



This post by Alejandro Camacho and [Robert L. Glicksman](#) is an excerpt from an article first published in the [University of Chicago Law Review](#).

On the morning of December 30, 2021, the Marshall Fire ignited in Boulder County, Colorado. Driven by hurricane-force winds and fueled by vegetation desiccated by years of drought, it burned more than six thousand acres and destroyed over one thousand homes in a matter of hours — the most destructive wildfire in Colorado history. Boulder County’s lawsuit against Suncor Energy and Exxon Mobil Corporation, filed in state court in 2018, seeks to recover those costs from the companies whose products allegedly caused them. The suit rests not merely on the claim that fossil fuel combustion drives climate change, but on the more specific and more serious allegation that the defendant companies spent decades concealing the relationship between their products and climate harm while actively marketing those products to a public kept deliberately uninformed of the consequences. The [complaint](#) alleges a sustained campaign of deception designed to allow the companies to continue profiting from fossil fuel sales while the climatic consequences they had long anticipated mounted.

Boulder County is not alone. Dozens of [state and local governments](#)—from Honolulu to Annapolis, from the shores of Rhode Island to the islands of Puerto Rico — have filed similar suits in state courts across the country. Together, these cases constitute the most significant wave of climate accountability litigation in American

history. They represent an attempt by subnational governments to deploy the centuries-old mechanisms of state tort law to ensure that corporations pay for the harms they cause, rather than shifting the costs entirely to taxpayers who had no part in the decisions that created them.

Such attempts to allocate to fossil fuel producers the costs subnational governments have incurred in responding to climate change are supported by the polluter-pays principle, aptly [described as](#) “a fundamental aspect of the public policy embodied in environmental law.” An [accepted norm](#) of international environmental law, the polluter pays principle is “[designed to achieve](#) ‘the internalization of environmental costs,’ by ensuring that the costs of pollution control and remediation are borne by those who cause the pollution, and thus reflected in the costs of their goods and services, rather than borne by the community at large.”

That form of cost internalization is precisely what the local governments in cases like [Suncor Energy \(U.S.A.\) Inc. v. County Commissioners of Boulder County](#) are [seeking](#). The case for allocating the local governments’ adaptation costs to oil companies is significantly strengthened in the event of corporate fraud through intentional suppression of data about the impacts on the global climate caused by their products. If proven, that [concealment](#) would have deprived the public, policymakers, and communities of the information necessary to respond to climate change in a timely and adequate way that would have reduced the costs of doing so.

The suits by local governments against the oil companies have met a coordinated response. Fossil fuel companies and their supporters have mounted a sustained effort to move the cases out of state court and into federal court — where they hoped to obtain dismissal on the ground that federal law forecloses the claims — and to persuade the Supreme Court that state courts are categorically barred from entertaining them. The Court’s [decision to grant certiorari](#) in *Suncor* confirms that the legal questions these cases raise are significant and require definitive resolution. The Court will address, at a minimum, whether the [Clean Air Act](#) preempts state common law damage claims for climate-related harm and possibly whether the Constitution’s allocation of foreign affairs authority independently requires their dismissal.

[***Read the full article in the University of Chicago Law Review.***](#)

