Beyond Boulder

What Suncor Could Mean for Corporate Climate Litigation Worldwide

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15.10.2026 doi: 10.59704/fd58bb4c0034dcf9

The making of climate law is a distinctly global exercise. Perhaps more than in many other areas of law, climate litigation develops through a conversation across jurisdictions, as litigants borrow arguments, evidence, and strategies from proceedings elsewhere, while judges engage with decisions from vastly different legal traditions. Many cases also involve common defendants, allowing developments in one jurisdiction to inform possibilities for accountability in another. This is particularly true of litigation against major fossil fuel companies, which face growing claims concerning their contributions to climate-related harm and alleged deception about climate risks in jurisdictions around the world.

And so, when one of the world's biggest players in the legal landscape speaks, the rest have particular reason to listen. The United States is not only one of the world's largest greenhouse gas emitters and home to some of its most consequential fossil fuel companies; it also has a famously litigious legal system capable of exposing corporate conduct to scrutiny on an extraordinary scale. Its voice therefore carries particular weight in two areas where climate accountability remains elusive: Who should bear the costs of climate change and what legal responsibilities do corporations have for their contributions to it?

This is precisely what is at stake in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, heard by the U.S. Supreme Court on 5 October 2026. Filed in 2018 by the City and County of Boulder, Colorado, against Suncor Energy and ExxonMobil, the lawsuit seeks to shift the costs of local climate-related harms and adaptation from affected communities and taxpayers to the companies alleged to have contributed to them. It is one of dozens of lawsuits brought by state and local governments across the United States seeking to hold major fossil fuel companies financially accountable for climate-related harm, often alleging both contributions to greenhouse gas emissions and corporate deception about their consequences. It is also part of a wave of lawsuits that could become one of the largest mass torts in legal history. Continuing a years-long effort to prevent the claims from proceeding through various jurisdictional and procedural challenges, the defendants have now taken the case to the country's highest court, asking it to decide whether federal law precludes state-law claims seeking relief for injuries caused by interstate and international greenhouse gas emissions. The Court also added a threshold question of its own: whether it has jurisdiction to review the case at this stage.

The substantive legal questions remain stubbornly rooted in the peculiarities of the U.S. legal system, involving the division of authority between federal and state governments, the preemptive effect of the Clean Air Act, and the treatment of interstate pollution. These questions have already been extensively dissected and debated in expert legal commentary (such as this and this) and amicus briefs (such as this and this). But how far might the consequences of this distinctly U.S. dispute reach? Although the Supreme Court's ruling will not bind courts elsewhere, its effects could reverberate across borders. Following the oral arguments, three potential outcomes come into focus, each with distinct implications for climate litigation and corporate accountability worldwide.

Potential Outcome 1: Climate Damages Claims Survive

The first possibility is that the Supreme Court leaves the Colorado Supreme Court ruling undisturbed, allowing Boulder's claims to proceed. This could follow from a substantive rejection of the companies' preemption

arguments on any number of grounds, including that neither the Constitution nor the Clean Air Act forecloses the state-law remedies at issue. The same practical result could arise without the Court resolving preemption questions at all: through a jurisdictional dismissal or an evenly divided Court. The latter possibility has become more plausible thanks to Justice Alito's recusal over his investments in fossil fuel companies. This "Alito Principle" deserves consideration by judges worldwide: those with financial interests in industries affected by their decisions should recuse themselves, including in cases involving fossil fuels and climate change. Its consistent application would have implications far beyond this case.

The implications of this outcome for corporate accountability would extend well beyond U.S. borders. First, there is evidence. Continued proceedings could substantially expand the already extensive record of fossil fuel companies' knowledge of climate risks and alleged deceptive conduct. The unusually expansive discovery procedures available in U.S. courts could bring millions of additional internal corporate documents and sworn testimony to light. Coupled with rapid advances in AI-assisted archival research, including tools such as the University of Oxford's CLARA, which enables researchers to interrogate millions of pages of industry documents and trace findings to their original sources, further disclosures could facilitate more extensive and systematic scrutiny of corporate knowledge, public representations, and business decisions over time. Such evidence could strengthen and inform litigation and regulatory proceedings internationally, particularly those alleging corporate deception or seeking to establish liability for climate harm.

Second, although the peculiarities of U.S. law may resist direct transplantation, the principles underlying the Court's reasoning could resonate beyond its borders. A substantive rejection of preemption could reinforce a distinction of significance beyond U.S. federalism: regulating greenhouse gas emissions and allowing compensation for the harm they cause are not necessarily mutually exclusive (as the history of tobacco litigation and other mass torts illustrates). A recognition that emissions regulation need not foreclose claims seeking compensation for climate-related harm could strengthen arguments elsewhere that centralized regulatory authority does not, by itself, displace private-law remedies or subnational avenues for redress.

Third, the consequences could extend beyond courtrooms to the court of public opinion. High-profile trials, sworn testimony, and the disclosure of internal corporate records could bring renewed scrutiny to the fossil fuel industry's historical knowledge of climate risks, its public representations, and its role in perpetuating dependence on fossil fuels. Such proceedings could shape public perceptions well beyond the U.S., regardless of their ultimate outcome. Successful damages judgments, moreover, could have an even more profound effect, shifting the Overton window of corporate climate accountability: what was once considered an ambitious or even implausible demand —that fossil fuel companies compensate communities for climate-related harm—could become an increasingly credible legal claim and, eventually, a broader expectation of corporate responsibility around the world.

Finally, a favorable outcome in *Suncor* could preserve the U.S. as a critical forum for corporate climate accountability while encouraging efforts to secure remedies elsewhere. With several of the world's largest fossil fuel companies headquartered in the U.S., preserving avenues for compensation there is particularly important, given the jurisdictional and enforcement obstacles to pursuing those companies abroad. And the stakes are hardly negligible. Even without a final judgment, the prospect of extensive discovery, mounting litigation costs, and substantial damages awards could increase pressure on companies to settle. And as the industry defendants warned the Supreme Court, "the damages in even one case could potentially reach into the billions of dollars." Successful claims could, in turn, lend momentum to comparable litigation internationally. As avenues for accountability expand, however, questions of equitable access to compensation may become more pressing. Growing claims against the same corporate defendants could create competition for recoveries, potentially favoring

communities with greater resources, procedural advantages, or earlier enforceable judgments. Ensuring that corporate climate accountability benefits those most affected by climate change, rather than those best positioned to litigate, should therefore remain an important consideration.

Potential Outcome 2: Some Climate Damages Claims Are Preempted; Others Move Forward

A second possibility is that the Supreme Court bars certain state-law climate damages claims while preserving others. Boulder could therefore still proceed towards discovery and trial on narrower claims. Following oral argument, this potential outcome appears more likely to turn on the scope of preemption under the Clean Air Act than on the companies' sweeping constitutional arguments. In particular, the Court might distinguish claims seeking compensation for climate harm based on fossil fuel production and sales alone from those seeking compensation for climate harm attributable to otherwise unlawful deceptive conduct. It might conclude that federal law preempts the former while preserving the latter, allowing states to impose liability for climate-related damages caused by corporate deception. Alternatively, the Court could adopt a narrower preemption rule without resolving whether deception-based claims remain viable, leaving that question for lower courts.

The silver lining for plaintiffs is that even a partial victory for the fossil fuel companies at the Supreme Court might leave much U.S. climate damages litigation standing. This is because allegations of corporate deception underpin the claims brought by state, local, and Native American tribal governments across the country—from California to Honolulu, to the Makah and Shoalwater Bay Indian Tribes. Internationally, much of the significance of the first outcome would remain.

Potential Outcome 3: Climate Damages Claims Are Broadly Preempted

The third, and most sweeping, possibility is that the Supreme Court broadly preempts state-law claims seeking compensation for climate-related harm. The Court could reach this outcome through a broad interpretation of the Clean Air Act or by accepting the companies' constitutional arguments concerning federalism and foreign affairs. Such a ruling could bring Boulder's case, along with much of the climate damages litigation across the U.S., to a halt.

Yet even this defeat for climate damages claims would not spell the end of corporate climate litigation in the U.S. Proceedings challenging corporate deception under consumer protection, antitrust, and securities laws could remain viable where they concern different injuries or seek remedies other than compensation for climate harm. Although such cases would not carry the same financial stakes as potentially multibillion-dollar damages awards, they could still result in substantial civil penalties, injunctions, and extensive discovery (see, e.g., *Massachusetts v. ExxonMobil*). Nevertheless, without an equivalent federal mechanism for compensating communities for climate-related harm, the mounting costs would continue to fall largely on affected individuals, communities, governments, and taxpayers.

While the evidentiary and reputational impact of surviving deception litigation, alongside other legal avenues against fossil fuel companies, would preserve an important role for the U.S. in global efforts to hold corporations accountable for climate harm, the growing body of climate damages litigation elsewhere would assume even greater significance. From *Lliuya v. RWE* and litigation brought by Pakistani flood survivors in Germany, to claims against Holcim in Switzerland and TotalEnergies in Belgium, and proceedings against Shell in the United Kingdom and Brazil, courts are being asked to assess corporate responsibility for climate harm under a range of legal theories. If U.S. courts were to partially close the door to climate damages, these cases would underscore the value of pursuing diverse theories of corporate liability across jurisdictions, each offering distinct paths to accountability and financial redress.

The question, then, is how far the Court's reasoning might travel—and what it could mean for these and future claims. A decision grounded in the particulari-

ties of U.S. preemption law would likely have limited relevance elsewhere. Yet broader judicial pronouncements questioning the role of courts in awarding compensation for harm arising from globally dispersed emissions could furnish defendants abroad with arguments against comparable claims.

One Thing Is Certain: Suncor Will Play a Part in the Larger Story of Climate Corporate Accountability

The legal questions before the Supreme Court may be distinctly domestic, but the stakes of *Suncor* are anything but. Its international consequences could extend to access to corporate evidence, prospects for compensation, and public perceptions of fossil fuel companies and their responsibility for climate harm. The ruling could also prompt more concerted efforts to shield the industry from damages claims, including through legislation, as recent developments in New Zealand and ongoing proposals in the U.S. illustrate. Beyond these consequences, Suncor's influence may lie in the Court's reasoning itself: not merely what it decides, but how it approaches broader questions of corporate responsibility, if at all. A narrow decision may offer little guidance to courts elsewhere, while broader pronouncements could shape legal arguments across jurisdictions. Whatever path the Court takes, *Suncor* will contribute to a larger conversation about corporate responsibility, the allocation of climate change's mounting costs, and the possibilities—and potential limits—of securing accountability through the courts.

Disclosure: Benjamin Franta serves as a consulting or testifying expert in various climate-related legal actions, but not Boulder v. Suncor, and contributed to an amicus brief to the Supreme Court in support of Boulder, outlining the history of fossil fuel companies' deceptive conduct concerning climate change.

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SUGGESTED CITATION

De Bona, Melina; Franta, Benjamin: Beyond Boulder: What Suncor Could Mean for Corporate Climate Litigation Worldwide, Verfassungsblog, 15.10.2026, doi: 10.59704/fd58bb4c0034dcf9.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20261015-143754-0.