NLRB’s exclusive jurisdiction over labor disputes, and federal protection against being subjected to litigation in certain state court venues.” Gayle Gerson, *A Return to Practicality: Reforming the Fourth Cox Exception to the Final Judgment Rule Governing Supreme Court Certiorari Review of State Court Judgments*, 73 *Fordham L. Rev.* 789, 826–27 (2004). Every single one of those cases wasn’t decided by this Court acting *ultra vires*. In fact, if they were, that would cast down on the propriety of other foundational “premature” cases like *Mills v. Alabama*, 384 U.S. 214 (1966), or *National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977). Gerson, 73 *Fordham L. Rev.* at 827 n.258 (discussing *Skokie* as a *Cox*-like case). That can’t be right.

The final-judgment rule isn’t a permission slip for state courts to juke federal review of extraordinary claims until after the unlawful litigation has finished trampling the Constitution. See *Fla. v. Thomas*, 532 U.S. 774, 780 (2001) (applying *Cox*, 420 U.S. at 482–83). There’s no reason not to hear this case.

II. AFFIRMANCE COURTS ECONOMIC CALAMITY.

Outsized consequences alone aren't conclusive evidence that a government is acting unconstitutionally. But they can suggest something's amiss. *Cf. Learning Resources v. Trump*, 607 U.S. ___ (2026); *Biden v. Neb.*, 600 U.S. 477 (2023); *Ala. Ass'n of Realtors v. U.S. Dep't of HHS*, 594 U.S. 758 (2021). So it is here.

Allowing suits like Boulder's to move forward would have cataclysmic consequences for the Nation—indeed, the world. The legal theory Boulder advances is brazen: energy companies “have altered the climate by producing, selling, and promoting fossil fuels” in unsafe quantities and “[t]he consequences of these actions have led to an altered climate with concomitant costs.” Pet. App. 89a. That theory can't be cabined to a few large producers (or even just oil and gas companies). Nor can it be limited by the amended complaint's occasional suggestions of unsavory conspiracy. Boulder refuses to say the quiet part out loud—its theory is that the fossil-fuel industry itself is illegal.

So we aren't talking about a backward-looking injury against a known set of defendants—or limited to “big” emitters. That's not conjecture. Small, local producers are being haled into court on similar theories right now. *City of Charleston v. Brabham Oil Co.*, Case No. 20-3579, 2023 WL 11867279 at *6 (D.S.C. July 5, 2023); Pet. Br. 7 (“Nearly 60 state and local governments have filed lawsuits such as this one, and more are continuing to do so”). This is precisely the sort of unpredictable legal chaos that the Founders intended to preempt by making “the Judges

in every State . . . bound” to “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof.” U.S. Const., art. VI.

And this will get worse if not stopped now. If the fossil-fuel industry itself is illegal and since global climate change is, well, global, that means all local governments must have suffered very similar “harms” to those included in the amended complaint. “The total number of U.S. local governments—including county, township, municipal[,] and special-purpose entities—was 90,837 in 2022.” Amy Smaldone & Mark L.J. Wright, *Local Governments in the U.S.: A Breakdown by Number and Type*, Fed. Reserve Bank of St. Louis (Mar. 14, 2024); <https://perma.cc/Z2W4-CGRY>. That’s a lot of plaintiffs. Nor, for that matter, will the mischief stop at governments. If states, counties, and municipalities can bring claims against members of the fossil-fuel industry based on greenhouse-gas emissions, why would Boulder’s theory stop there—why not every person in the Nation?

Fifty states and the District of Columbia, all U.S. overseas territories, 90,837 local governments, 340 million Americans, and 36 million business entities—all potential plaintiffs. If even a fraction bring suit and win, it will end the fossil-fuel industry, from the largest oil companies down to the smallest local producers. Even amortized settlements couldn’t be structured in a way to staunch the bleeding from judgments that would run to the trillions.

This result would have unimaginably vast consequences. Like it or not, the world runs on fossil fuels. Today, the three largest drivers of world energy

use are “[o]il and oil products” (30.2%), “[c]oal and coal products” (27.8%), and “[n]atural gas” (22.7%). Int’l Energy Agency, “World: Energy Mix,” <https://perma.cc/NXR8-RK87>. Demand isn’t declining either— “[g]lobal oil, natural-gas and coal demand reached record levels in 2025.” Brenda Shaffer, *‘Renewable’ Energy Gives Us a Crisis*, Wall St. J. (Mar. 26, 2026).

America is no exception. “Fossil fuels have dominated the U.S. energy mix for 100 years,” with petroleum, natural gas, and coal combining for about 83 percent of “total U.S. energy consumption.” U.S. Energy Information Admin., *U.S. Energy Facts Explained*; <https://perma.cc/V72G-D4XH>.

And this isn’t “just” about fueling cars or keeping the lights on. “In chemical manufacturing, petroleum is” uniquely “critical: an astounding 90% of chemical feedstocks are derived from oil or gas. Virtually all plastic comes from chemicals extracted from oil or gas, and petrochemicals are used to produce everything from lubricants to paint to plywood to synthetic fabrics to fertilizer.” Brian Potter, *How an Oil Refinery Works*, Construction Physics – Inst. for Progress (Apr. 30, 2026); <https://perma.cc/AZ6E-S5ET>.

The future may see a rise in alternatives and a swift transition to a nuclear or renewable baseload in the United States. But we can’t count on it. And it’s certainly not around the corner. American fossil fuel production has soared— “[t]otal domestic production of crude oil and natural gas in FY2024—the most recent year for which data are available for both federal and nonfederal production—was the highest

in the history of the United States for each commodity.” Lexie Ryan, *Revenues and Disbursements from Oil and Natural Gas Leases on Onshore Federal Lands*, Cong. Rsch. Serv. (Feb. 12, 2026); see also *id.* at 1–5 (describing production increases).

Consider: a phased-in, centrally directed effort by the federal government to carry out an “aggressive transformation in the domestic energy industry” was estimated—by the implementing administration—to “cause retail electricity prices to remain persistently 10% higher in many States” and “reduce GDP by at least a trillion 2009 dollars by 2040.” *W. Va. v. EPA*, 597 U.S. 697, 714–15 (2022) (internal quotation marks and citation omitted). Crushing the industry wholesale would make that less-than-cheery outcome look like overflowing abundance. After all, once the world’s energy firms have been bankrupted by our plaintiff’s bar—who would ever risk selling fossil fuels in the United States ever again?

And even if these cases are ultimately losers, unable to extract their trillions from fossil-fuel producers, that doesn’t make them harmless. Until the risk of jackpot litigation is taken off the table, rational actors will have to price the uncertain, high-impact legal exposure of new hydrocarbon exploration, production, or sales. Pricing that risk will compel firms to cease new development and pause (or claw back) investments in new (even if less-carbon-intensive and more efficient) extraction.

The result? More expensive energy in a time of increased demand until the heightened litigation risk finally passes. That wait won’t end civilization, but it

won't be cheap—and higher energy costs disproportionately burden the least among us. Aguilar & Fuentes-Albero, *Energy Consumption and Inequality*; see also NFIB Rsch. Ctr., *Small Business Problems & Priorities* (2024), <https://perma.cc/7XPM-332M> (identifying “Cost of Natural Gas, Propane, Gasoline, Diesel, Fuel Oil” and “Electricity Costs (rates)” as already significant problems for small business success).

* * *

All this isn't to say that the energy industry can't ever be held liable for honestly brought tort cases. Of course it can. There's no shortage of lawsuits—or lawyers willing to bring them.

But are we really supposed to believe that the Constitution, designed by boosters of markets and commerce like Alexander Hamilton, Gouverneur Morris, and Rufus King, has nothing to say about *this* tort case—an effort by local governments to use the state courts to destroy national prosperity? That's answered in the asking.

CONCLUSION

This Court is empowered to hear this case and stop Boulder's effort to subvert the "supreme Law of the Land." U.S. Const., art. VI. It should do so.

Respectfully submitted,

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May 21, 2026