

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.

*ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO*

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS**

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QUESTIONS PRESENTED

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

TABLE OF CONTENTS

	Page
Interest of the United States	1
Introduction.....	2
Statement.....	5
A. Boulder’s state-court complaint.....	5
B. Petitioners’ attempted removal to federal court.....	6
C. The state trial court’s denial of the motion to dismiss	7
D. The Colorado Supreme Court’s exercise of original jurisdiction	7
Summary of argument	8
Argument.....	10
I. This Court has jurisdiction	10
A. This Court has statutory jurisdiction	10
B. This Court has Article III jurisdiction	14
II. The Constitution precludes Boulder’s state common-law claims	15
A. Boulder seeks to use Colorado law to regulate petitioners’ worldwide conduct	15
B. The Constitution bars Boulder’s attempt to unilaterally regulate global emissions	17
C. Boulder’s attempt to regulate global emissions interferes with the federal government’s exclusive role in foreign affairs	26
III. The Clean Air Act preempts Boulder’s state common-law claims	28
A. The Clean Air Act’s decisionmaking scheme puts EPA and source States in charge of emissions	29
B. Boulder’s claims conflict with the Clean Air Act’s decisionmaking scheme.....	32
Conclusion.....	35
Appendix — Constitutional provisions, statutory provisions, and rule	1a

IV

TABLE OF AUTHORITIES

Cases:	Page
<i>ASARCO Inc. v. Kadish</i> , 490 U.S. 605 (1989)	14
<i>American Elec. Power Co. v. Connecticut</i> , 564 U.S. 410 (2011)	4, 20, 23, 24, 29, 31, 34
<i>American Ins. Ass’n v. Garamendi</i> , 539 U.S. 394 (2003)	9, 26, 27
<i>American Trucking Ass’ns v. Los Angeles</i> , 569 U.S. 641 (2013)	33
<i>Atlantic Richfield Co. v. Christian</i> , 590 U.S. 1 (2020)	11, 13, 14
<i>Atlantic Richfield Co. v. Montana Second Judicial Dist. Court</i> , 408 P.3d 515 (Mont. 2017)	13
<i>BMW of N. Am., Inc. v. Gore</i> , 517 U.S. 559 (1996)	9, 18, 19
<i>BP p.l.c. v. Mayor & City Council of Baltimore</i> , 593 U.S. 230 (2021)	6
<i>Bell v. Cheswick Generating Station</i> , 734 F.3d 188 (3d Cir. 2013)	31
<i>Bonaparte v. Tax Court</i> , 104 U.S. 592 (1881)	18
<i>Cameron v. Vandegriff</i> , 13 S.W. 1092 (Ark. 1890)	23
<i>Camreta v. Greene</i> , 563 U.S. 692 (2011)	14
<i>City of New York v. Chevron Corp.</i> , 993 F.3d 81 (2d Cir. 2021)	27, 30
<i>Commonwealth v. Macloon</i> , 101 Mass. 1 (1869)	23
<i>Crosby v. National Foreign Trade Council</i> , 530 U.S. 363 (2000)	27
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014)	19, 25
<i>Edgar v. MITE Corp.</i> , 457 U.S. 624 (1982)	18, 19
<i>Erie R.R. v. Tompkins</i> , 304 U.S. 64 (1938)	31
<i>Fisher v. District Court</i> , 424 U.S. 382 (1976)	11
<i>Food Mktg. Inst. v. Argus Leader Media</i> , 588 U.S. 427 (2019)	14

V

Cases—Continued:	Page
<i>Franchise Tax Bd. v. Hyatt</i> , 587 U.S. 230 (2019)	18
<i>Fuld v. Palestine Liberation Org.</i> , 606 U.S. 1 (2025)	26
<i>Hernández v. Mesa</i> , 589 U.S. 93 (2020).....	26
<i>Hines v. Davidowitz</i> , 312 U.S. 52 (1941)	27
<i>Hoery v. United States</i> , 64 P.3d 214 (Colo. 2003)	33
<i>Hyde v. United States</i> , 225 U.S. 347 (1912)	21
<i>Illinois v. Milwaukee</i> , 406 U.S. 91 (1972)	32
<i>International Paper Co. v. Ouellette</i> , 479 U.S. 481 (1987)	20, 30
<i>Jesner v. Arab Bank, PLC</i> , 584 U.S. 241 (2018).....	28
<i>Kiobel v. Royal Dutch Petroleum Co.</i> , 569 U.S. 108 (2013)	28
<i>Kurns v. Railroad Friction Prods. Corp.</i> , 565 U.S. 625 (2012)	15, 16, 33
<i>Lamps Plus, Inc. v. Varela</i> , 587 U.S. 176 (2019).....	29
<i>Lessee of Pollard v. Hagan</i> , 44 U.S. 212 (1845).....	17
<i>Lewis v. Lewis</i> , 189 P.3d 1134 (Colo. 2008).....	33
<i>MacPherson v. Buick Motor Co.</i> , 111 N.E. 1050 (N.Y. 1916)	23
<i>Merrick v. Diageo Americas Supply, Inc.</i> , 805 F.3d 685 (6th Cir. 2015)	30
<i>Mission Prod. Holdings, Inc. v. Tempnology, LLC</i> , 587 U.S. 370 (2019)	14
<i>Missouri v. Illinois</i> , 200 U.S. 496 (1906)	32
<i>Mullaney v. Wilbur</i> , 421 U.S. 684 (1975).....	12
<i>National Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023)	17, 19, 20
<i>New York Life Ins. Co. v. Head</i> , 234 U.S. 149 (1914)	21
<i>Nielsen v. Oregon</i> , 212 U.S. 315 (1909).....	18
<i>PLIVA, Inc. v. Mensing</i> , 564 U.S. 604 (2011)	29

VI

Cases—Continued:	Page
<i>Pacific Bell Tel. Co. v. linkLine Comm'cns, Inc.</i> , 555 U.S. 438 (2009)	14
<i>People ex rel. Gallagher v. District Court</i> , 933 P.2d 583 (Colo. 1997)	13
<i>People in Interest of T.T.</i> , 442 P.3d 851 (Colo. 2019)	12
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985)	19
<i>Sanders v. District Court</i> , 444 P.2d 645 (Colo. 1968)	12
<i>Simpson v. State</i> , 17 S.E. 984 (Ga. 1893)	21, 22
<i>Slack Techs., LLC v. Pirani</i> , 598 U.S. 759 (2023)	14
<i>State v. Lord</i> , 16 N.H. 357 (1844)	23
<i>State ex rel. Glenn v. District Court</i> , 563 P.2d 73 (Mont. 1977)	13
<i>State ex rel. U.S. Fidelity & Guar. Co. v.</i> <i>Montana Second Judicial Dist. Court</i> , 783 P.2d 911 (Mont. 1989)	13
<i>State Farm Mut. Auto. Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003)	18
<i>Strassheim v. Daily</i> , 221 U.S. 280 (1911)	21, 22
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014)	14
<i>Texas Indus., Inc. v. Radcliff Materials, Inc.</i> , 451 U.S. 630 (1981)	20
<i>Young v. Masci</i> , 289 U.S. 253 (1933)	22
<i>Zschernig v. Miller</i> , 389 U.S. 429 (1968)	27
Constitutions, statutes, and rules:	
U.S. Const.:	
Art. I, § 8, Cl. 3 (Dormant Commerce Clause)	3, 19
Art. III	8, 10, 14

VII

Constitutions, statutes, and rules—Continued:	Page
Art. IV:	
§ 2	17
§ 3	17
Art. VI, Cl. 2 (Supremacy Clause)	29, 1a
Amend. VI	17
Amend. XIV (Due Process Clause)	19
Colo. Const. Art. VI:	
§ 2(1)	13, 1a
§ 3	11, 12, 2a
Mont. Const. Art. VII:	
§ 2(1)	11
§ 2(2)	11
Clean Air Act,	
42 U.S.C. 7401 <i>et seq.</i>	4, 6-8, 10, 28, 29, 31-34
42 U.S.C. 7411	10, 31, 34, 3a
42 U.S.C. 7411(a)(1)	30, 3a
42 U.S.C. 7411(b)(1)(A)	30, 4a
42 U.S.C. 7411(b)(1)(B)	30, 5a
42 U.S.C. 7411(d)	30, 7a
42 U.S.C. 7411(d)(1)	30, 7a
42 U.S.C. 7416	10, 30, 16a
42 U.S.C. 7521(a)(1)	34
42 U.S.C. 7604(e)	30
Clean Water Act, 33 U.S.C. 1251 <i>et seq.</i> :	
33 U.S.C. 1365(e)	30
33 U.S.C. 1370	30
Locomotive Inspection Act, 49 U.S.C. 20701 <i>et seq.</i>	33
28 U.S.C. 1257(a)	8, 10-12, 2a
Colorado Consumer Protection Act,	
Colo. Rev. Stat. § 6-1-105(1) <i>et seq.</i>	6

VIII

Rules—Continued:	Page
Colo. App. R.:	
Rule 21	7, 12, 17a
Rule 21(a)(1).....	12, 17a
Rule 21(a)(2).....	12, 17a
Rule 21(h)(2)	10, 23a
Rule 21(o)	10, 25a
Mont. R. App. P.:	
Rule 14(1)	12
Rule 14(3)	12
Miscellaneous:	
91 Fed. Reg. 7686 (Feb. 18, 2026)	34

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INTEREST OF THE UNITED STATES

This case involves whether federal law precludes claims seeking to apply one State’s law to the activities of fossil-fuel companies around the world to hold those companies liable for injuries allegedly caused by global climate change. The United States has a substantial interest in the proper interpretation of the federal constitutional and statutory provisions involved. The United States has recently brought suit to block similar attempts to impose state-law liability for global fossil-fuel emissions because such suits severely interfere with the federal government’s constitutional and statutory responsibilities. See, *e.g.*, *United States v. Minnesota*, No. 26-cv-2456 (D. Minn.); *United States v. Vermont*, No. 25-cv-463 (D. Vt.). And the United States filed a brief as amicus curiae at the petition stage of this case.

INTRODUCTION

This case presents a basic question: Can one city wield one State's law to dictate how the rest of the world must address a global problem with global effects? The Constitution supplies the answer: Absolutely not.

Here, the city is Boulder, the law is Colorado common law, and the problem is global "climate change" from the world's collective "greenhouse gas emissions." J.A. 5. Boulder's solution is to fault fossil-fuel producers like petitioners for extracting, selling, and advertising fossil fuels, inducing others to use them, then failing to "bring[] emissions under control." J.A. 97-98. Virtually all of that conduct and its alleged consequences—from petitioners' activities to others' emissions, to resulting "warming [of] the atmosphere and oceans," J.A. 3, 34-35, to myriad collateral effects—happens outside Colorado, and much occurs entirely overseas.

Boulder wants to hold petitioners liable for causing global warming based on alleged effects in Boulder, from wildfire damage to public-health costs from increased insect-borne illnesses. J.A. 46-48, 52-53. Similar harms will purportedly affect the whole world. Indeed, 60 States and localities have brought near-identical suits to hold fossil-fuel producers liable for alleged past and future climate-related harms in those places. Those suits share the same avowed goal: to address a global problem caused by global conduct with global effects by imposing open-ended liability on fossil-fuel producers for every far-downstream consequence in that State that a state court attributes to global warming.

The Constitution rejects that butterfly-effect theory of state authority. In our constitutional system, States are separate, coequal sovereigns within a unitary federal system. Each State retains powers to regulate matters

within its own borders. However, no one State can superimpose its own regulatory preferences on the rest—least of all to address a global problem that exists almost entirely outside its borders and affects the world at large. Multiple doctrines forbid such extraterritorial regulation, whether described as a structural constitutional constraint, a due-process limit, a Dormant Commerce Clause violation, or an exclusively federal area.

Our federal system would disintegrate if each State could tackle inherently national or international problems by forcing its regulatory prescriptions on the other 49. That free-for-all would generate a scrum of competing regulatory approaches and republic-threatening tension. Colorado cannot leverage state law to impose liability for petitioners' worldwide fossil-fuel activities any more than Oregon could use its law to penalize global cruise lines for facilitating pandemics that strain Oregon's hospitals. The Framers vested the federal government—not each State—with powers to address national problems with uniform national regulations.

Compounding the constitutional problem, Boulder's suit offends vertical federalism by interfering with the federal government's exclusive role over foreign affairs. Global warming is a global issue, and the United States' position in international negotiations has opposed the very sorts of liability and compensation schemes that Boulder and dozens of other States and localities are attempting to impose. The federal government cannot retain its primacy in international affairs if subsets of the United States are effectively negotiating against it. State and local suits like Boulder's also invite needless diplomatic friction with the foreign countries where petitioners extract, produce, and sell fossil fuels, and where those activities are presumably lawful. All of this underscores

why the Framers vested the federal government alone with authority over foreign policy.

Congress further precluded Boulder’s claims by enacting the Clean Air Act, 42 U.S.C. 7401 *et seq.*, which preempts contrary state regulation. Congress “delegated” to the Environmental Protection Agency (EPA) “the decision whether and how to regulate carbon-dioxide emissions from powerplants.” *American Elec. Power Co. v. Connecticut*, 564 U.S. 410, 426 (2011). The Act reflects Congress’s choice to address air pollution by targeting only domestic emitters like factories and power plants. The Act also gives the State where emissions occur a cooperative role in regulating emissions—but other States cannot seize a seat at the regulatory table by alleging in-state effects of emissions.

Boulder would upend that scheme. Whereas Congress mandated an EPA-helmed national air-pollution scheme targeting stationary emissions sources, Boulder would let any State force any actor anywhere in the chain of production, distribution, and consumption to cease any emissions-causing conduct. Whereas Congress targeted only domestic emissions, Boulder would regulate the world. Boulder’s state-law choices are no supplements to the federal scheme; they are its nemesis, thwarting EPA’s ability to determine whether and how to regulate stationary sources by allowing all 50 States to impose different regimes for different ends—here, attempting to impose liability so unending and extreme that fossil-fuel producers may be forced out of business. This Court has never countenanced the notion that a single State could dictate how the entire country—let alone the world—addresses a global problem with indivisible global effects. The Constitution and the Clean Air Act foreclose that topsy-turvy result.

STATEMENT

A. Boulder’s State-Court Complaint

In 2018, the City and county of Boulder (together, Boulder) sued petitioners in Colorado state court. Pet. App. 49a-50a. Petitioners are energy companies that engage in “fossil fuel activities”—the production, promotion, refining, marketing, and sale of fossil fuels, such as oil, natural gas, and coal. J.A. 5, 14.¹

Boulder alleges that petitioners’ worldwide production, promotion, and sale of fossil fuels prompted others worldwide to use those fuels in ways that emit greenhouse gases into the atmosphere. J.A. 5-6, 18, 23-24, 35. Boulder seeks to hold petitioners “responsible” for their role, currently and “historically,” in facilitating “billions of tons” of downstream greenhouse-gas emissions “globally.” J.A. 18, 24, 98, 102. The “increased” concentration of greenhouse gases in the atmosphere, Boulder alleges, “trap[s] heat in the climate system, and warm[s] the planet,” J.A. 34, causing “more (and more serious) heat waves, wildfires, droughts, and floods,” among other effects—all injuring Boulder’s “property” and “residents” along with the rest of the world, J.A. 2.

Boulder asserts five Colorado common-law claims against petitioners stemming from their role in “causing and/or contributing to climate change,” J.A. 118: public nuisance, private nuisance, trespass, unjust enrichment, and civil conspiracy. J.A. 112-123, 127-136. Those claims seek to compel petitioners “to compensate [Boulder] for [its] past and future damages and costs to mitigate the impact of climate change.” J.A. 136 (emphasis omitted).

¹ Plaintiffs originally included San Miguel County, but the trial court transferred its claims to a different venue. Pet. App. 49a n.1. The court also dismissed Boulder’s claims against defendant Suncor Energy, Inc., for lack of personal jurisdiction. *Id.* at 75a-87a.

Boulder asserts that it has “spent and will have to spend substantial sums to mitigate” its injuries, J.A. 115-116, including “damage to property (valued in the billions of dollars),” J.A. 114.²

B. Petitioners’ Attempted Removal To Federal Court

Petitioners removed the case to federal court. See 405 F. Supp. 3d 947, 955, 975. The district court ordered the case remanded to state court. *Id.* at 954. The court of appeals affirmed. 965 F.3d 792. This Court granted a writ of certiorari, vacated the court of appeals’ judgment, and remanded for further consideration in light of *BP p.l.c. v. Mayor & City Council of Baltimore*, 593 U.S. 230 (2021). See 141 S. Ct. 2667.

The court of appeals again affirmed the remand to state court. 25 F.4th 1238, 1246. Petitioners sought review; at this Court’s invitation, the Solicitor General filed a brief taking the position that the case was not removable. U.S. Cert. Amicus Br. at 6-7, *Suncor Energy (U.S.A.) Inc. v. Board of County Comm’rs*, 143 S. Ct. 1795 (2023) (No. 21-1550). The brief explained that Boulder’s claims did not present a federal question under the well-pleaded-complaint rule and could not be recharacterized as arising under federal common law. *Id.* at 7-16. The brief, however, expressly distinguished the removability issue from whether the Clean Air Act preempts Boulder’s claims. *Id.* at 13-15. This Court denied review. 143 S. Ct. 1795.

² Boulder also asserted a claim under the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-105(1) *et seq.* J.A. 124-127. Unlike the common-law claims, that claim sought to hold petitioners liable only for “deceptive trade practices” “in Colorado.” J.A. 124. The trial court dismissed that claim without prejudice based on Boulder’s failure to plead it with particularity. Pet. App. 133a-136a.

C. The State Trial Court’s Denial Of The Motion To Dismiss

In state court, petitioners moved to dismiss Boulder’s complaint for failure to state a claim. Mot. to Dismiss Am. Compl. for Failure to State a Claim (Dec. 9, 2019). As relevant here, petitioners contended that Boulder’s claims involve unconstitutional extraterritorial regulation and are preempted by the Clean Air Act. *Id.* at 14-16, 19. Petitioners added that Boulder’s efforts to punish petitioners’ “worldwide” conduct impair the federal foreign-affairs power and violate due process. *Id.* at 16, 19.

The trial court denied petitioners’ motion to dismiss Boulder’s common-law claims. Pet. App. 48a-139a. The court reasoned that nothing in the Constitution precludes Boulder from seeking “damages for conduct causing in-state injuries.” *Id.* at 112a. The court also rejected Clean Air Act preemption because Boulder’s claims are “not about regulating emissions.” *Id.* at 105a.

D. The Colorado Supreme Court’s Exercise Of Original Jurisdiction

Petitioner Exxon Mobil Corporation filed a petition, which the other petitioners later joined, invoking the Colorado Supreme Court’s “original” jurisdiction under Colorado Appellate Rule 21. Pet. for Order to Show Cause 6 (July 16, 2024). The Colorado Supreme Court issued an order to show cause as to “[w]hether the [trial] court erroneously concluded that [Boulder’s] claims could proceed under state law.” J.A. 142.

After briefing and oral argument, the Colorado Supreme Court determined that the case warranted the exercise of “original jurisdiction” under Rule 21. Pet. App. 8a. The court discharged the order to show cause and remanded for further proceedings, concluding that neither the Constitution nor other federal law bars Boulder’s claims. *Id.* at 1a-47a.

The Colorado Supreme Court rejected petitioners’ reliance on “federalism concerns,” “the structure of the Constitution,” and “the federal foreign affairs power.” Pet. App. 16a-17a, 22a. The court reasoned that Boulder’s claims would not “impair the effective exercise of this country’s foreign policy” because they “do not seek to regulate [greenhouse-gas] emissions.” *Id.* at 24a.

The Colorado Supreme Court also held that Boulder’s claims are not preempted by federal common law because the Clean Air Act “displaced the federal common law in this area.” Pet. App. 11a, 16a. The court further concluded that the Act itself does not preempt Boulder’s claims because those claims “do not seek compensation for any [greenhouse-gas emissions] by [petitioners] themselves but rather focus on [petitioners’] upstream production activities.” *Id.* at 21a.

Justice Samour, joined by Justice Boatright, dissented, Pet. App. 25a-47a, reasoning that the Clean Air Act and “the federal government’s primacy in foreign affairs” preclude Boulder’s claims, *id.* at 27a-28a.

SUMMARY OF ARGUMENT

I. This Court has jurisdiction. The decision below is a “[f]inal” judgment under 28 U.S.C. 1257(a) because it terminated an original, self-contained proceeding in the Colorado Supreme Court. Further, petitioners have Article III standing to invoke this Court’s authority. The decision below increases the risk that petitioners will be found liable and must pay damages, and it subjects petitioners to the burden of having to continue defending against Boulder’s suit.

II. The Constitution precludes Boulder’s state-law claims. Petitioners engage in the worldwide production, promotion, and sale of fossil fuels. Boulder’s claims seek to hold petitioners liable for their global activities—

most of which occurred outside Colorado and, indeed, the United States—on the theory that they caused a global problem (climate change) affecting the entire planet (including Boulder). To avoid added liability, petitioners would have to cease any further fossil-fuel activities anywhere—triggering momentous consequences for the global economy.

The Constitution bars Boulder’s attempt at universal regulation. Under the Constitution, each State is an equal sovereign over its own territory. Thus, each State may regulate matters within its borders. No State, however, can “impose its own policy choice on neighboring States,” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996)—least of all to address global problems that exist almost entirely outside its borders and affect the world at large. Boulder cannot evade that principle by pointing to the in-state effects of petitioners’ worldwide conduct. Those effects are far too attenuated to justify imposing Colorado law on the rest of the country to address an inherently interstate issue.

The Constitution further prohibits Boulder from attempting to extend Colorado law to regulate the rest of the world. The Constitution “allocat[es]” the “foreign relations power to the National Government.” *American Ins. Ass’n v. Garamendi*, 539 U.S. 394, 413 (2003). The federal government has long opposed the establishment of liability and compensation schemes at the international level to address the alleged effects of climate change. Yet Boulder’s claims would impose just such a scheme, forcing multinational fossil-fuel companies to pay damages indefinitely for their alleged roles in causing climate change. Boulder’s claims would interfere with foreign relations in myriad other ways, undermin-

ing the United States’ ability to speak with one voice on the international stage.

III. The Clean Air Act also preempts Boulder’s state-law claims. That Act makes EPA the decisionmaker on whether and how to regulate emissions from stationary sources. 42 U.S.C. 7411. States retain authority to regulate only sources within their borders. 42 U.S.C. 7416. Boulder would instead make Colorado state judges the decisionmakers; curb emissions by targeting upstream fossil-fuel suppliers rather than stationary emissions sources; and impose liability for worldwide emissions-causing conduct. Together, those choices would supplant Congress’s careful choices and invite competing regimes from all 50 States.

ARGUMENT

I. THIS COURT HAS JURISDICTION

This Court has both statutory and Article III jurisdiction. The decision below is a final judgment under 28 U.S.C. 1257(a), and petitioners have Article III standing to invoke this Court’s authority.

A. This Court Has Statutory Jurisdiction

1. Section 1257(a) grants this Court jurisdiction to review “[f]inal judgments or decrees rendered by the highest court of a State.” 28 U.S.C. 1257(a). The decision below is the “final determination of [an] original proceeding in the [state] supreme court.” Colo. App. R. 21(h)(2) and (o). The Colorado Supreme Court exercised its original jurisdiction to decide whether the Constitution or other federal law precludes Boulder’s claims and thereby created a self-contained case that concluded with its decision holding that the claims are not precluded. Pet. App. 7a-8a, 24a. This Court thus has jurisdiction under Section 1257(a), even though the Colorado

Supreme Court contemplated further trial-court proceedings. See *id.* at 24a-25a; *Fisher v. District Court*, 424 U.S. 382, 385 n.7 (1976) (per curiam).

That conclusion flows from *Atlantic Richfield Co. v. Christian*, 590 U.S. 1 (2020), where this Court exercised jurisdiction over a case in the same posture. There, plaintiffs sued in Montana state court, pressing state common-law claims. *Id.* at 9. The defendant, Atlantic Richfield, countered that federal law precluded some claims. *Id.* at 10. The state trial court rejected that argument, denied Atlantic Richfield’s motion for summary judgment, and ordered the claims to proceed to trial. *Ibid.* After Atlantic Richfield invoked the Montana Supreme Court’s original jurisdiction to issue writs of supervisory control, that court exercised original jurisdiction and affirmed the trial court’s ruling. *Id.* at 10-12.

This Court held that the Montana Supreme Court’s decision was “final” under Section 1257(a) because “[u]nder Montana law, a supervisory writ proceeding is a self-contained case, not an interlocutory appeal.” *Atlantic Richfield*, 590 U.S. at 12. Thus, the Montana Supreme Court’s resolution of that proceeding was “final,” even though it “allowed the case to proceed to trial.” *Ibid.* “[T]he nature of the [state-court] proceeding, not the issues the state court reviewed,” determines finality. *Ibid.*

This case is materially identical. Like Montana’s Constitution, Colorado’s Constitution grants the state supreme court original jurisdiction over certain cases. Compare Mont. Const. Art. VII, § 2(1) and (2) (granting “original jurisdiction” and “general supervisory control”), with Colo. Const. Art. VI, § 3 (granting “original” jurisdiction to issue such writs “as may be provided by rule of court”). Like Montana law, Colorado law prescribes that the state supreme court’s exercise of original jurisdic-

tion constitutes a self-contained proceeding. Compare Mont. R. App. P. 14(1) and (3) (distinguishing exercises of “original” jurisdiction from the “normal appeal process”), with Colo. App. R. 21(a)(1) and (2) (distinguishing exercises of “original jurisdiction” from “relief available by appeal”). Like the Montana Supreme Court’s decision in *Atlantic Richfield*, the Colorado Supreme Court’s decision here also terminates such a proceeding. Pet. App. 24a. As in *Atlantic Richfield*, the decision below is a final judgment under Section 1257(a) despite contemplating further trial-court proceedings.

2. Boulder instead contends (Br. in Opp. 10-13) that the Colorado Supreme Court was exercising its appellate, not its original, jurisdiction when issuing its decision below. But the Colorado Supreme Court—the “ultimate expositor[]” of Colorado law, *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975)—disagreed, stating that it was exercising its “original jurisdiction under [Colorado Appellate Rule] 21.” Pet. App. 7a. That should be dispositive. See *Mullaney*, 421 U.S. at 691.

Regardless, Boulder’s characterization is wrong; the Colorado Supreme Court was not exercising a power of “general superintending control” that is limited to appellate proceedings. Br. in Opp. 11 (citation omitted). That court has long exercised general superintending control in original, not just appellate, proceedings. See, e.g., *People in Interest of T.T.*, 442 P.3d 851, 856 (Colo. 2019) (finding an exercise of “original jurisdiction” appropriate “as a matter of [the state supreme court’s] general superintending authority”); *Sanders v. District Court*, 444 P.2d 645, 650 (Colo. 1968) (similar). Since 1999, Rule 21 has expressly approved that practice. Colo. App. R. 21(a)(1); see Colo. Const. Art. VI, § 3. It is irrelevant that the Colorado Constitution’s grant of “gen-

eral superintending control” appears in the same provision as its grant of “appellate jurisdiction.” Br. in Opp. 11 (citation omitted). Nothing in that provision restricts the exercise of “general superintending control” to appellate proceedings, Colo. Const. Art. VI, § 2(1), and the Colorado Supreme Court has not read such a restriction into the text.

Boulder also characterizes the decision below as involving an exercise of appellate jurisdiction because the state supreme court “reviewed” a trial court’s order “de novo” and “remand[ed]” for further proceedings. Br. in Opp. 12 (quoting Pet. App. 24a). The same was true in *Atlantic Richfield*: The Montana Supreme Court “review[ed]” a trial court’s order “de novo” and “remanded” for further proceedings. *Atlantic Richfield Co. v. Montana Second Judicial Dist. Court*, 408 P.3d 515, 518, 523 (2017). The original proceeding in the state supreme court was still “a self-contained case, not an interlocutory appeal.” *Atlantic Richfield*, 590 U.S. at 12.

Boulder adds that the Colorado Supreme Court sometimes refers to “[o]riginal proceedings pursuant to [Rule] 21” as “interlocutory appeal[s].” *People ex rel. Gallagher v. District Court*, 933 P.2d 583, 592 (1997); see Br. in Opp. 12. But “interlocutory” in that context means only that the trial court has not decided the entire case. *Gallagher*, 933 P.2d at 592. The Montana Supreme Court has similarly sometimes described the type of proceeding in *Atlantic Richfield* as “interlocutory review.” See, e.g., *State ex rel. U.S. Fidelity & Guar. Co. v. Montana Second Judicial Dist. Court*, 783 P.2d 911, 913 (Mont. 1989); *State ex rel. Glenn v. District Court*, 563 P.2d 73, 73 (Mont. 1977) (per curiam). The proceeding is still an original, self-contained case.

B. This Court Has Article III Jurisdiction

Article III’s case-or-controversy requirement is inapplicable in state courts, but petitioners must satisfy that requirement here. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 618-620 (1989). The decision below lets Boulder’s common-law claims for massive damages proceed. Pet. App. 24a. Petitioners have a natural “stake” in challenging that adverse decision, and Boulder has a natural “stake” in defending it. *Camreta v. Greene*, 563 U.S. 692, 701 (2011). That satisfies Article III.

Boulder contends (Br. in Opp. 14) that petitioners lack Article III standing because the decision below “merely declined to reverse denial of a motion to dismiss.” This Court has repeatedly rejected that theory by exercising Article III jurisdiction to review decisions declining to reverse the denial of a motion to dismiss or motion for summary judgment.³ Here, the decision below injures petitioners in two cognizable ways. First, it increases the risk that, at the end of the litigation, they will be found liable and ordered to pay damages. See *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 377 (2019). Second, it subjects petitioners to the burden of having to continue defending against Boulder’s claims. See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 165 (2014). A favorable decision from this Court would redress those injuries caused by the decision below, satisfying each element of appellate standing. See *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 432-433 (2019).

³ See, e.g., *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 765 (2023); *Atlantic Richfield*, 590 U.S. at 10; *Pacific Bell Tel. Co. v. linkLine Comm’ns, Inc.*, 555 U.S. 438, 444-445 (2009).

II. THE CONSTITUTION PRECLUDES BOULDER’S STATE COMMON-LAW CLAIMS

Petitioners engage in fossil-fuel activities worldwide. Boulder’s state-law claims assert that petitioners’ worldwide activities facilitated others’ worldwide emissions and are “responsible for causing, contributing to, and increasing the impacts of climate change.” J.A. 84. Boulder would thus force petitioners to indefinitely pay multi-billion-dollar costs of abating all downstream effects in Boulder that Boulder attributes to climate change. See pp. 5-6, *supra*. To avoid added liability, petitioners would have to cease “future” fossil-fuel activities entirely. J.A. 136 (emphasis omitted). The Constitution bars that attempt at universal regulation, which contravenes territorial limits on state authority and the federal government’s exclusive role over foreign affairs.

A. Boulder Seeks To Use Colorado Law To Regulate Petitioners’ Worldwide Conduct

The constitutional analysis must begin with an understanding of the sheer scope of Boulder’s claims, which attempt to leverage state common law to regulate (and effectively halt) petitioners’ worldwide production, sale, and promotion of fossil fuels.

To begin, Boulder’s claims—styled as common-law nuisance, trespass, unjust enrichment, and conspiracy—involve state regulation. J.A. 112-123, 127-136. Common law “duties and standards of care” constitute “state ‘regulation,’” no less than a state statute or administrative rule. *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (citation omitted). “[S]tate ‘regulation can be effectively exerted through an award of damages,’ and ‘the obligation to pay compensation can be, indeed is designed to be, a potent method of governing

conduct and controlling policy.’” *Ibid.* (brackets, citation, and ellipsis omitted).

Here, Boulder’s regulatory method would be potent indeed. Boulder’s claims posit that petitioners engaged in wrongful conduct worldwide—“caus[ing], creat[ing], contribut[ing] to and/or exacerbat[ing] dangerous alterations in the climate” by producing, selling, and advertising fossil fuels, J.A. 112, and by failing to “bring[] emissions under control,” J.A. 98. Boulder targets those activities “globally and historically.” J.A. 98, 102. Virtually all of that fossil-fuel activity occurred outside Colorado, and much of it outside the United States. See J.A. 14-15, 17-18, 21-24, 29, 32-34, 96, 99-103. For example, the complaint describes Exxon’s “explor[ation] for oil and natural gas on six continents” and “market[ing] [of] products all over the world,” citing activities in Texas, Canada, Latin America, Angola, Qatar, Russia, and the United Arab Emirates. J.A. 21-22, 29, 32, 99-101.

So too, billions of actors’ ensuing emissions from using fossil fuels occurred outside Colorado, and mostly abroad. See J.A. 18, 23-24, 98, 102. Boulder alleges that those global emissions combine invisibly and indivisibly to create a global problem that inflicts global consequences, from more frequent storms to droughts, and from rising sea levels to higher rates of insect-borne diseases. J.A. 39, 52-53, 118. Boulder blames petitioners for all of this, for wrongfully selling and marketing “fossil fuels at levels [they] knew would bring numerous and catastrophic injuries to Colorado.” Resp. Colo. Sup. Ct. Br. 1; see J.A. 2, 34, 112. Those are the same kinds of injuries that the rest of the world would allegedly experience. J.A. 5, 34-35, 41, 88-89.

Boulder’s claims would leave petitioners indefinitely on the hook for the many billions of dollars it takes to

remediate every past and future phenomenon that Colorado courts attribute to global warming. That apparently includes everything from impairment of Boulder citizens' rights "to use and enjoy public property," to interference with their rights to "emergency management" and "safe and unobstructed travel," to costs associated with rebuilding infrastructure and mitigating "pest infestations," to losses arising from "reduced" agricultural and employee "productivity." J.A. 113, 116-117. Boulder also seeks petitioners' "profits" from "not incurring the costs necessary to reduce the impacts of [their] contributions to climate change" in Boulder. J.A. 123. To avoid further liability, petitioners would need to curtail their fossil-fuel activities so as to "bring[] emissions under control." J.A. 98.

B. The Constitution Bars Boulder's Attempt To Unilaterally Regulate Global Emissions

The Constitution allocates sovereign authority equally among the States and thereby generally disempowers one State from regulating within others. That principle, derived from the text and structure of the Constitution, forbids a State from circumventing territorial limits on its power and attempting to impose its own will on all other States confronted with a shared interstate problem. The constitutional structure thus forecloses Boulder's attempt to use Colorado common law to hold petitioners responsible for fueling global climate change.

1. The Constitution allocates power both vertically (between the federal government and the States) and "horizontal[ly]" (among the States). *National Pork Producers Council v. Ross*, 598 U.S. 356, 376 n.1 (2023). That horizontal allocation of authority is territorial. See, e.g., U.S. Const. Art. IV, §§ 2, 3; U.S. Const. Amend. VI; *Lessee of Pollard v. Hagan*, 44 U.S. 212, 228 (1845). Under

the Constitution, each State is an “*equal*” sovereign over its own territory. *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 246 (2019) (citation omitted). Equal sovereignty means “each State may make its own reasoned 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).

By the same token, equal sovereignty “implies certain constitutional ‘limitations’” on a State’s authority. *Hyatt*, 587 U.S. at 245 (brackets and citation omitted). One such limitation, embodied in the Constitution’s structure, is that a State generally may not reach across borders and regulate conduct in other States. “No State can legislate except with reference to its own jurisdiction.” *Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1882). And “no single State” can impose “a policy for the entire Nation” or “even impose its own policy choice on neighboring States.” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996). Doing so would violate “[e]ach State’s equal dignity and sovereignty under the Constitution”—a principle “embed[ded] * * * within the constitutional design.” *Hyatt*, 587 U.S. at 245.

This Court has repeatedly enforced that constitutional prohibition on extraterritorial regulation. In *Bonaparte*, the Court rejected a State’s attempt to exempt securities held by residents of another State from taxation in that other State. 104 U.S. at 592-594. In *Nielsen v. Oregon*, 212 U.S. 315 (1909), the Court rejected a State’s attempt to “punish a man for doing within the territorial limits of [another State] an act which that [other] State had specially authorized him to do.” *Id.* at 321. Likewise, in *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the plurality rejected a State’s attempt to “directly regulate[]

transactions” that took place “wholly outside the State.” *Id.* at 641.

Moreover, this Court has identified myriad constitutional provisions and doctrines that reinforce “the role territory and sovereign boundaries play,” *National Pork Producers*, 598 U.S. at 375—especially when one State seeks to tackle inherently interstate issues. For instance, the Court has interpreted the Fourteenth Amendment’s Due Process Clause to prohibit a State from exercising general personal jurisdiction over a defendant—and adjudicating his conduct nationwide—simply because he placed his product in “the stream of commerce.” *Daimler AG v. Bauman*, 571 U.S. 117, 132 (2014). And due process prohibits a State from “impos[ing] economic sanctions on violators of its laws with the intent of changing the tortfeasors’ lawful conduct in other States.” *BMW*, 517 U.S. at 572. So too, due process prohibits choosing a single State’s law to govern every claim in a “nationwide class action” when that State lacks a sufficient “‘interest’” in all the claims. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 822 (1985).

This Court has also invoked the Dormant Commerce Clause to “resolve disputes about the reach of one State’s power.” *National Pork Producers*, 598 U.S. at 376. *National Pork Producers* held that the Dormant Commerce Clause did not impose an “‘almost *per se*’ rule forbidding enforcement of state laws that have the ‘practical effect of controlling commerce outside the State,’ even when those laws do not purposely discriminate against out-of-state economic interests.” *Id.* at 371 (citation omitted). But that case involved a state law that regulated in-state conduct (the sale of pork) with out-of-state effects (on pork producers). *Id.* at 363-364, 376 n.1. This case involves the opposite: a state-law attempt to lever-

age in-state effects (*e.g.*, wildfires) to justify directly regulating out-of-state conduct (*e.g.*, oil production). The Court in *National Pork Producers* aptly suggested that such an effort to regulate out-of-state conduct could violate “the territorial limits of state authority under the Constitution’s horizontal separation of powers.” *Id.* at 376 n.1.

Similarly, the Court has recognized certain controversies that “our federal system does not permit” to “be resolved under state law” because “the interstate or international nature of the controversy makes it inappropriate for state law to control.” *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). Thus, the Court has said, “the regulation of interstate water pollution is a matter of federal, not state law.” *International Paper Co. v. Ouellette*, 479 U.S. 481, 488 (1987). Accordingly, “borrowing the law of a particular State would be inappropriate” when “‘deal[ing] with air and water in their ambient or interstate aspects.’” *American Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421-422 (2011) (*AEP*) (citation omitted).

Whatever the label, these doctrines all perform the same function: to “referee disputes about where one State’s authority ends and another’s begins.” *National Pork Producers*, 598 U.S. at 375. Where global problems with global reach are concerned, these doctrines favor respecting “the role territory and sovereign boundaries play” over allowing each State to force its policy choices on its neighbors. *Ibid.* Across contexts, the constitutional rule against extraterritorial reach has particular force with respect to inherently interstate issues. Those issues present heightened risks that, by regulating conduct outside its borders, a State will impose its policy choices on the Nation. When nationwide and global prob-

lems are at issue, it is especially important that States remain “within the orbits of their lawful authority.” *New York Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914).

Boulder’s claims clearly violate constitutional prohibitions on extraterritorial regulation. Boulder is attempting to use state law to hold petitioners liable for a worldwide problem caused by indivisible worldwide emissions by effectively forcing them to abandon their worldwide fossil-fuel activities—all because the problem has far-downstream alleged effects in Colorado that are no different from and may indeed be dwarfed by alleged effects in other States.

2. Boulder invokes an exception to the rule against extraterritorial regulation, whereby States can regulate conduct outside a State when that conduct produces, or is intended to produce, certain effects within the State. See Br. in Opp. 33; Resp. Colo. Sup. Ct. Br. 4, 19-20, 49. That exception does not encompass attempts by one State to regulate an inherently interstate or global problem arising from almost wholly extraterritorial conduct whose in-state consequences are the same in kind in every State.

Rather, the effects-based exception rests on a theory of “constructive presence in a State” that requires a far closer nexus to the regulating State. *Hyde v. United States*, 225 U.S. 347, 362 (1912). If the effects of a person’s out-of-state conduct are sufficiently proximate, the theory goes, the person can be treated as constructively, if not actually, present in the State where the effects occur, and thus subject to that State’s regulatory authority. *Ibid.*; see *Strassheim v. Daily*, 221 U.S. 280, 285 (1911).

For example, *Simpson v. State*, 17 S.E. 984 (Ga. 1893), involved a shooter standing in South Carolina who

aimed and fired a pistol at someone across the border in Georgia. *Id.* at 985. The “balls from the pistol” missed the intended victim but landed in Georgia and “took effect” there. *Ibid.* The Georgia Supreme Court held that the shooter could be prosecuted under Georgia law based on a theory of “constructive” presence: Although the shooter never set foot in Georgia, he could be “regard[ed]” as “accompanying the ball, and as being represented by it, up to the point where it strikes.” *Ibid.* *Simpson* illustrates that the effects of the out-of-state conduct must be direct, traceable, and particularized. One could draw a straight line from the firing of the shots in South Carolina to their effects in Georgia, allowing Georgia to punish the shooter “as if he had been present at the effect.” *Strassheim*, 221 U.S. at 285.

Young v. Masci, 289 U.S. 253 (1933), fits the same mold. The Court stated that “a person acting outside the State may be held responsible according to the law of the State for injurious consequences within it,” *id.* at 259, because the injurious consequences in *Young* were direct, traceable, and particularized. A car owner in New Jersey lent his car to someone who drove the car into New York and accidentally hit a pedestrian. *Id.* at 256. The Court explained that “[w]hen [the owner] gave permission to drive his car to New York, he subjected himself to the legal consequences imposed by that State upon [the driver’s] negligent driving as fully as if he had stood in the relation of master to servant.” *Id.* at 258. That close nexus justified treating the owner as if he had been present in New York.

Likewise, under the effects-based exception, someone in Illinois could be punished under Michigan law for selling machinery under false pretenses to a buyer in Michigan. *Strassheim*, 221 U.S. at 281-285. Someone who se-

verely injured a man on the high seas could be punished under Massachusetts law for causing the man's death in Massachusetts. *Commonwealth v. Macloon*, 101 Mass. 1, 4 (1869). A company that manufactured a defective car in Michigan could be held liable under New York law for causing the car to break down in New York. *MacPherson v. Buick Motor Co.*, 111 N.E. 1050, 1051-1055 (N.Y. 1916). Someone who constructed a dam in Maine could be held liable under New Hampshire law for flooding a road in New Hampshire. *State v. Lord*, 16 N.H. 357, 359 (1844). And someone who blasted rock in Indian Territory could be held liable under Arkansas law for striking a person with a piece of rock in Arkansas. *Cameron v. Vandegriff*, 13 S.W. 1092, 1092-1093 (Ark. 1890).

All of those decisions involved localized problems with direct, traceable, and particularized effects. By contrast, Boulder's invocation of the effects-based exception posits that petitioners' out-of-state conduct caused alterations to the climate affecting the entire planet, including Colorado. J.A. 2, 21, 34. This Court, however, has "[n]ever held that a State may sue to abate any and all manner of pollution originating outside its borders." *AEP*, 564 U.S. at 422. To the extent petitioners' fossil-fuel activities in Colorado contributed to ensuing emissions and global warming, those activities played an infinitesimal role at most. Boulder's claims do not distinguish activities within Colorado from those outside the State; nor could they disambiguate which sources of emissions caused alleged harms in Boulder. See pp. 16-17, *supra*. Nothing about the effects exception lets Boulder use far-downstream effects in Boulder—which are just one part of undifferentiated alleged global consequences—as a hook to impose Colorado law on petitioners' worldwide conduct.

Boulder’s complaint underscores just how many indirect steps separate petitioners’ worldwide conduct from far-down-the-chain effects in Boulder. Take the alleged connection between Exxon’s operations in Texas and the alleged “costs associated with increased drought conditions” in Boulder. J.A. 29, 137. The complaint suggests the following causal chain: (1) Exxon explores for natural gas in Texas, see J.A. 21-24, 97-98; (2) Exxon sells natural gas to unspecified powerplants worldwide, see J.A. 97-98; (3) powerplants worldwide burn the natural gas to generate electricity, emitting greenhouse gases into the atmosphere, see J.A. 35, 98; (4) those emissions mix with others, trapping “heat inside the Earth’s climate system” and “warming the atmosphere and oceans,” J.A. 34; see J.A. 34-35; (5) “[r]ising temperatures and shifting precipitation patterns” cause severe droughts in Colorado, J.A. 45; see J.A. 45-46; and (6) “increased drought conditions” lead Boulder to incur “alternate planting and increased landscape maintenance costs,” J.A. 137.

Those alleged effects are indirect—reaching Colorado only after multiple links in the alleged causal chain. They are not traceable, but untraceable: Because “[g]reenhouse gases once emitted ‘become well mixed in the atmosphere,’” Boulder cannot attribute a drought in Colorado to any particular source of emissions—let alone to any particular conduct by petitioners, even further down the alleged causal chain. *AEP*, 564 U.S. at 422 (citation omitted). Further, the effects are not particularized, but undifferentiated: The medium allegedly transmitting them is the Earth’s entire atmosphere. Boulder cannot say that petitioners’ activities altered the climate any more in Colorado than they did in New York—or anywhere else in the world. See *ibid.* (“[E]mis-

sions in New Jersey may contribute no more to flooding in New York than emissions in China.”).

Adopting Boulder’s theory would transform the legal fiction of constructive presence into farce. Any company that produces natural gas *anywhere* would be constructively present everywhere that any downstream consequence from natural-gas production might manifest. That sort of limitless stream-of-commerce theory has never sufficed in other doctrinal contexts. Cf. *Daimler*, 571 U.S. at 132 (recognizing that placing “a product into the stream of commerce” is not sufficient to establish general personal jurisdiction). Otherwise, every jurisdiction in the country—and the world—could bring a suit like Boulder’s; dozens of state and local governments already have. See Pet. Br. 7; U.S. Cert. Amicus Br. 20 n.3 (listing 22 other climate-change suits). Fossil-fuel companies would be subject not only to billions of dollars in damages in each suit, but also to a multiplicity of rules governing their conduct everywhere. State and local governments could equally sue everyone else in the causal chain; on Boulder’s theory, anyone involved in producing or using fossil fuels contributed to the “nuisance” or “trespass” in Colorado.

Boulder’s theory would also invite suits targeting other nationwide or global phenomena with global (and thus local) effects. If the alleged causal chain linking oil drilling in Texas to “potholes” in Boulder suffices to justify extending the reach of Colorado law into the rest of the country (and world), J.A. 65, then little remains of the Constitution’s territorial limits on state authority. California could wield its law to prevent the country’s refrigerator manufacturers from emitting chemicals that destroy the world’s ozone layer and thus indirectly increase Californians’ incidence of skin cancer. Oklahoma

could seek to regulate Maine’s schools on the theory that social and economic effects of a poor education are felt nationwide (including in Oklahoma). And Montana could seek to regulate health care costs in Florida, on the theory that the healthcare market is interconnected. Boulder’s theory cannot be squared with the Constitution’s territorial limits on state authority.

**C. Boulder’s Attempt To Regulate Global Emissions
Interferes With The Federal Government’s Exclusive
Role In Foreign Affairs**

Boulder’s attempt to mitigate alleged downstream consequences of global climate change by regulating petitioners’ conduct abroad is even more problematic. That regulation is unconstitutionally extraterritorial because petitioners’ overseas activities—like coal mining in Latin America or oil drilling in Qatar, J.A. 99, 101—are highly attenuated in relation to Boulder’s asserted in-state harms from global warming. Such international regulation is further unconstitutional because it usurps the federal government’s primacy over foreign relations under the Constitution.

Again, the premise of Boulder’s complaint is that petitioners’ conduct—most of which occurred abroad—has caused a “cross-border” global warming problem, which is, “by definition,” “international” in scope, “affect[ing] [multiple] countries’ interests.” *Hernández v. Mesa*, 589 U.S. 93, 104 (2020); see pp. 16-17, *supra*. The Constitution, however, “allocat[es]” the “foreign relations power to the National Government.” *American Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413 (2003). Further, the Constitution “confers upon the Federal Government—and it alone—both nationwide and extraterritorial authority.” *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 15 (2025). “Our system of government” thus “requires that

federal power in the field affecting foreign relations be left entirely free from local interference.” *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941); see *Zschernig v. Miller*, 389 U.S. 429, 432 (1968) (similar).

Boulder’s claims “interfere[] with the National Government’s conduct of foreign relations” in multiple ways. *Garamendi*, 539 U.S. at 401. The federal government “has long opposed the establishment of liability and compensation schemes at the international level for alleged climate change.” D. Ct. Doc. 12, ¶ 18, *United States v. Minnesota*, No. 26-cv-2456 (D. Minn. May 11, 2026) (Landau Decl.); see *City of New York v. Chevron Corp.*, 993 F.3d 81, 103 n.11 (2d Cir. 2021) (similar). Yet Boulder’s claims would impose just such a scheme, forcing multinational fossil-fuel companies to pay damages indefinitely for allegedly “causing and/or contributing to climate change.” J.A. 118.

Moreover, “by targeting fossil fuel companies for actions they took overseas,” Boulder’s claims would “create[] new frictions in all international negotiations that implicate climate policies.” Landau Decl. ¶ 18. It would be pointless for the federal government to engage in such negotiations if States or localities could upend them by invoking a single State’s law. See *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 381 (2000) (emphasizing the need for “the President to speak for the Nation with one voice in dealing with other governments”). Worse, Boulder’s claims are the tip of the iceberg; dozens of States and municipalities, from Annapolis to Hoboken to Maui, have filed similar suits, pursuing materially similar theories to hold oil companies liable for alleged downstream global-warming consequences. U.S. Cert. Amicus Br. 20 n.3.

Claims like Boulder’s also invite “clashes” between state law and the laws of foreign nations, sowing “international discord.” *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115 (2013) (citation omitted). Petitioners’ overseas activities were presumably lawful in the countries in which they occurred, such as Angola, Qatar, and Russia. J.A. 101. Yet Boulder would have Colorado law deem those activities wrongful based only on their downstream effects in Boulder, creating tension between Colorado and foreign laws. Other countries “may seek to respond to the lawsuit through their relations with the United States, including [by] expressing their concerns through diplomatic engagements, retaliating through increased costs on U.S. fossil fuel producers operating in those countries, [and] taking other steps against U.S. interests.” Landau Decl. ¶ 21.

The Constitution assigns to the President and Congress the “responsibility and institutional capacity to weigh [such] foreign-policy concerns” and to decide whether to embrace such foreign-policy consequences. *Jesner v. Arab Bank, PLC*, 584 U.S. 241, 265 (2018); see *Kiobel*, 569 U.S. at 116. By making Colorado common law the arbiter of petitioners’ activities worldwide, Boulder’s claims would instead cede those “delicate” decisions to Colorado state judges. *Kiobel*, 569 U.S. at 115 (citation omitted). The Constitution prohibits that usurpation of the federal government’s foreign-relations role.

III. THE CLEAN AIR ACT PREEMPTS BOULDER’S STATE COMMON-LAW CLAIMS

Even setting constitutional problems aside, the Clean Air Act preempts Boulder’s attempt to function as a super-EPA deciding who should bear primary responsibility for global emissions and what level of abatement of global fossil-fuel activity is necessary to mitigate far-

downstream effects. The Act reserves to EPA the decision whether and how to regulate emissions from stationary sources, and preserves traditional territorial limits on States’ regulatory authority. Boulder’s claims would instead let Colorado law supply different standards and would disrupt EPA’s regulation of stationary sources by targeting upstream fossil-fuel companies. Further, Congress authorized regulation of only domestic emissions sources—but Boulder would subvert the Act’s calibrated regulatory scheme by imposing liability for worldwide fossil-fuel activities.

A. The Clean Air Act’s Decisionmaking Scheme Puts EPA And Source States In Charge Of Emissions

Under the Supremacy Clause, federal law “shall be the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. Art. VI, Cl. 2. “Where state and federal law ‘directly conflict,’ state law must give way.” *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 617 (2011) (citation omitted). State law that “stands as an obstacle to the accomplishment and execution of the full purposes and objectives” of Congress must also give way. *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 183 (2019) (citation omitted). Here, federal law clashes with and thus supplants state attempts to regulate out-of-state emissions sources.

1. As this Court has concluded, the Clean Air Act reflects Congress’s choices to make EPA—not States—the “primary regulator of greenhouse gas emissions,” and to address emissions by regulating stationary sources, such as factories and power plants. *AEP*, 564 U.S. at 428. The Act requires EPA to list “categories of stationary sources” that EPA determines “cause[], or contribute[] significantly to, air pollution which may

reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. 7411(b)(1)(A). Once EPA lists a category, it must establish emissions standards for new or modified sources within that category as well as existing sources (under certain circumstances). 42 U.S.C. 7411(b)(1)(B); see 42 U.S.C. 7411(a)(1) and (d). EPA’s standards must “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) [EPA] determines has been adequately demonstrated.” 42 U.S.C. 7411(a)(1).

The Act limits States’ role to regulating emissions originating within their own borders. Pursuant to EPA’s emissions guidelines, States submit for EPA approval plans specifying emissions restrictions for existing stationary sources within their jurisdiction. 42 U.S.C. 7411(d)(1). The Act also preserves “the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution.” 42 U.S.C. 7416; see 42 U.S.C. 7604(e). That saving clause just preserves States’ authority to regulate *in-state*. That is how this Court interpreted the Clean Water Act’s analogous saving clause in *Ouellette* when rejecting the notion that the saving clause could be read to allow multiple States to impose conflicting rules over the same body of water. 479 U.S. at 496-497; see 33 U.S.C. 1365(e), 1370. There is no reason to interpret Section 7416 differently. See *City of New York*, 993 F.3d at 99-100; *Merrick v. Diageo Americas Supply, Inc.*, 805 F.3d 685, 692 (6th Cir. 2015);

Bell v. Cheswick Generating Station, 734 F.3d 188, 196 (3d Cir. 2013).

2. This Court’s decision in *AEP* reinforces that Boulder’s claims are preempted. In *AEP*, plaintiffs brought federal common-law nuisance claims against power plants whose greenhouse-gas emissions allegedly contributed to “global warming.” 564 U.S. at 418. *AEP* held that the Clean Air Act displaced those federal common-law claims. *Id.* at 423-429. The Court concluded that Section 7411 “delegated to EPA the decision whether and how to regulate carbon-dioxide emissions from powerplants,” *id.* at 426, and that federal common-law claims could not “be reconciled with th[at] decisionmaking scheme” because they would “commit to federal judges, in suits that could be filed in any federal district,” the authority to determine “what amount of carbon-dioxide emissions is ‘unreasonable,’” *id.* at 428-429 (citation omitted).

So too here, Boulder’s state common-law claims would commit to Colorado judges the same kinds of “judgments” that the federal common-law claims in *AEP* would commit to federal judges. 564 U.S. at 429. Because Section 7411 reserves those judgments to EPA and source States, Boulder’s claims “cannot be reconciled with the decisionmaking scheme Congress enacted.” *Ibid.* If Boulder’s claims could proceed, that would open the door not just to one set of judges applying a single body of common law (as in *AEP*), but to 50 sets of judges applying 50 different bodies of common law—eviscerating the uniform Clean Air Act scheme.

True, *AEP* reserved judgment on “the availability of a claim under state nuisance law.” 564 U.S. at 429. But this Court has held in cases before and after *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), that federal common

law governs in the interstate pollution context. See *Illinois v. Milwaukee*, 406 U.S. 91, 104 (1972); *Missouri v. Illinois*, 200 U.S. 496, 520 (1906). Congress did not empower States to intrude in this longstanding area of federal responsibility by enacting the Clean Air Act and Clean Water Act. Rather, those Acts' saving clauses reserve to States a role in regulating only *in-state*. See pp. 30-31, *supra*.

B. Boulder's Claims Conflict With The Clean Air Act's Decisionmaking Scheme

Boulder's claims are preempted because Boulder would substitute Congress's regulatory choices with its own even more far-reaching regulatory scheme. Far from regulating only in-state activity, Boulder's claims use attenuated, in-state effects to regulate almost entirely out-of-state fossil-fuel activities that generate undifferentiated worldwide emissions. J.A. 18, 24, 98, 102. Had Boulder brought the same state-law claims against stationary sources outside Colorado, those claims would plainly be preempted under the Clean Air Act. Boulder cannot circumvent that problem by trying to regulate companies that supply fossil fuels that generate the emissions. J.A. 2.

Boulder's public- and private-nuisance claims illustrate the incompatibility with the federal regime. Those claims allege that worldwide emissions—nearly all of which originated outside Colorado—have created a “nuisance” in Boulder. J.A. 114, 118. But under the Clean Air Act, it is not for Colorado to say, through its courts' definition of “nuisance,” whether emissions from stationary sources (and other sources) outside Colorado have reached an unacceptable level. Rather, the Act prescribes the standard for when stationary-source emissions must be regulated and reserves to EPA and source

States the authority to determine what amount is “unreasonable.” Pet. App. 125a.

Likewise, Boulder’s trespass claim alleges that worldwide emissions—including from stationary sources outside Colorado—have caused an “uninvited physical intrusion” in Boulder. Pet. App. 131a; see *Hoery v. United States*, 64 P.3d 214, 217 (Colo. 2003); J.A. 120-122. Boulder’s unjust-enrichment claim alleges that worldwide emissions, including out-of-state stationary-source emissions, have caused an “unfair detriment” to Boulder. *Lewis v. Lewis*, 189 P.3d 1134, 1141 (Colo. 2008); see J.A. 122-123. (Boulder’s civil-conspiracy claim just alleges a conspiracy to commit the other torts. Pet. App. 137a.) Under each claim, Colorado judges applying Colorado law would decide the appropriate amount of out-of-state emissions from stationary sources on their way to deciding how much petitioners’ fossil-fuel activities should be effectively curbed, in conflict with Congress’s choices in the Clean Air Act.

This Court has “often rejected efforts by States to avoid preemption by shifting their regulatory focus from one company to another in the same supply chain.” *American Trucking Ass’ns v. Los Angeles*, 569 U.S. 641, 652 (2013). *Kurns*, for example, held that plaintiffs could not avoid the preemptive effect of the Locomotive Inspection Act (LIA), 49 U.S.C. 20701 *et seq.*, simply by suing the manufacturers of locomotive equipment, rather than the railroads that used that equipment. 565 U.S. at 636-637. The “field pre-empted by the LIA” was defined “on the basis of the physical elements regulated —‘the equipment of locomotives’—not on the basis of the entity directly subject to regulation.” *Id.* at 636 (citation omitted).

Likewise here, preemption is based on a conflict with the Clean Air Act’s vesting of authority in EPA to determine whether and how to regulate emissions. Suing the suppliers rather than the emitters magnifies rather than avoids that conflict. Congress made the deliberate choice to target stationary emitters, such as factories and powerplants, and treat *them* as the relevant sources of greenhouse-gas emissions. Boulder’s claims supplant that decision by treating fossil-fuel production and sales as the relevant “sources” instead. J.A. 18, 24. Boulder’s substitute regulatory regime targeting companies whose products cause emissions would render pointless the standards that EPA and source States place on stationary emitters. Those downstream standards would be unnecessary (and completely miscalibrated) were Boulder’s upstream regulation successful.

That Boulder’s claims also cover emissions from other countries exacerbates the conflict. Section 7411 makes EPA the primary regulator of “domestic” stationary sources only. *AEP*, 564 U.S. at 425. Allowing Colorado state judges to supplant EPA as the primary domestic regulator is bad enough; appointing them as super-EPAs with global reach further undermines the federal decisionmaking scheme.⁴

⁴ EPA recently concluded that it lacks authority under 42 U.S.C. 7521(a)(1) to prescribe greenhouse-gas emissions standards for new motor vehicles and engines based on climate-change concerns. 91 Fed. Reg. 7686 (Feb. 18, 2026). But that conclusion about Section 7521(a)(1) does not apply to EPA’s authority under Section 7411 to regulate emissions from stationary sources—the decisionmaking scheme that *AEP* interpreted in ways that conflict with Boulder’s claims. Cf. *AEP*, 564 U.S. at 430 (Alito, J., concurring in part and concurring in the judgment). Regardless of what authority the Act delegates to EPA, Boulder’s claims are constitutionally barred.

CONCLUSION

The judgment of the Colorado Supreme Court should be reversed.

Respectfully submitted.

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* The Solicitor General is recused in this case.

APPENDIX

TABLE OF CONTENTS

	Page
Appendix — Constitutional provisions, statutory provisions, and rule:	
U.S. Const. Art. VI, Cl. 2	1a
Colo. Const. Art. VI, § 2	1a
Colo. Const. Art. VI, § 3	2a
28 U.S.C. 1257(a)	2a
42 U.S.C. 7411	3a
42 U.S.C. 7416	16a
Colo. App. R. 21	17a

APPENDIX

1. U.S. Const. Art. VI, Cl. 2 provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. Colo. Const. Art. VI, § 2 provides:

Appellate jurisdiction

(1) The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

(2) Appellate review by the supreme court of every final judgment of the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver shall be allowed, and the supreme court shall have such other appellate review as may be provided by law. There shall be no appellate review by the district court of any final judgment of the probate court of the city and county of Denver or of the juvenile court of the city and county of Denver.

3. Colo. Const. Art. VI, § 3 provides:

Original jurisdiction—opinions

The supreme court shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and such other original and remedial writs as may be provided by rule of court with authority to hear and determine the same; and each judge of the supreme court shall have like power and authority as to writs of habeas corpus. The supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decision of said court.

4. 28 U.S.C. 1257(a) provides:

State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

5. 42 U.S.C. 7411 provides:

Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term “standard of performance” means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term “new source” means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term “stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term “modification” means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term “existing source” means any stationary source other than a new source.

(7) The term “technological system of continuous emission reduction” means—

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii)¹ of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time there-

¹ See References in text note below.

after shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h), nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii)¹ shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would

have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) before November 15, 1990, and for which regulations had not been proposed by the Administrator by November 15, 1990, the Administrator shall—

(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after November 15, 1990;

(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after November 15, 1990; and

(C) propose regulations for the remaining categories of sources within 6 years after November 15, 1990.

(2) In determining priorities for promulgating standards for categories of major stationary sources for

the purpose of paragraph (1), the Administrator shall consider—

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise

such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2), the Administrator shall revise the list under subsection (b)(1)(A) to apply properly such criteria.

(4) Upon application of the Governor of a State showing that—

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Unless later deadlines for action of the Administrator are otherwise prescribed under this section, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(6) Before taking any action required by subsection (f) or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase “not feasible to prescribe or enforce a standard of performance” means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the

application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) and this subsection).

(i) Country elevators

Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

- (i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and
- (ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

6. 42 U.S.C. 7416 provides:

Retention of State authority

Except as otherwise provided in sections 1857c-10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter

shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

7. Colo. App. R. 21 provides:

Original Proceedings in the Supreme Court

(a) In General.

(1) *Original Jurisdiction Under the Constitution.* This rule applies only to the original jurisdiction of the supreme court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the supreme court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution.

(2) *Extraordinary Nature and Availability of Relief.* Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the supreme court. Such relief will be granted only when no other adequate remedy is available, including relief available by appeal, under C.R.C.P. 106, or under Crim. P. 35.

(3) *Forms of Writs Subject to this Rule.* Petitions for writs of habeas corpus, mandamus, quo warranto, injunction, prohibition, and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a specific form of writ when seeking relief under this rule.

(b) **Initiating an Original Proceeding.** The petitioner must file a petition for an order to show cause specifying the relief sought and requesting the court to issue to one or more proposed respondents, as set forth in subsection (e)(1), an order to show cause why the relief requested should not be granted.

(c) **Docket Fees.** Upon the filing of a petition under this rule, the petitioner must pay to the clerk of the supreme court the docket fee of \$225.00 and must comply with C.A.R. 12.

(d) **Form, Caption, and Title of the Petition.**

(1) *Form.* Unless otherwise provided, the petition and all documents filed under this rule must comply with the requirements of C.A.R. 28(g) for opening briefs and C.A.R. 32.

(2) *Caption and Title.*

(A) If there is no underlying proceeding, the petition must be captioned, “In Re [Petitioner v. Proposed Respondent(s)].”

(B) If there is an underlying proceeding, except as otherwise required by C.A.R. 32(f) or another provision of these Rules, the petition must use the full, exact, and unmodified caption given by the lower court or tri-

bunal in the underlying proceeding, “In Re [Caption of Underlying Proceeding].” Only one case may be listed as the underlying proceeding in the caption.

(C) The petition must be titled “Petition for Order to Show Cause Pursuant to C.A.R. 21.”

(e) **Contents of the Petition.** The petitioner has the burden of showing that the court should issue an order to show cause. To enable the court to determine whether to issue an order to show cause, the petition must set forth in sufficient detail the following:

(1) the identity of the petitioner and of the proposed respondent(s), together with, if applicable, their party status in the underlying proceeding (e.g., plaintiff, defendant, etc.). The proposed respondent(s) must be the real party (or parties) in interest against whom relief is sought. When a petition seeks a writ of mandamus or prohibition directed to a court or tribunal, the proposed respondents must be the lower court or tribunal, if appropriate, and all parties to the underlying proceeding other than the petitioner;

(2) the identity of the court or other underlying tribunal, the case name and case number or other identification of the underlying proceeding, if any, and identification of any other related proceeding;

(3) the ruling, action, or failure to act complained of and the relief being sought;

(4) the reasons why no other adequate remedy is available;

- (5) the issues presented;
- (6) the facts necessary to understand the issues presented;
- (7) argument and points of authority explaining why the court should issue an order to show cause and grant the relief requested;
- (8) a list of supporting documents, or an explanation of why supporting documents are not available; and
- (9) the names, addresses, telephone numbers, and e-mail addresses (if any) of all parties to the underlying proceeding; or, if a party is represented by counsel, the attorney's name, address, telephone number, and email address (if any).

(f) **Service.** The petitioner must serve the petition on every party and proposed respondent and on the lower court or tribunal. All documents filed under this rule must be served in accordance with C.A.R. 25. If a case is filed through the court's E-System, E-Service on a party must be completed in the supreme court case; the supreme court will not accept service of documents made in the underlying proceeding or in the lower court.

(g) **Supporting Documents.**

- (1) Proceedings initiated under this rule are not subject to C.A.R. 10.
- (2) A petition must be accompanied by a separate, indexed appendix of available supporting documents necessary for a complete understanding of the issues presented. The appendix must include an index or table of contents of the supporting documents with page numbers noting where

the documents appear. If the supporting documents are unavailable, the petition must explain why they are unavailable, consistent with subsection (e)(8).

(3) In cases involving an underlying proceeding, the following documents must be included in the appendix:

(A) the order or judgment from which relief is sought if applicable;

(B) documents and exhibits submitted in the underlying proceeding that are necessary for a complete understanding of the issues presented; and

(C) a transcript of the proceeding leading to the underlying order or judgment if available.

(4) The filing party is responsible for reviewing all supporting documents, including any attachments, exhibits, and appendices, to determine if the document contains information that should be excluded from public access pursuant to Chief Justice Directive 05-01 section 4.60. Any supporting document filed by a party that is not accessible to the public pursuant to Chief Justice Directive 05-01 section 4.60 must be accompanied by a motion to suppress or seal as prescribed in subsection (g)(4). The filing party must certify compliance with this subsection as directed by C.A.R. 32(h).

(5) Any document submitted as sealed or suppressed pursuant to Chief Justice Directive 05-01 sections 3.07 and 3.08 must be filed as a separate supporting document and must be accompanied by

a motion for leave to file the document as sealed or suppressed. The motion must:

(A) identify with particularity the specific document containing sensitive information;

(B) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document as sealed or suppressed;

(C) articulate the substantial interest that justifies depriving the public of access to the document; and

(D) cite any applicable rule, statute, case law, or prior court order sealing or suppressing the document.

(6) Original proceedings involving the specific case types listed in Chief Justice Directive 05-01 section 4.60(b)(1)-(9) are not accessible to the public. Unless a party intends to seal the proceeding pursuant to subsection (g)(5), it is unnecessary to file a motion to suppress the proceeding.

(h) Stay.

(1) *Pending a Decision to Issue an Order to Show Cause.* The filing of a petition under this rule does not stay any underlying proceeding or the running of any applicable time limit. If the petitioner seeks a temporary stay in connection with the petition pending the court's determination whether to issue an order to show cause, a stay ordinarily must be sought first from the lower court or tribunal. If a request for stay below is imprac-

licable, not promptly ruled upon, or is denied, the petitioner may file a separate motion for a temporary stay in the supreme court supported by accompanying materials justifying the requested stay.

(2) *Upon Issuance of an Order to Show Cause.* Issuance of an order to show cause by the supreme court automatically stays all underlying proceedings until final determination of the original proceeding in the supreme court unless the court, acting on its own, or upon motion, lifts the stay in whole or in part.

(i) **No Initial Responsive Pleading to Petition Allowed.** Unless requested by the supreme court, no responsive pleading to the petition may be filed prior to the court's determination of whether to issue an order to show cause.

(j) **Ruling on the Petition.**

(1) *Denial.* The court may deny the petition without explanation and without an answer by any respondent.

(2) *Issuance of an Order to Show Cause.* The court may issue an order to show cause. The clerk will serve the order on all persons ordered or invited by the court to respond and on the lower court or tribunal in the underlying proceeding.

(k) **Response to Order to Show Cause.**

(1) The court in its discretion may invite or order any party, including a party in the underlying proceeding, to respond to the order to show cause within a fixed time. Any party in the underlying proceeding may request permission to re-

spond to the order to show cause but may not respond unless invited or ordered to do so by the court. Those ordered by the court to respond are the respondents.

(2) The response to an order to show cause must comply with the requirements of C.A.R. 28(g) for answer briefs and with C.A.R. 32.

(3) Two or more respondents may respond jointly.

(l) Reply to Response to Order to Show Cause. The petitioner may submit a single reply brief within the time fixed by the court. A reply must comply with the requirements of C.A.R. 28(g) for reply briefs and with C.A.R. 32.

(m) Amicus Briefs. Any amicus curiae may file a brief only by leave of the court after a case number has been assigned. A brief submitted by an amicus curiae must comply with C.A.R. 29(a), (b), (c), (d), (f), and (g).

(1) *Before Ruling on a Petition.* Before the court rules on a petition an amicus curiae may tender a brief with a motion for leave to file supporting a petitioner, but the court may act on a petition at any time after the petition is filed, including before the submission of an amicus brief.

(2) *After Issuing an Order to Show Cause.* If the court issues an order to show cause, an amicus brief supporting a petitioner must be filed within seven days after the issuance of the show cause order, or such other time as the court may order for the submission of amicus briefs. An amicus brief supporting a respondent must be tendered by the deadline for the respondent's response, or

such other time as the court may order for the submission of amicus briefs. An amicus curiae that does not support either party must file its brief no later than seven days after the issuance of an order to show cause, or such other time as the court may order for the submission of amicus briefs.

(3) *No Reconsideration.* The filing of an amicus brief within the deadlines established by this rule but after the court has acted on a petition is not a ground for reconsideration of the court's decision to issue an order to show cause or deny a petition.

(n) **No Oral Argument.** There will be no oral argument unless ordered by the court.

(o) **Disposition of an Order to Show Cause.** The court in its discretion may discharge the order or make it absolute, in whole or in part, with or without opinion. Orders issued without an opinion will not be designated for official publication by the court and will remain unpublished. Unpublished orders may not be cited as precedent.

(p) **Petition for Rehearing.** A petition for rehearing may be filed only when the court has issued an opinion discharging the order to show cause or making the order absolute. Any petition for rehearing may be filed in accordance with C.A.R. 40(c)(2). No petition for rehearing may be filed after denial of a petition without explanation, if the order was discharged without opinion, or if the order was made absolute without opinion.