NO. 25-170

IN THE

Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC.; SUNCOR ENERGY SALES INC.; EXXON MOBIL CORPORATION,

Petitioners,

v.

COUNTY COMMISSIONERS OF BOULDER COUNTY; CITY OF BOULDER,

Respondents.

On Writ of Certiorari
to the Supreme Court of Colorado

BRIEF OF PROFESSOR DEREK T. MULLER AS *AMICUS CURIAE* SUPPORTING NEITHER PARTY

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INTERESTS OF *AMICUS CURIAE*[1]

Derek T. Muller is a Professor of Law at Notre Dame Law School. He has taught courses on federal courts and civil procedure, among others. He is a co-author of a federal courts casebook, *Federal Courts: Cases and Materials on Judicial Federalism and the Lawyering Process* (5th ed. 2022), as well as an open-access resource on federal courts and civil procedure, *Rules and Laws for Civil Actions* (2025). He has submitted amicus briefs to this Court and federal courts of appeals on a range of subjects within his expertise, including the scope of appellate jurisdiction over decisions that precede final judgment.

Because this appeal involves an important and recurring question of appellate jurisdiction, with significant implications for the administration of federal courts, Professor Muller has an interest in this case's proper resolution.

Professor Muller takes no position on the ultimate merits of petitioners' federal defenses. He submits this brief to address only the threshold question of whether this Court has jurisdiction to review the judgment of the Colorado Supreme Court. That jurisdictional question is important not merely to this case, but to the proper operation of this Court's review of federal questions decided by state courts of last resort.

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[1] No party or counsel for a party wrote any part of this brief. No person other than *amicus* and his counsel made any financial contribution to the preparation of this brief.

SUMMARY OF THE ARGUMENT

A state court of last resort conclusively resolved a federal defense through an original proceeding while the underlying trial action remains pending. In this case, the relevant question is not whether the underlying tort action has ended. It has not. The question is whether the distinct proceeding in Colorado's court of last resort has ended, and whether that proceeding finally resolved the federal issue that the state supreme court chose to decide.

Colorado law identifies the proceeding as original, separate, and complete upon discharge of the rule to show cause. Federal law then determines whether that completed proceeding qualifies as final under 28 U.S.C. § 1257(a).

This Court has jurisdiction because the Colorado Supreme Court finally resolved a discrete original proceeding that conclusively rejected petitioners' federal defense. That proceeding was not simply a step in the ordinary progress of the underlying tort suit. It was a separate, self-contained original proceeding in the State's highest court, invoked under that court's constitutional authority to issue original and remedial writs and to exercise general superintending control over inferior courts.

The continued pendency of the underlying tort action does not defeat finality. In *Atlantic Richfield*, this Court held that a state supreme court's decision in a supervisory writ proceeding was final for Section 1257(a) purposes because the writ proceeding was a self-contained case under state law. That holding

controls here. Section 1257(a) looks to the judgment rendered by the state court of last resort. Where that judgment ends a separate original proceeding and finally resolves a federal question, this Court may review it.

Federal law determines whether the resulting judgment is final within the meaning of Section 1257(a). Colorado law is relevant to the extent that it shows what kind of proceeding the Colorado Supreme Court conducted. It was original, extraordinary, and self-contained. Once the Colorado Supreme Court discharged the rule to show cause, nothing remained pending in that proceeding.

Finality turns on the nature of the State high court proceeding, not on whether the issue arose from a nonfinal order in a related trial-court case. A writ proceeding may test an interlocutory ruling and still produce a final judgment reviewable by this Court if the writ proceeding itself is separate and complete. Here, it was.

In the alternative, this case satisfies the fourth category of *Cox Broadcasting*. The Colorado Supreme Court finally decided the federal issue. Reversal by this Court would terminate the litigation. And postponing review would seriously erode the federal interests asserted here. Petitioners claim that federal law prevents Colorado courts from applying state law to these claims. A claimed federal right of that kind is impaired by forcing the parties asserting it to proceed through discovery, trial, and possible judgment before this Court can review the federal question.

This case is unlike one in which a party merely seeks premature correction of a routine evidentiary or pleading ruling. The Colorado Supreme Court's judgment is the authoritative state-law resolution of a federal defense that will govern this litigation in state court going forward. If review is delayed—assuming another chance even arises—the asserted federal right will be substantially consumed by the very proceedings petitioners contend federal law forbids.

Article III standing is also no obstacle.

Petitioners lost a federal defense in the state court of last resort. The Colorado Supreme Court's judgment binds the trial court, subjects petitioners to further litigation under the rejected federal ruling, and would be favorably redressed by reversal here.

ARGUMENT

I. The Colorado Supreme Court's judgment is final because it is a self-contained proceeding.

Section 1257(a) authorizes this Court to review "[f]inal judgments or decrees" from State high courts "where title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or the statutes of . . . the United States." 28 U.S.C. § 1257(a).

The statute reflects a balance. On the one hand, this Court cannot supervise every interim ruling in state-court litigation. On the other hand, when a State court of last resort conclusively has resolved a federal question in a proceeding that has ended, this

Court's review may be necessary to preserve the uniformity and supremacy of federal law.

The finality inquiry under Section 1257(a) should begin with the judgment that this Court has been asked to review. The judgment below was not a trial-court order. Nor was it an intermediate appellate decision subject to further state review. It instead was the Colorado Supreme Court's final disposition of an original proceeding brought under Colorado Appellate Rule 21, which allows a party to petition the Colorado Supreme Court for specific relief. The Colorado Supreme Court issued an order to show cause, entertained full briefing, resolved the federal question, and discharged the order. The proceeding was completed.

Nothing remained for the Colorado Supreme Court to do. The separate fact that the underlying tort action returned to the trial court does not make the Colorado Supreme Court's completed original proceeding any less final. When a state court of last resort conclusively resolves a federal issue in a completed original proceeding, Section 1257(a) permits review even if the underlying trial court litigation continues.

Historically, this Court has reviewed State high court decisions that resolve original proceedings. The phrase—"Final judgment or decree"—was used in the federal Judiciary Act of 1789, § 25, 1 Stat. 73, 86, and it incorporated concepts of finality from English common law, see *McLish v. Roff*, 141 U.S. 661, 665 (1891).

Congress retained this phrase as to State high

court decisions despite amending other provisions, including in 1891, § 6, 26 Stat. 826, 828 (authorizing federal circuit courts to review "final decisions" of lower federal courts), and in 1988, § 3, 102 Stat. 662, 662 ("Final judgments or decrees rendered by the highest court of a State in which a decision could be had . . . ").

This Court's settled construction of the finality requirement supplies the relevant background for the application Section 1257(a) here. State high court decisions that resolve original proceedings, even when the decision contemplates additional related proceedings in a trial court, are final and subject to review.

A. Section 1257 focuses on the judgment rendered in a state court of last resort, and the Colorado decision is a final judgment.

Section 1257(a) asks whether this Court is reviewing a final judgment rendered by the highest court of a State. Here, the judgment under review is not the trial court's denial of a motion to dismiss. It is the Colorado Supreme Court's final disposition of a Rule 21 proceeding.

Colorado Appellate Rule 21 allows a party to petition the Colorado Supreme Court for specific relief as an "original proceeding." Rule 21 distinguishes the underlying proceeding, allows the lower court to be a respondent, stays the underlying case, and ends when the Colorado Supreme Court discharges or makes absolute the rule. *Atlantic Richfield* treats such a proceeding "as final." *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 12 (2020).

In *Atlantic Richfield*, the Montana Supreme Court had reviewed a trial-court order through a supervisory writ proceeding. *Id.* Although the underlying litigation continued, this Court held that the Montana Supreme Court's judgment was final because the supervisory writ proceeding was a self-contained proceeding under state law. The Court emphasized that finality turned on the nature of the state proceeding, not merely on the interlocutory character of the issue reviewed in that proceeding.

Landowners initially brought state-law claims in Montana state court. *Id.* at 9. The parties filed motions for summary judgment on whether a federal statute (CERCLA) precluded the state-law claims. *Id.* at 10. The trial court "granted judgment for the landowners on that issue and allowed the lawsuit to continue." *Id.*

The Montana Supreme Court "grant[ed] a writ of supervisory control" and affirmed the trial court, allowing the lawsuit to proceed. *Id.*

This Court made short work of the argument that the Montana Supreme Court's decision was not final. The "Montana Supreme Court exercised review in this case through a writ of supervisory control." *Id.* at 12. "Under Montana law, a supervisory writ proceeding is a self-contained case, not an interlocutory appeal." *Id.* The decision was thus final—and this Court had jurisdiction to review it—even though the decision in substance denied summary judgment and "allowed the case to proceed to trial." *Id.*

That holding controls here. Colorado's Rule 21 proceedings perform the same jurisdictional function for present purposes. They are not ordinary interlocutory appeals. They are original proceedings in the Colorado Supreme Court, rooted in the State Constitution's grant of original and superintending authority.

A Rule 21 petition initiates a proceeding in the Colorado Supreme Court. The court has discretion whether to issue an order to show cause. If it does, the rule contemplates responses from the real parties in interest and, in appropriate cases, from the lower court or tribunal. The issuance of the order automatically stays the underlying proceedings unless the Colorado Supreme Court orders otherwise. The proceeding ends when the court discharges the order or makes it absolute, in whole or in part.

In *Atlantic Richfield*, this Court rejected the argument that review of State high court decisions resolving original proceedings was somehow "limited." *Id.* It was not. "It is the nature of the Montana proceeding, not the issues the state court reviewed, that establishes [this Court's] jurisdiction." *Id.*

The Colorado Supreme Court did not deny a writ petition summarily. It granted extraordinary review, issued a rule to show cause, directed responses, considered the parties' competing positions, and decided the federal issue. The State high court's disposition did not leave any aspect of the Rule 21 proceeding unresolved. The judgment below was therefore final in the only proceeding this Court is asked to review.

Respondents have referred to Article VI, § 2 of the Colorado Constitution. But *Atlantic Richfield* does not make federal jurisdiction depend on the location or description of power in a state constitution. It instead asks whether the proceeding used by the state court is a self-contained proceeding rather than an interlocutory appeal. Colorado Rule 21 answers that question. It provides for a petition initiating an original proceeding in the Colorado Supreme Court, permits the lower tribunal to be named as a respondent, stays the underlying action, and ends in a final determination of the Rule 21 matter. The Colorado Supreme Court followed that procedure here. Whatever the source of the court's authority, the proceeding actually conducted was not an ordinary interlocutory appeal.

Treating the judgment as final will not open the door to piecemeal review of state-court litigation. This Court's jurisdiction is limited to a specific category of cases—completed original proceedings in a state court of last resort that finally decide a federal question. Those proceedings end with "[f]inal judgments or decrees rendered by the highest court of a State." 28 U.S.C. § 1257(a).

Many interlocutory state-court rulings will not satisfy those requirements. A trial-court order does not become reviewable merely because a litigant disagrees with it. Nor does an intermediate appellate ruling become final simply because it addresses an important question. What matters here is the combination of three features: a State high court proceeding, original or supervisory in nature; final disposition

of that proceeding; and conclusive resolution of a federal question.

That combination may be uncommon. But when it exists, Section 1257(a) permits review. The finality requirement should not be transformed into a rule that disables this Court from reviewing a State high court's final judgment merely because that judgment arose out of a writ proceeding connected to ongoing trial litigation. Such a rule would make this Court's jurisdiction turn on the happenstance of state procedural design, and it would discourage State high courts from using original writ procedures to resolve substantial federal questions. Section 1257(a) does not require that result.

Suppose the Colorado Supreme Court had made the rule absolute and ordered dismissal of the claims on federal-law grounds. Boulder almost certainly would argue in those circumstances that the judgment was final and reviewable because it terminated the underlying case. But finality under Section 1257(a) should not depend solely on which party prevailed in the State high court. When a state supreme court grants extraordinary review, conclusively decides the federal question, and terminates the original proceeding, the judgment should be final for the party who lost that proceeding as well as for the party who won it.

The jurisdictional rule should be *neutral*. A completed original proceeding in a State court of last resort is final when it finally resolves the federal issue presented, regardless of whether the State high court grants or denies relief. The losing party has suffered

the adverse judgment; the winning party has obtained the benefit of that judgment. In either event, the proceeding in the State high court is over.

B. This Court's precedents confirm that *Atlantic Richfield* applies here.

State high courts exercise control over lower courts through original proceedings, including writs of mandamus, writs of control, or (at issue here) orders to show cause. State judicial systems sometimes authorize original writ proceedings in the State's highest court, separate from the underlying case that gives rise to the writ petition. When such a proceeding is self-contained and has been finally disposed of, the judgment ending it is final for purposes of Section 1257(a).

Indeed, this Court historically has treated State high court decisions that resolve original proceedings as final judgments and decrees subject to review under Section 1257(a) and its predecessor provisions.

A paradigmatic example is *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8 (1931). There, the State of California sued to enjoin natural-gas production under state law. *Id.* at 11. The trial court granted a preliminary injunction. The defendants sought a writ of prohibition from the state appellate court, arguing that the statute violated the Fourteenth Amendment and otherwise violated the U.S. Constitution. *Id.* at 14. The state appellate court denied the writ, leaving in place the trial court's injunction. *Id.* at 14–15.

This Court granted certiorari. Addressing its jurisdiction: "The proceeding for a writ of prohibition is a *distinct suit*, and the judgment finally disposing of it is a *final judgment* within the meaning of section 237(a) of the Judicial Code"—i.e., where Section 1257(a) was formerly codified. *Id.* (emphasis added). The Court reached that conclusion despite the fact that the appellate court's denial of the writ, in substance, merely allowed the underlying lawsuit to proceed in trial court. See *id.* at 15–16.

To support this proposition, *Bandini* cited, among other cases, *Weston v. City Council of Charleston*, in which Chief Justice Marshall concluded that a State high court's decision denying a writ of prohibition "was a final judgment in the sense in which that term is used in the 25th section of the judicial act." 27 U.S. (2. Pet.) 449, 455 (1829).

Along these same lines, the Court in *Mount Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.* reviewed the Alabama Supreme Court's decision quashing a writ of prohibition. "Prohibition is a *distinct suit* and the judgment finally disposing of it is a *final judgment* within the meaning of the Judicial Code, under the statutes of Alabama and by the common law." 240 U.S. 30, 31 (1916) (citation omitted) (emphasis added). This Court deemed "not material" the fact that the State high court decision "did not decide the merits of the principal suit." *Id.*

The Court's practice is not confined to writs of prohibition. In *Fisher v. District Court of the Sixteenth Judicial District of Montana*, the trial court dismissed an adoption proceeding related to an Indian child.

424 U.S. 382, 383 (1976). The child's mother sought from the Montana Supreme Court a writ of supervisory control, which the court granted, concluding that the trial court did have jurisdiction. *Id.* at 385.

This Court reviewed and reversed, explaining that the "writ of supervisory control issued by the Montana Supreme Court is a final judgment within our jurisdiction under 28 U.S.C. § 1257(3)," even though "further proceedings are to be had in the lower court." *Id.* at 383 n.7.[2]

II. The Court historically has reviewed, as "final judgments or decrees," a limited category of decisions that contemplate further proceedings under *Cox Broadcasting*.

This Court need not reach an alternative basis for jurisdiction if it applies *Atlantic Richfield*. But an alternative basis for jurisdiction exists as articulated in *Cox Broadcasting*.

A. Historically, this Court exercised jurisdiction over final judgments or decrees issued by lower courts.

Between 1789 and 1891, the Court was authorized to review "final judgments or decrees" from lower federal courts. § 22, 1 Stat. 73, 84.

During this period the Court repeatedly reviewed

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[2] Many earlier cases have involved jurisdictional questions, see *Fisher*, 424 U.S. at 383 n.7 (collecting cases), but this Court confirmed in *Atlantic Richfield* that its appellate jurisdiction was not "limited" to original proceedings related to jurisdiction.

certain pre-final-judgment decisions, including decisions that were final in a practical—though not technical—sense because additional proceedings would occur in the trial court. See, e.g., *Ray v. Law*, 7 U.S. (3 Cranch) 179 (1805); *Whiting v. Bank of the United States*, 38 U.S. (13 Pet.) 6 (1839); *Forgay v. Conrad*, 47 U.S. (6 How) 201, 205 (1848); *Bronson v. LaCrosse & Milwaukie R.R. Co.*, 67 U.S. (2 Black) 524, 531 (1863); *Marin v. Lalley*, 84 U.S. (17 Wall.) 14 (1873); *Sage v. R.R. Co.*, 96 U.S. 712 (1878); *First Nat'l Bank of Cleveland v. Shedd*, 121 U.S. 74 (1887).

The Court has also consistently reviewed certain pre-final-judgment decisions from State high courts under Section 1257(a) and its predecessor provisions. See, e.g., *Carondelet Canal & Navigation Co. v. Louisiana*, 233 U.S. 362 (1914); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945).

Based on these cases, and others, the Court in *Cox Broadcasting Corp. v. Cohn* explicitly recognized this practice and identified four categories of State high court decisions that contemplated further proceedings but were nonetheless reviewable. 420 U.S. 469, 478–87 (1975).

The fourth category includes cases in which the federal issue has been finally decided in the state courts; further proceedings are pending in which the party seeking review "might prevail on the merits on nonfederal grounds thus rendering unnecessary review of the federal issue by this court;" and reversal on the federal issue would be preclusive of any further litigation." *Id.* at 483. Such cases are reviewable if

"a refusal immediately to review the state court decision might seriously erode federal policy." *Id.*

State high court decisions that deny federal preemption can fall within the fourth exception. For example, in *Construction Laborers v. Curry*, cited in *Cox Broadcasting* to exemplify the fourth exception, the Court granted certiorari to review the Georgia Supreme Court's reversal of the trial court's denial of a preliminary injunction against union-related activity. 371 U.S. 542, 543 (1963).

The Georgia Supreme Court's decision undisputedly contemplated further proceedings. *Id.* But this Court concluded that it still had jurisdiction because, among other things, the Petitioner made "a substantial claim . . . that the jurisdiction of the state court is pre-empted by federal law." *Id.* at 552.

Post-*Cox Broadcasting* cases are in accord. In *Mississippi Power & Light Company v. Mississippi*, the Mississippi Public Service Commission increased electric rates to allow recovery of the cost of nuclear power purchased at rates required by the Federal Energy Regulatory Commission. 487 U.S. 354, 366–67 (1988). The Mississippi Supreme Court reversed, holding that the Public Service Commission should have first determined whether the FERC-mandated rates were prudent, and remanded for the Public Service Commission to conduct the prudency inquiry. *Id.*

Despite the ongoing state proceedings, this Court granted certiorari and reversed, holding that a state-law prudency inquiry was preempted by FERC's mandated rates. *Id.* On the question of jurisdiction, the

Court concluded: "The critical federal question—whether federal law pre-empts such proceedings while the FERC order remains in effect—has . . . already been answered by the State Supreme Court and its judgment is therefore ripe for review." *Id.* at 370 n.11 (citing *Cox Broadcasting*, 420 U.S. at 477).

More recently, the Court has reviewed *Cox Broadcasting* cases that involved State high court decisions denying federal preemption without explicitly addressing the jurisdictional issue. See *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 259 (2013) (reviewing the New Hampshire Supreme Court's decision that reversed and remanded the trial court's grant of summary judgment); *Coventry Health Care of Missouri, Inc. v. Nevils*, 581 U.S. 87, 93 (2017) (reviewing the Missouri Supreme Court's decision that reversed and remanded the trial court's grant of summary judgment).

Against this backdrop, Section 1257(a) is properly interpreted as conveying jurisdiction to review State high court decisions that, as collected and categorized in *Cox Broadcasting*, finally resolve federal questions even though they contemplate further proceedings in the trial court.

This case falls in line with pre- and post-*Cox* cases in which the Court has exercised jurisdiction over State high court decisions that rejected federal preemption at the motions stages. See *Construction Laborers*, 371 U.S. at 543; *Mississippi Power & Light*, 487 U.S. at 366–67; *Dan's City Used Cars*, 569 U.S. at 259; *Coventry Health Care*, 581 U.S. at 93.

B. This Court has jurisdiction under *Cox Broadcasting*.

This case falls well within the fourth category of state high court decisions that *Cox Broadcasting* recognized as reviewable by this Court, even though further state court proceedings remain.

Cox Broadcasting recognized that Section 1257(a) finality is not limited to cases in which all proceedings in state court have ended. In certain categories of cases, a state-court judgment resolving a federal issue is sufficiently final to permit this Court's review.

First, the federal issue has been finally decided by the Colorado Supreme Court. Petitioners argued that federal law forecloses respondents' state-law claims. The Colorado Supreme Court rejected that defense. Its decision is not subject to further review in the Colorado courts. Nor did the court reserve the issue for later reconsideration. Its decision supplies the governing rule for the underlying litigation going forward.

Second, reversal by this Court would terminate the underlying litigation. Petitioners' federal defense, if accepted, would bar respondents' remaining state-law claims. This Court's decision would not merely adjust the course of discovery, alter an evidentiary ruling, or require a new trial while leaving the same claims otherwise intact. The federal question is dispositive.

Third, delayed review would seriously impair the federal interests asserted. Petitioners contend that

federal law does not permit Colorado state law to govern these claims. Amicus takes no position on whether that contention is correct. But, for jurisdictional purposes, the character of the federal defense matters. Petitioners do not merely assert that the trial court made a garden-variety error that can be remedied after final judgment. They assert a federal right not to be subjected to state-law adjudication of these claims at all.

When a party asserts such a federal defense, postponing review can materially diminish the asserted federal right. The party must undergo the very proceedings it says federal law forbids.

Discovery, class or mass-tort management issues, expert proceedings, trial preparation, and trial itself may impose substantial burdens. But the point is not cost alone. The point is that the federal defense asserted here has a structural dimension: petitioners argue that state law is not a permissible rule of decision for the controversy. If that argument is correct, then forcing the controversy through state-law adjudication inflicts the very injury that the federal defense is designed to prevent.

Some federal rights cannot be adequately protected by waiting until the end of state-court proceedings. The reason is not that every federal defense warrants immediate review. The reason is that where the federal issue has been conclusively resolved, where reversal would end the case, and where delay would erode the federal interest at stake. Section 1257(a) permits review in those circumstances.

Those considerations are especially weighty where, as here, the State court of last resort has already spoken. There is no need to wait for further state-court consideration of the federal issue. There will be none. The trial court is bound by the Colorado Supreme Court's ruling, and the parties must litigate under that ruling unless this Court intervenes. Later review may remain theoretically possible, but *Cox Broadcasting* asks whether postponement "might seriously erode federal policy." 420 U.S. at 483. In this context, it would.

The formal availability of later review does not defeat jurisdiction under *Cox Broadcasting*. The premise of that category is that, in some circumstances, the theoretical possibility of later review is not an adequate substitute for immediate review because the federal issue has already been finally decided and the consequences of delay are themselves significant.

Nor is jurisdiction defeated by the possibility that petitioners might later prevail on some nonfederal ground. *Cox Broadcasting* itself contemplates circumstances in which further proceedings might occur but review is proper because the federal issue is finally resolved and delay threatens important federal interests. Here, the federal issue is not one of many ordinary trial questions. It is the threshold question whether state law may be used to adjudicate the claims at all. If this Court agrees with petitioners on that question, the litigation ends. That is sufficient under *Cox Broadcasting*.

III. Article III allows review.

Article III presents no independent obstacle to this Court's jurisdiction. The relevant question is not whether respondents would have had Article III standing had they filed this action in federal district court. This case comes from a state court, and state courts are not bound by Article III's case-or-controversy requirement in the same way that federal courts are. The relevant question is whether *petitioners*, as the parties invoking this Court's appellate jurisdiction, have standing to seek reversal of the judgment below. They do.

Petitioners suffered an adverse adjudication of their asserted federal rights. They invoked the Colorado Supreme Court's original jurisdiction to obtain a ruling that federal law forecloses respondents' claims. The Colorado Supreme Court rejected that argument. That rejection was not abstract or advisory. It has operative legal consequences, and it governs the underlying case. It subjects petitioners to continued litigation under state law. And it binds lower Colorado courts on the federal question decided.

That is a "concrete injury" for purposes of appellate standing. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 616 (1989). A party that loses on a federal defense in a state court of last resort has a personal stake in reversing that judgment. The injury is not speculative. Petitioners are defendants in the underlying action, and the Colorado Supreme Court's decision requires them to continue defending against claims they contend federal law bars. That is enough.

The injury is also fairly traceable to the judgment below. Before the Colorado Supreme Court ruled, petitioners sought dismissal on federal grounds. After the court ruled, that defense was rejected as a matter of controlling Colorado precedent. The continued proceedings petitioners face are traceable to the judgment they ask this Court to review.

Redressability is equally straightforward. If this Court reverses and holds that federal law forecloses respondents' claims, petitioners' asserted injury will be remedied. The underlying litigation will not proceed on the claims barred by federal law. The adverse State high court precedent will no longer govern petitioners' federal defense.

CONCLUSION

This Court has statutory and Article III jurisdiction to review the Colorado Supreme Court's decision.

Respectfully submitted,

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