

“THE HEAT IS ON”*: ENVIRONMENTALISTS WANT TO CHARGE ENERGY EXECUTIVES WITH MURDER

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HIGHLIGHTS:

- Environmental activists are frustrated by the fact that their arguments have failed to convince lawmakers, regulators, and the general public that the threats posed by climate change are as dire as they believe.
- Most activists are pinning their hopes on a series of civil cases premised on state common law theories that have been filed in state courts across the country against energy companies seeking compensation and punitive damages for their contributions to climate change. The U.S. Supreme Court recently agreed to consider a challenge to one of those cases—*Suncor Energy Inc. v. County Commissioners of Boulder County*—which will be argued on the first day of the Court’s new term.
- Sensing a possible, if not likely, loss, some activists have been urging state prosecutors to file murder or manslaughter charges against senior executives at companies that produce, refine, promote, and sell fossil fuels.
- Such prosecutions would violate fundamental principles of criminal law in our country and would be fundamentally unfair and do extensive damage to the rule of law.

I. INTRODUCTION

Environmental activists—considered by some to be climate alarmists—who are trying to crush American oil and gas companies and replace fossil fuels are getting desperate. Their claims that the “science is settled” keep getting challenged. They also know that little can be done to curb greenhouse gas emissions in countries like China, India, and Russia and that their pledges to improve are worthless. Moreover, these activists know that their pleas for change will fall on deaf ears in any of the developing countries that consistently rank as the most polluted countries in the world.¹ Indeed,

*Glen Fry, *The Heat Is On*, from *Beverly Hills Cop* (Paramount Pictures 1984), https://www.youtube.com/watch?v=uZD8HKVKnel&list=RDuZD8HKVKnel&start_radio=1 (last accessed Aug. 23, 2026).

¹ World Population Review, *Dirtiest Countries in the World 2026*, <https://worldpopulationreview.com/country-rankings/dirtiest-countries-in-the-world> (last visited Aug. 6, 2026).

in 2024, 87.29 percent of worldwide carbon dioxide emissions came from outside the United States.²

In our country, environmental activists have been unable to persuade their fellow Americans of the righteousness of their cause. So some have taken to juvenile histrionics like splashing paint or soup on iconic works of art by Edgar Degas³ (as they have done in other countries to works by Pablo Picasso,⁴ Claude Monet,⁵ Vincent van Gogh,⁶ and Leonardo da Vinci⁷). Nuisance lawsuits funded by environmentalists such as Leonardo DiCaprio, who flies in his gas-guzzling private jet to deliver speeches decrying climate change in places like Davos, Switzerland,⁸ have not done the trick either. At the moment, most activists are pinning their hopes on a series of civil cases premised on state common law theories that have been filed in state courts across the country against energy companies seeking compensation and punitive damages for their contributions to climate change. The U.S. Supreme Court recently agreed to consider a challenge to one of those cases, with oral argument scheduled for Monday, October 5, the first day of the Court's new term.

The activists fear, with some justification, that they may lose that case. So what to do then? Well, as the popular saying goes, "Never underestimate desperate people. You

² Hannah Ritchie & Pablo Rosado, *CO₂ and Greenhouse Gas Emissions*, OUR WORLD IN DATA, ourworldindata.org (2025), <https://ourworldindata.org/profile/co2/united-states> (last accessed Aug. 31, 2026). While the United States is currently the second largest source of greenhouse gas emissions, China emits almost three times the amount of carbon dioxide into the atmosphere. In 2024, the U.S. emitted 4.9 billion tons of carbon dioxide, while China emitted 12.3 billion tons. Moreover, U.S. carbon dioxide emissions have been on a downward trajectory over the last two decades and have fallen as a percentage of worldwide global emissions over the last eight decades, while China's emissions have risen steadily and rapidly with no sign of letting up. Hannah Ritchie & Pablo Rosado, *CO₂ and Greenhouse Gas Emissions*, OUR WORLD IN DATA, ourworldindata.org (2025), <https://ourworldindata.org/profile/co2/china> (last accessed Aug. 31, 2026).

³ Benjamin Sutton, "US Climate Activist Gets 18-Month Prison Sentence for Splashing Paint on Degas Sculpture's Case," *The Art Newspaper*, October 31, 2025, <https://www.theartnewspaper.com/2025/10/31/climate-activist-timothy-martin-national-gallery-art-degas-sculpture-sentenced>.

⁴ Tessa Solomon, "Climate Activist Hurls Pink Paint at Picasso Painting at Montreal Museum," *ARTnews*, June 20, 2025, <https://www.artnews.com/art-news/news/climate-activist-hurls-pink-paint-at-picasso-painting-at-montreal-museum-1234745777/>.

⁵ Karen K. Ho, "Climate Activists Smear Red Paint on Monet Painting at National Museum in Sweden," *ARTnews*, June 14, 2023, <https://www.artnews.com/art-news/news/climate-activists-monet-protest-sweden-national-museum-1234671759/>.

⁶ Associated Press, "Climate Protesters Throw Tomato Soup on Van Gogh's 'Sunflowers,'" PBS NewsHour, October 14, 2022, <https://www.pbs.org/newshour/arts/climate-protesters-throw-tomato-soup-on-van-goghs-sunflowers>.

⁷ Kevin Shalvey and Helena Skinner, "Activists Splatter 'Mona Lisa' with Soup in Louvre Museum in Paris," ABC News, January 28, 2024, <https://abcnews.com/International/activists-splatter-mona-lisa-orange-liquid-louvre/story?id=106742951>.

⁸ Thomas Catenacci, "Leonardo DiCaprio Traveled on Gas-Guzzling Private Jets, Yachts While Funding Climate Nuisance Lawsuits," Fox News, August 16, 2022, <https://www.foxnews.com/politics/leonardo-dicaprio-traveled-gas-guzzling-private-jets-yachts-funding-climate-nuisance-lawsuits>.

never know how far they will go to get what they want." Using language usually reserved to describe serial murders, terrorist attacks, and mass shootings, several environmental activists are encouraging state prosecutors to charge energy executives and greenhouse gas emitters with murder or manslaughter for deaths that the environmentalist activists claim are directly related to their conduct. While their concern about climate change, whether overblown or not, may be legitimate, I argue herein that such a prosecution would be incompatible with the fundamental principles of criminal law in our country, such as the need for criminal laws to provide fair notice and for prosecutors to prove causation and that the defendant acted with a guilty mind (or *mens rea*) beyond a reasonable doubt. Ignoring or compromising those core principles in order to achieve an outcome that environmentalists consider politically desirable would do great damage to the rule of law.

II. THE SIGNIFICANCE OF SUNCOR ENERGY INC. V. COUNTY COMMISSIONERS OF BOULDER COUNTY

The case that the Supreme Court will consider this fall is *Suncor Energy Inc. v. County Commissioners of Boulder County*. In that case—one of dozens of similar lawsuits that energy companies are facing in state courts across the nation—granola-and-crystal-friendly Boulder, Colorado and its surrounding county sued several leading multinational energy companies, Suncor Energy and its affiliates as well as ExxonMobil, asserting a variety of state-law common law tort claims and statutory claims, including nuisance, trespass, unjust enrichment, and consumer protection violations. The plaintiffs claim that the defendants' worldwide production, refinement, promotion, and sale of fossil fuels have resulted in greenhouse gas emissions that, cumulatively, have contributed to global climate change which, in turn, has caused a parade of horrors inflicting harm around the world, including in Colorado. In their complaint, the plaintiffs indicate that they are seeking billions of dollars "to compensate" for "past and future damages and costs to mitigate the impacts of climate change"⁹

In 1981 in *Texas Industries, Inc. v. Radcliff Materials, Inc.*, the Supreme Court stated that there are "instances, [where] our federal system does not permit the controversy to be resolved under state law, either because the authority and duties of the United States as sovereign are intimately involved or because the interstate or international nature of the controversy makes it inappropriate for state law to control."¹⁰ Additionally, in

⁹ Board of County Commissioners of Boulder County et al. v. Suncor Energy (U.S.A.), Inc. et al., Amended Complaint and Jury Demand, Case No. 2018CV30349, Boulder County District Court, Colorado, filed June 11, 2018, https://climateintegrity.org/uploads/media/Boulder_Amended_Complaint_06112018.pdf.

¹⁰ *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981), <https://supreme.justia.com/cases/federal/us/451/630/>. See also *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941)(citation and internal quotation marks omitted)("The Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties. For local interests the several States of the Union exist, but, for national purposes, embracing our relations with foreign nations, we are but one people, one

1987, in an analogous case, *International Paper Co. v. Ouellette*, the Court held that, in light of “the fact that control of interstate pollution is primarily a matter of federal law,” the Clean Water Act’s “pervasive regulation” precludes all state-law claims against an alleged polluter except claims brought under the laws of the state from which the discharges emanated.¹¹ As the Court reiterated recently in *Fuld v. Palestine Liberation Organization*, one of “the principles of interstate federalism embodied in the Constitution” is the proposition that “[s]tate sovereign authority is bounded by the States’ respective borders.”¹²

In 2011, in *American Electric Power Co. v. Connecticut*, the Supreme Court considered a case in which the plaintiffs had asserted *federal* common law claims against several major fossil-fuel fired power plants that generated electricity for much of the country. In a unanimous decision by Justice Ruth Bader Ginsburg, the Court held that the Clean Air Act preempts the assertion of claims based on federal common law asserted by states against entities that emit greenhouse gases.¹³

The Court recognized that since the early 1900s, it had approved lawsuits brought by one state to abate pollution emanating from another state under federal common law, but not under state common law. Ginsburg continued that even after *Erie R. Co. v. Tompkins* (1938), in which the Court held that federal courts should not create their own common law for issues that are properly governed by state law, the application of federal common law was still appropriate to address:

subjects within national legislative power where Congress has so directed or where the basic scheme of the Constitution so demands. Environmental protection is undoubtedly an area within national legislative power, one in which federal courts may fill in statutory interstices, and, if necessary, even fashion federal law. As the Court stated in *Milwaukee I*: When we deal with air and water in their ambient or interstate aspects, there is a federal common law.¹⁴

Ginsburg continued that, “[r]ecognition that a subject is meet for federal law governance, however, does not necessarily mean that federal courts should create the controlling law.”¹⁵ The Court held that the Clean Air Act, which gives the U.S.

nation, one power. Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.”); *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 419 (2003)(quoting *Zschernig v. Miller*, 389 U.S. 429, 440 (1968)) (“state laws ‘must give way if they impair the effective exercise of the Nation’s foreign policy.’”).

¹¹ *International Paper Co. v. Ouellette*, 479 U.S. 481, 492 (1987),

<https://supreme.justia.com/cases/federal/us/479/481/>.

¹² *Fuld v. Palestine Liberation Organization*, 606 U.S. 1, 14 (2025),

https://www.supremecourt.gov/opinions/24pdf/24-20_f2bh.pdf.

¹³ *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011),

<https://supreme.justia.com/cases/federal/us/564/410/>.

¹⁴ *Id.* at 421 (internal quotation marks and citations omitted).

¹⁵ *Id.* at 422.

Environmental Protection Agency authority to regulate greenhouse gas emissions generally but leaves states mostly free to regulate such emissions within their own borders, evidences a clear intent by Congress to preclude the assertion of federal common law claims. In *Suncor*, the defendants sought dismissal of the case against them, arguing, among other things, that the Clean Air Act also preempts the assertion of *state* statutory and common law tort claims to redress emissions emanating from overseas or other states.

In 2021, in a similar case, *City of New York v. Chevron Corp.*, the U.S. Court of Appeals for the Second Circuit accepted that argument, stating that it was “too strange to seriously contemplate” that Congress’s passage of the Clean Air Act “to address issues that demand a unified federal standard” would “suddenly” make state law “presumptively competent” to further address, and potentially interfere with, that standard.¹⁶ Allowing such state-law claims to proceed, the court said, would “risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other.”¹⁷ More recently, a divided Maryland Supreme Court, relying extensively on *City of New York*, issued a similar ruling dismissing three consolidated cases that Maryland local governments had filed asserting state common law claims against 26 multinational oil and gas companies.¹⁸

In *Suncor*, however, the trial court and, subsequently, the Colorado Supreme Court, over a vigorous dissent by two of its Justices, rejected this argument, concluding that, whereas the Clean Air Act may have preempted *federal* common law claims, it did not preempt *state* common law and statutory claims.¹⁹ To get around *American Electric Power*, the Suncor plaintiffs attempted to distinguish between the pollution emitters themselves and the upstream producers and sellers of fossil fuels, suing only the latter. The plaintiffs in *City of New York* also made this distinction in their pleadings; however, the Second Circuit recognized that, “[a]rtful pleading cannot transform the City’s complaint into anything other than a suit over global greenhouse gas emissions. It is precisely because fossil fuels emit greenhouse gases—which collectively ‘exacerbate global warming’—that the City is seeking damages.”²⁰

The Colorado Supreme Court, on the other hand, found the distinction to be significant and ruled that the case should be allowed to proceed. That court also offered some counterintuitive reasoning along these lines: the U.S. Supreme Court has long held that federal common law precludes the application of state-law claims to address

¹⁶ *City of New York v. Chevron Corp.*, 993 F.3d 81, 98–99 (2d Cir. 2021), <https://cases.justia.com/federal/appellate-courts/ca2/18-2188/18-2188-2021-04-01.pdf>.

¹⁷ *Id.* at 93.

¹⁸ *Mayor and City Council of Baltimore v. BP p.l.c.* (Md. Mar. 24, 2026), https://fingfx.thomsonreuters.com/gfx/legaldocs/jnvwragoza/pw/03252026maryland_climate.pdf.

¹⁹ *County Commissioners of Boulder County v. Suncor Energy U.S., Inc.*, No. 24SA206 (Colo. 2025), <https://law.justia.com/cases/colorado/supreme-court/2025/24sa206.html>.

²⁰ *City of New York*, at 91.

pollution emanating from outside its borders; but since the Supreme Court has now held that passage of the Clean Air Act prevents courts from applying federal common law in such cases, suddenly state-law claims should be given new life.

In 2023, in an analogous case against fossil-fuel producers and sellers, *City & County of Honolulu v. Sunoco LP*, the Hawaii Supreme Court reached the same conclusion as the Colorado Supreme Court in *Suncor*.²¹ Last year, the U.S. Supreme Court declined to hear an appeal from the Hawaii case, but it has now decided to hear Suncor's appeal in the Colorado case. These lawsuits have, no doubt, already had a chilling effect on potential investors and entrants into the energy field. If these state-law cases are allowed to proceed and liability and crushing cumulative penalties are imposed, the result would be a *de facto* carbon tax, which would be passed on to consumers, would destabilize whole sectors of our economy (not to mention world markets), and could end up eventually bankrupting the entire industry, which is the ultimate goal of the well-heeled groups and individuals backing these lawsuits.

Given the profound domestic, international,²² and national security implications and potential destabilizing and deleterious impact, it is no exaggeration to say that the *Suncor* case will decide whether Congress and the administration or Boulder, Colorado (or, even worse, a smattering of local juries comprised of lay individuals from deep-blue jurisdictions throughout the country) gets to set our national energy policy. At the very least, a ruling in the plaintiffs' favor would interfere with the sovereign power of the other states to regulate energy policy and the environment within their own borders and would risk creating a patchwork of standards that would likely cripple the energy industry.

²¹ *City and County of Honolulu v. Sunoco LP*, No. SCAP-22-0000429 (Haw. 2023), <https://cases.justia.com/hawaii/supreme-court/2023-sc-22-0000429.pdf>.

²² As Mike Pompeo, James Baker, Nikki Haley, and H.R. McMaster point out in their amicus brief in the *Suncor* case:

For the past five decades, addressing global greenhouse gas emissions has been a foreign affairs issue dealt with by the President and Congress—not states. Often, this has resulted in the United States spearheading international collaboration on the issue. But just as critically, it has also required the federal government to oppose international efforts adverse to United States interests.

Brief for Michael R. Pompeo, James Addison Baker III, Nikki Haley, and Herbert R. McMaster as Amici Curiae Supporting Petitioners, *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners of Boulder County*, No. 25-170 (U.S. filed May 21, 2026), at 15-16, https://www.supremecourt.gov/DocketPDF/25/25-170/409506/20260521140016915_Amicus%20Brief%20of%20Senior%20Foreign%20Affairs%20Officials.pdf. They then chronicle the efforts made by presidents, starting with Richard Nixon, and Congress to address the global climate change issue and discuss how state law, such as Colorado's, that purport to regulate how U.S.-based companies contribute to global carbon dioxide emissions interfere with the federal government's efforts to address the problem by engaging in negotiations with foreign countries.

III. MURDER AND MANSLAUGHTER FOR ENERGY EXECUTIVES?

Sensing the possibility, if not the likelihood, of a loss in *Suncor*, some environmentalists, like guitarist Nigel Tufnel of the iconic band *Spinal Tap*, have decided to turn the amplifier dial up to 11.²³ They are advancing the argument that the senior executives of energy companies should be criminally prosecuted for the deaths they contend have been caused by global warming, urging prosecutors to charge them with murder or manslaughter, hoping that the threat or actual use of this dramatic measure will help them accomplish the goals they have thus far been unable to achieve.²⁴

The move to submit energy executives and greenhouse gas to criminal prosecution is not new. For more than a half-century, environmentalists have been trying to add the crime of “ecocide” to the lexicon of international law.²⁵ The issue was first

²³ Nigel Tufnel, “Spinal Tap – ‘These go to eleven....’,” *YouTube*, October 21, 2011, video, 0:49, <https://www.youtube.com/watch?v=4xgx4k83ztc>.

²⁴ Environmental activists, frustrated by their current efforts’ failure to effectuate change, are up front about their motives. For example, in their article, *Climate Homicide: Prosecuting Big Oil For Climate Deaths*, David Arkush and Donald Braman, under the subheading “Homicide Prosecution Would Support Uniquely Effective Remedies,” write:

Existing attempts at civil and regulatory remedies have yet to abate [fossil fuel companies’] ongoing lethal conduct. Federal courts, at the FFCs’ request, have blocked serious regulatory measures and have prevented many private civil suits from proceeding. This is, in no small part, by FFCs’ design. Judicial appointments to federal courts supported by FFC-funded research, appointments-related lobbying, and political campaigning have all helped generate a pipeline of judges supportive of holdings favoring FFCs. With an anti-regulatory majority on the Supreme Court, with regulatory bodies like the EPA facing new restrictions on their power over private actors, and with little prospect of private redress, the criminal law may offer an effective tool for states to shift FFCs’ conduct from lethal to beneficial.

Arkush, David & Braman, Donald, *Climate Homicide: Prosecuting Big Oil For Climate Deaths* (Jan. 23, 2023). *Harvard Environmental Law Review*, Vol. 48, No. 1, 2024, at 102 (footnotes omitted), SSRN: <https://ssrn.com/abstract=4335779> or <http://dx.doi.org/10.2139/ssrn.4335779>. Similarly, in her article, *Climate Prosecution As Climate Regulation*, former federal prosecutor Cindy Cho chronicles a series of “obstacles” posed by recent Supreme Court decisions that have reigned in the power of environmental regulators and increased the ability of new energy companies to challenge longstanding regulations. Cindy J. Cho, “Climate Prosecution as Climate Regulation,” *Northwestern University Law Review Online* 119 (2025), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1354&context=nulr_online. Cho bemoans that Congress is unlikely to pass major climate legislation in the foreseeable future as well as the potential problems surrounding civil enforcement efforts against fossil fuel companies. She advocates for criminal prosecution of energy executives backed by potential incarceration as a form of what she calls “wake-up call deterrence,” arguing that, “[w]ith the right mix of conditions, the deterrent effect of a homicide charge on the decisionmaking of an oil executive or corporate board would be real and meaningful.” *Id.* at 323, 350. Indeed, she contends, “the threat of criminal law’s most serious punishments combined with the stigma a homicide charge generates—would advance the same ultimate purposes in the fight against climate change the regulatory state may now struggle to achieve.” *Id.* at 325.

²⁵ For articles describing the history of efforts to establish ecocide in law and urging countries to do so, see, e.g., Darryl Robinson, “Ecocide — Puzzles and Possibilities,” *Journal of International Criminal Justice* 20, no. 2 (May 2022): 313–47, <https://doi.org/10.1093/jicj/mqac021>; Milena Sterio, “Crimes Against the Environment, Ecocide, and the International Criminal Court,” *Case Western Reserve Journal*

considered seriously in response to the U.S. military's use of Agent Orange during the Vietnam War to clear jungle brush for military operations. The term was first used by Prof. Arthur Galston in 1970 at a conference in which he proposed developing a new international agreement to prohibit "ecocide." Shortly thereafter, in 1972, at a United Nations Stockholm Conference on Human Environment, Swedish Prime Minister Olof Palme referred to the U.S. military's actions in Vietnam as "ecocide." And in 1973, international law scholar Richard Falk proposed an International Convention on the Crime of Ecocide. More recently, other prominent individuals including the late Pope Francis and French President Emmanuel Macron have joined the chorus in favor of creating a new crime of ecocide. Prior to the creation of the International Criminal Court with the passage of the Rome Statute in 1996, those efforts failed.

In 1991, the International Law Commission, a body of experts established by the United Nations General Assembly, created an initial draft "Code of Offences Against the Peace and Security of Mankind," which contained a crime of "Willful and Severe Damage to the Environment." After much debate, this crime was dropped from the final version of the code—usually referred to as the Rome Statute²⁶ (named after the location of the conference where it was considered)—which created the International Criminal Court (ICC) in 1998 and governs its jurisdiction.

Indeed, environmental crimes were left out of the Rome Statute entirely, with one limited exception involving armed conflict. There are four crimes that fall within the jurisdiction of the ICC: genocide, crimes against humanity, war crimes, and crimes of aggression. Article 8(2)(b)(iv) of the Rome Statute includes within the definition of a war crime the intentional launching of an attack with the knowledge that such an attack will cause "widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated." To date, no individual or country has been prosecuted in the ICC for violating this provision. Environmentalists have been trying mightily since then

of *International Law* 56 (2024),

<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2677&context=jil>; Ethan A. Heller, "Unleashing Ecocide: Conscribing International Prosecutors into the Fight Against Climate Change," *Georgetown Environmental Law Review* 35 (2022): 89–112,

<https://www.law.georgetown.edu/environmental-law-review/wp-content/uploads/sites/18/2024/01/GT-GELR230016-Heller.pdf>; Rebecca J. Hamilton, "Criminalizing Ecocide: An Opportunity to Embed the Inseparability of Humans from Nature Into the Law," *Harvard Human Rights Journal* 38, no. 1 (2025): 69–112, https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2025/05/02_HLH_38_1_Hamilton69-112-Compressed-for-Website.pdf;

Anastacia Greene, "The Campaign to Make Ecocide an International Crime: Quixotic Quest or Moral Imperative?" *Fordham Environmental Law Review* 30, no. 3 (2019),

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1814&context=elr>; Ricardo Pereira, "After the ICC Office of the Prosecutor's 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide?" *Criminal Law Forum* 31 (2020): 179–224,

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3654359; Polly Higgins, Damien Short, and Nigel South, "Protecting the Planet after Rio – The Need for a Crime of Ecocide," *Criminal Justice Matters* 90, no. 1 (2012): 4–5, <https://doi.org/10.1080/09627251.2012.751212>.

²⁶ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

to add ecocide as a separate crime within the jurisdiction of the ICC, but they have thus far failed.

Although advocates have tossed around different definitions over the years, the one most frequently debated was proposed in 2021 by an international panel convened by Stop Ecocide International, which defines ecocide as “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage being caused by those acts.” Further, the proposal defines “wanton” as acting “with reckless disregard for damages which would be clearly excessive in relation to the social and economic benefits anticipated.”²⁷

Of course, since the United States is not a signatory to the Rome Statute (neither are China or India; Russia signed but never ratified it and later revoked its signature), energy executives and greenhouse gas emitters operating in the United States would not be subject to prosecution before the ICC, and ecocide laws in other countries would likely have limited reach against them as well. Although environmentalists have failed in their efforts to add ecocide to the Rome Statute, other than in the very limited war crime context discussed above, several countries have passed similar laws.²⁸ Even

²⁷ Independent Expert Panel for the Legal Definition of Ecocide, *Commentary and Core Text* (Stop Ecocide Foundation, June 2021),

<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/69ce6733be8a210ba4bb6562/1775134628400/IEP+Definition+EN>.

²⁸ See, e.g., [Republic of Armenia, Criminal Code, art. 154](#) (Ecocide: Intentional mass destruction of flora or fauna, contamination of the atmosphere, soils or water resources, as well as commission of other acts which have caused an ecological catastrophe — shall be punished by imprisonment for a term of ten to fifteen years.); [Republic of Belarus, Criminal Code, art. 131](#) (Ecocide: Intentional mass destruction of flora or fauna, or poisoning of atmospheric air or water resources, or committing other intentional acts capable of causing an ecological catastrophe (ecocide) is punishable by 10 to 15 years' imprisonment.); [Republic of Moldova, Criminal Code, art. 136](#) (Ecocide: Deliberate mass destruction of flora and fauna, poisoning the atmosphere or water resources, and the commission of other acts that may cause or caused an ecological disaster shall be punished by imprisonment for 10 to 15 years.); [Ukraine, Criminal Code, art. 441](#) (Ecocide: Mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster shall be punishable by imprisonment for a term of eight to fifteen years.); [Georgia, Criminal Code, art. 409](#) (1. Ecocide i.e. contamination of the atmosphere, soil, water resources, mass destruction of fauna or flora, or any other act that could have led to an ecological disaster, - shall be punished by imprisonment for a term of twelve to twenty years. 2. The same act committed during armed conflicts, - shall be punished by imprisonment for a term of fourteen to twenty years or with life imprisonment.); [Republic of Kazakhstan, Criminal Code, art. 169](#) (Ecocide: Mass destruction of vegetable or animal world, poisoning of the atmosphere, land and water resources, as well as commission of other actions, caused or could cause ecological disaster or environmental emergency, - shall be punished by imprisonment for the term of ten to fifteen years.); [Republic of Tajikistan, Criminal Code, art. 400](#) (Ecocide: Mass destruction of flora and fauna, poisoning the atmosphere or water resources, as well as commitment of other actions which may cause ecological disasters is punishable by imprisonment for a period of 15 to 20 years.); [Vietnam, Criminal Code, art. 422](#) (Crimes Against Humanity: 1. Any person who, whether in peacetime or wartime, commits genocide against population of an area, destroys sources of living, cultural or spiritual life of a nation or sovereign territory, upsets the foundation of a society in order to sabotage it or commits other acts of genocide or destroys of the environment shall face a penalty of 10 – 20 years' imprisonment, life imprisonment or death. 2. This offence is committed under pressure or order given by superior officers, the offender shall face a penalty of 10 – 20 years' imprisonment.); [Kyrgyz Republic, Criminal Code, art.](#)

so, prosecutions in those countries have been few and far between. Several other EU nations are also considering adding ecocide to their criminal codes following the EU's 2024 *Directive on the protection of the environment through criminal law*. The *Directive* informed member states that "where... offences cause the destruction of... an ecosystem of considerable size or environmental value... or cause widespread and substantial damage," they "should constitute qualified criminal offences," which "can encompass conduct comparable to 'ecocide.'"²⁹ Some, however, appear hesitant about doing so.³⁰

The concept of prosecuting U.S.-based energy executives and greenhouse gas emitters for murder or manslaughter has only recently reached our shores. Under the Model Penal Code, which is issued by the American Law Institute and serves as a guide to many state laws, murder is reserved for someone acting purposefully or knowingly (in other words, with a clear intent) to kill another person,³¹ while manslaughter is for those who kill another by engaging in conduct while knowing that there was a substantial and unjustifiable risk that such conduct could result in someone's death.³²

David Arkush (the Director of Public Citizen's Climate Program), Donald Braman (a professor at George Washington University Law School), Aaron Regunberg (a climate activist and former member of the Rhode Island House of Representatives), and Cindy Cho (a professor at Indiana University's Maurer School of Law and a former federal

[409](#) (Ecocide: Mass destruction of flora or fauna, poisoning of the atmosphere or water resources, as well as the commission of other actions that may lead or have led to an environmental disaster, shall be punishable by imprisonment for a term of twelve to fifteen years.); [Russian Federation, Criminal Code, art. 358](#) (Ecocide: Massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of 12 to 20 years.) [French Environment Code, art. 231-3](#). (The act of emitting into the air, throwing, dumping, or allowing to flow into surface or groundwater or into the sea within territorial waters, directly or indirectly, one or more substances whose action or reactions cause serious and lasting harmful effects on health, flora, and fauna, in manifestly deliberate violation of a specific obligation of care or safety prescribed by law or regulation...is punishable by five years' imprisonment and a fine of one million euros, which amount may be increased up to five times the benefit derived from committing the offense.).

²⁹ Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the Protection of the Environment through Criminal Law and Replacing Directives 2008/99/EC and 2009/123/EC, OJ L, 2024/1203, <https://data.consilium.europa.eu/doc/document/PE-82-2023-INIT/en/pdf>.

³⁰ "Infringements: 23 Member States Miss Deadline for Transposing Environmental Crime Rules," *ENDS Europe*, <https://www.endseurope.com/article/1964717/infringements-23-member-states-miss-deadline-transposing-environmental-crime-rules>.

³¹ See "Section 210.2. Murder," *Model Penal Code Annotated*, Criminal Law Web, accessed August 22, 2026, https://www.criminallawweb.net/web1/mpc/PART1/snippets/210_2.htm.

³² See "Section 210.3. Manslaughter," *Model Penal Code Annotated*, Criminal Law Web, accessed August 22, 2026, https://www.criminallawweb.net/web1/mpc/PART1/snippets/210_3.htm; Wex Definitions Team, "Manslaughter," Wex, Legal Information Institute, last reviewed July 2023, <https://www.law.cornell.edu/wex/manslaughter>.

prosecutor), among others, are vigorously pursuing this issue.³³ In a 2024 Harvard Environmental Law Review article, Arkush and Braman explain their rationale, arguing that “prosecutors regularly bring homicide charges against... corporations whose reckless or negligent acts or omissions cause unintentional deaths,” and there are “doctrinal and social predicates of homicide prosecutions where multiple corporate actors have engaged in conduct that endangers much or all of the public.”³⁴ Therefore, according to Arkush and Braman, “fossil fuel companies could be prosecuted for every

³³ Arkush, David and Braman, Donald, Climate Homicide: Prosecuting Big Oil For Climate Deaths (January 23, 2023). Harvard Environmental Law Review, Vol. 48, No. 1, 2024, SSRN: <https://ssrn.com/abstract=4335779> or <http://dx.doi.org/10.2139/ssrn.4335779>; Aaron Regunberg, Cindy Cho, David Arkush, and Donald Braman, “Charging Big Oil with Climate Homicide: Preliminary Prosecution Memo for July 2023 Heat Wave,” Public Citizen, <https://www.citizen.org/article/charging-big-oil-with-climate-homicide/>; Cindy J. Cho, “Climate Prosecution as Climate Regulation,” *Northwestern University Law Review Online* 119 (2025): 323, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1354&context=nulr_online. Public Citizen has also been urging the New York legislature to pass a bill, known as the Corporate Catastrophe Act, which would “makell it a crime to cause,” risk, or fail to prevent “a catastrophe when acting as a member, manager, director, or officer of a corporation in furtherance of one’s corporate interests or duties.” See New York State Assembly, Assembly Bill A10210, 2025–2026 Regular Session, introduced by M. of A. Gallagher, February 12, 2026, https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10210&term=2025&Summary=Y&Actions=Y&Memo=Y&Text=Y; Public Citizen, “Gallagher and Hinchey Lead New York Lawmakers and Advocates in Push for the Corporate Catastrophe Act,” May 11, 2026, <https://www.citizen.org/news/gallagher-and-hinchey-lead-new-york-lawmakers-and-advocates-in-push-for-the-corporate-catastrophe-act/>. The bill is based on Model Penal Code § 220.2–1, which establishes a general crime of causing catastrophe. American Law Institute, Model Penal Code § 220.2(1), “Causing or Risking Catastrophe” (1962), [https://www.criminallawweb.net/web1/mpc/PART1/snippets/220_2\(1\).htm](https://www.criminallawweb.net/web1/mpc/PART1/snippets/220_2(1).htm). While the bill was introduced, it has not been enacted into law. Pennsylvania and New Jersey, however, recently enacted similar laws. See 18 PA Cons Stat § 3302 (2025), NJ Rev Stat § 2C:17-2 (2025). These same activists have also encouraged state prosecutors to charge energy executives with reckless endangerment in jurisdictions that have such a law on their books. See Aaron Regunberg, “It’s Time to Prosecute Climate Crimes – with Laws That Already Exist,” *The Guardian*, July 28, 2026, <https://www.theguardian.com/commentisfree/2026/jul/28/prosecute-climate-crimes-big-oil>; Public Citizen and Fair and Just Prosecution, “Charging Big Oil Companies & CEOs with Reckless Endangerment: A Preliminary Prosecution Memo for New York,” October 17, 2024, <https://www.citizen.org/article/charging-big-oil-with-reckless-endangerment/>. As Regunberg describes in *The Guardian*: “These laws criminalize reckless conduct that creates a substantial risk of injuring another person. Recklessness means knowing something is dangerous – eg predicting your pollution would cause ‘more violent weather’ – and engaging in that conduct anyway. That’s exactly what big oil did, and the resulting climate crisis is now creating a substantial risk of injuring people across the country.” One advantage of this theory is that it does not require proof that a specific person was the target of criminal conduct, only that the conduct was reckless and endangered the safety of multiple unspecified persons. Nonetheless, prosecuting an energy executive under a reckless endangerment theory would suffer from many of the same problems, which are discussed in detail later in this article, that would apply to a murder or manslaughter prosecution, including the fact that this is a heavily regulated industry and that the conduct in question has undeniable benefits for our national security, our economy, and the multitudes of people who count on reliable sources of energy for their wellbeing and everyday lives.

³⁴ David Arkush and Donald Braman, “Climate Homicide: Prosecuting Big Oil for Climate Deaths,” *Harvard Environmental Law Review* 48, no. 1 (2024): 45–114, https://journals.law.harvard.edu/elr/wp-content/uploads/sites/79/2024/04/02_HLE_48_1_Arkush-Braman.pdf.

type of homicide short of first degree murder." In fact, they say, energy companies' "culpability far exceeds that in ordinary homicide cases."³⁵

IV. THE NEED AND BENEFITS OF FOSSIL FUELS

Before discussing the merits and demerits of this radical proposal, I would like to present some relevant data about the benefits and harms of fossil fuels.

As President Donald Trump recently explained, "[w]e need a reliable, diversified, and affordable supply of energy to drive our Nation's manufacturing, transportation, agriculture, and defense industries, and to sustain the basics of modern life and military preparedness."³⁶ Certainly for the foreseeable future, diverse, abundant, and reliable energy sources, including from coal, gas, and oil, are fundamental to our national security, stability, and prosperity, not to mention that of our allies and friendly developing countries trying mightily to provide their inhabitants' basic needs and to improve their well-being and standard of living.

³⁵ Id. at 55.

³⁶ President Donald J. Trump, "Executive Order 14156—Declaring a National Energy Emergency," January 20, 2025, *The American Presidency Project*, hosted by University of California, Santa Barbara, <https://www.presidency.ucsb.edu/documents/executive-order-14156-declaring-national-energy-emergency>. See also Vaclav Smil, "The Modern World Can't Exist Without These Four Ingredients. They All Require Fossil Fuels," *Time*, May 12, 2022, <https://time.com/6175734/reliance-on-fossil-fuels/> ("[W]e could not enjoy our quality of life without the provision of many materials required to embody the myriad of our inventions. Four materials rank highest on the scale of necessity, forming what I have called the four pillars of modern civilization: cement, steel, plastics, and ammonia are needed in larger quantities than are other essential inputs. ... And these four materials, so unlike in their properties and qualities, share three common traits: they are not readily replaceable by other materials (certainly not in the near future or on a global scale); we will need much more of them in the future; and their mass-scale production depends heavily on the combustion of fossil fuels, making them major sources of greenhouse gas emissions. ... Moreover, the unfolding transition to renewable energies will demand huge amounts of steel, concrete and plastics. No structures are more obvious symbols of 'green' electricity generation than large wind turbines—but their foundations are reinforced concrete, their towers, nacelles, and rotors are steel, and their massive blades are energy-intensive—and difficult to recycle—plastic resins, and all of these giant parts must be brought to the installation sites by outsized trucks (or ships) and erected by large steel cranes, and turbine gearboxes must be repeatedly lubricated with oil. These turbines would generate truly green electricity only if all of these materials were made without any fossil fuels. Fossil fuels remain indispensable for producing all of these materials. ... And beyond these four material pillars new and highly energy-intensive material dependencies are emerging and electric cars are their best example. A typical lithium car battery weighing about 450 kilograms contains about 11 kilograms of lithium, nearly 14 kilograms of cobalt, 27 kilograms of nickel, more than 40 kilograms of copper, and 50 kilograms of graphite—as well as about 181 kilograms of steel, aluminum, and plastics. Supplying these materials for a single vehicle requires processing about 40 tons of ores, and given the low concentration of many elements in their ores it necessitates extracting and processing about 225 tons of raw materials. And aggressive electrification of road transport would soon require multiplying these needs by tens of millions of units per year! ... And until all energies used to extract and process these materials come from renewable conversions, modern civilization will remain fundamentally dependent on the fossil fuels used in the production of these indispensable materials. No artificial intelligence designs, no apps, no claims of coming 'dematerialization' will change that.").

According to the U.S. Energy Information Administration, “[i]n 2025, the United States consumed an average of about 20.6 million barrels of petroleum per day, or a total of about 7.52 billion barrels of petroleum” per year.³⁷ Further, “[n]early all the crude oil that is produced in or imported into the United States is refined into petroleum products, such as gasoline, diesel fuel, heating oil, and jet fuel, which are then consumed. Liquids produced from natural gas processing are also consumed as petroleum products. Renewable biofuels, such as ethanol and biodiesel, are used as substitutes for or as additives to refined petroleum products.”³⁸ Petroleum, a major contributor to greenhouse gases, is a key component of many products that we use every day—such as plastics, ink, cosmetics, detergents, candles, shoe polish, and paper cups—and is critical to innovations such as artificial intelligence and machine learning which are transforming our society.³⁹ Most households rely on natural gas for heating, air conditioning, lighting, and refrigeration; commercial buildings have many of the same needs, plus others such as ventilation, computing, and office equipment; the transportation industry relies almost exclusively on fossil fuels to meet its energy needs; and the same is true of the construction, manufacturing, and agricultural sectors which both consume and produce energy.⁴⁰

Fossil fuel is not only important to our everyday lives, our domestic economy, and our international relations. As retired Army General and former CIA Director David Petraeus once said, “Energy is the lifeblood of our warfighting capabilities.”⁴¹ A brief filed in the *Suncor* case on behalf of retired Air Force General Richard Myers and retired Navy Admiral Michael Mullen, both former Chairmen of the Joint Chiefs of Staff, makes the compelling argument that “a dependable, abundant supply of energy [is] indispensable to our Nation’s warfighting capacity” and that “achieving energy security

³⁷ U.S. Energy Information Administration, “How much oil is consumed in the United States?,” Frequently Asked Questions (FAQs), accessed August 22, 2026, <https://www.eia.gov/tools/faqs/faq.php?id=33&t=6>.

³⁸ *Id.*

³⁹ Earth Science Week, “Products Made from Petroleum,” Classroom Activities, accessed August 22, 2026, <https://www.earthsciweek.org/resources/classroom-activities/products-made-petroleum/>.

⁴⁰ U.S. Energy Information Administration, “Use of Energy in Homes,” Energy Explained, last modified December 11, 2025, <https://www.eia.gov/energyexplained/use-of-energy/homes.php>; U.S. Energy Information Administration, “Use of Energy in Commercial Buildings,” Energy Explained, last modified June 29, 2023, <https://www.eia.gov/energyexplained/use-of-energy/commercial-buildings.php>; U.S. Energy Information Administration, “Use of Energy Explained: Energy Use for Transportation,” Energy Explained, last modified December 18, 2025, <https://www.eia.gov/energyexplained/use-of-energy/transportation.php>; United Nations Environment Programme, “Global Status Report for Buildings and Construction,” Resources and Reports, March 7, 2024, <https://www.unep.org/resources/report/global-status-report-buildings-and-construction>; U.S. Energy Information Administration, “Use of Energy Explained: Energy Use in Industry (In-Depth),” Energy Explained, last modified March 18, 2024, <https://www.eia.gov/energyexplained/use-of-energy/industry-in-depth.php>.

⁴¹ U.S. Department of Energy, “The Department of Defense Operational Energy Strategy,” Articles, June 14, 2011, <https://www.energy.gov/articles/energy-war-fighter-department-defense-operational-energy-strategy>.

is a prerequisite for national security.”⁴² While acknowledging that “it is important to continue to look for ‘greener’ ways to fuel the military,” they also recognize that, “the reality is the U.S. military must always take into account its enemies’ own fossil-fuel uses and potential superior deployment abilities because of those uses.”⁴³ If it drives, flies, floats, or fires, the odds are extremely high that it uses petroleum products, and in large amounts.

V. SKEPTICISM ABOUT CURRENT MODELS OF CLIMATE CHANGE

“It is by no means a certainty that the world faces crisis, catastrophe, existential threat.”⁴⁴ Well, you may ask, which right-wing climate denier said this? That statement was made last year by Dr. Steven Koonin, the former Under Secretary for Science at the Department of Energy during the Obama administration, the former director of the Center for Urban Science and Progress at New York University, and the author of *Unsettled: What Climate Science Tells Us, What It Doesn’t, and Why It Matters*, and co-author of *A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate*.

While environmentalist activists and many climate scientists, as well as those pursuing civil litigation against energy companies and pushing ecocide/homicide prosecutions, would like everyone to believe that “the science is settled,” a small, but determined, group of climate scientists, facing public ridicule and professional ostracism, say that the science has been politicized. They contend that the computer models used and touted by environmentalists likely overstate—perhaps dramatically—the threat posed by greenhouse gas emissions and are a classic example of garbage in, garbage out (to wit, flawed and biased inputs leading to flawed and biased outputs).⁴⁵ Some of the environmental studies and other reference material

⁴² Brief of Amici Curiae General (Retired) Richard B. Myers and Admiral (Retired) Michael G. Mullen in Support of Petitioners at 4-5, *Suncor Energy (U.S.A.) Inc., et al. v. County Commissioners of Boulder County, et al.*, No. 25-170 (U.S. Sep. 5, 2025). The need for oil and its derivative products has existed for more than a century. Citing to an extensive study by security and international relations analyst Ian Lessor, Myers and Mullen note that with the emergence of tanks, aircraft, and submarines in World War I, “oil and its products began to rank as among the principal agents by which the Allies would conduct war and by which they could win it.” *Id.* at 12-13. In 1917, in a speech before the House of Commons, British Cabinet Minister Walter Long went so far as to say, “Oil is probably more important at this moment than anything else. You may have men, munitions, and money, but if you do not have oil, ... all your other advantages would be of comparatively little value.” *Id.* at 13. And a year later, Lord Curzon, who would later serve as British Foreign Secretary, remarked that, “the Allies floated to victory on a wave of oil.” “When Oil Became Black Gold,” *Harvard Gazette*, November 17, 2005, <https://news.harvard.edu/gazette/story/2005/11/when-oil-became-black-gold-2/>. The need for and strategic importance of oil to our military has not diminished with the passage of time; it has only increased, as Myers and Mullen chronicle.

⁴³ *Id.* at 5.

⁴⁴ Steven Koonin, “Steven Koonin On The Unsettled Science Of Climate,” interview by John Robson, *YouTube*, August 11, 2025, video, 1:15:30, <https://www.youtube.com/watch?v=2xLdT3biXMY>.

⁴⁵ U.S. Department of Energy, *A Critical Review of Impacts of Greenhouse Gas Emissions on the U.S. Climate*, Climate Working Group Report (Washington, DC: U.S. Department of Energy, July 2025), https://www.energy.gov/sites/default/files/2025-07/DOE_Critical_Review_of_Impacts_of_GHG_Emissions_on_the_US_Climate_July_2025.pdf;

designed to “educate” judges who will preside over climate-change-related lawsuits received substantial input from groups and individuals that are actively involved in these lawsuits and have financial skin in the game.⁴⁶

Recently, the European Geosciences Union, which describes itself as “the leading organisation for Earth, planetary and space science research in Europe,”⁴⁷ published its latest climate modeling report, replacing the previous version, which provided much of the basis for the climate scenarios that a multitude of heavily cited research papers have treated like the Gospel.⁴⁸ In the new report, the authors candidly admit that the high-end range of emission trajectories and projected temperature increases—in other words, the most extreme scenarios—had become “implausible, based on trends in the costs of renewables, the emergence of climate policy and recent emission trends,”⁴⁹ and have now been revised sharply downward. Even so, some experts believe that the current model still overstates the problem because the model’s assumptions about projected population growth and other factors are unrealistic, if not outright ridiculous.⁵⁰

<https://judithcurry.com/2023/02/24/climate-uncertainty-risk-the-presentation/>; U.S. Energy Information Administration, “The Unreliability of Current Global Temperature and Solar Activity Estimates and Its Implications for the Attribution of Global Warming,” Climate Reports, last modified December 10, 2024, <https://www.heritage.org/climate/report/the-unreliability-current-global-temperature-and-solar-activity-estimates-and-its>; Roy Spencer, “Global Warming: Observations vs. Climate Models,” Climate Reports, last modified January 24, 2024, <https://www.heritage.org/environment/report/global-warming-observations-vs-climate-models>; Patrick T. Brown, “I Overhyped Climate Change to Get My Paper Published,” *The Free Press*, September 5, 2023, <https://www.thefp.com/p/i-overhyped-climate-change-to-get-published>. Others are less critical, but still contend that the predictive models relied upon by environmental activists likely overstate the extent of the climate change problem. See, e.g., Lewis, N.: Comment on “Opinion: Can uncertainty in climate sensitivity be narrowed further?” by Sherwood and Forest (2024), *Atmos. Chem. Phys.*, 25, 8821–8829, <https://doi.org/10.5194/acp-25-8821-2025>, 2025.

⁴⁶ Alana Goodman, “Inside the Left-Wing Operation to ‘Train’ Judges About Climate Change,” *Washington Free Beacon*, March 12, 2026, <https://freebeacon.com/courts/inside-the-left-wing-operation-to-train-judges-about-climate-change-free-trips-to-napa-valley-palm-beach-and-hawaii-fuel-a-secret-judge-recruitment-operation/>; Editorial Board, “A Climate Coup at the National Academies of Science,” *Wall Street Journal*, July 20, 2026, <https://www.wsj.com/opinion/a-climate-coup-at-the-national-academies-of-science-0e2c3e8f>.

⁴⁷ European Geosciences Union, “About EGU Overview,” <https://www.egu.eu/about/> (last accessed August 22, 2026).

⁴⁸ Detlef P. van Vuuren et al., “The Scenario Model Intercomparison Project for CMIP7 (ScenarioMIP-CMIP7),” *Geoscientific Model Development* 19, no. 1 (April 2026), <https://doi.org/10.5194/gmd-19-2627-2026>.

⁴⁹ *Id.* at subsection 2.2.2.

⁵⁰ Roger Pielke Jr., “RCP8.5 Is Officially Dead,” *American Enterprise Institute*, May 1, 2026, <https://www.aei.org/commentary/rcp8-5-is-officially-dead/>; Marlo Lewis, Jr., “RCP8.5: Climate Establishment Officially Retires Extreme Scenario (Part I),” *CEI Blog*, Competitive Enterprise Institute, June 29, 2026, <https://cei.org/blog/rcp8-5-climate-establishment-officially-retires-extreme-scenario-part-i/>; Marlo Lewis, Jr., “RCP8.5: Climate Establishment Officially Retires Extreme Scenario (Part II),” *CEI Blog*, Competitive Enterprise Institute, June 29, 2026, <https://cei.org/blog/rcp8-5-climate-establishment-officially-retires-extreme-scenario-part-ii/>; Marlo Lewis, Jr., “CEI’s Marlo Lewis Testifies before Natural Resources Subcommittee on Examining Systemic Government Overreach at CEQ,” Congressional Testimony, Competitive Enterprise Institute, September 14, 2023,

Similarly, there are critics of the models used for climate attribution science, which attempts to estimate precisely how much human-caused global warming increased the likelihood of a particular extreme climate event, as well as the number of deaths resulting from that event that are attributable to that cause.⁵¹ Among those critics is Roger Pielke, a Senior Fellow at the American Enterprise Institute, who has characterized climate attribution science as “weather attribution alchemy” and “a form of tactical science—research performed explicitly to serve legal and political ends.”⁵² The Intergovernmental Panel on Climate Change (IPCC), a United Nations-based organization that tries to assess the latest scientific information in order to provide governments around the world with information to help them develop climate policies, candidly admits that:

Scientists cannot answer directly whether a particular event was caused by climate change, as extremes do occur naturally, and any specific weather and climate event is the result of a complex mix of human and natural factors. Instead, scientists quantify the relative importance of human and natural influences on the magnitude and/or probability of specific extreme weather events.⁵³

In a likely understatement, Pielke states that, “[t]he IPCC’s inability to reach high confidence in the detection and attribution of most types of extreme events has been viewed by climate advocates as politically problematic.”⁵⁴

Even if one assumes, for the sake of argument, that the data cited by the environmentalists who support cases like *Suncor* and ecocide/homicide prosecutions is accurate, there is the risk that lawsuits against energy producers like Suncor could backfire, exacerbating the very harm they seek to minimize. Bankrupting domestic energy companies could result in production shifting to other less-regulated countries such as China, India, Iran, and Russia, leading to an increase in global

https://cei.org/congressional_testim/ceis-marlo-lewis-testifies-before-natural-resources-subcommittee-on-examining-systemic-government-overreach-at-ceq/.

⁵¹ Ralph B. Alexander, “Contorted Science: The Flawed Logic of Extreme Event Attribution,” Briefing Paper, *The Global Warming Policy Foundation*, March 2026,

<https://thegwfpf.org/content/uploads/2026/03/Contorted-Science-The-Flawed-Logic-of-Extreme-Event-Attribution.pdf>; <https://link.springer.com/article/10.1007/s10584-023-03591-4>;

<https://www.eenews.net/articles/climate-critics-try-to-discredit-ipcc-author-for-linking-disasters-to-global-warming/>.

⁵² Roger Pielke Jr., “Weather Attribution Alchemy,” American Enterprise Institute, October 8, 2024,

<https://www.aei.org/commentary/weather-attribution-alchemy/>.

⁵³ Sonia I. Seneviratne et al., “Weather and Climate Extreme Events in a Changing Climate,” in *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. Valérie Masson-Delmotte et al. (Cambridge: Cambridge University Press, 2021), chap. 11, FAQ 11.3 | Did Climate Change Cause That Recent Extreme Event In My Country?, <https://www.ipcc.ch/report/ar6/wg1/chapter/chapter-11/>.

⁵⁴ See n. 52, *supra*.

emissions, a phenomenon known as “emissions leakage.”⁵⁵ It would also, of course, constitute a massive financial and strategic bonanza for these countries, some of which have interests that are adverse to, if not outright hostile towards, us and our allies.

In short, devising an optimal energy policy involves tradeoffs, constant study, informed assessments, and policy choices about how best to supply the world's copious energy needs while also seeking to reduce greenhouse gas emissions, especially since there are currently no viable, reliable, and scalable alternatives. This reality, and who should be the policymakers, are at the heart of the *Suncor* case. Similarly, one would be foolish not to weigh these benefits and risks when analyzing whether homicide or manslaughter charges against energy companies and executives ought to be pursued.

VI. CAUSATION

There are, of course, environmental crimes already on the books at both the federal⁵⁶ and state⁵⁷ levels. And there have been instances in which companies and individuals have been held criminally liable for environmental harms resulting in death, serious bodily injury, or other harms. For example, in *U.S. v. Elias*, the owner of a fertilizer company was convicted after ordering several of his employees to enter and wash out a tank that he knew contained cyanide-laced sludge without providing them with any safety equipment, resulting in the near-death of one of the employees who suffered severe, permanent disabilities.⁵⁸ In *State v. Far West Water & Sewer, Inc.*, a company that

⁵⁵ Christoph Böhringer, Jan Schneider, and Emmanuel Asane-Otoo, “Emissions Leakage, Environmental Policy and Trade Frictions,” *Journal of Environmental Economics and Management* 88 (March 2018), <https://www.sciencedirect.com/science/article/abs/pii/S0095069616301462>.

⁵⁶ U.S. Department of Justice, “5-11.000 - Environmental Crimes,” *Justice Manual*, updated May 2018, <https://www.justice.gov/jm/jm-5-11000-environmental-crimes>.

⁵⁷ [CA Health & Safety Code § 25189.6](#) (reckless handling of hazardous materials creating risk of fire, explosion, injury, or death); [CA Penal Code § 374.8](#) (malicious disposal of hazardous substances); [NY ECL §§ 71-2710-71-2714](#) (endangering public health, safety, or the environment (fifth through first degree, increasing severity); first degree is a Class C felony); [FL Stat. § 403.161\(1\)\(a\)](#) (prohibition on causing pollution that harms or injures human health or welfare, animal, plant, or aquatic life or property); [FL Stat. § 403.161\(4\)](#) (violation due to reckless indifference or gross careless disregard — second-degree misdemeanor, up to \$10,000 and 60 days in jail); [PA Clean Streams Law, 35 P.S. § 691.1 et seq.](#) (water pollution offenses); [OH Rev. Code § 3734.03](#) (prohibits disposal of solid or infectious waste by open burning or open dumping; reckless violation is an unclassified felony); [OH Rev. Code § 3734.17](#) (prohibits accepting hazardous waste from a generator who violated director's rules; violators liable for damages, remediation costs, plus civil/criminal penalties); [415 ILCS 5/44\(k\)\(2\)](#) (criminal operation of a hazardous waste or PCB incinerator, first offense — Class 4 felony, fine up to \$100,000 per day of offense); [MCL 324.11151\(3\)](#) (Knowing hazardous waste violation that places another person in imminent danger of death or serious bodily injury; fine up to \$250,000 or up to 2 years imprisonment (higher penalties for extreme indifference to human life)); [MCL 324.11105 \(NREPA Part 111\)](#) (prohibits generating, disposing, storing, treating, or transporting hazardous waste without complying with Part 111 requirements).

⁵⁸ *United States v. Elias*, 269 F.3d 1003 (9th Cir. 2001), <https://caselaw.findlaw.com/court/us-9th-circuit/1404836.html>.

owned a sewage collection and treatment facility, its president, a supervisor, and one of the company's subcontractors were convicted after two individuals were directed to enter an underground sewage tank that contained toxic hydrogen sulfide sewage gas without safety equipment, resulting in the death of both individuals and severe injury to a third who attempted to rescue them.⁵⁹ In *United States v. Hansen*, the founder and president, the chief executive officer, and a plant manager of a chemical plant were convicted for repeated discharge violations in which untreated wastewater containing highly toxic chemicals was allowed to pool on the plant floor, exposing and endangering workers.⁶⁰ In *United States v. Chemical & Metal Industries, Inc.*, a company that recycles hazardous compounds was convicted after an employee working for one of its clients died from being exposed to highly toxic industrial waste that was stored in a container mislabeled as containing a non-toxic refrigerant.⁶¹ And in 2013, British Petroleum plead guilty to, among other things, 11 counts of manslaughter in connection with the 2010 blowout and subsequent explosion on its Deepwater Horizon drilling rig, which resulted in the death of 11 workers and a massive oil spill.⁶²

It is a fundamental principle of our criminal law that a prosecutor must prove beyond a reasonable doubt that a defendant actually caused, often referred to as but-for causation, the alleged harm.⁶³ Each of the cases mentioned in the preceding paragraph involved a direct, traceable, and clearly foreseeable connection with no intervening, superseding event between the defendant's discrete conduct and the harm caused, not a generalized grievance against an entity or individual contributing to global warming. Establishing the causal link between greenhouse gas emissions and any particular harm, including someone's death, and prosecuting energy executives and greenhouse gas emitters for murder or manslaughter, is an entirely different matter altogether.

Mind you, proving causation is exceedingly difficult in civil cases, such as *Suncor*. This is because, as the Court in *American Electric Power* recognized, "Greenhouse gases once emitted become well mixed in the atmosphere; emissions in New Jersey may contribute no more to flooding in New York than emissions in China."⁶⁴ As the Court has stated, it is "textbook tort law that an action 'is not regarded as a cause of an event if the particular event would have occurred without it.'"⁶⁵ In addition to the fact that

⁵⁹ State v. Far West Water & Sewer Inc., 232 P.3d 1242 (Ariz. Ct. App. 2010),

<https://caselaw.findlaw.com/court/az-court-of-appeals/1520926.html>.

⁶⁰ United States v. Hansen, 262 F.3d 1217 (11th Cir. 2001),

<https://law.justia.com/cases/federal/appellate-courts/F3/262/1217/607941/>.

⁶¹ United States v. Chemical & Metal Indus., Inc., No. 11-30327 (5th Cir. Apr. 17, 2012),

<https://cases.justia.com/federal/appellate-courts/ca5/11-30327/11-30327-2012-04-17.pdf?ts=1410996203>.

⁶² U.S. Department of Justice, "United States v. BP Exploration and Production, Inc.," Criminal Division, Victim Notification Program, last updated September 27, 2023,

<https://www.justice.gov/criminal/criminal-vns/case/united-states-v-bp-exploration-and-production-inc>.

⁶³ Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media, 589 U.S. 327, 331 (2020).

⁶⁴ American Electric Power, 564 U.S. at 422 (internal quotation marks and citations omitted).

⁶⁵ Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 347 (2013) (citation omitted).

greenhouse gas emissions and the resultant climate change is a global, borderless phenomenon, there are myriad other sources, including non-fossil-fuel sources, for carbon dioxide and greenhouse gas emissions. Land management and conversion can result in the release of carbon dioxide, methane, and nitrous oxide that has been stored in soil, litter, and dead organic matter.⁶⁶ The wastewater treatment industry is also a significant contributor of non-fossil-fuel greenhouse gas emissions, as is agriculture, through things like irrigation practices, the use of certain fertilizers, herbicides, and pesticides, the growth of certain crops, and excrement and flatulence from ruminant animals.⁶⁷ There are other things too that can cause or materially contribute to some of the problems blamed on global warming such as wildfires, which may be declining globally and which can be caused by poor forest management.⁶⁸

The problem of proving but-for causation would be magnified exponentially in a criminal case where due process requires precision and a clear causal connection between a defendant's conduct and the harm sustained by a victim. The case of *Burrage v. United States* is instructive here.⁶⁹ In that case, Marcus Burrage sold heroin to Joshua Banka who died after injecting himself with the drug. Heroin was not the only drug that Banka ingested the night he died. His death followed what the Supreme Court characterized as "an extended drug binge"⁷⁰; an autopsy revealed that, in addition to heroin, codeine, alprazolam, clonazepam metabolites, and oxycodone were found in his system.

Burrage was subsequently tried and convicted of selling the drug that caused Banka's death. At trial, the government's toxicology experts could not definitively say that Banka would have lived had he not taken the heroin; they testified that the heroin was a contributing factor in his death, since it was intermixed with the other drugs, and that it was "very less likely" that he would have died had he not injected himself with the

⁶⁶ U.S. Environmental Protection Agency, "Land Use, Land-Use Change, and Forestry Sector Emissions and Sequestration," last updated April 14, 2023, <https://www.epa.gov/ghgemissions/land-use-land-use-change-and-forestry-sector-emissions-and-sequestration>.

⁶⁷ U.S. Environmental Protection Agency, "Agriculture Sector Emissions," last updated March 10, 2026, <https://www.epa.gov/ghgemissions/agriculture-sector-emissions>;

Xinyue He, Haiyan Li, Juanjuan Chen, Huan Wang, Lu Lu, "Quantifying Greenhouse Gas Emissions from Wastewater Treatment Plants," *Environmental Science and Ecotechnology* 26 (July 2025), <https://www.sciencedirect.com/science/article/pii/S2666498425000845>.

⁶⁸ Bjorn Lomborg, "Newsom's Climate False Alarms," *Wall Street Journal*, March 20, 2026, <https://www.wsj.com/opinion/newsoms-climate-false-alarms-b891b2ed>; Center for Biological Diversity, "Fire and Forest Management," Public Lands: Forests: Ecosystem Restoration, accessed August 22, 2026, https://www.biologicaldiversity.org/programs/public_land/forests/ecosystem_restoration/fire-and-forest-management.html; Alicia Victoria Lozano, "Decades of Mismanagement Led to Choked Forests — Now It's Time to Clear Them Out, Fire Experts Say," *NBC News*, October 18, 2020, <https://www.nbcnews.com/news/us-news/decades-mismanagement-led-choked-forests-now-it-s-time-clear-n1243599>.

⁶⁹ *Burrage v. United States*, 134 S. Ct. 881 (2014), <https://supreme.justia.com/cases/federal/us/571/12-7515/case.pdf>.

⁷⁰ *Id.* at 885.

heroin. A unanimous Supreme Court, in an opinion by Justice Antonin Scalia, overturned the conviction.

Scalia cited to criminal law treatises by universally acclaimed scholars Wayne LaFare, H.L.A. Hart, and Tony Honore for the following proposition: "The law has long considered causation a hybrid concept, consisting of two constituent parts: actual cause and legal cause. When a crime requires not merely conduct but also a specified result of conduct, a defendant generally may not be convicted unless his conduct is both (1) the actual cause, and (2) the 'legal' cause (often called the 'proximate cause') of the result."⁷¹ The Model Penal Code, Scalia wrote, also "reflects this traditional understanding; it states that '[c]onduct is the cause of a result' if 'it is an antecedent but for which the result in question would not have occurred.'"⁷² Since the toxicologists could not say that the heroin Banka ingested would have killed him even if he hadn't taken the other drugs or that Banka would have lived had he not injected himself with the heroin, the government failed to prove but-for causation linking the defendant's conduct (selling him the heroin) and Banka's death.

The Court rejected the government's argument that evidence that the heroin Burrage sold to Banka was a "contributing cause" in his death was enough to sustain the conviction. Citing "the need for clarity and certainty in the criminal law," Justice Scalia wrote: "Is it sufficient that use of a drug made the victim's death 50 percent more likely? Fifteen percent? Five? Who knows. Uncertainty of that kind cannot be squared with the beyond-a-reasonable-doubt standard applicable in criminal trials or with the need to express criminal laws in terms ordinary persons can comprehend."⁷³ Of course, in an ecocide or environmental homicide or manslaughter prosecution, the government would be unable to establish that any particular fossil-fuel producer was a five-percent (or anything even close to that) contributor to any individual's death.

When it comes to actual causation, climate activists are, thus far, relying on climate attribution models to bridge this gap. As previously noted, however, there are reputable scientists who argue that such models are flawed and were shaped to serve political and legal ends.⁷⁴ Moreover, the people who are relying on these models do not seem to consider the socio-economic benefits of fossil fuel production. I am sure that one could, for example, make a compelling argument that the manufacturers of automobiles, who also have a profit motive for what they do, know to a certainty that there will be far more fatalities as a result of the use of their product than there would be if transportation were limited to, say, bicycles and horse-drawn buggies. In the absence of some design flaw, however, we would never countenance prosecuting automobile executives for murder or manslaughter simply because millions of people use their product, even though tens of thousands of individuals die in traffic fatalities in our country every year. (Actually, I am sure there are some activists who would not

⁷¹ Id. at 887 (internal citations and quotation marks omitted).

⁷² Id. at 888.

⁷³ Id. at 892.

⁷⁴ See n. 51-52, *supra*.

only countenance it, but would actively encourage it.) The same is true, of course, for firearms manufacturers, who are heavily regulated and produce a lawful product used by millions of law-abiding citizens for lawful purposes, even though use of their product unquestionably results in tens of thousands of mostly self-inflicted deaths every year. (It is likewise true that there are activists who would heartily endorse firearm manufacturers' prosecution.) One can debate the relative costs and benefits associated with widespread automobile and firearms usage and whether existing regulations (setting aside the constitutional issues in connection with the possession and use of firearms) are adequate, but that is a far cry from urging prosecutors to try the head of General Motors or Smith & Wesson for murder or manslaughter.

As noted above, in addition to actual causation, often referred to as "but-for causation," which was the issue in *Burrage*, a prosecutor would have to prove that any harm caused by the defendant was reasonably foreseeable, often referred to as "legal causation" or "proximate causation." Although the standard varies somewhat by jurisdiction, in criminal cases, this generally requires proof that the harm to the victim was a natural and probable consequence of the defendant's actions uninterrupted by any independent contributions from unrelated third parties. To quote Justice Ruth Bader Ginsburg, "because of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point."⁷⁵ Put another way, the harm must not be "too remote or accidental in its occurrence" from the defendant's conduct.⁷⁶

In the case of energy production and greenhouse gas emissions (with the former being one step removed from the latter), any causal chain (and it would be a very long one) resulting in death would likely be the result of billions of independent decisions and actions (including regulations and permitting decisions by government actors) over decades by individuals and entities around the world contributing to climate change, each contributing incrementally to that chain. Given this reality, it would be quite a stretch to say that it was reasonably foreseeable or a natural and probable consequence that a particular individual's death would result from the actions of any individual or entity. While other theories of causation pushed by environmental activists *may* be suitable in limited civil contexts—theories such as "alternative liability"⁷⁷ (in which it appears that several actors contributed to a particular harm and

⁷⁵ *CSX Transp., Inc.*, 564 U.S. at 692 (quoting *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99, 103 (N.Y. 1928) (Andrews, J., dissenting)). See also *Paroline v. United States*, 572 U.S. 434, 444-45 (2014) (citations omitted) ("The concept of proximate causation is applicable in both criminal and tort law, and the analysis is parallel in many instances. Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct. A requirement of proximate cause thus serves, inter alia, to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity.").

⁷⁶ Markus D. Dubber, "Model Penal Code: General Principles of Liability," Penal Code Comparer & Analyzer, University of Toronto, accessed August 22, 2026, Model Penal Code § 2.03, http://individual.utoronto.ca/dubber/web/website/genliab/Model_Penal_Code.htm.

⁷⁷ See *Summers v. Tice*, 33 Cal.2d 80 (1948), <https://law.justia.com/cases/california/supreme-court/2d/33/80.html>.

the burden is shifted to them to prove who was and was not responsible) and “market-share liability”⁷⁸ (in which liability is apportioned among several independent actors based on their market share when it is impossible to determine which actor’s product caused the victim’s harm)—such theories are impermissible in the criminal context where the burden of proof never shifts to the defendant and each defendant’s culpability and individual causation must be proven beyond a reasonable doubt based on hard evidence, not the statistical probabilities that climate attribution models purport to provide.

VII. SPECIFICITY, FAIR NOTICE, AND *MENS REA*

Nullum crimen sine lege, a Latin phrase meaning “no crime without law,” known today as the Rule of Legality,⁷⁹ is a foundational concept of criminal law.⁸⁰ At its core, it means that a person should not be punished for an act unless there is a pre-existing law that made it clear that doing that act could subject someone to criminal prosecution and potential punishment.⁸¹ The Supreme Court has emphasized this time and again. As quoted above, in order to pass constitutional muster, criminal laws must be expressed “in terms ordinary persons can comprehend.”⁸² This foundational principle is further supported by the rule of lenity, which demands that, when courts interpret ambiguous terms in a criminal statute, those ambiguities must be construed in favor of the defendant,⁸³ and the void-for-vagueness doctrine, which provides that a statute that is insolubly ambiguous to a person “of ordinary intelligence” cannot form the basis for a criminal charge.⁸⁴ With rare exceptions such as the 2010 Deepwater Horizon oil

⁷⁸ *Hymowitz v. Eli Lilly & Co.*, 73 N.Y.2d 487, 539 N.E.2d 1069, 541 N.Y.S.2d 941 (1989), cert. denied sub nom., *Rexall Drug Co. v. Tigue*, 493 U.S. 944 (1989), <https://openjurist.org/73/ny2d/487/hymowitz-v-eli-lilly-co>. INB: Use just N.E.2d citation and ID the court in the parenthetical with the date.]

⁷⁹ See Paul J. Larkin, Jr., *The Lost Due Process Doctrines*, 66 CATH. U. L. REV. 293, 306 (2016).

⁸⁰ Wex Definitions Team, “Nullum crimen sine lege,” Wex, Legal Information Institute, last reviewed August 2023, https://www.law.cornell.edu/wex/nullum_crimen_sine_lege. A complementary principle is “*Nulla poena sine lege*” (“There is no penalty absent a written law”).

⁸¹ As Professor Jerome Hall has noted, “[t]he principle of legality is in some ways the most fundamental of all the [criminal law’s] principles.” JEROME HALL, GENERAL PRINCIPLES OF CRIMINAL LAW 25 (2d ed. 1960) (insertion in original).

⁸² See *Burrage v. United States*, 134 S. Ct. 881, 892 (2014). See also *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926) (“[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.”); *Screws v. United States*, 325 U.S. 91, 96 (1945) (plurality opinion) (“To enforce such a [vague] statute would be like sanctioning the practice of Caligula who ‘published the law, but it was written in a very small hand, and posted up in a corner, so that no one could make a copy of it.’”); *Rogers v. Tennessee*, 532 U.S. 451, 459 (2001) (identifying “core due process concepts of notice, foreseeability, and, in particular, the right to fair warning as those concepts bear on the constitutionality of attaching criminal penalties to what previously had been innocent conduct”).

⁸³ See, e.g., *United States v. Santos*, 553 U.S. 507, 514 (2008); *United States v. Granderson*, 511 U.S. 39, 54 (1994); *United States v. Bass*, 404 U.S. 336, 347–49 (1971); *McBoyle v. United States*, 283 U.S. 25, 25–26 (1931).

⁸⁴ See, e.g., *United States v. Davis*, 588 U.S. 445, 447 (2019) (“In our constitutional order, a vague law is no law at all. Only the people’s elected representatives in Congress have the power to write new federal criminal laws. And when Congress exercises that power, it has to write statutes that give ordinary people fair warning about what the law demands of them. Vague laws transgress both of those constitutional

spill,⁸⁵ applying murder or manslaughter statutes or ecocide theories of criminal liability to energy producers or greenhouse gas emitters would lack the requisite specificity.

Take, for example, the model statute that Stop Ecocide International's panel of experts proposed, which defined ecocide as "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage being caused by those acts." The terms "substantial likelihood," "severe," "widespread," and "long-term" are themselves ambiguous, raise threshold questions (when does something become substantially likely and what counts as damage that is severe, widespread, or long-term?), and can be difficult to tie down in terms of proving at trial or providing adequate notice to individuals *ex ante* that the conduct they are contemplating would constitute a crime. And "damage" to what? Trees? Grass? How wide is "widespread? Longer than a football field or some other arbitrary distance, such as 1 mile, 5 miles, or 10? How long must something last to be "long-term"? Longer than the three years that it takes to complete law school? The four (or five) years that it takes to finish college? The 14-17 years that it takes to become a neurosurgeon? The Jurassic Period? Some other (again) arbitrary period? And should

requirements. They hand off the legislature's responsibility for defining criminal behavior to unelected prosecutors and judges, and they leave people with no sure way to know what consequences will attach to their conduct. When Congress passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again."); *Johnson v. United States*, 576 U.S. 591, 595 (2015) ("The Fifth Amendment provides that 'No person shall . . . be deprived of life, liberty, or property, without due process of law.' Our cases establish that the Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement."); *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012); *United States v. Hariss*, 347 U.S. 612, 617 (1954) (holding that a criminal statute is unconstitutionally vague if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute"); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) ("No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."). A close cousin of the void-for-vagueness doctrine is doctrine that my colleague Paul Larkin has referred to as the "impermissible judicial expansion doctrine," which prohibits courts from broadening the scope of illegal conduct beyond what a reasonable person would understand a term to mean. Paul J. Larkin Jr., *The Lost Due Process Doctrines*, 66 Cath. U. L. Rev. 293, 308 (2017), <https://scholarship.law.edu/lawreview/vol66/iss2/7> (last visited Sept. 2, 2026). See also *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964) ("There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language."); *Metrish v. Lancaster*, 569 U.S. 351, 358-360 (2013); *Rogers v. Tennessee*, 532 U.S. 451, 457-62 (2001); *Marks v. United States*, 430 U.S. 188, 192 (1977); *Douglas v. Buder*, 412 U.S. 430, 432 (1973); *Rabe v. Washington*, 405 U.S. 313, 315 (1972).

⁸⁵ As the Department of Juxtoproxiastice stated in its press release, British Petroleum admitted as part of its guilty plea that on April 20, 2010, two of its highest-ranking supervisors, known as "Well Site Leaders," "observed clear indications that the Macondo well was not secure and that oil and gas were flowing into the well, but chose not to take obvious and appropriate steps to prevent the blowout. Additionally, BP admitted that as a result of the Well Site Leaders' conduct, control of the Macondo well was lost, resulting in catastrophe." See n. 62, *supra*.

there be 51 different definitions—one for the federal government and one for each state?

While it is possible that the use of these terms in a statute might survive a due process challenge, it is hard to fathom how requiring proof of wantonness, defined as “with reckless disregard for damages which would be clearly excessive in relation to the social and economic benefits anticipated,” could survive such a challenge, especially when it comes to energy producers and greenhouse gas emitters. After all, it is undisputed that humans benefit, both socially and economically, from energy production and greenhouse gas emissions, even though such acts can harm the environment. It is also indisputable that environmental harm in the energy space usually comes from the cumulative efforts of billions of individuals and entities, both large and small, acting independently over a considerable period of time in which any harm may only become clear in hindsight, if then. How are particular energy producers or greenhouse gas emitters to know *ex ante* whether any damage they might cause (or, more likely, contribute to) “would be clearly excessive in relation to the social and economic benefits anticipated”? How could a judge or lay jury possibly make such a determination, one that is, essentially, a scientific or legislative line-drawing judgment? Would the cost-benefit calculus be the same in remote rural areas as it is in high-density urban areas? What if the accused murderer complied with all applicable regulations and industry standards? Would that immunize someone from liability? If not, should a judge or jury take that into consideration when determining guilt or innocence? Could the government officials who issued permits or set inadequate standards be indicted as co-conspirators, perhaps for felony murder (setting aside the qualified and sovereign immunity questions)?

Myriad activities that we engage in and rely upon every day impact the environment—manufacturing and then driving automobiles, digging up rare earth minerals to use in computers and laptops, building sewer systems, constructing and powering office buildings, the list is endless. Some of these activities may do extensive damage to the environment, yet yield considerable economic and social benefits and be environmentally superior to currently existing alternatives.

It is often said that criminal law is a blunt instrument, with many potential, perhaps unintended, deleterious side effects. Coming up with sensible environmental regulations that consider appropriate trade-offs on issues of this complexity is difficult enough, especially as circumstances change and technology develops. Regulations, at least, are flexible and can be debated and adjusted far more easily than criminal statutes can be. Regulations and permitting processes can also list specifically prohibited activities that provide the requisite notice to support a criminal prosecution if violated. But convicting someone of murder or manslaughter—with the attendant loss of liberty, not to mention significant reputational and financial harm—without

direct causation or any clear standards governing the allegedly culpable conduct? As former President Joe Biden used to say, "C'mon man!"⁸⁶

One can argue, as environmental activists do, that existing environmental regulations and remedies are inadequate, that so-called climate change deniers are egregiously wrong or even charlatans, and that the results of inaction may soon prove irreversible and catastrophic. One can also argue that those individuals and entities who produce energy resulting in greenhouse gas emissions are engaged in a classic tragedy of the commons on a worldwide scale.⁸⁷ Criminal prosecutions, however, whether for murder, manslaughter, or ecocide, require that guilt be established beyond a reasonable doubt against a specific defendant, acting with the requisite *mens rea* or guilty mental state,⁸⁸ engaged in specific conduct that directly and foreseeably killed others. Each of these elements are ill-suited to harm that is caused by multiple actors operating independently over months, years, or possibly decades.

Any criminal prosecution under such circumstances would be inconsistent, arbitrary, and likely highly politicized, the equivalent of Justice Potter Stewart's famous (but utterly useless) "I know it when I see it" test for obscenity prosecutions.⁸⁹ But of course, that's the point. However unfair this might be and however much damage it would do to the rule of law, environmentalists are *counting* on this uncertainty and risk-aversion in the face of such a threat to publicly shame those who are prosecuted, raise the public profile and change the public's perception of their cause, chill future energy development and production, deter others from entering the field, and bankrupt firms that currently engage in that activity, all longstanding goals that regulation and civil litigation have failed to achieve to their satisfaction and likely never would.

VIII. CONCLUSION

Environmental activists may be disappointed, if not outright despondent, that their climate change message of cataclysms to come has not produced the desired response. But pursuing murder or manslaughter prosecutions against energy company executives for their connection to a highly regulated industry that brings undeniable benefits to mankind, albeit at a cost to the environment, would violate fundamental principles of criminal law. Hard and frustrating though it may be, such activists should direct their appeals to members of Congress, regulators, and the general public, not criminal prosecutors.

⁸⁶ Joe Biden – C'mon Man!, YouTube, <https://www.youtube.com/watch?v=yjioGjh9xM8> (last accessed August 24, 2026).

⁸⁷ A tragedy of the commons is a situation in which individuals and entities with access to an unowned (that is, common) resource, and acting out of their own self-interest, overuse and deplete that resource to the detriment of the collective welfare of themselves and others.

⁸⁸ The requisite mental state for murder is knowledge or intent that the conduct would cause the specific victim's death, whereas the requisite mental state for manslaughter is gross negligence or recklessness toward the deceased individual. A general knowledge that one's actions would likely contribute in some marginal way to elevated global temperatures is hardly victim-specific.

⁸⁹ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

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