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Supreme Court Grants Certiorari in Boulder Climate Case — What Comes Next?

Client Alerts

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On February 23, 2026, the US Supreme Court granted certiorari in *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, No. 25-170, agreeing to hear a case that has drawn the attention of the energy industry, environmental advocates, and the federal government alike. This appeal arises from a 2018 Colorado state court lawsuit brought by the City of Boulder and Boulder County (together, Boulder) against Suncor Energy and ExxonMobil, seeking damages for alleged injuries resulting from the defendants' production, marketing, and sale of fossil fuels. The amended complaint asserts various state-law tort claims, including public and private nuisance, trespass, unjust enrichment, civil conspiracy, and related statutory violations. In May 2025, the Colorado Supreme Court concluded that Boulder's claims could proceed, holding that the Clean Air Act does not preempt plaintiffs' state-law claims.[1]

In granting certiorari, the US Supreme Court has identified two questions for review: first, whether federal law precludes state law claims seeking relief for injuries caused by the effects of interstate and international greenhouse gas emissions on the global climate. Second—a question added by the Court itself—whether it has statutory and Article III jurisdiction to hear the case at all. Should the Court reach the merits, it may resolve a growing split among federal courts and state supreme courts over whether federal law preempts state common law tort claims arising from climate change.[2] Notably, the United States filed an amicus brief supporting the industry petitioners and arguing that federal law preempts plaintiffs' state-law claims.

The grant of certiorari raises several significant questions for industry participants, state and municipal litigants, and other stakeholders. We highlight the most pressing below.

- **Will the Court reach the merits, or resolve the case on jurisdictional grounds?** In granting certiorari, the Court added a question not presented in the petition: whether it has statutory and Article III jurisdiction to hear the case at all. In Boulder's opposition brief, it raised various threshold jurisdictional arguments, including that the Court lacks statutory jurisdiction because the Colorado Supreme Court's decision was interlocutory, not a final judgment, and that the Court may lack Article III jurisdiction to hear public nuisance suits arising from climate change injuries. The fact that the Court added jurisdiction as a separate briefing question suggests at least some

justices share these concerns. If the Court concludes it lacks jurisdiction, the case could be dismissed without any ruling on preemption—leaving the underlying legal questions unresolved and the state court landscape unchanged.

- **How does the federal government's rescission of the EPA's endangerment finding affect the federal preemption argument?** In September 2025, the United States filed an amicus brief urging the Court to reverse the Colorado Supreme Court and arguing that the Clean Air Act preempts Boulder's claims. Just a few months later, on February 18, 2026, the EPA published a final rule rescinding its earlier finding under the Clean Air Act that greenhouse gas emissions endanger public health and welfare—the so-called "endangerment finding." [3] The rule rests on EPA's conclusion that it never had statutory authority under section 202(a)(1) of the Clean Air Act to regulate greenhouse gas emissions in response to climate change. Plaintiffs may argue that EPA's announcement that it lacks authority to regulate greenhouse gas emissions weakens the federal preemption argument. Given the potential tension between the federal government's position on these issues, stakeholders should closely monitor any future briefs that the United States submits.

- **How will the Court treat the interstate and international dimensions of greenhouse gas emissions?** The industry defendants have framed this as a case about whether one state can provide a remedy for injuries caused by pollution originating from outside its borders, including from international sources. But Boulder and the Colorado Supreme Court characterized Boulder's claims as more traditional, and merely "seek[ing] damages from upstream producers for harms stemming from the production and sale of fossil fuels" where those harms have in-state effects.[4] The Court's characterization of the nature of these claims may prove dispositive and may differ from claim to claim.

- **What is the significance of the foreign affairs preemption argument?** Petitioners argued in their certiorari petition that Boulder's claims intrude on the federal government's exclusive authority over foreign affairs and policy, particularly given the international nature of greenhouse gas emissions and global climate change. Although the Supreme Court granted certiorari, neither of the questions presented explicitly addresses the dispute through a foreign-affairs-doctrine lens. The Supreme Court may nonetheless entertain this argument, and any related holding could have implications well beyond climate litigation.

The case will likely be argued in the fall, with a decision to follow by mid-2027. Companies in the fossil fuel, energy, and related sectors should monitor developments closely as the litigation unfolds.

Footnotes

[1] *Cnty. Commissioners of Boulder Cnty. v. Suncor Energy USA, Inc.*, 2025 CO 21 (2025).

[2] *Compare City and County of Honolulu v. Sunoco LP*, 537 P.3d 1173 (2023), *with City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021).

[3] Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act, 91 Fed. Reg. 7686 (Feb. 18, 2026).

[4] *Cnty. Commissioners of Boulder*, 2025 CO 21 at 50.

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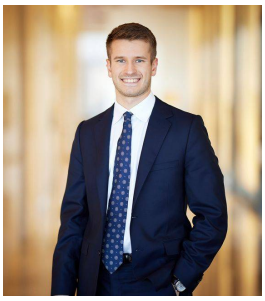

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