



LAST UPDATED SEPT. 30

The Supreme Court [hears oral arguments](#) on October 5, 2026 in *Suncor Energy v. County Commissioners of Boulder County*.

The plaintiffs in this case are local governmental entities in the State of Colorado that face substantial and rising costs to mitigate the impacts of climate change in the form of heat waves, wildfires, droughts, and floods: The Board of County Commissioners of Boulder County, and the City of Boulder.

The defendants are Exxon Mobil Corporation and Suncor Energy (U.S.A), Inc., Suncor Energy Sales, Inc., and Suncor Energy, Inc. (collectively, the “Suncor Defendants”).

The City and County of Boulder first sued Suncor Energy and ExxonMobil on April 17, 2018 for allegedly deceiving the public about their products’ role in climate change. In a 5-2 [ruling](#) issued on May 12, 2025, the Colorado Supreme Court majority sided with the city and county of Boulder in rejecting the oil companies’ arguments that federal law preempts Boulder’s state law claims.

Boulder is one of dozens of local governments and states throughout the United States that have filed lawsuits in state court against fossil fuel companies, seeking

to hold them accountable for climate change damages and their alleged deception. Although none of these cases have yet gone to trial, the U.S. Supreme Court decided to review Boulder's case at the request of the oil company petitioners.

Justice Samuel Alito will *not* participate in the case. According to [press reports](#), lawyers for Exxon and Suncor were informed on Sept. 28 of Alito's recusal in a letter from Scott Harris, clerk of the Supreme Court who did not provide a rationale, stating only, "I am writing to inform the parties that Justice Alito has determined that he will not continue to participate in this case." Recent financial disclosure reportedly show Alito's holdings include stock in ConocoPhillips and Phillips 66 — defendants in separate but similar climate-related lawsuits.

The Arguments

The plaintiffs argue that they, and their taxpayers, cannot pay the full costs of all that is needed to attempt to mitigate the harm caused by climate change "nor should they" because defendants "have acted recklessly." They argue that the costs should be shared by Exxon and the Suncor because they knowingly caused and contributed to the alteration of the climate by producing, promoting, refining, marketing and selling fossil fuels at levels that have caused and continue to cause climate change, while concealing and/or misrepresenting the dangers associated with fossil fuels' intended use. As causes of action the plaintiffs allege: Public Nuisance, Private Nuisance, Trespass, Unjust Enrichment, Consumer Protection (Violation of the Colorado Consumer Protection Act), and Civil Conspiracy. Plaintiffs are seeking monetary relief for past and future damages and costs to mitigate the impact of climate change, such as the costs to analyze, evaluate, mitigate, abate, and/or remediate the impacts of climate change. Their amended complaint is [here](#).

The defendants have argued that federal law forecloses state-law claims seeking relief for injuries allegedly caused by the effects of global greenhouse-gas emissions on the global climate. They argue that Boulder's lawsuit is an "audacious attempt to use state tort law to address the effects of global climate change" and is incompatible with the Constitution.

The question [presented by the petitioners](#) is "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." Suncor Energy and Exxon Mobil argue that federal law precludes state-law claims seeking relief. "State courts and parties are devoting enormous resources to the litigation of these

cases, and the energy industry is facing the threat of damages awards that could run into the billions of dollars,” they write.

In addition to these questions, the justices directed the parties to brief and argue “whether they even have the authority to hear the case at this time.” Petitioners (defendants) argue that the U.S. Supreme Court has statutory and constitutional jurisdiction to hear this case. In response, the respondents (plaintiffs) argue that “how to allocate the cost of climate alteration is a matter of genuine debate” and that “the structure of our Constitution assigns responsibility for resolving that debate to the states and the political branches of the federal government.”

Why This Case is Important

UCLA Law Prof. Cara Horowitz, who teaches a climate change law seminar, says cities, counties, and states around the country are bringing cases similar to Boulder’s for one primary reason: Climate change is wildly expensive.

“We are well beyond the time when climate harms loomed in some distant future; instead, communities are dealing right now, and regularly, with climate-enhanced floods, heat waves, catastrophic fires, sea level rise, and other problems. These problems are expensive to manage, and states and localities bear the brunt of the costs, stretching their very limited budgets. With these court cases, communities and states allege that fossil fuel companies got us into this mess in part through consumer deception and other violations of state law, by concealing the harms of their products — and should therefore be on the hook to help pay for some of these costs.”

“The Boulder case, like similar cases around the country, is still in a fairly early stage of litigation. Colorado courts have allowed the case to proceed past a motion to dismiss but have not yet moved forward to discovery, fact-finding, a trial, or a judgment. In that sense, the U.S. Supreme Court is involving itself very early, well before Colorado courts have decided, for themselves, how the case should come out. This matters because this gives the Supreme Court justices an opportunity to short-circuit the case should it choose to do so, essentially depriving Boulder of the opportunity to have its day in state court. Moreover, the justices could issue a decision that simultaneously undercuts many or all of the other, similar cases unfolding in state courts around the country. In other words, because the Supreme Court elected to hear this case now and not in, say, three years, its decision could—depending on its outcome and rationale — cut off many of those other cases

before they've gotten very far down the road, too."

Assessing the Arguments

UCLA Law Prof. Alejandro Camacho is co-author of a new article on this subject titled ["The Polluter-Pays Principle and Its Enemies: Corporate Fraud, Weaponizing Preemption, and the Survival of Climate Accountability"](#) published by the University of Chicago Law Review. He says there are many justifications for rejecting the broad preemption sought by Suncor and fewer arguments pointing in the other direction. Here he analyzes a handful of the arguments for rejecting preemption:

Congress expressly preserved state law rather than displacing it. The Clean Air Act contains no express preemption of tort suits. In fact, the statute includes "savings clauses" that affirmatively preserve state authority and common law rights. Congress knew perfectly well how to preempt state law when it wanted to—it clearly preempted state motor vehicle emission standards and not damages actions. Nothing else in the Act supplies the clear statement preemption would require.

A key Supreme Court case is directly on point, and petitioners do not engage it. In *Silkwood v. Kerr-McGee*, the Court upheld a state punitive damages award against a nuclear licensee in a field it had just described as entirely occupied by federal regulation, reasoning that it was difficult to believe Congress meant to leave victims without recourse. If comprehensive federal safety regulation of nuclear power does not oust state tort remedies, the Clean Air Act does not either. Astonishingly, neither the petitioners nor any supporting briefs cite the case, let alone distinguish it.

A key Supreme Court case expressly left this question open. *American Electric Power Co. v. Connecticut* held that the Clean Air Act displaced federal common law nuisance claims. The Court then said whether a state-law cause of action can go forward or whether the Clean Air Act preempts it were questions it did not address. Importantly, displacement and preemption are different doctrines with different standards: (1) displacement asks only whether Congress spoke to a subject; (2) preemption requires clear and manifest congressional intent to oust state remedies.

A key Supreme Court case cuts against preemption, not for it. In *Ouellette*, the Supreme Court barred an affected state from applying its own nuisance law to

an out-of-state discharger under the Clean Water Act, but it preserved the claim under source-state law so that injured parties would not be left without a remedy. The Third Circuit Court of Appeals specifically applied that reasoning to the Clean Air Act, finding no meaningful difference between the two statutes' savings clauses. Yet the fossil fuel companies somehow try to spin Ouellette to extinguish these claims!

A damages award is not regulation. The fossil fuel defendants try to argue that a large-enough judgment would govern conduct in the way regulation does. Deterrence is indeed one of tort law's functions. But if incidental deterrent effect were enough to preempt damage recover, no state tort remedy could ever coexist with any federal regulatory program. What really matters is whether a judgment would set a standard that bound conduct outside of the case. And a damages award does not.

No federal statute has ever preempted a state claim of deception. The Clean Air Act regulates what companies put into the air. It says nothing about what they told the public. Prior case law has held that federal product regulation does not displace the general duty not to deceive, and this duty exists whether or not the product is federally regulated.

Possible Outcomes

More than most cases, this one could end in a lot of different places, and the narrowest is the one that observers are paying the least attention to, according to **UCLA Law Prof. Alejandro Camacho**, co-author of the book "Lessons for a Warming Planet." Here Camacho outlines five of the possible outcomes:

1. The Court never reaches the merits.

As mentioned above, the Court added a question no party asked it to decide: whether it has statutory and constitutional jurisdiction to hear the case at all. Federal statute requires a final judgment for the Supreme Court to review the state court judgment, and this is an interim ruling. Constitutionally, the Court can review the state judgment only if Boulder would have had standing in federal court. Boulder County may have difficulty showing its injuries are traceable to the fossil fuel companies, and the companies may have difficulty showing that losing a motion to dismiss injured them. A jurisdictional dismissal is a win for Boulder County, though, since the case would just proceed in Colorado state court.

2. **A broad ruling for petitioners.**

The Court could hold that federal law forecloses state-law claims for injuries traceable to interstate and international emissions. That would end not only Boulder's suit but several dozen climate accountability cases pending nationwide. Because the reasoning might not be limited to climate, it could supply a template for arguing that other diffuse, transboundary harms are beyond state tort law too.

3. **A narrow ruling for petitioners.**

The Court could hold that Colorado may not apply its law to out-of-state emitters. That would be a loss but not a dismissal: the deception claims, which rest on marketing and concealment within Colorado, would survive, and plaintiffs could refocus on them.

4. **A ruling for respondents.**

The Court could hold that the Clean Air Act does not preempt state common law and that the foreign affairs doctrine does not reach ordinary tort suits. The case would then return to Colorado for discovery. Additionally, Justice Alito's recusal also raises the potential for a 4-4 split that affirms the Colorado ruling without setting a national precedent but allowing Boulder's case to proceed without affecting the other cases.

5. **A split decision.**

The Court could resolve the Clean Air Act question and say nothing about the foreign affairs preemption, or vice versa. Given how sparsely the companies briefed the foreign affairs theory, that is a real possibility.

How Could This Affect Other Climate Cases?

UCLA Law Prof. Cara Horowitz says it's not yet clear whether or how a decision in this case will affect the broader set of state-law climate deception cases against fossil fuel companies.

"A very broad preemption holding in favor of fossil fuel defendants in this case could bring similar suits to a quick end. On the other end of the spectrum, a narrow ruling that the Supreme Court doesn't have jurisdiction to hear this case at this time would leave the broader set unscathed. My colleague has some good thoughts

(above) on which of those outcomes is better supported. And of course there are many options in the middle. We'll have to wait and see."

Amicus Briefs

Dozens of amicus briefs, or friend of the court briefs, have [been filed](#) in the case. Here are a few particularly notable ones:

Colorado Ranchers: A group of seven cattle ranchers filed [a brief](#) supporting Boulder, saying they are "living through the impacts of anthropogenic climate change that scientists have warned about for years," and that rising temperatures driven by the use of fossil fuels threaten "the economic viability of a way of life that has been central to communities for generations."

EPA Administrators: More than a dozen former EPA administrators, both Democrats and Republicans, signed onto [a brief](#) that focuses on the Clean Air Act. "Nothing in the text or structure of the Clean Air Act preempts respondents' Colorado state law tort claims," they argue. "Preemption of those deceptive advertising and consumer protection claims—which are firmly anchored in the state's traditional police powers—would seriously encroach upon state sovereignty."

Natural Resources Defense Council: NRDC cites a recent report from the National Academies of Sciences providing a comprehensive assessment of the current capabilities of extreme event attribution in its [amicus brief](#) urging the justices not to thwart state-law cases against oil companies for climate damages.

Dave Jones: Former California Insurance Commissioner Dave Jones knows the insurance market. Jones [submitted a brief](#) to make clear that "the biggest threat to insurance and the hundreds of millions who depend on it isn't from climate accountability lawsuits, but from climate change itself," Jones writes.

Jonathan Adler: Adler is Professor of Law at the William & Mary Law School, where he teaches courses in administrative, environmental, and constitutional law. His [brief](#) addresses only the preemption questions. "State law... has played an essential role in this nation's history of environmental protection," the brief argues. "Resort to state law should not be foreclosed merely because such claims threaten economically important interests or rely upon expansive theories of liability or attenuated chains of causation."

More Context About The Case

WATCH a webinar press briefing about the case featuring Alejandro Camacho (UCLA Law), Lesley Clark (POLITICO), Ishan Thakore (Colorado Public Radio), and Emily Sanders (Point Source News).

WATCH a Center for Progressive Reform webinar briefing about the case featuring Alejandro Camacho (UCLA Law), Daniel Farber (UC Berkeley Law)), and Rachel Rothschild (University of Michigan Law).

A coalition of groups had [argued](#) that Justice Samuel Alito must recuse himself from the case due to his substantial holdings in the oil and gas industry, but some at the Supreme Court [said](#) it was not required. But on Sept. 28, lawyers for Exxon and Suncor were informed of Alito's recusal.

Alito's recusal has raised new questions about his participation in accepting the Boulder case in the first place, which "may have been pivotal," Inside Climate News [notes](#).

[Suncor Energy \(U.S.A.\) Inc. v. County Commissioners of Boulder County - The Climate Litigation Database](#)