

**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 AMICUS CURIAE
UTE INDIAN TRIBE OF THE UINTAH
AND OURAY RESERVATION
IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE AMICUS CURIAE¹

The **UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION** (the *Ute Indian Tribe*) is a sovereign federally recognized Indian Tribe composed of three bands of the greater Ute Tribe—the Uintah Band, the White River Band, and the Uncompahgre Band—who today live on the Uintah and Ouray Reservation in northeastern Utah. *Ute Indian Tribe v. State of Utah*, 521 F. Supp. 1072, 1093 (D. Utah 1981).

The Uintah and Ouray Reservation is in the Uintah Basin, and includes lands in Uintah, Duchesne, Carbon, Wasatch, and Summit Counties in Utah. The Tribe derives much of its income from oil and gas production. About the Utes, Utetribes.com. The Ute Indian Tribe has a strong interest in preserving the right of all federally recognized Indian tribes to access state court actions for harms on their lands. Additionally, and similar to other *amici*, the Ute Tribe holds a strong interest in countering the assertion that federal Indian law principles at all call for the reversal of the Colorado Supreme Court’s decision.

¹ Pursuant to this Court’s Rule 37.6, counsel for *amicus curiae* certify that no person or entity other than *amicus curiae* and their counsel authored this brief in whole or in part. No person other than *amicus curiae* or their counsel made a monetary contribution to its preparation or submission of the brief.



SUMMARY OF ARGUMENT

Tribes would benefit from, and would not be harmed by, a decision in favor of Boulder County. Tribes have authority to access state courts to adjudicate claims for torts committed on their land. That is the only tribal interest directly at stake here, and a decision allowing Boulder County to proceed would similarly preserve, rather than threaten, tribes' ability to access state courts for comparable tort claims involving harms on tribal lands.

Beyond that, the holding in this case would impact tribes. The rules governing preemption of tribal authority are not co-extensive with the rules governing preemption of state authority. States chose to join the Union, and to sign on to the federal constitutional scheme, and preemption of states is based upon their agreement.

Tribes did not choose to join the Union. Many actively resisted for as long as they could before being confined to reservations against their will. That history produces a different legal test for preemption of tribal authority—sometimes better for tribes and sometimes worse, but indisputably different. If this Court were to issue a decision in favor of Suncor, the scope of that holding would not extend to tribes except with respect to tribal access to state courts.

In short, this Court should reject Suncor's argument and COLT's effort to treat tribal sovereignty as equivalent to state sovereignty for preemption purposes for two reasons. First, tribal access to state courts

remains an important tool for tribes seeking relief for on-Reservation harms. Second, this case does not independently decide the scope of tribal sovereign authority because the federalism issues presented concern the relationship between state and federal power under the Constitution, not the inherent authority of tribes.



ARGUMENT

The Ute Indian Tribe is a member of the Coalition of Large Tribes (COLT). In this matter, and contrary to the position of the Ute Indian Tribe, COLT filed a brief supporting Suncor. The Tribe submits this short amicus brief to clarify that the Ute Indian Tribe disagrees with COLT's argument. COLT's argument is incorrect.

The Ute Indian Tribe is uniquely positioned in this matter. It derives much of the income from oil and gas production on its lands. It uses that income to provide essential governmental services to its members. It does not have any other resource on its land that would generate income to maintain those essential services. It supports responsible use and responsible development of fossil fuels.

But the Tribe also understands that protecting tribal sovereignty from further erosion is more important than short-term monetary interests. Every tribe has the authority to make its own decisions on the regulation of its own lands and on whether to bring suits for torts that harm their land.

Suncor and COLT's arguments will directly harm some tribes and have the potential to harm all tribes substantially. COLT's argument against tribal sovereignty rests on two premises: first, that tribes are on par with states; and second, that states lack regulatory power under the alleged facts because only the United States has that power. From those premises, COLT concludes that federal preemption bars state jurisdiction here. By wrongly equating tribes and states, COLT also suggests that tribes, like states, lack authority to stop outsiders from degrading tribal lands.

More broadly and more significantly, COLT argues that the tribes and states are at the mercy of the United States. Oddly, many of the amici this Court sees supporting state rights in other matters are now submitting amicus briefs, seemingly based only on current politics, against state authority to adjudicate, and in favor of near-total federal power to control oil and gas production. This Court's precedent would not be for or against fossil fuel development. It would decide whether the federal government can deprive states of adjudicatory authority over common tort claims, and then whether the federal government has deprived Colorado of that authority in this case.

The Ute Indian Tribe is sorry that an entity it belongs to filed a brief that wrongfully—and harmfully to tribes—seeks to align tribal interests with the oil producer.

I. Efforts to Impede Tribal Access to State Courts Threaten Long-Term Tribal Sovereignty

In *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877 (1986), this Court held that Indian Tribes are permitted to seek relief in State Courts for on-Reservation harms. Although the Ute Indian Tribe does not believe it has ever used that authority, many other tribes have, including for suits similar to Boulder County's suit. *E.g.*, *Makah Indian Tribe v. Exxon Mobil Corporation*, No. 2:24-cv-157, 2025 U.S. Dist. LEXIS 56448 (W.D. Wash. Mar. 26, 2025) (Exxon Mobil removed the Tribe's suit to federal court, and federal court remanded to state court).

As a practical matter, because of the overly complex and changing precedents governing tribal court civil jurisdiction under *Montana v. United States*, 450 U.S. 544 (1981), and subsequent cases, which have further restricted the *Montana* exceptions, reliance on *Wold Engineering* to litigate in a state court can save a tribe years of expensive litigation fighting for a tribal forum. It remains an important tool in tribes' legal toolboxes. Through its argument to this Court, Suncor, surprisingly joined by COLT, seeks to bar Tribes from accessing state courts for claims for on-Reservation harms similar to those alleged by Boulder County. That may be in the short-term interest of oil-producing tribes such as the Ute Indian Tribe. But as the general sweep of Indian law and history shows, the consequences from conceding sovereignty for short-term benefit are always wrong and always ultimately harmful.

II. Tribal Sovereignty is Not Independently at Stake in this Case

Contrary to COLT's discussion, the scope of tribal sovereignty and of federal preemption of tribal sovereign authority is based upon very different rules from those governing preemption of state and local governments. Where federal preemption of state law is rooted in the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2., Indian law preemption is a specialized doctrine demanding a balancing inquiry. Because tribal sovereignty has unique historical and legal foundations, courts should not apply ordinary federal preemption rules used in state-federal conflicts to disputes involving Indian tribes. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980). Tribes are not states, and their sovereignty is different in nature. Therefore, when deciding preemption authority in Indian Country, courts must consider the long-standing tradition of tribal self-government and sovereignty, rather than relying solely on conventional preemption principles. *Id.*

Except for the access-to-state-courts issue addressed in section I of this brief, this case does not directly implicate tribal sovereignty. There is no mention of tribal interests in the Colorado Supreme Court decision under review, nor in the questions presented to this Court. The primary question presented is: does federal law preempt state law claims for damages stemming from oil and gas companies' activities that contribute to climate change and increased greenhouse-gas emissions? Thus, the federalism issue at play here is the balance of authority between the state and federal government based upon states granting specific sovereign authorities to the federal government.

Tribes' sovereign authority is inherent and does not come from the Constitution. See *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978) (affirming that tribal sovereignty is not created by the Constitution but is an inherent power that has never been extinguished); *United States v. Lara*, 541 U.S. 193 (2004); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). By contrast, the relationship and respective authorities of the states and the federal government are governed by the Constitution.² The federalism arguments advanced against the application of state law here rest on the premise that, in the constitutional system, “the limits of State power are defined in view of the relation of the States to each other in the Federal Union,” and that “[t]he Constitution confers upon the Federal Government—and it alone—both nationwide and extraterritorial authority.” *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14-15 (2025) (citing *Burnet v. Brooks*, 288 U.S. 378, 401 (1933)). Any suggestion that tribes and states stand on the same footing in this case is therefore legally incorrect, ignores the unique place tribes hold within and beyond the federal system, and does not advance tribes' sovereign interests.

Suncor, COLT, and other amici argue that because Suncor asserts that a decision in the Colorado state court would be based upon extraterritorial impact, state jurisdiction over a commonly used, long-standing form

² The Supreme Court has long recognized that “[t]he Constitution created a Federal Government of limited powers” and the “Tenth Amendment makes explicit that ‘[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people’” *New York v. United States*, 505 U.S. 144, 155 (1992) (citing *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991)).

of a tort claim is barred. To amici, that sounds like an issue for argument in jury instructions in the State Court case, not an argument for preemptive adjudication of the merits by this Court.

As the United States’ brief in support of Supreme Court review acknowledges, the theory underlying this lawsuit and others like it is “that every locality in the United States is entitled to recover damages for the localized consequences of climate change.” U.S. Br. at 21. That admission tracks the Colorado Supreme Court’s holding and limitation of the scope of the state court case. The Colorado Supreme Court expressly limited the state court suit to claims focused on “defendants’ upstream production activities,” *Boulder County*, 2025 CO 21, at ¶ 58, by targeting the companies’ advertising practices and alleging that they misled the public on the impacts of climate change and the role of fossil fuel products.

Preemptively barring jurisdiction based on fear that a state court or tribal court will go too far later is not supported by law. That is particularly true here, where the Colorado Supreme Court has already limited the state-court suit to localized consequences. Barring jurisdiction now based on conjecture about what could happen if later jury instructions fail to track that limitation would substantially infringe on a non-federal sovereign authority to adjudicate tort claims arising from harms on that sovereign’s land.



CONCLUSION

This case does not involve a controversy within Indian Country, nor does it involve a state attempting to assert its laws within a tribe's sovereign territories. The holding in this case would directly apply to tribes only to the extent they seek access to state courts to recover damages. COLT's attempt to invoke tribal interests seeks to benefit Suncor directly. While that might serve the Ute Indian Tribe's indirect interests today, it is contrary to the Tribe's long-term interests, and to all tribes' long-term interests, in protecting tribal sovereignty and tribal authority to protect their reservations from outsiders who cause harm on their reservations.

For the reasons stated above, this Court should reject Suncor and COLT's arguments, so that this matter can proceed to resolution in the Colorado Court, consistent with the limitations contained in the Colorado Supreme Court's decision.

Respectfully submitted,

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