

Why the Supreme Court Should Shut Down Climate-Change Tort Suits in *Suncor v. Boulder*

by Professor Richard A. Epstein

Executive Summary

On October 5, 2026, the United States Supreme Court will hear argument in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*. The justices will consider whether federal environmental laws preclude state-law suits seeking damages from oil and gas companies for harms allegedly caused by the worldwide use of their products.¹ This case is the leading vehicle in a nationwide litigation campaign that seeks to convert global climate change into a source of local tort liability. The Court should hold these claims preempted.

- **No causal connection.** The plaintiffs no longer sue simply over emissions. In addition, they target only the sale of fuel by asking a single jury to isolate the sliver of global temperature change traceable to those sales—a futile exercise given that greenhouse gases, once emitted, become well mixed in the atmosphere.
- **Preemption is settled doctrine.** In *American Electric Power Co. v. Connecticut*, the Court held that the Clean Air Act displaces all federal common-law claims over interstate emissions. Recasting the same grievance as a state-law deceptive sales claim poses the risk of the same massive dislocations and should therefore be similarly barred.
- **No actionable fraud.** The suits rest on “missing warnings” about climate change—a meteorological phenomenon that was common knowledge. The plaintiffs never identify the particular statement or statements that would satisfy them and never drafted one that meets their unstated standards.
- **Misrepresentation law requires proof of fraud, not hindsight.** A fraud case requires proof of a deliberately false statement on which the public relied to its detriment. A plaintiff cannot achieve this when the climate risks of fossil fuel use are well known to the public.
- **A growing split favors dismissal.** The Maryland Supreme Court has dismissed parallel suits as “so far afield from any area of traditional state or local responsibility that it cannot be seriously contemplated,” and two federal district courts in New York have struck down New York’s \$75 billion Climate Change Superfund Act as preempted and as an impediment to exclusive federal control of foreign relations.
- **The forum is the strategy.** Plaintiffs have gone to great lengths to keep these global warming cases out of federal court—disclaiming federal interests, joining irrelevant in-state defendants, dismissing suits once removed, and claiming that an appeal is not appropriate because no final

¹ See *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (U.S. cert. granted Feb. 23, 2026). The Court also directed the parties to brief whether it has statutory and Article III jurisdiction to hear the case. See Questions Presented, <https://www.supremecourt.gov/qp/25-00170qp.pdf>.

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judgment has been rendered. They use these maneuvers solely because they expect to lose on the merits before a neutral federal forum. A merits ruling in *Suncor* in favor of the defendants can end the campaign at its source.

Introduction: The Two Questions in *Suncor*. On its opening day of the 2026 term, October 5, 2026, the United States Supreme Court will hear oral argument in *Suncor Energy Inc. v. County Commissioners of Boulder County*. The Court will consider whether the federal environmental laws preclude and preempt any effort by private litigants to obtain damages in so-called public nuisance cases against oil and gas companies that sold their products inside Colorado, for harms allegedly attributable to the use of those products by drivers within the state and around the world. These suits are not brought against any parties because they may have caused harmful emissions. Indeed, the plaintiffs explicitly disclaim any right to injunctive relief. Instead, the plaintiffs strategically target the *sale* of oil and gas and ask for damages that could inflict severe financial dislocation on the defendants and other oil and gas companies in a similar situation.²

The oil company defendants advance a two-pronged approach against these actions. The first prong—not squarely before the Court—asks whether the traditional underlying principles of tort law are properly extended to deal with these cases. The second asks whether federal environmental statutes like the Clean Air Act bar these common law actions under both federal and state law.

This *Legal Backgrounder* addresses the preemption argument against the backdrop of the basic liability issue, which for now sits on the backburner in *Suncor*. Yet it ultimately must be confronted because of its potential reach. If the theories of liability offered by the respondents and their *amici* are incorrect, then *neither* the state courts through their tort system *nor* the state regulators should be allowed to bring either sort of action on these free-ranging theories of liability; and the federal government likewise could not use its regulatory powers to impose vast fines on the selling of gasoline in ordinary consumer markets.

None of these arguments mean that public nuisance law has no role to play in a sound tort system, even if the recent wave of public nuisance cases against oil and gas companies goes far beyond the norm. Public nuisance remains a critical body of law, but not one that courts should expand in situations where plaintiffs cannot demonstrate any connection between the alleged environmental harm and the defendants' conduct. As a Baltimore City Circuit Court decision noted in a copy-cat *lawsuit* in which the City of Baltimore “only seeks to address and hold Defendants accountable for a deceptive misinformation campaign is simply a way to get in the back door what they cannot get in the front door.”³

The Missing Causal Connection. A close analysis of the plaintiffs' argument confirms the extent to which it deviates from traditional legal principles. The soundest guide is not the woolly and sprawling theories of causation that rely on such general terms. In his brief on behalf of 18 like-minded States, California Attorney General Rob Bonta argues that the state tort system already contains sufficient protections against runaway liability—“such as proximate cause, allocation of fault, foreseeability, and others”—so that no federal intervention is needed to protect these companies.⁴ He thus lists supposed protections, but his posturing is pure palaver, because the brief never offers a single instance in which those supposed safeguards have ever been brought to bear to limit liability once a jury has found it.

More concretely, the theory of proximate cause is stretched beyond recognition because the plaintiffs ignore all the intermediate and additional stops between the sale of gasoline and impacts attributable to global warming. The allocation of fault to the plaintiff counts for little if the initial damages total in the billions and the defendants are portrayed as bad faith villains and the general public as naïve. Foreseeability is off the table as a defense in a case where the defendants consciously knew of the harms they wrought on the world. Knocking ten

² Professor John Yoo and I submitted an amicus brief in this case, prepared by the Mountain States Legal Foundation, which covers some of the issues discussed here. See Brief of Amici Curiae Mountain States Legal Foundation et al. in Support of Petitioners, *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (U.S. Sept. 11, 2025). The present article updates that brief and raises arguments not developed in full there.

³ *Mayor & City Council of Baltimore v. BP P.L.C.*, No. 24-C-18-004219, slip op. (Md. Cir. Ct. Balt. City July 10, 2024) (Brown, J.).

⁴ Brief of California and Other States as Amici Curiae in Support of Respondents, *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (U.S. Aug. 2026).

percent off an astronomical sum is a simple rounding error, not a stable defense.

In their further defense of the Colorado Supreme Court’s vacuous decision, Attorney General Bonta and other state attorneys general [allude](#) to a fictional history of the early origins of public nuisance law: “Building from its venerable origins, renewal and evolution are central aspects of tort law, which has repeatedly evolved to reflect changing societal interests and emerging technological developments while continuing to serve its compensatory purpose.” There is no discussion of the most important decision of the time, *Anon.* (1536), which sets out the basic parameters of public nuisance law that remain fully applicable today.⁵ That case turned on the basic form of push-pull causation (*corpore corpori*, or by the body to the body) that *is* an effective limit on frivolous litigation because it reaches only those cases where an obstacle on a public road blocks the movement of traffic, or pollution spilled into a public river damages plants, animals, and people.

The key doctrinal point is that the public action for “general damages” responds to the losses from delay that blocks traffic, which on modern highways could be extensive; a fine, payable to the government, is imposed to approximate those standard losses. In addition, special damages are allowed to any party who suffered disproportionate losses, like a driver or passenger who is injured by colliding into the barrier. These actions remain perfectly viable today,⁶ as confirmed in *Richards v. Washington Terminal Co.*, which recognized that “a property owner may be entitled to compensation for such special damages as devolve exclusively upon his property and not equally upon all the neighboring property.”⁷ At no point did that decision hint that regulation was inappropriate for the general damages, which were plain for the eye to see. In a more modern vein, *Burgess v. M/V Tamano* showed both the use and the limits of private rights of action under the public nuisance doctrine. No one questioned the government’s right to sue for losses to public parks, and the court allowed private damage suits for those parties nearest to the harm—namely commercial fishermen and claim diggers—but denied them to restaurants and other businesses, one step further removed, that benefited from the tourist trade.⁸ Here, by contrast, there are no immediate plaintiffs and no demonstration of systematic losses said to follow not from emissions but from the absence of warnings of known risks.

It should be painfully evident that these modern climate lawsuits lack the causal connection that public nuisance law required in earlier cases. The new cases do not represent some orderly advancement based on greater knowledge of how the law operates; they boldly demand enormous compensation for harms so remote and tenuous that they cannot be counted as harms at all.

Preemption after *American Electric Power v. Connecticut*. The first point bears repeating: The City of Boulder does *not* allege any the defendants released or emitted any pollutants at all. In *American Electric Power Co. v. Connecticut*, a group of state and private parties sued—alternatively under state and federal law—four private power companies and the Tennessee Valley Authority under public nuisance, seeking to impose a cap on their emissions, to be reduced annually as technology improves. The plaintiffs sought no damages. But even with this circumscribed posture, an eight-Justice Supreme Court unanimously (Justice Sotomayor recused) held that the federal cause of action was preempted by the [Clean Air Act](#).⁹ The Court deferred on the question of whether state law was preempted. But the writing was on the wall, for, given the concerns articulated in *AEP*, there is no reason not to preempt a discordant collection of different state lawsuits on a problem that affects all fifty states and every territory, and which is sure to impede the negotiations that the United States must conduct on a global basis.

⁵ *Anon.*, Y.B. 27 Hen. 8, fol. 27, Mich., pl. 10 (1536), the foundational case establishing that a public nuisance is remedied by the Crown while a private plaintiff must show special damage distinct from that suffered by the public generally. Excerpts from that decision are found in Mario Loyola, *The ‘Public Nuisance’ Theory of Pharmaceutical Liability for the Opioids Crises Is ... a Public Nuisance*, Competitive Enterprise Institute, Nov. 24, 2021, <https://cei.org/blog/the-public-nuisance-theory-of-pharmaceutical-liability-for-the-opioids-crisis-is-a-public-nuisance/>.

⁶ Restatement (Second) of Torts § 821C (Am. L. Inst. 1979).

⁷ *Richards v. Washington Terminal Co.*, 233 U.S. 546, 557 (1914).

⁸ *Burgess v. M/V Tamano*, 370 F. Supp. 247 (D. Me. 1973).

⁹ *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011). The Court divided 4-4 on standing and the availability of a federal common-law action but held unanimously (8-0, Justice Sotomayor recused) that the Clean Air Act displaces any federal common-law right to seek abatement of carbon-dioxide emissions.

An argument to the contrary has been made that the decision in *AEP* should be read narrowly so as to only *displace* federal law actions but not to *preempt* any state law causes of action.¹⁰ That argument is just not credible, even to the plaintiffs, because at no time did they seek to impose liability for emissions under the state law if preemption were not part of the overall picture. But it is, most manifestly, the linchpin of the overall system. The key case is the 1947 Supreme Court decision in *Rice v. Santa Fe Elevator Co.*¹¹ in which the question was whether a long-standing state law system of rate regulation could survive the imposition of a federal statute that covered the same ground, such that the regulated parties no longer needed to receive state licenses. As the syllabus of the case summarizes, such state licenses were no longer necessary:

3. As amended, the Federal Act is not merely paramount over state law in the event of conflict, but completely supersedes the state law, except to the extent that it fails to cover the field or makes express exceptions in favor of state law.

4. The test of applicability of state laws is whether the matter on which the State asserts the right to act is in any way regulated by the Federal Act. If it is, the federal scheme prevails though it is a more modest, less pervasive regulatory plan than that of the State.

The preemption doctrine here does not distinguish between state common law rules and state statutes, and it would be odd to think that a multitude of a wide array of state common law actions could not disrupt the actions of the federal law. To then require explicit preemption is beyond the pale because the normal presumption of state supremacy is displaced whenever there is a direct conflict between state and federal law, whenever the federal law occupies the field, or whenever the state laws stand as a barrier to the effectuation of the federal interest. Any or all these three heads are viable so that it is manifest that only the federal law must apply. Not only is the internal operation of the federal law disrupted, but also, these state rules necessarily undermine the exclusive control of the federal government in foreign affairs. The matter of displacement is a total red herring when the stakes are this high.

In essence the current round of litigation cannot ignore this precedent, which is why the plaintiffs' second round of actions no longer sued for direct emissions, but instead have sought to evade the preemption defense in two ways. First, they insist that damages or other pecuniary relief, no matter how heavy, are always compatible with the federal regulatory regime. Courts have repeatedly rejected that argument since *San Diego Unions v. Garmon*, which held that the National Labor Relations Board's authority to govern precluded the award of damages:¹²

Such regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.

Second, the plaintiffs sought to avoid *AEP*'s binding effect by moving one level further back in the causal chain of distribution, pleading that only the *sale* of petroleum products to motor vehicles users were the object of the suit. At this point, the theory becomes a giant *non sequitur*, for it cannot establish either (a) a causal connection between what the defendants are charged with and the harm, or (b) an escape from the preemption issue.

On the question of relief, both the Hawaii and Colorado suits go far beyond the relatively modest aspirations of *AEP*. Hawaii seeks not only money damages but also a disgorgement of all profits; Colorado demands "past and future damages" for all injuries caused by global climate change, along with remediation and abatement. Neither case makes the slightest effort to link the harms in question to the supposed misrepresentations that would be actionable under the Restatement (Third) of Torts:¹³

One who fraudulently makes a misrepresentation of fact, opinion, intention or law for the purpose of inducing another to act or to refrain from acting, is subject to liability for economic loss caused by the other's justifiable reliance on the misrepresentation.

¹⁰ See Jonathan H.H. Adler, *Displacement and Preemption of Climate Nuisance Claims*, 17 J.L. Econ. Pol. 217217 (2022).

¹¹ 331 U.S. 218 (1947).

¹² *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959).

¹³ Restatement (Third) of Torts: Liab. for Econ. Harm § 9 (Am. L. Inst. 2020).

The purpose of the law of misrepresentation is to prevent a defendant from taking advantage of the representee by concealing evidence known to the defendant but unknown to the plaintiff. The classical illustration is *Derry v. Peek*, which requires proof of fraud—“a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false” which is not made out by proof of gross negligence.¹⁴ The court denied liability for want of proof of fraud, even though the misrepresentation concerned a matter of substance.

In *Suncor*, there is no false statement to which the plaintiffs can point as the source of fraud; a company’s claim that its gasoline reduces engine wear, for instance, hardly counts as an implicit statement about global warming. Nor could they claim that the defendants had a duty to warn repeatedly the public of the dangers of global warming, which, as they well knew, was common knowledge to everyone, including all the plaintiffs, as well as the government entities that have brought these suits on their behalf. Nor could the plaintiffs explain why members of the public, if told what they already knew, would have chosen to cut back on gasoline consumption when they get all the benefits of fuel economy and bear only the tiniest fractions of any claimed social loss. Nor was there any push-pull relationship between these speech acts and other sources of carbon dioxide emissions, both from natural sources and other forms of heavy industry. And closer to home the Colorado plaintiffs did not attempt to explain why higher highway usage, heavier vehicles, bad storms, sloppy repairs, or other tortfeasors had a role to play.

The plaintiffs and their amici constantly [claim](#) that their lawsuits are designed to force the defendants “to share a portion of the costs their taxpayers face in coping with a climate altered in part by petitioners’ tortious conduct,” without making even the feeblest effort to prove that this “portion” is above zero.¹⁵ It is not feasible to ask any jury to estimate how much loss is attributable to these defendants when it is established at the outset that well over 99 percent of the losses arise elsewhere. That elusive sliver of loss should never entitle plaintiffs to billions of dollars. As Professor Yoo and I stated in our amicus brief prepared by the Mountain States Legal Foundation, “It is now well known that the production, sale, and consumption of fossil fuels in any single state (or anywhere in the world) do not generate a sufficiently large temperature change to produce a rise in sea levels anywhere, let alone in any single city or state.”¹⁶ As noted in the *AEP* decision, “Greenhouse gases once emitted ‘become well mixed in the atmosphere.’”¹⁷ With production taken out of the case, sale and consumption can be nothing more than an insignificant cog in a very large machine.

The plaintiffs seek to avoid this difficulty with the disingenuous argument that their [deception claims](#) “require only that petitioners stop misleading the public, they could avoid liability without reducing their contributions to emissions at all.” But at no point do they say what statements would achieve that result—though it would be a simple matter for their lawyers and experts to draft the warnings they think should have been posted. But they refused to do so, preferring instead to seek hundreds of millions or more in damages for their own omission. The plaintiffs should be required to produce the very warnings that would have ended the litigation before it began—warnings that could only repeat what is now common knowledge—and their refusal to do so should be a complete defense to every case built on these missing warnings.

A Split in Authority Favoring Dismissal. A recent and notable recent decision by the Maryland Supreme Court breaks sharply from the decisions in both Hawaii and Colorado. The Maryland Supreme Court affirmed the dismissal of the Annapolis, Anne Arundel County, and Baltimore dismissals from 2025 and 2024. Those dismissed cases were closely similar to the Boulder and Honolulu cases that the state supreme courts in Colorado and Hawaii allowed to proceed. The Maryland Supreme Court [ruling held](#):¹⁸

¹⁴ *Derry v. Peek* (1889) 14 App. Cas. 337 (HL).

¹⁵ Brief of California and Other States as Amici Curiae in Support of Respondents, *supra* note 4.

¹⁶ Brief of Amici Curiae Mountain States Legal Foundation et al., *supra* note 2, at 6.

¹⁷ *AEP*, 564 U.S. at 422 (quoting Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,514 (Dec. 15, 2009)).

¹⁸ *Mayor & City Council of Baltimore v. BP p.l.c.*, No. SCM-PET-0052-2025 (Md. Mar. 24, 2026) (affirming dismissal of the climate-tort suits brought by Baltimore, Annapolis, and Anne Arundel County).

Quite simply, the notion that a local government such as Baltimore, Annapolis, or Anne Arundel County may pursue state law nuisance claims against the Defendants—seeking injunctive relief to abate injuries arising from global greenhouse effects arising from worldwide conduct—is so far afield from any area of traditional state or local responsibility that it cannot be seriously contemplated.

The difficulty of linking gasoline sales to massive changes in water levels of local climate changes has led to yet another insidious effort to bypass the causation and proof problems, this one undertaken by New York. New York enacted its Climate Change Superfund Act authorizing recovery of some \$75 billion—at \$3 billion per year for a period of 25 years, from designated fossil-fuel companies allegedly liable not only for the emissions that came from within the state but worldwide.¹⁹ A Federal District Court has held the statute preempted under the U.S. Court of Appeals for the Second Circuit decision in *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), which held that state municipalities could not use state tort actions to hold multinational oil companies liable for the consequences of global warming.

The Northern District of New York in *West Virginia v Letitia James* found that the preemption analysis in *Chevron* carried over even though the theory of liability was changed to, in the words of the applicable statute, that “Climate change, resulting primarily from the combustion of fossil fuels, is an immediate, grave threat to the state’s communities, environment, and economy.” See Climate Change Superfund Act, S. 2129-B. But in its long analysis the District Court concluded that nothing in the new statute changed the federal-state balance previously established. On August 31, 2026, Chief Judge Brenda K. Sannes granted the challengers summary judgment—holding the Act preempted by the Clean Air Act notwithstanding the EPA’s 2026 rescission of its endangerment finding and separately barred by the foreign-affairs doctrine as applied to worldwide emissions. On September 14, the parties jointly moved for entry of final judgment to expedite an appeal to the Second Circuit that may turn on the Supreme Court’s decision in *Suncor*.

A decision from the Southern District of New York very recently joined *West Virginia v. James*, in which District Court Judge P. Kevin Castel, in no uncertain words, stated the United States had standing to vindicate its “sovereign interest” in upholding the Supremacy of the federal government, including “its exclusive authority to conduct foreign affairs,” in explicit reliance on the Second Circuit decision in *City of New York v. Chevron*.²⁰ The contrary decisions from Hawaii and Colorado were not mentioned. It should be evident that if, say, half the states were allowed to follow New York’s lead, damages of \$50 billion per year for domestic harms by each oil and gas company could bankrupt or cripple every oil company in the land, even without aggressive foreign nations following the same strategy. It is hard to see why this result is better for the firms than a complete injunction against all selling and/or drilling activities.

Climate Plaintiffs’ Efforts to Evade a Federal Forum. The approach Boulder County has taken in *Suncor* is the product of a deliberate forum-selection strategy. Since 2017, state and local governments—working with anti-fossil-fuel activists and the plaintiffs’ bar—have filed dozens of climate suits against energy companies. Notwithstanding the plainly national and international character of their claims, they have filed the vast majority in state court and fought vigorously to keep them there. California Attorney General Bonta explained that California waited years to sue until it was sure the defendants could not remove the action, because federal court “was close to being outcome determinative” against the State, and “we sued as soon as we knew that we could bring this case in state court, where we always wanted to be.”²¹

That fear is grounded in bitter experience. Every prior attempt to impose climate liability in federal court has failed, regardless of circuit or administration—from the early dismissal of suits against automakers, to the rejection of emissions claims in both *AEP* and *Kivalina*, to the Second Circuit’s decision in *City of New York v.*

¹⁹ Climate Change Superfund Act, ch. 679, 2024 N.Y. Laws (codified at N.Y. Env’t Conserv. Law § 76-0101 et seq.). The Act directs the Department of Environmental Conservation to recover \$75 billion—roughly \$3 billion per year over 25 years—from producers and refiners determined responsible for more than one billion tons of covered greenhouse-gas emissions worldwide between 2000 and 2024.

²⁰ *United States v. New York*, No. 1:25-cv-03656-PKC (S.D.N.Y.), <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2025cv03656/641677/117/>.

²¹ Climate One Interview with California Attorney General Rob Bonta (Apr. 23, 2024), <https://www.climateone.org/audio/rob-bonta-suing-big-oil>.

Chevron.²² To avoid that fate, plaintiffs have resorted to a familiar toolkit. Their complaints now recite elaborate disclaimers of any federal interest—renouncing recovery for injuries on federal land or arising from fuel supplied to the military—insisting that these actions are not final and hence not appealable,²³ while pressing claims that are global in scope. They name irrelevant, non-diverse defendants, such as a single family-owned fuel supplier or small in-state retailers, solely to defeat diversity jurisdiction. None of these named defendants is alleged to have engaged in the production or deception at the heart of the case.

The tell is what happens once these tactics fail. When defendants have succeeded in removing a case, plaintiffs have repeatedly abandoned it rather than litigate in a federal forum: the *Crab Fishermen's* plaintiffs voluntarily dismissed their entire suit after the Northern District of California “reluctantly” denied remand, and King County, Washington did the same once its case was set to remain in federal court.²⁴ And when they have lost on appeal in a case that began in federal court, plaintiffs have declined to seek the Supreme Court’s review—as the City of New York did after the Second Circuit ruled against it. But promptly thereafter they filed a restyled consumer-protection suit in state court instead. Consistent with all of this, the Boulder plaintiffs now argue that the Court lacks jurisdiction to hear *Suncor* at all, urging that an appeal from the denial of a motion to dismiss is not a “final judgment” under 28 U.S.C. § 1257.²⁵ The strategy is coherent, and it confirms the plaintiffs’ own assessment of the merits: they will do nearly anything to keep these cases away from a neutral federal forum. A merits ruling in *Suncor* would take that choice away.

Conclusion

There is today a rising impatience with the massive abuse of the historical law of public nuisance in other cases of similar importance. *Monsanto Co. v. Durnell* accepted an express preemption defense against plaintiff efforts to brand Monsanto’s Roundup herbicide toxic in the teeth of strong scientific evidence to the contrary. In yet another mass tort, *Chevron USA v. Plaquemines Parish* refused to allow a Louisiana jury to impose \$745 million for supposed erosion damage caused by its World War II efforts to producing aviation gas, by allowing its removal to federal court. Similarly, in the *Gilead Tenofovir Cases* the California Supreme rejected arguments that would impose on pharmaceutical companies a common law duty to innovate based on preliminary clinical trials. In each, the courts refused to let an expansive tort theory outrun its doctrinal moorings—and the climate suits represent that overreach in its most extreme form.

It is time for the Supreme Court to complete the cleansing of the Augean stables by sending this latest imposter packing. The climate suits before the courts today allege no emissions damages by the defendants, identify no false statement on which anyone relied, and offer no way to trace any measurable share of global harm to the sale of fuel. They have survived only by careful forum selection and creative pleading. *Suncor* gives the Court the occasion to hold what *AEP* already implied and what the Maryland courts and the Northern District of New York have now confirmed: that the federal environmental laws leave no room for fifty States and their subdivisions to regulate the global climate through the tort system. Federal preemption is the lawful way to bring these meritless lawsuits to an end.

²² See *California v. Gen. Motors Corp.*, No. C06-05755, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007); *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012); *City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017 (N.D. Cal. 2018), *rev’d on other grounds*, 960 F.3d 570 (9th Cir. 2020).

²³ See *Gilead Tenofovir Cases*, 20 Cal.5th 390 (2026), <https://www4.courts.ca.gov/opinions/documents/S285862.PDF>.

²⁴ See *Pac. Coast Fed’n of Crab Fisherman’s Ass’ns, Inc. v. Chevron Corp.*, No. 18-cv-07477, 2023 WL 7299195 (N.D. Cal. Nov. 1, 2023) (denying remand), dismissed voluntarily, Dkt. 273 (Dec. 14, 2023); Notice of Voluntary Dismissal, *King County v. BP p.l.c.*, No. C18-758RSL, Dkt. 187 (W.D. Wash. Sept. 28, 2021).

²⁵ 28 U.S.C. § 1257(a) (permitting Supreme Court review of “final judgments or decrees” rendered by the highest court of a State). An exception to the provision applies when all the merit-related issues have been resolved. It would be most unwise for the Supreme Court to leave the issue unresolved when it can eliminate enormous uncertainty and administrative costs imposed by an authoritative judgment.