No. 25-170

IN THE

Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., *et al.*,
Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, *et al.*,
Respondents.

ON A WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO

BRIEF OF *AMICUS CURIAE* COALITION OF LARGE TRIBES IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

Established in 2011, the Coalition of Large Tribes (COLT),[1] represents the interests of more than 50 Indian tribes with reservations encompassing 100,000 acres or more, some the size of states like Delaware and West Virginia, including the Navajo Nation, Crow Tribe, Blackfeet Nation, Shoshone-Bannock Tribes, Spokane Tribe, Sisseton-Wahpeton Sioux Tribe, Mandan, Hidatsa and Arikara Nations, Rosebud Sioux Tribe, the Northern Arapaho Tribe, and others. All told, COLT's members manage over 50 million acres—over 78,000 square miles—across dozens of Indian reservations, a cumulative landmass larger than each of 38 of the 50 states.

COLT's mission is to defend its member tribes' inherent sovereign and treaty rights and to promote the health and welfare of tribal citizens. Many COLT member tribes own or manage substantial fossil-energy interests on tribal lands, which collectively contain more than 20% of U.S. oil and gas reserves and more than 30% of the nation's coal reserves west of the Mississippi. These valuable energy interests bolster tribal sovereignty through financial and energy independence, and they promise to lift many tribe members out of poverty. COLT cares about tribal sovereignty and reducing Indian poverty, and both interests would be harmed if the decision below were affirmed.

[1] No counsel for any party authored this brief in any part, and no person or entity other than amicus made a monetary contribution to fund its preparation or submission. See Sup. Ct. R. 37.6.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a dramatic example of overweening state and local attempts to regulate global greenhouse gas emissions. Petitioners and fellow amici amply explain how these attempts by Respondents and similar jurisdictions to bankrupt the national fossil-energy industry trench on the sovereign power of coequal states and the federal government. But that is not all. Respondents' aggressive use of state tort law also interferes with Indian sovereignty and violates longstanding Indian preemption doctrine. For these reasons too, the decision below must be reversed.

*

The early history of Indians and their lands' mineral wealth is rife with injustice. Over the past century, however, many tribes have finally begun to enjoy the benefits of their energy resources. These tribes' substantial reserves of oil, gas, and coal have brought them much-needed revenue for self-government and the promise of economic security for their people—in a word, sovereignty. But their sovereignty now faces a new threat from states and localities hostile to the fossil-energy industry.

The history of the Osage Nation is illustrative. "After settlers displaced the Osage … from [their] native lands, the federal government shunted the tribe onto the open prairie in Indian Territory." *Fletcher* v. *United States*, 730 F.3d 1206, 1207 (10th Cir. 2013) (Gorsuch, J.). "At the time, the government had no idea those grasslands were to prove a great deal more fertile than they appeared. Only years later did the Osages' mammoth reserves of oil and gas make themselves known." *Id.* And when that black gold was discovered, mayhem soon followed:

Rapacious settlers stole Osage "headrights" to mineral wealth, murdering as much as three percent of the entire Osage people in the process—an outrage that "history has come to call 'the Osage reign of terror.'" See Rennard Strickland, *Osage Oil: Mineral Law, Murder, Mayhem, and Manipulation*, 10 Nat. Res. & Env't 39, 42 (1995); see also *Oklahoma* v. *Castro-Huerta*, 597 U.S. 629, 668 (2022) (Gorsuch, J., dissenting) (noting that "many [Oklahoma] settlers engaged in schemes to seize Indian lands and mineral rights by subterfuge"); cf. KILLERS OF THE FLOWER MOON (Apple Studios 2023).

The gross injustice visited upon the Osage in Oklahoma magnifies the tragic and all-too-common relationship between Indians and their land's mineral wealth well into the early twentieth century. When gold was discovered on their ancestral lands in Georgia, the Cherokee were sent on the infamous Trail of Tears to the seemingly barren grasslands of Oklahoma. See generally David Williams, THE GEORGIA GOLD RUSH: TWENTY-NINERS, CHEROKEES, AND GOLD FEVER (Univ. of S.C. Press 1993). And when "precious as well as other useful metal" was "said to abound" on their lands, the Navajo were sent on "the Long Walk" to a "a semiarid, alkaline, fuel-stingy, insect-infested" wasteland. *Arizona* v. *Navajo Nation*, 599 U.S. 555, 576 (2024) (Gorsuch, J., dissenting) (quotations omitted).

The recurring storyline is clear: An Indian tribe had land; that land had mineral wealth; so the tribe was removed and sent to what was considered worthless wasteland. But worthless it was not. Many of these tribes' ostensibly barren reservations bore a tremendous wealth of energy resources beneath the surface. And over the better part of the last century, tribes like those in amicus COLT have wrested value from lands once dismissed as

valueless in the form of coal, oil, and gas. These crucial natural resources have become the lifeblood of tribal sovereignty, providing tribes with a critical source of income with which to provide essential government services independent of federal funding.

History now threatens to repeat itself. Tribal mineral wealth is again under attack. But this time, the attack comes not from pillaging prospectors who want the tribes' minerals for themselves. Rather, the threat today comes from hostile states and localities—like Respondents—whose aggressive use of state tort and consumer-protection law would severely restrict, if not forbid, tribes and their energy-industry partners from developing tribal fossil-fuel resources.

Inherent tribal sovereignty and federal law, however, interpose "two independent barriers" to these rogue jurisdictions' overbroad "assertion[s] of state regulatory authority." *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980). A key "corollary of [tribes' inherent] sovereignty" is that "States have virtually no role to play when it comes to Indian affairs." *Haaland* v. *Brackeen*, 599 U.S. 255, 304 (2023) (Gorsuch, J., concurring). Moreover, given the "paramount federal policy of ensuring that Indians do not suffer interference with their efforts to develop strong self-government," *Ute Indian Tribe of the Uintah & Ouray Rsrv.* v. *Utah*, 790 F.3d 1000, 1007 (10th Cir. 2015) (Gorsuch, J.) (citation modified), contrary state policies must yield under longstanding principles of Indian preemption. Respondents and jurisdictions like them unabashedly aim to bankrupt the fossil-fuel industry over its alleged contributions to global greenhouse-gas emissions. But that would interfere with tribes' sovereignty, and it would thwart overarching federal policy favoring tribal self-government and mineral development.

See generally *Crow Tribe of Indians* v. *Montana*, 819 F.2d 895 (9th Cir. 1987), summarily aff'd sub nom. *Montana* v. *Crow Tribe of Indians*, 484 U.S. 997 (1988). Accordingly, Respondents' claims cannot stand.

ARGUMENT

I. Indian Tribes Are Inherently Sovereign, And Their Lands' Energy Resources Are Critical To Their Sovereignty.

"Native American Tribes possess inherent sovereign authority over their members and territories." *Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 689 (2022) (Gorsuch, J.) (quotation omitted); accord *Castro-Huerta*, 597 U.S. at 668 (Gorsuch, J., dissenting) ("Tribes are sovereigns."). A core aspect of that inherent sovereign authority is to ensure "the economic security … of the tribe." *Montana* v. *United States*, 450 U.S. 544, 566 (1981). Tribal lands are exceptionally rich in natural resources, especially fossil-energy resources like oil, gas, and coal. See U.S. Dep't of Energy (DOE), Off. of Indian Energy (OIE), STRENGTHENING TRIBAL COMMUNITIES, SUSTAINING FUTURE GENERATIONS 2, No. DOE/IE-0038 (Aug. 2017), tinyurl.com/DOE-OIE (OIE Report).[2] This tremendous natural wealth offers historically impoverished tribes the opportunity to achieve energy independence and financial security for self-government—an opportunity that many tribes have readily embraced. Prudent stewardship and development of their land's abundant resources is thus critical to tribal sovereignty.

[2] Many COLT member tribes believe that this report significantly underestimates tribal mineral resources.

A. Indian Tribes Retain Inherent Sovereignty That Long Antedates Our Constitution.

Indigenous peoples have populated the lands of the present-day United States for at least 23,000 years. See Nat'l Park Serv., White Sands Nat'l Park, Fossilized Footprints (last updated Jan. 27, 2026), tinyurl.com/23M-years. Over millennia, these native peoples formed communities and governed themselves as tribes. See *United States* v. *Wheeler*, 435 U.S. 313, 322–23 (1978) ("Before the coming of the Europeans, the tribes were self-governing sovereign political communities."); see *Haaland*, 599 U.S. at 309 (Gorsuch, J., concurring) (quotation omitted) (noting that, "years before Jamestown," tribes "employed sophisticated governmental models, formed confederacies with one another, and often engaged in decisionmaking by consensual agreement" (citation modified)). From the beginning, tribes were sovereign political bodies, capable of and entitled to self-rule.

When British colonists landed on American shores, they "regarded the Indians as owners of their land." *Id.* at 304 (Gorsuch, J., concurring) (quotation omitted). The Crown, as the English sovereign, made treaties with the Indian tribes—sovereign-to-sovereign. *Id.* at 308–09. And after the American Revolution, "the new Republic broadly recognized the sovereignty of Indian Tribes, even if it did so sometimes grudgingly." *Id.* at 309 (citation modified). The Constitution's text and the Framers' early practice confirm the tribes' sovereign status. *Id.* at 310–11 (citing, e.g., U.S. CONST. art. I, § 8, cl. 3, *id.* § 2, cl. 3., and letters from George Washington's Secretary of War Henry Knox and Thomas Jefferson); accord *Lac du Flambeau Band of Lake Superior Chippewa Indians* v. *Coughlin*, 599 U.S. 382, 407 (2023) (Gorsuch, J., dissenting).

Today, Indian tribes continue to "occupy a unique status" in our law. See *Nat'l Farmers Union Ins. Cos.* v. *Crow Tribe*, 471 U.S. 845, 851 (1985). As pre-Constitutional entities that had been "separate nations," *Williams* v. *Lee*, 358 U.S. 217, 218 (1959), tribes retain a certain sovereignty like that of foreign nations—a sovereignty that "has never been extinguished." *Wheeler*, 435 U.S. at 322 (quoting F. Cohen, Handbook of Federal Indian Law 122 (1945) (emphasis omitted)); see also *United States* v. *Mazurie*, 419 U.S. 544, 557 (1975) ("Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory."). But unlike foreign nations, tribes exist within our country's borders like states. Yet "Tribal reservations are not States," *Bracker*, 448 U.S. at 143, either; they exist within states, although many straddle state lines. In sum, tribes are "neither politically foreign nor domestic"—they exist in the twilight zone somewhere in between. *Lac du Flambeau*, 599 U.S. at 407 (Gorsuch, J., dissenting).

B. Fossil Energy Reinforces Tribal Sovereignty.

Generating revenue is "an essential attribute of Indian sovereignty." See *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982). Each tribe has "general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services." *Id.* (holding that tribe had inherent power to tax on-reservation oil-and-gas production).

Yet "Tribes face a number of barriers to raising revenue in traditional ways" like taxing property or income. *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 807 (2014) (Sotomayor, J., concurring). For one thing, because states can tax non-Indian business activity on tribal lands, tribes that tax on top risk deterring business with double taxation. See *Cotton Petroleum Corp.* v. *New*

Mexico, 490 U.S. 163, 188–89 (1989); *id.* at 208–09 (Blackmun, J., dissenting); cf. *Atkinson Trading Co., Inc.* v. *Shirley*, 532 U.S. 645, 659 (2001) (imposing limits on tribal taxing power).[3] For another, tribes have long suffered from endemic poverty and lack of opportunity, so tribe members typically do not have much taxable income, if any. See U.S. Dep't of Health & Human Servs., Admin. for Children & Families, REPORT TO CONGRESS ON THE SOCIAL AND ECONOMIC CONDITIONS OF NATIVE AMERICANS: FISCAL YEAR 2019, at 7 (Jan. 18, 2023), tinyurl.com/NA-Povty (historical Indian poverty rate is *double* the national average). "As a result, 'there is no stable tax base on most reservations.'" *Bay Mills*, 572 U.S. at 813 (Sotomayor, J., concurring) (quoting Matthew L.M. Fletcher, *In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue*, 80 N.D. L. Rev. 759, 774 (2004)).

So tribes have had to develop new ways to generate income to "fund a more substantial portion of their own governmental functions," and "commercial enterprises" have proven "a central means of achieving that goal." *Id.* at 807 (Sotomayor, J., concurring). For this reason, tribes' commercial enterprises "cannot be understood as mere profit-making ventures that are wholly separate from the Tribes' core governmental functions." *Id.* at 810. Rather, "tribal business operations are critical to the goals of tribal self-sufficiency," and indeed, tribal sovereignty. *Id.*

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[3] Although beyond the scope of this amicus brief, it is COLT's position that much of the body of Indian tax law that has developed is unjust and unconstitutional. See Coalition of Large Tribes, *Comment Letter on Tax Treatment of Tribally-Chartered Corporations and Other Entities Organized by Tribes Under Tribal Law* (Aug. 18, 2023), perma.cc/2YEM-KJ35.

Development of natural resources on tribal lands—especially fossil-energy resources—are among the most significant of tribes' sovereign commercial enterprises. The opportunity is clear: Tribal lands amount to only about 2% of the United States, but they "contain almost 30% of the coal reserves west of the Mississippi … and 20% of known oil and gas reserves"—and likely much more. OIE Report, supra, at 2; see supra n.2. As tribes discovered their lands' subterranean wealth over the twentieth century, many capitalized on the opportunity to bolster their sovereignty. See Shawn E. Regan & Terry L. Anderson, *The Energy Wealth of Indian Nations*, 3 LSU J. Energy L. & Resources 193, 207 & tbl. 1 (2014) (identifying "major energy resource tribes"); Andrew Curley, CARBON SOVEREIGNTY: COAL, DEVELOPMENT, AND ENERGY TRANSITION IN THE NAVAJO NATION 6 (Univ. of Ariz. Press 2023) ("[I]n the twentieth century … [fossil fuel] industries emerged as the basis of sovereignty for many Native nations.").

Fast-forward to today: In 2025 alone, tribal lands produced over 373 million cubic feet of natural gas, 73 million barrels of oil, and 4 million tons of coal. See U.S. Dep't of the Interior (DOI), Off. of Nat. Res. Revenue, *Natural Resources Revenue Data* (2025), perma.cc/KV9J-7H8W. The revenue from this tremendous volume of tribal energy production has redounded to the benefit of the tribes, which have grown "more sovereign by the barrel." Phil Davies, *Homeland of Opportunity*, at 19, FED GAZETTE, Fed. Rsrv. Bank of Minneapolis (Oct. 2014), tinyurl.com/Fed-Gaz-Bakken (quoting former tribal chairman).

Many of amicus COLT's member tribes have taken advantage of their lands' fossil-energy resources to fund

their sovereign self-government and to bring their people economic security. To name just a few:

- The Southern Ute Indian Tribe—based in Colorado almost due south of Respondent Boulder—is among the top oil-and-gas-producing tribes in the country. See *Business*, SOUTHERN UTE INDIAN TRIBE, tinyurl.com/S-Ute-Biz (last visited May 18, 2026); *Southern Utes Take Energy Destiny in Hands, Become Major Coalbed Methane Producer in Colorado*, NATURAL GAS INTELLIGENCE (Sept. 27, 2004), tinyurl.com/NGI-Article ("The Southern Ute tribe is considered the 'most successful in energy' of all the Native American tribes."). Roughly 60 fossil-fuel producers have operated on Southern Ute lands and paid the tribe millions in royalties. *Id.*

  The Southern Ute Indian Tribe also owns two production companies. Over three decades ago, the tribe formed Red Willow Production Company "to take greater control over the Tribe's energy resources." *About Us*, RED WILLOW PRODUCTION CO., rwpc.us (last visited May 18, 2026). Today, Red Willow has interests in more than 1,800 wells across three states and offshore in the Gulf of Mexico. *Id.* (home page). The Southern Ute Indian Tribe also formed and controls Red Cedar Gathering Company, which collects natural gas from over 1,200 wells on tribal lands. *About Us*, RED CEDAR GATHERING CO., redcedargathering.com (last visited May 18, 2026).

- The Mandan, Hidatsa, and Arikara (MHA) Nation, also known as the Three Affiliated Tribes, is located in the heart of the Bakken Formation, a region containing a "world-class accumulation" of recoverable oil—the "largest continuous oil accumulation ever assessed by the [U.S. Geological Survey]." U.S. DOI, *Bakken*

Formation Oil Assessment in North Dakota (May 19, 2011), tinyurl.com/DOI-Bkn-PR. The MHA Nation embraced its fossil-energy wealth: The Fort Berthold Reservation produces about 100 million barrels of crude oil per year, yielding more than $1.5 billion for the Nation. See *Boom in Native American Oil Complicates Biden Climate Push*, FLATHEAD BEACON, Associated Press (June 25, 2021), tinyurl.com/FlthdBcn. This much-needed income has enabled the Nation to invest in "infrastructure development, including $24 million to reconstruct a key road artery; $30 million for housing, streets and utilities; … $6 million for sewer systems," and "$14 million [for a] K-12 school." Davies, supra, at 18–19.

The MHA Nation regards its oil as critical to tribal sovereignty. Before the North Dakota Legislature, for instance, former MHA Nation Chairman Tex Hall professed Nation's "firm belief [that] we will become more sovereign by the barrel." *Id.* at 19. And the Nation's wholly-owned energy company, Missouri River Resources—"dedicated to developing oil and gas resources for the benefit of the Three Affiliated Tribes membership"—proclaims as its motto: "Sovereignty by the barrel." MISSOURI RIVER RESOURCES, missouririverresources.com (last visited May 19, 2026); see also Sierra Crane-Murdoch, *The Other Bakken Boom*, HIGH COUNTRY NEWS (Apr. 23, 2012), tinyurl.com/Bakken-Boom.

- The Navajo Nation has developed uranium, oil and gas, and coal across six Western states. Oil production on Navajo lands dates to the 1920s and has been central to the Nation's independence and sense of identity ever since. *History*, Navajo Nation, tinyurl.com/NNHstry (last visited May 19, 2026). Indeed, oil is so

central to modern Navajo sovereignty that the Nation's flag features "an oil derrick symbolizing the resource potential of the Tribe." *Id.* Today, the Nation owns and operates two energy companies: (1) Navajo Nation Oil and Gas Co. (NNOG), the "mission" of which is "[m]aximizing resources for the benefit of the Navajo Nation," NAVAJO NATION OIL & GAS CO., nnogc.com (last visited May 19, 2026) (NNOG Website); and (2) Navajo Transitional Energy Co. (NTEC), which the tribe expressly "established … to exercise sovereignty over its abundant natural resources," NAVAJO TRANSITIONAL ENERGY CO., navenergy.com (last visited May 19, 2026) (NTEC Website).

NNOG has engaged in upstream, midstream, and downstream oil-and-gas operations in Colorado, New Mexico, and Utah for nearly thirty years. NNOG Website, supra, at "Home" & "What We Do." Approximately 428 million barrels have been pumped from 577 wells in the Navajo Nation. *Id.* at "Company History." Meanwhile, in 2013, NTEC bought Navajo Mine, a 33,000-acre coal mine on tribal land in New Mexico that serves the Four Corners Power Plant (in which NTEC also has an interest). A spokesman for the Navajo President characterized this deal as "about Navajo Nation sovereignty, we're talking about owning our assets." *BHP Billiton to Sell Mine to Navajo Nation*, MINING ENGINEERING (Dec. 20, 2012), tinyurl.com/NN-Mine; see Curley, supra, at 73–74 (explaining that "Navajo sovereignty was built on fossil fuels"). Between the Navajo Mine and other coal mining operations in Wyoming and Montana, NTEC contributed almost $130 million in royalties, taxes, wages, and community-building funds to the Nation in 2024 alone. NTEC, 2024 OPERATIONAL REPORT 6 (July 2025), tinyurl.com/NTEC-Rpt-24.

- The Crow Tribe is a historic coal producer in Montana. It owns coal rights on more than 150,000 acres held in federal trust and an estimated 1.4 billion tons of coal beneath its reservation. *Empowering Indian Country: Coal, Jobs, and Self-Determination: Field Hearing Before the S. Comm. on Indian Affairs*, S. Hrg. No. 114-42, 114th Cong. 11 (2015) (statement of Crow Nation Chairman Darrin Old Coyote). The Crow Nation has publicly championed coal mining and export abroad. See *id.*
- The Ute Mountain Ute Tribe extracts oil, gas, and coal across Utah, Colorado and New Mexico. See *Ute Mountain Tribe – 2012 Project*, U.S. DOE, OIE Pol'y & Programs, tinyurl.com/Ute-DOE (June 2012). The tribe has relied on oil and natural gas for critical economic support for over 70 years. Rudy Montoya, SHIFTING FROM FOSSIL FUEL RELIANCE TO GREEN ENERGY SOVEREIGNTY: UTE MOUNTAIN UTE TRIBE 11, Sandia Nat'l Lab'ys, No. SAND2022-16503 (Nov. 2022), tinyurl.com/sandia-rprt. Besides funding essential government services, the tribe's oil and gas royalties and severance taxes have seeded six new enterprises to diversify the tribe's income and to expand the job market for tribe members. *Id.*; see *Economic Development*, UTE MOUNTAIN UTE TRIBE, tinyurl.com/Ute-Mt-EcDev (last visited May 18, 2026).

II. Longstanding Federal Policy Strongly Supports Tribal Energy Sovereignty.

Federal Indian mineral and energy policy has long recognized tribal energy sovereignty.

From the earliest years of the Republic, the federal government generally recognized tribes' sovereignty over valuable mineral resources. Indeed, from 1826 to 1871,

the United States entered into a series of treaties that explicitly addressed tribal mineral interests. See, e.g., Treaty with the Chippewa, Aug. 5, 1826, 7 Stat. 290, Art. III; Treaty with the Sauk and Foxes, Sept. 21, 1832, 7 Stat. 374, Art. XI; Treaty with the Shoshoni-Goship, Oct. 12, 1863, 13 Stat. 681, Art. IV; Indian Appropriations Act of 1871, ch. 120, § 1, 16 Stat. 544, 566 (codified at 25 U.S.C. § 71) (ending the treaty era).

The following six decades were marked by the disastrous federal policy of "allotment," under which tribal lands were parceled out to individual Indians in an attempt "to extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large." *Upper Skagit Indian Tribe* v. *Lundgren*, 584 U.S. 554, 558 (2018) (Gorsuch, J.) (quotation omitted) (discussing the General Allotment Act, ch. 119, 24 Stat. 388 (1887)). But "[i]n 1934, Congress reversed course," enacting "the Indian Reorganization Act to restore the principles of tribal self-determination and self-governance that prevailed before the General Allotment Act,"—principles that animate federal Indian law to this day. *Id.*; see Act of June 18, 1934, ch. 576, 48 Stat. 984 (codified at 25 U.S.C. § 5101 et seq.).

Even amid the failed policy of allotment, Congress periodically acted to protect or formalize tribal mineral interests. See, e.g., Act of Feb. 28, 1891, ch. 383, § 3, 26 Stat. 794, 795 (codified at 25 U.S.C. § 397) (first statute providing for Indian mineral leasing); Act of Feb. 20, 1893, ch. 148, 27 Stat. 470 (ratifying agreements authorizing oil and gas exploration on Seneca reservation); Act of July 1, 1898, ch. 542, 30 Stat. 567 (similar, with Seminole Nation). And shortly after allotment ended, Congress enacted the Indian Mineral Leasing Act of 1938 (IMLA), which created a uniform framework for mineral leasing on tribal

trust lands, albeit subject to federal approval. Act of May 11, 1938, ch. 198, 52 Stat. 347 (codified at 25 U.S.C. §§ 396a–396g).

Fast-forward to 1982: Indian energy production accelerated swiftly with Congress's passage of the Indian Mineral Development Act (IMDA), which authorized tribes to negotiate and enter into mineral agreements with greater autonomy. Pub. L. 97-382, 96 Stat. 1938 (codified at 25 U.S.C. §§ 2101–2108). The following year, President Reagan underscored the underlying policy of the IMDA with his canonical statement on modern federal Indian policy.

President Reagan announced that "[t]he Federal role is to encourage the production of energy resources" on Indian lands, because "both the Indian tribes and the Nation stand to gain from the prudent development and management of the vast coal, oil, [and] gas … resources found" there. Ronald Reagan, *Statement on Indian Policy*, 19 Weekly Comp. of Pres. Doc. 99 (1983), tinyurl.com/ReaganPolicy. Energy resource development "is important to the concept of [Indian] self-government," he explained, because it enables tribes to "reduce their dependence on Federal funds," and it promotes "sound reservation economies," without which, "the concept of self-government has little meaning." *Id.*

From the 1980s to the present, Congress built out a statutory framework on the bedrock principle of Indian energy sovereignty. See Indian Energy Resources Act of 1992, Pub. L. 102-486, tit. XXVI, 106 Stat. 3113 (promoting tribes' vertical integration of energy development, enabling them not only to extract resources but to process and market them too); Indian Tribal Energy Development and Self-Determination Act of 2005, Pub. L. 109-58, tit. V, 119 Stat. 764 (codified at 25 U.S.C. §§ 3501–3506)

(authorizing "Tribal Energy Resource Agreements" (TERAs), which enable tribes to advance energy development without federal approval—a dramatic departure from over a century of paternalistic federal oversight); Indian Tribal Energy Development and Self-Determination Act Amendments of 2017, Pub. L. 115-325, 132 Stat. 4445 (streamlining the TERA process).

In short, over the last century, Congress has progressively and deliberately dismantled the paternalistic controls that once kept tribes from fully exercising sovereignty over their own energy resources. And since President Reagan's watershed 1983 statement, executive policy has strongly supported Indian self-government and energy sovereignty. See, e.g., *Remarks by President Trump and Secretary of Energy Rick Perry at Tribal, State, and Local Energy Roundtable* (June 28, 2017), tinyurl.com/DJT-Indian-NRG ("[R]estrictions and regulations that put [tribal] energy wealth out of reach" are "infringements on tribal sovereignty [that] are deeply unfair to … Native American communities who are being denied access to the energy and wealth that they have on their own lands.").

III. State Laws That Impede Federal Indian Policy Or Interfere With Inherent Tribal Sovereignty Violate Longstanding Indian Preemption Doctrine.

Tribal sovereignty limits state power. It does so in three important ways, which mirror tribes' unique status as neither foreign nations nor states in the union, but rather as separate, "self-governing political communities" under the protection of the federal government. *Nat'l Farmers*, 471 U.S. at 851; cf. *Lac du Flambeau*, 599 U.S. at 410 (Gorsuch, J., dissenting) ("[T]his Court's Indian-law jurisprudence … has consistently treated Tribes as a

constitutional hybrid, resembling States in certain respects and foreign nations in others." (citation modified)).

First, as "separate sovereigns pre-existing the Constitution," tribes—like foreign nations—"have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 56, 58 (1978); see also *Kiowa Tribe of Oklahoma* v. *Mfg. Techs., Inc.*, 523 U.S. 751 (1998) (comparing tribal immunity to foreign sovereign immunity). This means that "Indian tribes have immunity even when a suit arises from off-reservation commercial activity," unless Congress—not a state— "unequivocally" abrogates that immunity. *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 785, 790 (2014) (Kagan, J.) (quotation omitted); accord *Utah*, 790 F.3d at 1009 (Gorsuch, J.) (principle of tribal sovereign immunity "applies with just as much force to claims … brought by states as by anyone else"); see also, e.g., *United States* v. *U.S. Fid. & Guar. Co.*, 309 U.S. 506, 512 (1940) (tribal sovereign immunity for coal leasing).

Second, like states, tribes share in the split sovereignty of our federal system. Tribes, much like states, are sovereign over their people and territory. Compare, e.g., *Ysleta*, 596 U.S. at 689 ("Native American Tribes possess inherent sovereign authority over their members and territories." (quotation omitted)), with *Brown* v. *Fletcher's Estate*, 210 U.S. 82, 89 (1908) ("[E]very state possesses exclusive jurisdiction and sovereignty over persons and property within its territory." (quotation omitted)). And split sovereignty within our constitutional system implies limits on each sovereign's power vis-à-vis the others. See Petitioners' Br. 23–24 (explaining that structural limitations flow from the states' "equal sovereignty" in our federal system). So just as states cannot violate others'

sovereignty by regulating beyond their own borders, neither can they violate tribes' sovereign spheres by regulating conduct affecting the tribes' "political integrity, the[ir] economic security, or the[ir] health or welfare." *Montana*, 450 U.S. at 566; see also *Williams* v. *Lee*, 358 U.S. 217, 220 (1959) ("States have no power to regulate the affairs of Indians on a reservation."); *Haaland*, 599 U.S. at 307–08 (Gorsuch, J., concurring) (noting the same "[a]s a corollary of [tribes'] sovereignty").

Third, because of tribes' distinct relationship with the federal government under the Constitution, tribes enjoy the protection of a uniquely strong form of federal preemption against state authority. The Constitution vests Congress and the President with authority over relations with the Indian tribes. See U.S. CONST. art. I, § 8, cl. 3 (Indian Commerce Clause); *id.* art. II, § 2, cl. 2 (President's treaty power). Using these powers, the federal government has "demonstrat[ed] a firm federal policy of promoting tribal self-sufficiency and economic development." *Bracker*, 448 U.S. at 143; see Sec. II., supra. This policy, set against the "crucial backdrop" of Indians' pre-Constitutional inherent sovereignty, shields tribes from state interference with federal supremacy. *New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983) (quotation omitted); see also *McClanahan* v. *State Tax Comm'n of Ariz.*, 411 U.S. 164, 172 (1973) (similar).

Importantly, this Indian preemption doctrine is more muscular than normal federal preemption. Ordinarily, "[i]nvoking some brooding federal interest … [is not] enough to win preemption of a state law; a litigant must point specifically to a constitutional text or a federal statute that does the displacing or conflicts with state law." *Va. Uranium, Inc.* v. *Warren*, 587 U.S. 761, 767–68 (2019) (Gorsuch, J.) (citation modified). But with Indian

preemption, "[t]hat is simply not the law." *Bracker*, 448 U.S. at 150–51. As this Court has explained, "[t]he unique historical origins of tribal sovereignty make it generally unhelpful to apply to federal enactments regulating Indian tribes those standards of pre-emption that have emerged in other areas of the law." *Id.* at 143. Instead, in the Indian context, "to find a particular state law to have been preempted by operation of federal law, an express congressional statement to that effect is [not] required." *Id.* at 144; see *Mescalero*, 462 U.S. at 334 ("[O]ur [Indian preemption] cases have rejected a narrow focus on congressional intent to preempt State law as the sole touchstone."). Given "both the broad policies that underlie [federal Indian law] and the notions of sovereignty that have developed from historical traditions of tribal independence," federal preemption applies with singular force to protect tribes' prerogative of self-government, as reinforced by Congress and the President under their constitutional powers. *Bracker*, 448 U.S. at 144–45; see Sec. II., supra.

In these three ways, then, tribes enjoy robust protection against state interference: States cannot sue them—even for off-reservation commercial conduct—unless Congress expressly abrogates (or they unequivocally waive) their immunity. *Bay Mills*, 572 U.S. at 785. States cannot meddle with tribes' inherent sovereign power to govern themselves and provide for their members' economic security, health, and welfare. *Bracker*, 448 U.S. at 142–43. And states cannot hinder federal policy—instantiated in countless Congressional acts and Presidential policies—of promoting Indian independence and sovereign self-government. *Id.* at 143–44. Any one of these "independent but related barriers," "standing alone," "can be a sufficient basis" to preclude "the assertion of state

regulatory authority over tribal reservations and members." *Id.* at 142.

Applying these principles, this Court has held, in case after case, that states cannot interfere with tribes' commercial activities that support tribal sovereignty, especially tribes' development of their lands' abundant natural resources.

1. In *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136 (1980), for example, this Court held that federal Indian preemption and inherent tribal sovereignty foreclosed two Arizona taxes on an Apache tribe's non-Indian timber-harvesting contractor. Federal law had "expressly authorized" Indian tribes "to establish commercial enterprises for the harvesting and logging of tribal timber." *Id.* at 147. The White Mountain Apache tribe did so. It formed a company and contracted with a non-Indian enterprise to harvest timber on tribal land—an operation that the tribe itself "could not carry out as economically on its own." *Id.* at 139. Arizona imposed taxes on this non-Indian contractor, and the Apache sued. *Id.* at 139–40.

The Court ruled for the Apache. Observing that the "economic burden" of Arizona's taxes on the non-Indian contractor would "ultimately fall on the Tribe," the Court explained that the taxes hindered the federal "policy of assuring that the profits derived from timber sales will inure to the benefit of the Tribe." *Id.* at 149, 151. The state's taxes "would threaten the overriding federal objective of guaranteeing Indians that they will receive the benefit of whatever profit the forest is capable of yielding." *Id.* at 149 (citation modified). "That objective," the Court added, "is part of the general federal policy of encouraging tribes to revitalize their self-government and to assume control over their business and economic affairs."

Id. (quotations omitted). Arizona's taxes also constituted unwarranted "additional burdens" atop a "comprehensive federal regulatory scheme" that, among other things, required the Bureau of Indian Affairs (BIA) to approve the tribe's timber-harvesting contracts with non-Indian companies. Although federal law did not expressly preempt Arizona law, its "purpose of promoting self-sustaining [Indian] communities" and its substantial "supervision over the harvesting and management of tribal timber" implicitly preempted the state's taxes.

2. In *New Mexico* v. *Mescalero Apache Tribe*, 462 U.S. 324 (1983), this Court rejected another state attempt to regulate a tribe's management of its natural resources for the benefit of its people. "Anticipating a decline in the sale of lumber which ha[d] been the largest income-producing activity within the reservation," the Mescalero Apache Tribe—a member of amicus COLT—sought to develop "other sources of income." *Id.* at 327. The tribe undertook "a substantial development of the reservation's hunting and fishing resources," which "generate[d] income … used to maintain the Tribal government and provide services to tribe members." *Id.* But New Mexico got in the way. The state sought to regulate hunting and fishing on the tribe's reservation concurrently and asserted the power "to impose conditions more restrictive than the Tribe's own regulations, including an outright prohibition." *Id.* at 330.

The Court roundly rejected New Mexico's invasion of tribal sovereignty: "It is beyond doubt that the … Tribe lawfully exercises substantial control over the lands and resources of its reservation," an "aspect of tribal sovereignty … expressly confirmed by numerous federal statutes." *Id.* at 337; see also *id.* at 334–35 & n.17. New Mexico's hunting and fishing laws, meanwhile, were "based on

[statewide] considerations not necessarily relevant to, and possibly hostile to, the needs of the reservation." *Id.* at 339. The state laws could not stand: They impeded tribal resource development that "generate[d] funds for essential tribal services and provide[d] employment for members who reside[d] on the reservation." *Id.* at 341. And that "threaten[ed] Congress' overriding objective of encouraging tribal self-government and economic development." *Id.*

3. *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) addressed a state's attempt to regulate a different kind of Indian commercial activity: gaming.[4] Because their "Reservations contained no natural resources which c[ould] be exploited," the Cabazon and Morongo Bands of Mission Indians had resorted to bingo. *Id.* at 218. California tried to impose its strict state gambling regulations on the tribe—regulations that imperiled the commercial viability of tribal gaming. *Id.* at 205 & n.3. These regulations were not compatible with "Indian sovereignty" and the "important federal interests" of promoting "Indian self-government," and "encouraging tribal self-sufficiency and economic development." *Id.* at 216–18. Writing for a unanimous Court, Justice White explained that "[s]elf-determination and economic development are not within reach if the Tribes cannot raise revenues and provide employment for their members." *Id.* at 219. Despite California's "legitimate concern" that "tribal games" would "attract[ ] organized crime" to the state, its

[4] Congress later superseded *Cabazon* with its enactment of the Indian Gaming Regulatory Act (IGRA), 102 Stat. 2467 (1988) (codified at 25 U.S.C. § 2701 *et seq.*), which comprehensively regulated the field of Indian gaming. The Indian preemption principles enunciated in *Cabazon* remain good law.

regulations could not "escape the pre-emptive force of federal and tribal interests." *Id.* at 211, 221.

4. Finally, in *Montana* v. *Crow Tribe of Indians*, 484 U.S. 997 (1988), this Court summarily affirmed the Ninth Circuit's holding that Montana's significant taxation of coal mined on tribal land was "preempted by federal law and policies" and "void for interfering with tribal self-government." *Crow Tribe of Indians* v. *Montana*, 819 F.2d 895, 903 (9th Cir. 1987). The Crow had contracted with two major energy companies to mine and bring their coal to market, with lease agreements under the Mineral Leasing Act of 1938. *Id.* at 897. Montana, however, imposed hefty taxes on the Crow's coal. *Id.* Although the "Tribe itself d[id] not pay the tax"—the lessees did—it naturally "result[ed] in … fewer royalties to the tribe." *Id.* at 899. After all, "[t]he state taxes increase[d] the costs of production," which "forced the coal producers to charge higher prices," thereby "reducing the demand for their Montana coal." *Id.* The Crow Tribe sued.

Applying this Court's precedents, the Ninth Circuit held Montana's taxes unlawful for two "independent" reasons. *Id.* at 897–903. *First*, they were preempted: They clashed with the "firm federal policy of promoting tribal self-sufficiency and economic development"—a policy that Congress intended to "be given broad preemptive effect." *Id.* at 898. Because "the taxes imposed by the state interfered with *the policies underlying* the 1938 [Mineral Leasing] Act"—in particular, "to ensure that Indians receive the greatest return from their property"—supreme federal law barred their imposition. *Id.* (emphasis added and quotations omitted). *Second*, the taxes were "invalid because [they] erode[d] the Tribe's sovereign authority." *Id.* at 903. "The power to tax … is an essential attribute of self-government," and "tax revenue from coal

production could generate funds for tribal services and provide employment for tribal members." *Id.* at 902. "By taking revenue that would otherwise go towards supporting the Tribe and its programs, and by limiting the Tribe's ability to regulate the development of its coal resources," Montana infringed on the Crow's sovereignty. *Id.* at 902–03; see also *id.* at 902 ("The Tribe's coal is not the state's to regulate. It has no such legitimate interest in appropriating Indian mineral wealth." (citation modified)).[5]

Notably, the Ninth Circuit reached these same conclusions even when the taxes were never actually imposed on the tribe's coal. See *id.* at 897. It was enough that the taxes on the books "interfer[ed] with the Tribe's coal leasing efforts" by making it hard for would-be lessees to "find a buyer" for the coal, which, in turn, "ma[de] it difficult for Crow to find a lessee." *Id.* at 903. Also notable, the Ninth Circuit rejected Montana's argument that its "heavy tax" on the tribe's coal was justified by the "indeterminable" "costs associated with treating the environmental consequences of coal production." *Id.* at 901. Among other things, Montana's stated "environmental interests" were already protected by federal law. *Id.* (citing the Surface

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[5] This Court has reaffirmed the case's core holding that "an unusually large state tax" on a tribe's mineral resources that "impose[s] a substantial burden on [a] Tribe" cannot stand. See *Cotton Petroleum*, 490 U.S. at 186–87 & n.17; see also *Montana* v. *Crow Tribe of Indians*, 523 U.S. 696, 706, 717 (1998) ("The negative impact of Montana's high taxes on the marketability of the Tribe's coal, as the District Court correctly comprehended, was the principal basis for the Ninth Circuit's … preemption decision."). Contrast *Cotton Petroleum*, 490 U.S. at 186–87 ("Any impairment [by New Mexico taxes] to the federal policy favoring [Indians'] exploitation of on-reservation oil and gas resources … is *simply too indirect and too insubstantial* to support Cotton's claim of pre-emption." (emphases added)).

Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq. (1982)).

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As these cases show, states cannot impede tribes' lawful means of generating revenue—commonly, natural-resource development—because (1) doing so conflicts with federal policy favoring tribal self-government, and (2) it is an affront to tribal sovereignty.

IV. State Attempts To Regulate Energy Companies' Contributions To Global Emissions Are Void Because They Interfere With Federal Indian Policy And Violate Inherent Tribal Sovereignty.

State and local governments, like Respondents, cannot regulate energy companies' alleged contributions to global greenhouse gas emissions. As Petitioners explain, the Constitution's structure, with states as "coequal sovereigns" within a federal system, forecloses state tort and consumer-protection claims that would effectively regulate interstate—and even international—emissions that are properly the province of the federal government. Petitioners' Br. 3–4, 22–29. Respondents' claims are also foreclosed because they encroach on Indian tribes' inherent sovereignty and conflict with the overriding federal policy favoring tribal self-government and development of natural resources as critical sources of tribal revenue.

If tribes were to engage in oil-and-gas drilling or coal mining themselves, they would enjoy immunity from state-law suits like Respondents' under this Court's well-established precedents. See *Bay Mills*, 572 U.S. at 785; *U.S. Fid. & Guar. Co.*, 309 U.S. at 512. But "most tribes do not have the resources to start a production company to develop their resources, such as oil and gas." U.S. Gov't

Accountability Off., GAO-15-502, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, at 30 (2015), tinyurl.com/GAO-BIA-Rpt; cf. *Bracker*, 448 U.S. at 139 (Apache outsourced logging because the tribe "could not" do so "as economically on its own"). So most tribes depend upon third-party energy companies, like Petitioners here, to capitalize on their lands' abundant energy resources.[6]

Respondents—and many other states and localities across the country—are threatening the economic viability of these companies with climate lawfare. See, e.g., *District of Columbia* v. *Exxon Mobil, et al.*, No. 2020-CA-002892-B (D.C. Sup. Ct. June 25, 2020) (D.C.'s nominal consumer-protection action seeking to impose liability for climate change). Because these energy companies' "production … of fossil fuels" plays a "substantial role" in "contributing to" global emissions, J.A. 2 ¶ 2, Respondents seek to impose catastrophic liability for the local effects of climate change. Indeed, one of Respondents' lawyers candidly explained that this lawsuit seeks to (indirectly) impose a draconian nationwide "carbon tax" on fossil-fuel producers who will then "have to" "declare bankruptcy." See Federalist Soc'y, *Can State Courts Set Global Climate Policy?*, at 32:55–35:05, YOUTUBE (Oct. 8, 2025), tinyurl.com/FedSoc-Bookbinder (comments of David Bookbinder).

Respondents' unabashed attempt to use state law in state court before a state jury to drive fossil-fuel

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[6] For example, a subsidiary of Petitioner Exxon Mobil Corporation has three natural-gas wells "located on Jicarilla Apache tribal land in New Mexico." U.S. Env't Prot. Agency, Region 6, *Federal Synthetic Minor New Source Review Permit*, No. R6NSR-NM-004 (July 13, 2017), perma.cc/KLG7-ZHFP; Exxon Mobil Corp., Current Report (Form 8-K) (June 25, 2010), tinyurl.com/Exxon-XTO-8K.

producers into bankruptcy imperils tribes' ability to find energy producers to help develop their natural resources. See *Crow Tribe*, 819 F.2d at 903 (state law made it "difficult" for tribe "to find a lessee" for coal mining). This threatens tribes' inherent sovereignty, clashes with federal policy favoring Indian mineral leasing and tribal self-government, and violates well-established Indian preemption doctrine under this Court's precedents.

1. State and local climate lawsuits jeopardize tribes' inherent sovereignty. For many tribes, including amicus COLT's member tribes, fossil-fuel development on tribal land constitutes a substantial—if not the sole—source of tribal income and on-reservation employment. See Sec. I.B., supra; see also *Crow Tribe*, 819 F.2d at 901 ("Coal production is vital to the economic development of the Crow Tribe."); accord *Cotton Petroleum*, 490 U.S. at 209 (Blackmun, J., dissenting) ("[O]il and gas production *is* the Jicarilla Apache economy—a common pattern in reservations with substantial oil and gas reserves." (emphasis original)); cf. *Cabazon*, 480 U.S. at 218–19 (bingo was the "sole source of revenues for the operation of the tribal governments and the provision of tribal services" because the "Reservations contain[ed] no natural resources"). This revenue and employment is crucial to Indian economic independence and self-government. See *Bracker*, 448 U.S. at 142–43; *Crow Tribe*, 819 F.2d at 896; cf. *Merrion*, 455 U.S. at 137 (highlighting the importance of a tribe's "authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services"). State-and-local attempts to dismantle the national fossil-fuel industry severely undermines this tribal sovereignty, transforming "sovereignty by the barrel" into "liability by the barrel." Cf. Crane-Murdoch, supra; Davies, supra.

2. Federal Indian law preempts state-law climate lawsuits. As explained in Section II, supra, longstanding federal policy—embodied in many congressional enactments, agency regulations, and presidential policy initiatives—strongly favors Indian self-government and economic security. See Sec. II., supra; see, e.g., 25 U.S.C. § 396g (IMLA) (authorizing Secretary of the Interior "to approve leases" of tribal mineral rights "to promote … the welfare of the Indians"); 25 U.S.C. §§ 2102(a), 2108 (IMDA) (enabling tribes to enter mineral agreements and offering "federal advice, assistance, and information during the negotiation"); 25 C.F.R. § 212.1(a) (BIA regulation stating purpose of "ensur[ing] that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests"); Reagan, supra (Presidential policy of encouraging tribes to "tak[e] advantage of economic development opportunities," including "the prudent development and management of the vast coal, oil, [and] gas … resources found on Indian lands"); cf. *Cabazon*, 480 U.S. at 216–17 & n.19 (collecting statutes promoting tribal self-government); *Mescalero*, 462 U.S. at 335 & n.17 (similar). These pro-Indian federal policies preempt state-and-local lawfare designed to cripple national fossil-fuel companies that support tribal energy development critical to Indian self-government and economic security. See *Mescalero*, 462 U.S. at 331–43; *Bracker*, 448 U.S. at 145–52; *Cabazon*, 480 U.S. at 216–22; *Crow Tribe*, 819 F.2d at 897–902, aff'd, 484 U.S. 997.[7]

[7] Additionally, federal law extensively regulates fossil-fuel production on tribal land. See *Kodiak Oil & Gas (USA) Inc.* v. *Burr*, 932 F.3d 1125, 1135–36 (8th Cir. 2019). This body of federal law may also preempt Respondents' suit on ordinary federal field-preemption principles.

Finally, it is no answer that Respondents and other jurisdictions seek to regulate fossil-fuel production—on tribal lands and elsewhere—because of the "environmental consequences" that flow from increased global greenhouse-gas emissions. *Crow Tribe*, 819 F.2d at 901. Such "environmental concerns have been addressed already" by federal law. *Id.*; see generally Clean Air Act (CAA), 42 U.S.C. § 7401, et seq.; cf. Petitioners' Br. 43–47 (explaining that the CAA preempts state-law climate suits). Moreover, conflicts between sovereigns—like states and tribes—within our federal system are to be resolved by reference to federal law, not the law of one particular state (or tribe). Cf. Petitioners' Br. 22–29 (explaining that "federal law applies to disputes involving interstate pollution"); see, e.g., *City of Milwaukee* v. *Illinois*, 451 U.S. 304 313 & n.7 (1981); *Int'l Paper Co.* v. *Ouellette*, 479 U.S. 481, 488 (1987); *Am. Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 429 (2011). Accordingly, federal law must control.

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Before the Constitution's ratification, "the States considered themselves fully sovereign nations." *Fran. Tax Bd. of Cal.* v. *Hyatt*, 587 U.S. 230, 237 (2019) (Thomas, J.). But "in ratifying the Constitution," they "surrendered a portion of their" inherent sovereignty by consent. *Id.* at 241; see *id.* at 245 (noting, for instance, that "the Constitution deprives [states] of the independent power … to enter into treaties" (citing U.S. CONST. art. I., § 10)). At the Founding, Indian tribes were also recognized as "fully sovereign nations." *Id.* at 237; see Sec. I.A., supra. But they did *not* ratify the Constitution, and they "surrendered" no "portion of their" inherent sovereignty. Cf. *id.* at 237; see Sec. II, supra (discussing tribes' treaty-making after the Founding—a sovereign prerogative that the Constitution denied to the states). So if states "retain"

"integral component[s]" of their "inviolable" pre-constitutional "sovereignty," 587 U.S. at 236 (quotation omitted), all the more so do the Indian tribes, whose inherent sovereignty "has never been extinguished." *Wheeler*, 435 U.S. at 322 (quotation omitted).

Like states and foreign nations, Indian tribes cannot "be haled involuntarily before" the court of another state and subjected to that state's laws. *Hyatt*, 587 U.S. at 239; see *Bay Mills*, 572 U.S. at 785. Respondents, therefore, cannot sue any tribe in state court for developing the energy resources of its sovereign territory. But what Respondents cannot do directly, they seek to do indirectly through climate lawfare against the tribes' energy-industry partners, which threatens them with insolvency. See Bookbinder, supra. Respondents' attempted end-run around governmental immunity violates tribes' inherent sovereignty and is preempted by pro-Indian federal law. It cannot stand. Respondents' state-law case should be dismissed.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted.

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No. 25-170

SUNCOR ENERGY (U.S.A.) INC., *et al.*,

Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, *et al.*,

Respondents.

AFFIDAVIT OF SERVICE

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District of Columbia
My commission expires April 30, 2029.

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No. 25-170

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Supreme Court of the United States

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ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO

BRIEF OF *AMICUS CURIAE*
COALITION OF LARGE TRIBES
IN SUPPORT OF PETITIONERS

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