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 Writ of Certiorari to the Supreme Court of Colorado

BRIEF OF *AMICI CURIAE* FORMER STATE SUPREME COURT JUSTICES IN SUPPORT OF PETITIONERS ON JURISDICTIONAL QUESTION

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STATEMENT OF INTEREST[1]

Amici curiae are 24 former chief justices and justices of state supreme courts. They hold varying judicial philosophies and were appointed by elected leaders of both parties. While on the bench, *amici* presided over writ proceedings, including proceedings raising questions of federal law. In so doing, they developed a deep understanding of the nature of such disputes. During service in their state court systems, *amici* also appreciated the importance of the relationship between the state and federal judiciaries. This case illustrates how that relationship works, with each judicial system carrying out the functions that our state and federal constitutions assign. *Amici* set forth that understanding here in the hope that it might benefit this Court's consideration of whether it has statutory jurisdiction. *Amici* address this brief to that question only; they take no position on the merits.

Amici believe that this Court has statutory jurisdiction. This Court has jurisdiction over a state supreme court's resolution of a writ proceeding directed at a lower court when it constitutes a "[f]inal judgment" of the "highest court of a State." 28 U.S.C. § 1257(a). As former members of the courts that hear these proceedings, *amici* have a unique institutional perspective on, and shared understanding of, the

[1] Pursuant to Supreme Court Rule 37.6, undersigned counsel states that no counsel for a party authored this brief in whole or in part, that no counsel for a party or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no entity or person, aside from *amici curiae* or their counsel, made a monetary contribution to fund the preparation or submission of this brief.

doctrinal underpinnings and the function of such proceedings. Writ proceedings directed at lower courts (whether they are called "original," "supervisory," "superintending," or in aid of "appellate"—the label does not matter) are self-contained cases.

Amici are also well positioned to explain why the answer to the jurisdictional question matters. Special proceedings are, by their nature, the vehicle through which state supreme courts often confront consequential legal questions—including questions of federal law, such as preemption, sovereign immunity, and individual rights. If this Court lacks jurisdiction to review those decisions, then the state-court rulings most likely to require this Court's oversight will be the very ones placed beyond its reach.

Finally, as noted in Petitioners' Brief, the Colorado Supreme Court's decision is final as a matter of state law, having fully resolved an "original proceeding." Pet. App. 7a. Federalism concerns would be implicated if that same judgment were not final under federal law. Such a result would also be inconsistent with the role that § 1257(a) assigns this Court and with its place in our constitutional structure.

List of *Amici*

Hon. Andrew W. Gould
Arizona Supreme Court 2016–2021

Hon. Kenneth B. Bell
Florida Supreme Court 2002–2008

Hon. C. Alan Lawson
Florida Supreme Court 2016–2022

Hon. Keith R. Blackwell
Supreme Court of Georgia 2012–2020

Hon. Michael P. Boggs
Supreme Court of Georgia 2017–2025;
Chief Justice, 2022–2025

Hon. David Nahmias
Supreme Court of Georgia 2009–2022;
Chief Justice, 2021–2022

Hon. Lawton R. Nuss
Kansas Supreme Court 2002–2019;
Chief Justice, 2010–2019

Hon. John D. Minton, Jr.
Supreme Court of Kentucky 2006–2023;
Chief Justice, 2008–2023

Hon. David Viviano
Michigan Supreme Court 2013–2024

Hon. Kurtis T. Wilder
Michigan Supreme Court 2017–2019

Hon. G. Barry Anderson
Minnesota Supreme Court 2004–2024

Hon. Lorie S. Gildea
Minnesota Supreme Court 2006–2023;
Chief Justice, 2010–2023

Hon. Michael G. Heavican
Nebraska Supreme Court 2006–2024;
Chief Justice, 2006–2024

Hon. Carmen Beauchamp Ciparick
New York Court of Appeals 1994–2012

Hon. Jonathan Lippman
New York Court of Appeals 2009–2015;
Chief Judge, 2009–2015

Hon. Yvette McGee Brown
Supreme Court of Ohio 2011–2012

Hon. Michael P. Donnelly
Supreme Court of Ohio 2019–2024

Hon. Robert G. Flanders, Jr.
Rhode Island Supreme Court 1996–2004

Hon. David Gilbertson
South Dakota Supreme Court 1995–2021;
Chief Justice, 2001–2021

Hon. Eva M. Guzman
Supreme Court of Texas 2009–2021

Hon. Nathan L. Hecht
Supreme Court of Texas 1989–2024;
Chief Justice, 2013–2024

Hon. Thomas R. Phillips
Supreme Court of Texas 1988–2004;
Chief Justice, 1988–2004

Hon. J. Dale Wainwright
Supreme Court of Texas 2003–2012

Hon. Daniel Kelly
Wisconsin Supreme Court 2016–2020

INTRODUCTION AND SUMMARY OF ARGUMENT

Under 28 U.S.C. § 1257(a), this Court may review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." For nearly two centuries, this Court has correctly understood that provision to encompass decisions in proceedings in which a party initiates a suit in the state supreme court seeking an extraordinary remedy, as happened here. Nearly every state has such proceedings, and, regardless of the label that they bear, they look alike in all relevant respects.

As this Court has held, a state supreme court's judgment in such a proceeding is "final" because it "is a self-contained case"—a distinct suit on a distinct cause, producing a judgment that fully and finally resolves the questions presented. *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 12 (2020). This Court has said as much repeatedly, holding in an unbroken line of cases stretching back more than a century that writ proceedings are reviewable under § 1257(a). The state courts agree. Throughout the country, state supreme courts uniformly treat these proceedings as self-contained cases, not interlocutory steps in lower-court litigation.

History explains this unanimity. The states' practices trace their origins to the common law, which recognized the authority of the King's Bench to superintend inferior courts through writ proceedings. This historical starting point explains why, despite some surface-level differences in terminology ("supervisory," "superintending," "appellate," "original," and the like), the procedural form is the same

everywhere—a new filing, a respondent court, a contested adjudication, and a final enforceable judgment. The proceeding below is no exception; it had each of those characteristics.

The Constitution's structure confirms that decisions in such proceedings are reviewable. Since the Founding, federal law has permitted state courts to decide cases involving federal questions—with this Court serving as the final arbiter, ensuring consistent interpretation of that law. A rule that placed special writ proceedings beyond this Court's reach would leave some of those questions unresolved, imposing costly delays and uncertainty on both litigants and the state courts themselves. After all, writ proceedings are, by their nature, the vehicle for many of the most consequential legal questions that a state court system confronts, including questions of federal law on which state courts are divided. Prompt resolution of those questions would free state courts from the burden of protracted, complex litigation that proper application of federal law might eliminate altogether.

ARGUMENT

I. THIS COURT HAS CONSISTENTLY AND CORRECTLY HELD THAT WRIT PROCEEDINGS ARE DISTINCT SUITS REVIEWABLE UNDER 28 U.S.C. § 1257(A)

From the beginning, this Court has faithfully applied the plain meaning of § 1257(a), which authorizes this Court to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a).

Judgments occur in cases,[2] so a state supreme court's decision is a final judgment when it resolves "a self-contained case." *Atl. Richfield Co.*, 590 U.S. at 12. That is because "[t]he word 'final'" describes "all judgments and decrees which determine the *particular cause*." *Weston v. City Council of Charleston*, 27 U.S. (2 Pet.) 449, 464–65 (1829) (emphasis added). A self-contained case, in other words, is a suit on a particular cause.

Applying this principle, this Court has consistently and correctly held that such proceedings are reviewable under § 1257(a) or its predecessors. *Atlantic Richfield Co.*, 590 U.S. at 12 (Montana); *Fisher v. Dist. Ct. of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382, 385 & n.7 (1976) (Montana); *Bandini Petroleum Co. v. Superior Ct. of State of Cal. in & for Los Angeles Cnty.*, 284 U.S. 8, 14–16 (1931) (California); *Michigan Cent. R. Co. v. Mix*, 278 U.S. 492, 494 (1929) (Missouri); *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30, 30–31 (1916) (Alabama); *see Rescue Army v. Mun. Ct. of City of Los Angeles*, 331 U.S. 549, 565, 568

[2] Section 1257 has, in fact, always required a "distinct suit." In its original form, it covered "a final judgment or decree *in any suit*, in the highest court of law or equity of a State in which a decision in the suit could be had . . . ." Section 25, Judiciary Act of 1789 (emphasis added). When codified in its current form in 1948, it did not substantively change. *See* 28 U.S.C. § 1257 (Reviser's Note) (explaining that "[c]hanges were made in phraseology" and noting no relevant substantive changes); *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 227–28 (1957) (holding that for the 1948 codification "no change is to be presumed unless clearly expressed"); *Madruga v. Superior Ct.*, 346 U.S. 556, 560 n.12 (1954). In this respect the statute bears the same meaning as it had at the Founding.

(1947) (California) (declining jurisdiction on prudential grounds); *Missouri ex rel. St. Louis, B. & M. Ry. Co. v. Taylor*, 266 U.S. 200, 206–07 (1924) (Missouri) (dismissing on other grounds); *see also Minnesota ex rel. Pearson v. Prob. Ct. of Ramsey Cnty.*, 309 U.S. 270, 271–72 (1940) (Minnesota).

The logic underpinning this line of cases is straightforward. Each writ proceeding results in a judgment in "a self-contained case" because it is a distinct cause or suit, seeking relief against a lower court, not just relief against an opposing party, although the relief against the lower court will of course affect any underlying proceedings. *See, e.g.*, *Fisher*, 424 U.S. at 385 n.7 (holding "writ of supervisory control," "available only in original proceedings," is final even "if further proceedings are to be had in the lower court"); *Bandini Petroleum Co.*, 284 U.S. at 14 ("proceeding for a writ of prohibition is a distinct suit"); *Michigan Cent. R. Co.*, 278 U.S. at 494 (holding that state court's denial of a "writ of prohibition … is [a] final" judgment). Hence the filing of the petition for the writ "initiates a separate lawsuit." *Atl. Richfield Co.*, 590 U.S. at 12; *Mt. Vernon*, 240 U.S. at 31. And, underscoring the separateness, the "demand" for relief made in such a proceeding is likewise distinct. *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 407–09 (1821). A final judgment in a state-supreme-court writ proceeding is therefore "an effective determination of the litigation and not of merely interlocutory or intermediate steps." *Atl. Richfield Co.*, 590 U.S. at 12 (citation omitted).

Although the County Commissioners of Boulder have argued that disposition of a state-supreme-court

writ proceeding is not final because it results in a "remand" and therefore additional proceedings in a lower court (BIO at 12),[3] this Court has consistently refused to equate finality with the resolution of the merits of underlying disputes. That this proceeding contemplates further lower court action and does "not decide the merits" of that underlying suit is "immaterial." *Mt. Vernon*, 240 U.S. at 31; *Detroit & Mackinac Ry. Co. v. Michigan R.R. Comm'n*, 240 U.S. 564, 570–71 (1916); *see also Atl. Richfield Co.*, 590 U.S. at 12. Indeed, the *Mt. Vernon* Court's observation that a prohibition proceeding "is not devoted to" the merits of the principal suit "but only to the preliminary question of the jurisdiction of the court in which that suit is brought," 240 U.S. at 31, reinforces rather than undermines finality. A petition for such a writ generally asks whether the lower court has exceeded its jurisdiction *or* grossly abused its authority; it does not *formally* review the correctness of the lower court's ruling on the merits. *See, e.g.*, *Plumb v. Fourth Jud. Dist. Ct.*, 279 Mont. 363, 368–69 (1996), *superseded by statute on other grounds*. In sum, because a final decision in such a proceeding "determine[s] the particular cause" and the right to the specific relief sought in that suit, it is reviewable under § 1257(a). *Weston*, 27 U.S. at 464–65.

[3] There is, in fact, no true remand even under Colorado law, because the underlying case remains in the lower court. Hence Colorado Rule of Appellate Procedure 21(h)(2) permits the Colorado Supreme Court to lift its stay of the lower court proceedings and allow them to continue while it decides whether to "discharge" its show cause order or make the order "absolute." Colo. App. R. 21(h)(2), (o).

II. THE VAST MAJORITY OF STATE SUPREME COURTS REGARD THEIR WRIT PROCEEDINGS AS DISTINCT SUITS

This Court's precedent and the text of § 1257(a) are enough to resolve the question, but the understanding and practice of the courts that actually oversee these writ proceedings provides powerful independent confirmation. Throughout the country, state supreme courts—the courts that receive these petitions, docket them as new cases, and enter final judgments resolving them—uniformly treat them as self-contained suits, not as interlocutory phases of lower-court litigation.

Although the states differ in how they characterize or understand the jurisdictional grounds or procedural form of such writ petitions, the proceedings in all of them constitute self-contained cases. State supreme courts fall roughly in four camps, with some falling into more than one. *First*, many exercise this authority as part of their *original* jurisdiction. Original jurisdiction, by definition, means taking cognizance of a new suit. *Second*, courts explicitly distinguish writ proceedings from appellate proceedings, underscoring their understanding that an original writ is not an interlocutory appeal but a separate action with different parties and different purposes. *Third*, some courts recognize a freestanding third category of matters implicating their "superintending" jurisdiction that is neither original nor appellate but independently authorizes the supreme court to entertain a distinct suit against the lower court. *Fourth*, even state supreme courts that purport to possess *only* appellate jurisdiction still

treat writ proceedings as separate, original suits "in aid of" that jurisdiction. Unsurprisingly, these camps overlap (original *and* "not appellate" jurisdiction, supervisory jurisdiction *and* original proceedings, etc.). Under every conception, the proceeding is a self-contained case.

In the first category are the many state supreme courts that understand writ proceedings as coming under their original jurisdiction.[4] And of course, when

[4] *E.g.*, *Clendaniel v. Conrad*, 26 Del. 549, 598 (1912) (holding the state constitution confers "original jurisdiction" "to issue writs of prohibition [to lower courts] or any of the judges of the said courts" (citation omitted)); *Surina v. Buckalew*, 629 P.2d 969, 972–73 (Alaska 1981) (holding that "writ of mandamus" against trial court requires "original application for relief"); *Ex parte State ex rel. Alabama Pol'y Inst.*, 200 So. 3d 495, 510 (Ala. 2015), *abrogated on other grounds by Obergefell v. Hodges*, 576 U.S. 644 (2015) (explaining its "original jurisdiction . . . to issue such remedial writs or orders as may be necessary to give it general supervision and control of courts of inferior jurisdiction" (citation omitted)); *State ex rel. Allen v. Carroll Cir. Ct.*, 226 N.E.3d 206, 211 (Ind. 2024) (explaining its "original jurisdiction" to exercise "supervisory authority through original actions for writs of mandamus or prohibition."); *State v. Gleason*, 12 Fla. 190, 208 (1868) (explaining its "original jurisdiction to issue the specified writs"); *Welty v. McMahon*, 316 N.W.2d 836, 838 (Iowa 1982) (noting "supervisory powers should be used sparingly in accepting original jurisdiction"); *Landrum v. Goering*, 306 Kan. 867, 869–70 (2017); *Arkk Props., LLC v. Cameron*, 681 S.W.3d 133, 139 (Ky. 2023); *Brockbank v. Second Jud. Dist. Ct. in & for Washoe Cnty.*, 65 Nev. 781 (1948) (entertaining original prohibition proceeding); *In re Domitrovich*, 668 Pa. 106, 119 (2021); *White v. Baker & Botts*, 833 S.W.2d 327, 330 (Tex. App. 1992) ("An application for mandamus is not an ordinary appeal; it is an original proceeding, a new cause of action."); *Cox v. Laycock*, 2015 UT 20, ¶ 22 (explaining its "original jurisdiction to issue all extraordinary writs" (citation omitted)); *State ex rel. W.*

a court exercises original jurisdiction, it "take[s] cognizance" of a new suit. *Cohens*, 19 U.S. at 397–98; *The Alicia*, 74 U.S. (7 Wall.) 571, 573 (1868); *Original Jurisdiction*, Black's Law Dictionary 857 (1st ed. 1891) ("jurisdiction to take cognizance of a cause at its inception . . . [d]istinguished from *appellate* jurisdiction"). Taking up a petition in this posture, the court "hear[s] and decide[s]" the "matter before any other court can review the matter." *Original Jurisdiction*, Black's Law Dictionary (12th ed. 2024). State courts recognize the distinctness of such an original proceeding (often one for a writ of mandamus or prohibition) even when, as it often is, it is directed at a trial court overseeing a pending case.[5] The

Canadian Greyhound Lines v. Superior Ct. for King Cnty., 26 Wash. 2d 740, 741 (1946).

[5] *The Associated Press v. Second Jud. Dist.*, 172 Idaho 113, 120 (2023); *see also State ex rel. Huntington Nat'l Bank v. Kontos*, 2015-Ohio-5190 (original action against trial judge); *State ex rel. Stivrins v. Flowers*, 273 Neb. 336, 340 (2007) ("original mandamus action against the district court"); *State v. New Hampshire Retail Grocers Ass'n, Inc.*, 115 N.H. 623, 625 (1975) (recognizing its authority to "issue original writs" to exercise its "general superintendence of all courts of inferior jurisdiction"); *State ex rel. City of Mansfield v. Crain*, 301 S.W.2d 415, 417–18 (Mo. App. 1957) (explaining "issuance of original remedial writs is not an appellate process"); *City of Roswell v. Sanchez-Gagne*, 580 P.3d 123, 125–26 (N.M. 2025); *Sanders v. Turn Key Health Clinics*, 2025 OK 19, ¶ 26 (explaining it exercises "original jurisdiction" when issuing "extraordinary supervisory writs and superintending writs in proper circumstances" targeted at "[f]inal and interlocutory trial court orders"); *In re Commonwealth of Va.*, 278 Va. 1, 5 (2009) ("In this proceeding, which invokes this Court's original jurisdiction, we consider whether a writ of mandamus or a writ of prohibition lies to compel a circuit court").

proceeding, falling under the court's original jurisdiction, is necessarily a self-contained case.

Second, other state supreme courts reach the same result by a different path: they explicitly distinguish writ proceedings from appellate proceedings. The "essential criterion of appellate jurisdiction" is "that it revises and corrects the proceedings in a cause already instituted, and does not create that cause." *Marbury v. Madison*, 1 Cranch 137, 175 (1803); *see In re Sanborn*, 148 U.S. 222, 224 (1893); *Appellate Jurisdiction*, Black's Law Dictionary 79 (1st ed. 1891) ("jurisdiction to revise or correct the proceedings in a cause already instituted and acted upon by an inferior court"). A writ proceeding does not "revise" or "correct" anything; it creates a new cause. As one court explains, a court's "appellate jurisdiction and its superintending control over inferior tribunals are distinct things, and must not be confounded." *Ex parte State ex rel. Alabama Pol'y Inst.*, 200 So. 3d at 510 (citation omitted) (internal quotations omitted). When a court exercises its "superintending control" to intervene in ongoing proceedings in the trial court, that proceeding "is not, properly speaking, an appeal. It is rather a whole new lawsuit, with different parties and different purposes." *People v. Yeotis*, 383 Mich. 429, 431–32 (1970).[6] In these states, as in Montana, "a

[6] *See also Canaday v. Superior Ct.*, 49 Del. 332, 341 (1955) (distinguishing "a petition for a writ of prohibition" from "ordinary appellate review of such an interlocutory ruling by writ of error"); *Wong v. Fong*, 60 Haw. 601, 604 (1979) (distinguishing "an interlocutory appeal" from "a writ of mandamus" directed at the trial judge); *The Associated Press*, 172 Idaho at 120 ("[i]t is fundamental that a writ will not function as the equivalent of an appeal." (citation omitted)); *Gleason*, 12 Fla. at 206 ("so far as the

supervisory writ proceeding is a self-contained case, not an interlocutory appeal." *Atl. Richfield Co.*, 590 U.S. at 12.

Third, still other state supreme courts recognize a distinct category of superintending jurisdiction—one that is neither purely original nor purely appellate. These courts emphasize that a writ proceeding is fundamentally distinct because it is, formally, a dispute between a litigant and the lower court about the lower court's exercise of its authority.[7] For

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mandamus controls courts it can be used as auxiliary to appellate jurisdiction; in other cases it is not so"); *McKenna v. New Jersey Highway Auth.*, 19 N.J. 270, 276 (1955); *Edwards v. City of Raleigh*, 240 N.C. 137, 139 (1954) (distinguishing limited appellate review from the more flexible "remedial writs necessary to give it a general supervision and control over the proceedings of the inferior courts" (citation omitted)); *Sanders v. Turn Key Health Clinics*, 2025 OK 19, ¶ 27 ("the Court may grant affirmative relief in the nature of extraordinary supervisory relief when appellate jurisdiction is absent"); *Clark v. Ewing*, 196 S.W.2d 53, 55 (Tex. Civ. App. 1946); *State ex rel. City of Mansfield*, 301 S.W.2d at 417–18; *State ex rel. Swan v. Elections Bd.*, 133 Wis. 2d 87, 91 (1986) (contrasting "supervisory" with "appellate" jurisdiction); *Bi-Rite Package, Inc. v. Dist. Ct. of Ninth Jud. Dist. of Fremont Cnty.*, 735 P.2d 709, 714 (Wyo. 1987) (contrasting its "appellate jurisdiction" with its "superintending control").

[7] *Parker v. Crow*, 2010 Ark. 371, 4–5 (2010) (defining "superintending jurisdiction as one of three types of jurisdiction held by the courts of last resort; the other types are appellate and original jurisdiction"); *Hyatt v. Allen*, 54 Cal. 353, 359–60 (1880) (holding that court may issue writs of mandamus and prohibition "without reference to the questions of original or appellate jurisdiction"); *Rivera v. Cataldo*, 153 Haw. 320, 324 (2023) (explaining its "general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses" (citation

example, in this very case, the Colorado Supreme Court's show-cause order directed not just the plaintiffs but the district court itself "to answer in writing . . . why the relief requested . . . should not be granted." J.A. 141–42. Such "superintending jurisdiction" is recognized as "an extraordinary power that is hampered by no specific rules or means." *Parker*, 2010 Ark. at 5. At the same time, it also "serves a narrow function: to provide for the direct control of lower courts, judges, and other judicial officers who fail to fulfill non-discretionary duties, causing harm that cannot be remedied through the appellate review process." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 24.[8] Whatever this

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omitted)); *Fischer v. Bedminster Twp., Somerset Cnty.*, 5 N.J. 534, 540 (1950) (explaining its "inherent power of superintendence of inferior tribunals"); *Harriman v. Waldo Cnty. Comm'rs*, 53 Me. 83, 88 (1865) (recognizing its authority to issue writs under its "general superintendence of all courts of inferior jurisdiction" (citation omitted)); *Weichel v. Hansen*, 219 N.W.2d 118, 120 (N.D. 1974) (explaining that the court "issue[s] such original and remedial writs as are necessary to the proper exercise of such superintending control" but that "superintending control is a separate and independent jurisdiction"); *State ex rel. Fourth Nat. Bank of Philadelphia v. Johnson*, 103 Wis. 591, 79 N.W. 1081, 1086 (1899) (explaining that the state constitution "contained three separate grants of jurisdiction to this court, namely, (1) the appellate jurisdiction; (2) the superintending control over inferior courts; and (3) the original jurisdiction . . . to protect the sovereignty of the state, preserve the liberty of the people, and secure the rights of its citizens").

[8] *See also Straub Clinic & Hosp. v. Kochi*, 81 Haw. 410, 414 (1996); *State v. Coward*, 702 S.W.3d 70, 75 (Mo. Ct. App. 2024); *Babb v. Superior Ct.*, 3 Cal. 3d 841, 851 (1971) (exercising "prerogative writs" only with "extreme reluctance").

jurisdiction is called, the proceeding it authorizes is a self-contained suit.

The Colorado Supreme Court has drawn on all three of these conceptions. In *Wheeler v. N. Colorado Irrigating Co.*, 9 Colo. 248 (1886), the court specifically distinguished its "appellate jurisdiction" from its "superintending control," explaining that each "carries with it authority to issue all writs appropriately connected with the proper performance of the duties imposed." *Id.* at 249–50. The mere placement of superintending control within the same constitutional provision as appellate jurisdiction does not collapse the distinction or transform such writ proceedings into interlocutory appeals. To the contrary, they remain "original writs" when the court issues them under its "general superintending control over all inferior courts." *Laizure v. Baker*, 91 Colo. 48, 51 (1932) (internal quotations and citation omitted).

Fourth, even state supreme courts purporting to possess *only* appellate jurisdiction assert that original writ proceedings are necessary to their exercise of that jurisdiction. These courts hold that jurisdictional limits cannot strip the power to exercise the "prerogative writs by which inferior jurisdictions are superintended and regulated" because that would amount to the "authority to supersede or abolish" the supreme court itself. *Traphagen v. W. Hoboken Twp.*, 39 N.J.L. 232, 235 (1877) (citation omitted). Courts therefore hold that even appellate jurisdiction cannot exist without keeping open a subset of original proceedings "in aid of" that jurisdiction. As one court explains, even when "deprived . . . of all original jurisdiction" a court may "issue an original process in

aid of its appellate jurisdiction." *State ex rel. Kain v. Hall*, 65 Tenn. 3, 6–7 (1873). A "writ of mandamus" is therefore permissible when issued to a lower court as "merely auxiliary to its appellate power." *Id.* at 7.[9] Likewise in *Arnold v. Alexander*, 321 Ga. 330, 333–34 (2025), the court explained that while the state constitution did not vest it with original jurisdiction, it retained jurisdiction "to issue process *as an original matter*" when "in aid of its [appellate] jurisdiction." *Id.* (emphasis added; citation omitted). In its view, an "appellate court's issuance of a writ of mandamus" is an improper exercise of "original jurisdiction" only when it "is not connected to a pending or impending appeal." *Id.* at 333 (citation omitted). Even courts exercising only appellate jurisdiction, therefore, recognize that their superintending proceedings are original suits and therefore self-contained cases.

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[9] *See also Vargas v. Superior Ct. of Apache Cnty.*, 60 Ariz. 395, 396–97 (1943) (explaining that its power "to issue writs of mandamus and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction" includes authority to hear certain "original proceeding[s] in mandamus"); *see also Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404 (2020); *People ex rel. Earle v. Cir. Ct. of Cook Cnty.*, 169 Ill. 201, 209 (1897) (holding that although writ of mandamus is "an original process" and courts "vested with only appellate powers . . . cannot exercise jurisdiction by mandamus," there is an "exception" when the writ "is necessary in aid of the appellate powers of such courts") (citing James L. High, A Treatise on Extraordinary Legal Remedies 34 (3d ed. 1896)); *In re Petition for Writ of Prohibition*, 312 Md. 280, 304 (1988), *disapproved of on other grounds by State v. Manck*, 385 Md. 581 (2005) ("a writ may issue in aid of appellate jurisdiction even though no case is pending in the appellate court").

That even writs issued in aid of appellate jurisdiction are self-contained cases refutes Boulder's contention that a superintending proceeding in Colorado is not a distinct suit. If such proceedings are self-contained cases even in states whose supreme courts possess only appellate jurisdiction, then *a fortiori* they are self-contained cases in states (such as Colorado) whose constitutions do not limit the supreme court's superintending authority to an "in aid of" function. And, indeed, the Colorado Supreme Court has long recognized its superintending control as a separate grant of authority, distinct from its appellate jurisdiction. *Wheeler*, 9 Colo. at 250; *Laizure*, 91 Colo. at 51. Once again, the substantive form of the proceeding is the same regardless of the label. It is therefore irrelevant for purposes of § 1257(a) whether a state supreme court exercises this authority under its original jurisdiction, an independent superintending jurisdiction, or in aid of its appellate jurisdiction. Under each framework, the proceeding involves a distinct cause seeking a distinct remedy and thus remains a self-contained case. *See Mt. Vernon*, 240 U.S. at 31 ("prohibition is a distinct suit"); *Weston*, 27 U.S. at 464–65.

This Court's own practice confirms that writ proceedings retain their character as distinct suits regardless of how the issuing court's jurisdiction is classified. The Article III limits on this Court's original jurisdiction do not deprive it of power to hold original writ proceedings exercised "in aid of" or "necessary to" its appellate jurisdiction. *Ex parte U.S.*, 287 U.S. 241, 246 (1932); *see Ex parte Republic of Peru*, 318 U.S. 578, 583 (1943); James E. Pfander, *Jurisdiction-Stripping and the Supreme Court's*

Power to Supervise Inferior Tribunals, 78 Tex. L. Rev. 1433, 1491–93 (2000) (explaining that in *Ex parte Crane*, 30 U.S. (5 Pet.) 190 (1831), this Court confirmed that *Marbury*'s limits on original jurisdiction did not prevent it from exercising jurisdiction over original writs pertaining to pending proceedings in lower courts). Nor does *Marbury* undermine the conception of writ proceedings as distinct suits. Indeed, this Court elsewhere has recognized the adversarial character of such proceedings—and thus their nature as distinct suits—in explaining that "mandamus should be resorted to only in extreme cases, since it places trial judges in the anomalous position of being litigants without counsel other than uncompensated volunteers." *La Buy v. Howes Leather Co.*, 352 U.S. 249, 257–58 (1957).

III. THE STATE SUPREME COURTS' WRIT PROCEEDINGS LOOK ALIKE BECAUSE THEY ALL DERIVE FROM THE SAME COMMON-LAW FORM

It is no coincidence that supreme courts, despite differing in how they characterize their jurisdictional authority, uniformly treat superintending proceedings as self-contained cases. After all, every state's writ practice echoes its historical antecedent: the common-law authority of the King's Bench to superintend inferior courts through original writ proceedings.[10] Because the states inherited a single

[10] Many states expressly adopted English common law by statute or by constitution. *See* Ford W. Hall, *The Common Law: An Account of its Reception in the United States*, 4 Vand. L. Rev.

procedural form—one in which a petitioner initiates a new suit against a court, the court is joined as a respondent, and the proceeding terminates in an independent final judgment—the "distinct suit" character of such proceedings does not vary with jurisdictional labels. The common-law pedigree thus independently confirms what Part II demonstrated: state-supreme-court writ proceedings are, and always have been, self-contained cases producing final judgments reviewable under § 1257(a).

In pre-Founding England, the King's Bench had "superintending jurisdiction over all . . . inferior courts . . ., which it freely exercised by the use of well-defined writs." *State ex rel. Fourth Nat. Bank of Philadelphia v. Johnson*, 79 N.W. 1081, 1087 (Wis. 1899). "The two great writs by which this superintending jurisdiction was principally exercised . . . were the writs of mandamus and prohibition; the one directing action by the inferior court, and the other forbidding action." *Id.* The King's Bench restrained inferior courts by prohibition "if they assume[d] a greater power than [was] allowed them by law" to "keep them within the boundaries of their jurisdiction," *Peters v. Peters*, 62 Mass. 529, 540 (1851), and had "authority to enforce in inferior tribunals the due exercise of those judicial or ministerial powers which had been vested in them" by mandamus. *Kelly v. Kemp*, 1917 OK 130, ¶ 2. These prerogative writs, closely associated with the exercise

791, 799–805 (1951) (describing its adoption in most former colonies and its subsequent spread west).

of royal authority, served as the "suppletory means of substantial justice."[11]

The King's Bench had power to "interfere to supply a remedy when the ordinary forms of proceeding [were] inadequate to the attainment of justice." *Runkel v. Winemiller*, 4 H. & McH. 429, 449 (Md. Gen. 1799) (Chase, J.). The nature of the King's Bench's superintending authority was both judicial and administrative.[12] It served "as a freestanding source of judicial authority that suitors were free to invoke by petition to the court in the first instance."[13] Critically, writ proceedings exercised under that authority were not mere administrative orders; they were adversarial actions that procedurally resembled

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[11] Pfander, *Jurisdiction-Stripping and the Supreme Court's Power to Supervise Inferior Tribunals*, *supra* pp. 18–19, at 1445 (citation omitted) (describing the prerogative writs); *Kendall v. U.S. ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 621 (1838) ("the power to issue this writ is given to the king's bench only, as having the general supervising power over all inferior jurisdictions and officers, and is coextensive with judicial sovereignty").

[12] *See In re Petition for Writ of Prohibition*, 312 Md. at 287 (the predecessor to the King's Bench "exercised broad supervisory authority over subordinate officials, judicial and otherwise, probably without paying much heed to whether a particular act of supervision was judicial or administrative in nature").

[13] *See* James E. Pfander, Marbury*, Original Jurisdiction, and the Supreme Court's Supervisory Powers*, 101 Colum. L. Rev. 1515, 1524–26 & nn.35, 37 (2001) (discussing the writ of mandamus); *In re Petition for Writ of Prohibition*, 312 Md. at 288 ("Thus when King's Bench became established as a common law court, it had original jurisdiction and appellate jurisdiction in both civil and criminal cases. And it had 'a general superintendence over the due observance of the law by officials and others.'") (citation omitted).

other forms of suits. The writ of mandamus, for example, first required that the initial order to show cause be served on the respondent court, after which the petitioner and respondent participated in an adjudicatory process, and the successful petitioner was granted relief in the form of a final award enforceable through contempt sanctions.[14] In other words, the proceeding had all the hallmarks of a distinct suit: a new filing, an adverse party, a contested adjudication, and a final enforceable judgment.

State supreme courts adopted this practice.[15] And they acknowledge that their superintending authority shares common-law roots with the power exercised by the King's Bench.[16] As one court has said, the power vested by its constitution "placed [it] in practically the same position with reference to the inferior courts of

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[14] *See* Pfander, Marbury*, Original Jurisdiction, and the Supreme Court's Supervisory Powers*, *supra* note 13, at 1526–28.

[15] *Foster v. Hill*, 372 Ark. 263, 267–68 (2008) (collecting cases) ("the highest court in any common-law state has inherent superintending control over lower courts; it is an inherent power available to enable the court to fulfill its role as the court of last resort in the state. It is derived from the common law of England for purposes of effective administration of justice within the court's jurisdiction." (internal citation omitted)).

[16] *E.g.*, *State ex rel. CityDeck Landing LLC v. Cir. Ct. for Brown Cnty.*, 2019 WI 15, ¶ 6 ("when the makers of the [state] constitution used the words 'superintending control over all inferior courts' they definitely referred to that well-known superintending jurisdiction of the court of king's bench") (citation omitted; internal quotation marks omitted); *Sidell v. Hill*, 357 S.W.2d 318, 321 (Ky. 1962) (noting that the state constitution conferred the court "the ancient common law power of a supreme court to control the actions of an inferior court").

the state, as that occupied by the court of Kings Bench, to the inferior courts of England under the common law . . . ." *Kelly*, 1917 OK 130, ¶ 2. So when state supreme courts exercise the power vested in them by their constitutions, the procedural form inherited—an extraordinary original action directed at a lower court—is identical nationwide. State supreme courts exercise superintending authority over inferior courts to prevent jurisdictional overreach and gross abuse of authority and limit the remedy to extraordinary circumstances. Writs are available "[o]nly [in] rare and special circumstances [that] warrant an extraordinary remedy." *The Associated Press*, 172 Idaho at 123. It is a powerful authority that "is used with caution and forbearance to further justice and to secure order and regularity in judicial proceedings where no ordinary remedies are adequate." *See Foster*, 372 Ark. at 268.

IV. A CRAMPED READING OF § 1257(A) WOULD LEAVE IMPORTANT QUESTIONS OF FEDERAL LAW UNRESOLVED, BURDENING STATE COURTS WITH COSTLY AND POTENTIALLY UNNECESSARY LITIGATION

The understanding that § 1257(a) applies to state writ proceedings finds support in the Constitution's structure and, in particular, the original conception of this Court's role vis-à-vis state courts. The Framers designed a system in which this Court serves as the final arbiter of federal law, including federal law adjudicated in the state courts. Important federal questions resolved in superintending proceedings are no exception. Respondent's contrary interpretation would create a gap in this Court's appellate

jurisdiction that the Framers—and Congress in enacting § 1257(a)'s predecessor—sought to prevent.

Since the founding, federal law has permitted state courts to exercise jurisdiction over cases involving federal questions. Article III permitted, but did not require, Congress "to create inferior . . . courts to hear and decide cases within the judicial power of the United States" and "invest them with all the jurisdiction it was authorized to bestow . . . ." *Palmore v. United States*, 411 U.S. 389, 401 (1973). The Judiciary Act of 1789 "established a system under which federal questions would generally be litigated in the first instance in state courts," and this Court would review final judgments in cases where the state court rejected a claim under federal law.[17] The Founders and Congress thus envisioned that state courts would hear most cases and controversies, including those involving federal law.[18]

Still, this Court must have the last word, ensuring uniform and authoritative interpretation of federal law throughout the country. *Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590, 613 (1874) (jurisdiction of state supreme courts' final judgments "secure[s] uniformity in the interpretation of [the

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[17] Arthur D. Hellman, *The Federal Question Jurisdiction Under Article III*, 104 B.U. L. Rev. 2143, 2163–64 (2024); *see Palmore*, 411 U.S. at 401 ("[Until 1875], the state courts provided the only forum for vindicating many important federal claims.").

[18] *See* Charles Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 Harv. L. Rev. 49, 67–68 (1923) (discussing the debates over state jurisdiction at the Federal Convention of 1787 and compromises in the Judiciary Act of 1789).

Constitution], and of the laws and treaties of the United States"). Although lower federal courts are now vested with federal-question jurisdiction,[19] state supreme courts still routinely decide important federal questions. *See, e.g., Crawford v. Washington*, 541 U.S. 36, 67–68 (2004). Thus enforcement of federal rights often becomes the work of state supreme courts.[20]

If a state supreme court's final resolution of a federal question in a writ proceeding were unreviewable, however, important questions of federal law could escape this Court's review entirely. Once a state supreme court definitively resolves a federal issue in such a proceeding, the case returns to the trial court under the shadow of that ruling.[21] Settlement, attrition, or other developments may then prevent later review. *Cf. AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) ("Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims."). Review, then, would not merely be postponed—it would be practically foreclosed.

Such a gap in this Court's superintending role over the state courts would be especially concerning since

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[19] Hellman, *supra* note 17, at 2163–64.

[20] *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 507 (1962) ("We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law."); *see also* Mich. Supreme Court, *The Role of State Courts in Our Federal System*, at 13 (Jan. 2022) (noting that over "214 sections [of the U.S. Code] provide for state courts to hear an action or other types of proceedings").

[21] *Cf. Brady v. Maryland*, 373 U.S. 83, 85 n.1 (1963).

writ proceedings are, by their nature, often the vehicle of choice for the most consequential and challenging legal questions. *See, e.g.*, *State ex rel. Maras v. LaRose*, 2022-Ohio-3295, ¶ 1 (seeking mandamus compelling certification of candidacy) (per curiam); *Republican Party of Ark. v. Kilgore*, 350 Ark. 540, 545 (2002) (granting petition "void[ing]" trial court's order to extend voting hours because the court "clearly abused [its] discretion and exceeded [its] authority"); *Diamond Multimedia Sys., Inc. v. Superior Ct.*, 19 Cal. 4th 1036, 1043–46 (1999) (noting issuance of "show cause" order and deciding question of federal securities law preemption). It is precisely when a lower court is alleged to have exceeded its jurisdiction or grossly abused its authority that federal issues such as preemption and sovereign immunity are most likely to arise. *State ex rel. Firecrow's Adoption v. Dist. Ct. of Sixteenth Jud. Dist.*, 167 Mont. 139, 142 (1975), *rev'd sub nom. Fisher*, 424 U.S. 382 (1976) (jurisdiction and preemption); *In re GlobalSanteFe Corp.*, 275 S.W.3d 477, 479 (Tex. 2008) (preemption); *Agua Caliente Band of Cahuilla Indians v. Superior Ct.*, 40 Cal. 4th 239, 243–45 (2006) (tribal sovereign immunity). A rule that places such proceedings beyond this Court's review, in other words, would exclude the very state-court decisions most likely to require it.

This Court's role in ensuring the uniformity of federal law is especially critical, where, as here, similar claims implicating federal questions are facing many state courts.[22] The state supreme courts that

[22] *E.g., Bucks Cnty. v. BP, PLC*, No. 2024-01836, 2025 WL 1484203, at *7 (Pa. Com. Pl. May 16, 2025), *appeal pending*, No.

have adjudicated the underlying federal questions of law are split,[23] and there are yet more who might be tasked with considering those questions anew.

Leaving important federal questions unanswered imposes costly delays and uncertainty that harm both litigants and state courts, especially where, as here, litigants are burdening state courts with highly complex litigation that might not have been brought in the first place. Properly resolving federal questions raised in superintending proceedings eliminates this burden altogether, freeing state courts to address the many other pressing demands from their "already-overworked state court[ ]" systems. *Raygor v. Regents of Univ. of Minnesota*, 534 U.S. 533, 554 n.15 (2002) (Stevens, J., dissenting).

Here, this Court has been presented with a federal question that has divided state courts, through a state supreme court judgment that finally resolved a distinct suit. The text of § 1257(a), this Court's precedent, the common-law form of writ proceedings, and the constitutional structure all point to the same conclusion: the judgment is reviewable, and this Court

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1525 CD 2025 (Pa. Commw. Ct.); *Platkin v. Exxon Mobil Corp.*, No. MER-L-001797-22, 2025 WL 604846, at *2 (N.J. Super. L. Feb. 5, 2025), *appeal pending*, No. A-001641-24T2 (N.J. Super. App. Div.); *Fuel Industry Climate Cases,* JCCP No. 5310, No. CJC-24-005310 (Cal. Super. Ct., San Francisco Cnty.).

[23] *Compare Mayor & City Council of Baltimore v. BP, PLC*, 493 Md. 427, 442–43 (2026) (holding that the asserted claims are preempted by federal law), *with City & County of Honolulu v. Sunoco LP*, 153 Haw. 326, 334 (2023) (holding that the asserted claims are not preempted by federal law).

may now definitively answer the federal question presented, to the benefit of all states.

CONCLUSION

This Court has jurisdiction under 28 U.S.C. § 1257(a) to hear this case.

Respectfully submitted,

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May 21, 2026