No. ________

# In the Supreme Court of the United States

GRETCHEN WHITMER, GOVERNOR OF THE STATE OF MICHIGAN, ET AL., PETITIONERS

v.

ENBRIDGE ENERGY, LP, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

Dana Nessel
Michigan Attorney General

Ann M. Sherman
Solicitor General
*Counsel of Record*
P.O. Box 30212
Lansing, Michigan 48909
ShermanA@michigan.gov
(517) 335-7628

Keith D. Underkoffler
Assistant Attorney General
Environment, Natural
Resources, and Agriculture
Division

Spencer D. Smith
Special Assistant Attorney
General
Attorneys for Petitioners

## QUESTION PRESENTED

The State of Michigan revoked and terminated an easement that had permitted pipelines to occupy sovereign lands beneath navigable waters. The private easement holder sued state officials in federal court, and the Sixth Circuit allowed the suit to proceed under *Ex parte Young* on the view that state sovereign immunity does not apply unless the requested relief would divest the State of full ownership and eliminate all regulatory power over the submerged lands—lands that this Court has recognized as implicating "special sovereignty interests." *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 281 (1997) (principal opinion); see *id.* at 289 (O'Connor, J., concurring in part and concurring in the judgment). The question presented is:

Whether a State is the real party in interest, and therefore entitled to sovereign immunity, where a private plaintiff sues state officials in federal court for relief that would diminish, but not necessarily extinguish, the State's ownership and control of its sovereign lands.

## PARTIES TO THE PROCEEDING

Petitioners Gretchen Whitmer, Governor of the State of Michigan, in her official capacity; and Scott Bowen, Director of the Michigan Department of Natural Resources, in his official capacity (collectively, "Governor") were defendants-appellants in the court below.

Respondents Enbridge Energy, Limited Partnership; Enbridge Energy Company, Inc.; and Enbridge Partners, L.P. (collectively, "Enbridge") were plaintiffs-appellees in the court below.

## RELATED CASES

The related proceedings within the meaning of this Court's Rule 14.1(b)(iii) are listed below:

- *Enbridge Energy*, *Limited Partnership*, *et al.* v. *Whitmer*, No. 24-1608 (6th Cir. Apr. 23, 2025) (judgment entered).
- *Enbridge Energy*, *Limited Partnership*, *et al.* v. *Whitmer*, No. 24-1608 (6th Cir. June 16, 2025) (rehearing denied).
- *Enbridge Energy*, *Limited Partnership*, *et al.* v. *Whitmer*, No. 1:20-cv-01141 (W.D. Mich. July 5, 2024) (motion to dismiss denied).

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The United States Court of Appeals for the Sixth Circuit's opinion, Pet. App. 3a–25a, is reported at 135 F.4th 467. The Sixth Circuit's order denying rehearing en banc, Pet. App. 39a–40a, is not reported but is available at 2025 WL 1860296. The United States District Court for the Western District of Michigan's opinion, Pet. App. 26a–38a, is not reported but is available at 2025 WL 1860296.

## JURISDICTION

The court of appeals entered judgment on April 23, 2025. Pet App. 1a–2a. Petitioners filed a petition for rehearing, which was denied on June 16, 2025. Pet. App. 39a–40a. On September 3, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to November 13, 2025. See No. 25A252. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED

The Eleventh Amendment to the United States Constitution provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by the Citizens of another State, or by Citizens or Subjects of any Foreign State."

## INTRODUCTION

This case presents an important question of federal law regarding state sovereign immunity that this Court left open in *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261 (1997). A private plaintiff may not maintain an action against state officials in federal court for relief that "is close to the functional equivalent of quiet title" to a State's "sovereign lands." *Id*. at 282–83. The Sixth Circuit nonetheless allowed this dispute over a perpetual physical occupation of the State of Michigan's sovereign lands to proceed in federal court without the State's consent, adopting an incorrect rule that sovereign immunity does not apply unless the requested relief would divest the State of *full* ownership and eliminate *all* regulatory power over the lands.

In 1953, the State of Michigan granted to Enbridge an easement to construct and operate pipelines on the bottomlands of the Straits of Mackinac—subject to defined specifications, ongoing compliance obligations, and an express termination clause. After determining that the easement violated the public trust doctrine and that Enbridge had repeatedly breached the easement's conditions, the State revoked and terminated the easement in May 2021. Enbridge sued the Governor in federal court for declaratory and injunctive relief prohibiting state officials from taking any steps to impede the operation of its pipelines. Such relief would effectively reinstate the 1953 easement and divest the State of its rights to possess the submerged lands and to exclude Enbridge from them.

This Court has previously confronted a similar scenario. In *Coeur d'Alene*, the Court held that state sovereign immunity applied to a suit that was "the functional equivalent of a quiet title action which implicates special sovereignty interests" in the State's ownership and control of submerged lands. 521 U.S. at 281. But "*Coeur d'Alene* involved multiple and fractured opinions," leaving courts and commentators confused about "the state of the Supreme Court's *Ex parte Young* jurisprudence." *Hill* v. *Kemp*, 478 F.3d 1236, 1257 & n.25 (10th Cir. 2007) (Gorsuch, J.).

This case squarely presents—and underscores the need to clarify after *Coeur d'Alene*—whether *Ex parte Young* permits suits that seek to diminish a State's ownership and control over its sovereign lands so long as some residual title and regulatory authority remain. The Sixth Circuit said yes, but the Second, Fifth, and Ninth Circuits have taken a different approach. Here, the material facts are undisputed and the issue is outcome determinative, making this an ideal vehicle for the Court to clarify the limits of *Ex parte Young* where "special sovereignty interests" in the State's submerged lands are at stake. *Coeur d'Alene*, 521 U.S. at 281. This Court's intervention is urgently needed because the Sixth Circuit's rule strikes at not one, but two core attributes of statehood: a State's immunity from suit and its dominion over sovereign lands.

## STATEMENT OF THE CASE

### A. Factual Background

Upon its admission to the Union in 1837, the State of Michigan acquired title to the bottomlands of the Straits of Mackinac, which run between Michigan's Upper and Lower Peninsulas and connect Lake Michigan and Lake Huron. See *Nedtweg* v. *Wallace*, 208 N.W. 51, 52 (Mich. 1926); *Coeur d'Alene*, 521 U.S. at 283. These submerged lands have "a unique status in the law" and "have historically been considered 'sovereign lands.' " *Coeur d'Alene*, 521 U.S. at 283 (citing *Utah Div. of State Lands* v. *United States*, 482 U.S. 196, 195–98 (1987)). Michigan holds title to these sovereign lands "in trust for the people," *State* v. *Venice of Am. Land Co.*, 125 N.W. 770, 778 (Mich. 1910), and "serves, in effect, as the trustee of public rights in the Great Lakes," *Glass* v. *Goeckel*, 703 N.W.2d 58, 64–65 (Mich. 2005).

In 1953, the State of Michigan, as Grantor, purported to "convey[] and quit claim[]" an easement to Enbridge, as Grantee, giving Enbridge the right "to construct, lay, maintain, use and operate two (2) pipe lines" on a four-mile stretch of submerged lands in the Straits of Mackinac.[1] Dist. Dkt. 1-1:24.[2] But that right

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[1] The easement was granted to Enbridge's predecessor, the Lakehead Pipeline Company. For consistency with the opinion below, Pet. App. 6a n2, this petition omits reference to Lakehead and treats the original easement as between the State and Enbridge.

[2] "Dist. Dkt." refers to the district court's CM/ECF docket in No. 1:20-cv-01141. Page cites are to the page numbers in the top right of the ECF header.

was granted "subject to" certain terms and conditions, including that Enbridge must "at all times exercise the due care of a reasonably prudent person" and that the pipelines must comply with certain "minimum specifications, conditions and requirements." *Id.* at 24–28.

As relevant here, the easement required a minimum pipe curvature of 2,050 feet radius, specific coating and wrap protection for all pipes, and a maximum unsupported pipe span of 75 feet. *Id.* at 27. The easement expressly states that it "may be terminated by Grantor [the State] … [i]f, after being notified in writing by Grantor of any specified breach of the terms and conditions of this easement, [Enbridge] shall fail to correct said breach within ninety (90) days." *Id.* at 29. The easement also states: "All rights not specifically conveyed herein are reserved to the State of Michigan." *Id.* at 33. Other than the State's reserved right to revoke and its express right to terminate, the easement is perpetual. *Id.* at 24–34.

In November 2020, the Governor notified Enbridge that the State was revoking and terminating the easement effective 180 days from the date of the notice. Dist. Dkt. 1-1:21. The revocation was based on the State's determination that the 1953 easement was never valid and violated the public trust doctrine. *Id.* at 3–10. The termination was based on the State's finding that Enbridge had repeatedly and incurably breached the easement's terms and conditions, including by failing to comply with the curvature limits, maintain the required coating, ensure proper pipeline support every 75 feet, and otherwise exercise the due care of a reasonably prudent person. *Id.* at 12–18.

### B. Procedural History

Enbridge sued the Governor in federal court, alleging that the State's revocation of the easement under the public trust doctrine and the State's exercise of its contractual right to terminate the easement for breach violated federal law. Dist. Dkt. 1:10–18. Enbridge argued in part that the terms of the easement were "nullified" by the later enactment of the federal Pipeline Safety Act. Dist. Dkt. 66:18; 125:20. It sought a declaratory judgment and an "injunction prohibiting [the Governor] from taking any steps to impede" the operation of the pipelines, "including the revocation or termination of the 1953 Easement based on the alleged non-compliance with [the terms and conditions] in the Easement." Dist. Dkt. 1:18–19.

The Governor moved to dismiss Enbridge's suit based on the State's sovereign immunity. Dist. Dkt. 62, 63. The Governor argued that, although the suit was nominally against state officials, *Ex parte Young* did not apply because Enbridge sought relief that would interfere with the State's special sovereignty interests in its submerged lands and compel the State to specifically perform its contractual obligations under an easement that it had renounced. Dist. Dkt. 63:7–25. Thus, Enbridge's requested relief "would improperly 'operate against [Michigan]', the 'real, substantial party in interest.' " *Id.* at 8 (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 101 (1984)).

The district court denied the Governor's motion, Pet. App. 26a–38a, and the Sixth Circuit affirmed, Pet. App. 3a–25a. The Sixth Circuit acknowledged that Enbridge's requested relief—prohibiting any state action that would interfere with Enbridge's perpetual use and physical occupation of the State's sovereign lands—would divest the State of *some* of "the sticks in the so-called bundle of sticks representing the State's property rights" and "no doubt have an impact on the State's ability to exercise its regulatory authority" over the disputed lands. Pet. App. 16a, 18a–19a. But the panel read this Court's fractured decision in *Coeur d'Alene* as imposing two necessary conditions for State sovereign immunity to apply: the requested relief must effectively "divest the State of *full* ownership" and "*eliminate* the State's regulatory power over the land." Pet. App. 20a (emphasis added). Because granting Enbridge the right to perpetually use and occupy the State's sovereign lands without the State's consent would still leave the State with some residual rights—including, the panel supposed, the right to "sell the disputed parcel subject to an encumbrance (that is, Enbridge's easement)" and "the right to exclude entities and individuals *other than Enbridge* from the parcel," Pet. App. 16a (emphasis added)—the Sixth Circuit held that the State was not the real, substantial party in interest.

## REASONS FOR GRANTING THE PETITION

The Sixth Circuit's decision warrants this Court's review because States have a fundamental interest in managing the use and occupation of their sovereign lands and in having disputes over those lands resolved in their own courts.[3] The decision below deepens

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[3] Under Michigan law, a private party may bring an action in state court claiming an interest in real property owned by the

acknowledged confusion over the scope of *Ex parte Young* when private plaintiffs seek relief that would diminish, but not necessarily extinguish, a State's ownership and control over sovereign lands. By adopting a cramped rule that requires divestiture of full ownership and elimination of all regulatory power, the Sixth Circuit parted ways with the Second, Fifth, and Ninth Circuits and misread this Court's precedents. The question is important and recurring, implicating both state sovereign immunity and States' unique interests in sovereign lands. This case cleanly presents the issue and offers an optimal vehicle for the Court to provide much-needed guidance.

## I. This case presents an important question of federal law that should be settled by this Court.

The petition should be granted because the Sixth Circuit decided the scope of state sovereign immunity from suit where the effect of the relief sought would be to diminish, but not necessarily extinguish, the State's ownership and control of its sovereign lands—an important federal question that "has not been, but should be, settled by this Court." Sup. Ct. Rule 10(c).

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State. See, e.g., *Schumacher* v. *Dep't of Nat. Res.*, 663 N.W.2d 921 (Mich. Ct. App. 2003).

### A. States' immunity from suit over sovereign lands is an important federal question.

This case implicates not one, but two bedrock legal principles: the "fundamental" principle of state sovereign immunity, *Alden* v. *Maine*, 527 U.S. 706, 729 (1999), and the "ancient" principle that a territorial sovereign has a "unique" interest in its ownership and control of lands underlying navigable waters, *Coeur d'Alene*, 521 U.S. at 283–86.

The Court has recognized that "States entered the federal system with their sovereignty intact; that the judicial authority in Article III is limited by this sovereignty; and that a State will therefore not be subject to suit in federal court unless it has consented to suit, either expressly or in the plan of the [constitutional] convention." *Blatchford* v. *Native Vill. of Noatak*, 501 U.S. 775, 779 (1991) (citations and internal quotation marks omitted). That is because "the generation that designed and adopted our federal system considered immunity from private suits central to sovereign dignity." *Alden*, 527 U.S. at 715.

In *Ex parte Young*, however, the Court created a "narrow exception" to state sovereign immunity. *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 39 (2021). This exception allows federal courts to issue prospective relief against state officials to prevent ongoing violations of federal law. *Id*. But it "is limited to that precise situation, and does not apply when 'the state is the real, substantial party in interest.' " *Va. Office for Prot. & Advoc*. v. *Stewart*, 563 U.S. 247, 255 (2011) (*VOPA*) (quoting *Pennhurst*, 465 U.S. at 107).

To determine whether the State is the real party in interest, a court must look past "elementary mechanics of captions and pleading," *Coeur d'Alene*, 521 U.S. at 270, and examine "the *effect* of the relief sought," *VOPA*, 563 U.S. at 256 (quoting *Pennhurst*, 465 U.S. at 107); see *Hawaii* v. *Gordon*, 373 U.S. 57, 58 (1963) ("The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter."). So *Ex parte Young* does not apply "when the judgment sought would expend itself on the public treasury or domain," "interfere with public administration," or require "specific performance of a State's contract," among other situations. *VOPA*, 563 U.S. 255, 257.

For instance, in *Coeur d'Alene*, the Coeur d'Alene Tribe sought an injunction to prevent Idaho officials from "taking any action in violation of the Tribe's rights of exclusive use and occupancy, quiet enjoyment, and other ownership interest in the submerged lands" of Lake Coeur d'Alene. 521 U.S. at 265. Because this relief would diminish the State of Idaho's control over lands and waters integral to its sovereign territory, the Court rejected the Tribe's suit on sovereign immunity grounds and, in doing so, stressed the "unique status in the law" of state lands beneath navigable waters. *Id*. at 282–83.

In an extended discussion joined by a majority of the Court, Justice Kennedy explained what makes state-owned submerged lands "unique." *Id*. at 283; see *id*. at 283–86. These lands "have historically been considered 'sovereign lands,' " and "[s]tate ownership of them has been 'considered an essential attribute of sovereignty.' " *Id.* at 283 (quoting *Utah Div. of State Lands*, 482 U.S. at 195). A State has a special interest in maintaining "sovereign control over submerged lands" because such lands are "infused with a public trust the State itself is bound to respect." *Id.*

Under "ancient doctrines" as old as the common law itself, *id.* at 284, "the State holds the title to the lands under the navigable waters … in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties," *Ill. Cent. R.R. Co.* v. *Illinois*, 146 U.S. 387, 452 (1892).[4] This duty to maintain the public trust "can only be discharged by the management and control of property in which the public has an interest, [and] cannot be relinquished by a transfer of the property." *Id.* at 453.[5]

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[4] While *Illinois Central* was a statement of Illinois law, see *PPL Montana, LLC* v. *Montana*, 565 U.S. 576, 603–04 (2012), Michigan "[l]ong ago" incorporated the decision as part of Michigan common law, *Obrecht* v. *Nat'l Gypsum Co.*, 105 N.W.2d 143, 149 (Mich. 1960).

[5] The public trust doctrine limits the State's ability to alienate submerged lands to private use. *Ill. Cent.*, 146 U.S. at 453–54, 460. "Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time." *Id.* at 455. "There can be no irrepealable contract in a conveyance of property by a grantor in disregard of a public trust, under which he was bound to hold and manage it." *Id.* at 460; *Phillips Petrol. Co.* v. *Mississippi*, 484 U.S. 469, 494 (1988) (O'Connor, J., dissenting) ("To the extent that the conveyances to private parties purported to include public trust lands, the States may strike them down, if state law permits.").

This case thus implicates two distinct sovereignty interests: first, "[a]n integral component" of States' sovereignty—"their immunity from private suits," *Franchise Tax Bd.* v. *Hyatt*, 587 U.S. 230, 238 (2019) (quoting *Fed. Mar. Comm'n* v. *S.C. State Ports Auth.*, 535 U.S. 743, 751–52 (2002)); and second, the unique "ties between … submerged lands and the State's own sovereignty," *Coeur d'Alene*, 521 U.S. at 287. These combined interests go to the heart of the dignity reserved to States by the Constitution. Cf. *Asociación de Reclamantes* v. *United Mexican States*, 735 F.2d 1517, 1521 (D.C. Cir. 1984) (Scalia, J.) ("A territorial sovereign has a primeval interest in resolving all disputes over use or right to use of real property within its own domain.").

### B. *Coeur d'Alene* left unsettled the scope of States' immunity from suit over sovereign lands.

While *Coeur d'Alene* recognized both "the dignity and respect afforded a State, which [sovereign] immunity is designed to protect," as well as the "special sovereignty interests" implicated by suits over public trust lands, 521 U.S. at 268, 281, the decision left the law of this area unsettled.

"*Coeur d'Alene* involved multiple and fractured opinions," leaving courts and commentators confused about "the state of the Supreme Court's *Ex parte Young* jurisprudence." *Hill*, 478 F.3d at 1257 & n.25 (Gorsuch, J.). Writing for himself and Chief Justice Rehnquist, Justice Kennedy advocated a "case-by-case approach" that considers a "broad" range of factors, including the availability of a state forum to vindicate federal rights, and that engages in "a careful balancing" of the federal and state interests at issue. *Coeur d'Alene*, 521 U.S. at 279–80; see *id*. at 270–78.

As to the Tribe's claim, Justice Kennedy began by noting "common ground" that "the Tribe could not maintain a quiet title suit against Idaho in federal court, absent the State's consent." *Id*. at 281. Justice Kennedy then reasoned that the Tribe's suit could not proceed—lest "the real interests served by the Eleventh Amendment" be "sacrificed to elementary mechanics of captions and pleading," *id*. at 270—because the requested declaratory and injunctive relief was "the functional equivalent of a quiet title action," *id*. at 281. Justice Kennedy explained that this was an "especially troubling" result because it "would diminish, even extinguish, the State's control over" sovereign lands held in public trust. *Id*. at 282.

In an opinion concurring in part and concurring in the judgment, Justice O'Connor, joined by Justices Scalia and Thomas, rejected Justice Kennedy's "unnecessar[y] recharacteriz[ation]" of the Court's *Ex parte Young* jurisprudence as requiring "a case-specific analysis of a number of concerns." *Id*. at 291. Instead, Justice O'Connor favored a simpler rule—"that a *Young* suit is available where a plaintiff alleges an *ongoing* violation of *federal* law, and where the relief sought is *prospective* rather than *retrospective*." *Id*. at 294; see *id*. at 288 ("A federal court cannot award retrospective relief, designed to remedy past violations of federal law.").

Justice O'Connor agreed, however, that the Tribe's suit was "the functional equivalent of an action to quiet its title to the bed of Lake Coeur d'Alene." *Id*. at 289. And, in Justice O'Connor's view, "[a] federal court cannot summon a State before it in a private action seeking to divest the State of a property interest." *Id*. Because the Tribe's requested relief would have this effect, "it simply cannot be said that the suit is not a suit against the State." *Id*. at 296.

Yet even as to suits over sovereign lands—an area of apparent agreement between Justices Kennedy and O'Connor—*Coeur d'Alene* is unclear. Something less than a dispute over ownership must suffice, otherwise there would have been no need to speak of being "close to the functional equivalent" of quiet title. *Id*. at 282 (principal opinion); see *id*. at 289 (O'Connor, J., concurring in part and concurring in the judgment). But how "close" is close enough? To borrow from *Coeur d'Alene*, what if the suit in question would "diminish," but not necessarily "extinguish," the State's ownership or control of sovereign lands? *Id*. at 282 (principal opinion).

Not only do *Coeur d'Alene*'s key phrases—"close to the functional equivalent" and "diminish, even extinguish, the State's control," *id*.—leave open important questions about the scope of sovereign immunity, but so too does the basic term "quiet title." Generally speaking, the "particular type of action, known as a quiet title suit" means "a suit by a plaintiff asserting a 'right, title, or interest' in real property" owned by another. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 215 (2012) (quoting 28 U.S.C. § 2409a(d)). Accordingly, under both state and federal law, a suit to establish an easement over another's land is a quiet title action. See, e.g., *Great Lakes Gas Transmission Co.* v. *MacDonald*, 485 N.W.2d 129, 130–31 (Mich. Ct. App. 1992); *True Oil*, *LLC* v. *Bureau of Land Mgmt*., 154 F.4th 1236, 1243–45 (10th Cir. 2025). But parts of Justice Kennedy's opinion appear to have used the term in a more limited sense, stating that the Tribe's suit was "close to the functional equivalent of quiet title in that substantially all benefits of ownership and control would shift from the State to the Tribe." 521 U.S. at 282.

Justice O'Connor stated the relevant legal principle more broadly: State sovereign immunity bars "a private action seeking to divest the State of a property interest." *Id*. at 289. "[A] property interest" could include many different legal or equitable claims to, or rights in, the State's property. Similarly, this Court in *VOPA* described the principle at a higher level of generality, explaining that *Ex parte Young* does not apply "when the judgment sought would expend itself on the public treasury *or domain*." 563 U.S. at 255 (emphasis added) (quoting *Dugan* v. *Rank*, 372 U.S. 609, 620 (1963));[6] see also *id*. at 269 (Roberts, C.J., dissenting) (referencing "the State's property rights"). Yet Justice O'Connor's analysis also mentioned other factors, including whether the relief sought was retrospective.

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[6] "Domain" in this context refers to a State's lands and waters. See *Dugan*, 372 U.S. at 620; see also, e.g., *Green* v. *Biddle*, 21 U.S. (8 Wheat.) 1, 12 (1823) (Story, J.) ("Every government has, and from the nature of sovereignty *must* have, the exclusive right of regulating the descent, distribution, and grants of the domain within its own boundaries … ." (emphasis added)).

See 521 U.S. at 288–89, 294–95. So, what if a private suit seeks to reinstate an easement that the State has already terminated and revoked?

Unsurprisingly, the fractured opinions in *Coeur d'Alene* have led to confusion in the lower courts as to the scope of *Ex parte Young*, and even to divergent outcomes in the specific context of sovereign lands and waters. See *infra* II. This Court's intervention is urgently needed to clarify the law.

## II. *Coeur d'Alene* has been inconsistently applied in the lower courts, including as to whether requested relief must completely extinguish a State's ownership and control over sovereign lands.

In applying Justice Kennedy's and Justice O'Connor's separate opinions in *Coeur d'Alene* to this case, the Sixth Circuit's approach departed from that of the Second, Fifth, and Ninth Circuits, providing yet another reason to grant the petition. See Sup. Ct. R. 10(a).

Enbridge's suit is like the suit in *Coeur d'Alene* in that Enbridge seeks declaratory and injunctive relief to prevent state officials from interfering with Enbridge's alleged property rights in the State's submerged lands. Specifically, Enbridge seeks a declaration that its easement rights to occupy and use the State's lands are exempt from the terms and conditions of the easement that the State negotiated in 1953, cannot be terminated by the State's invocation of the easement's express termination clause, and cannot be revoked by the State under the public trust doctrine.

Yet the Sixth Circuit held that *Ex parte Young* applies because Enbridge's requested relief would not "divest the State of *full* ownership" and "*eliminate* the State's regulatory power over the land." Pet. App. 20a. (emphasis added). The Sixth Circuit understood those to be necessary conditions to "satisfy the high bar set forth in *Coeur d'Alene*." *Id*. The Second, Fifth, and Ninth Circuits, however, have not adopted the Sixth's Circuit's rule. They instead have held that sovereign immunity applies if the requested relief would diminish—but not completely extinguish—a State's ownership and control over its sovereign lands.

In *Western Mohegan Tribe & Nation* v. *Orange County*, 395 F.3d 18 (2d Cir. 2004), the plaintiff Tribe brought claims against New York officials that it alleged were "of a more limited nature than those considered by the *Coeur d'Alene* Court," involving only "the right to camp, to hunt, to fish, and to use the waters and timbers in the contested lands and waterways" and "to exclude all others" from them, *id*. at 22 (internal quotation marks, brackets, and emphasis omitted). The plaintiff did not seek to deprive the State of New York of *every* stick in the bundle of property rights. And the Second Circuit acknowledged that, even if it granted the relief requested, the State would retain fee title to the lands. *Id*. at 23. Yet the Second Circuit held that the suit was barred by sovereign immunity because it sought a ruling that "New York's exercise of fee title remains 'subject to' the [plaintiff's] rights," which was "fundamentally inconsistent with the State of New York's exercise of fee title." *Id*. (citation omitted).[7]

The Fifth Circuit has dealt specifically with the application of *Coeur d'Alene* to a private plaintiff's claim to an easement over state-owned land, and it reached the opposite conclusion of the Sixth Circuit. In *Baker Farms*, *Inc*. v. *Hulse*, the plaintiff alleged that it had "a property interest in easements" over sovereign lands owned by the State of Texas. 54 F. App'x 404, 2002 WL 31687704, at *1 (5th Cir. 2002). The Fifth Circuit held that "[a] federal court may not adjudicate a State's interest in property without the State's consent." *Id*. (citing *Ysleta Del Sur Pueblo* v. *Laney*, 199 F.3d 281, 289 (5th Cir. 2000)).[8] Because the plaintiff's suit over disputed easements "sought to adjudicate limitations of the State of Texas's interest in its property, its suit was barred" by sovereign immunity. *Id*.

The Ninth Circuit has similarly held that a suit need not seek to extinguish the State's regulatory

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[7] Accord *Silva* v. *Farrish*, 47 F.4th 78, 85 (2d Cir. 2022) (holding that sovereign immunity did not apply because, unlike in *Western Mohegan*, the plaintiffs did not seek relief that would allow them to exclude all others from disputed waters); *Unkechaug Indian Nation* v. *Seggos*, 126 F.4th 822, 830 (2d Cir. 2025) ("The relief sought by plaintiffs 'in this case is not a right to *exclude all others*." (quoting *Silva*, 47 F.4th at 85 n.7)). The Sixth Circuit got this right-to-exclude inquiry backwards. See *infra* III.

[8] In *Ysleta Del Sur Pueblo* v. *Laney*, the Fifth Circuit held that a Tribe's outright claim to title was a sufficient—not necessary—condition for *Coeur d'Alene* to apply. See 199 F.3d at 290 ("[T]he Tribe is asking this court to determine that the State has no title to the Property because title rests in the Pueblo."). Petitioners agree.

power for sovereign immunity to apply. In *Lacano Investments*, *LLC* v. *Balash*, the plaintiff alleged ownership rights in submerged lands in Alaksa. 765 F.3d 1068, 1070 (9th Cir. 2014). It tried to distinguish *Coeur d'Alene* on the ground that because it was not itself a sovereign, its ownership of the land would remain subject to state regulation and would not deprive the State of "all regulatory power" over the lands. *Id*. at 1075. The Ninth Circuit held that "[t]his is not a sufficient distinction of *Coeur d'Alene*," noting Justice O'Connor's view that States "must possess actual control over submerged lands in order to regulate properly the use of navigable waters." *Id*.

Other lower courts have more narrowly applied state sovereign immunity along lines similar to the Sixth Circuit. See *Elephant Butte Irrigation Dist*. v. *Dep't of the Interior*, 160 F.3d 602, 611–13 (10th Cir. 1998) (describing *Coeur d'Alene* as a "suit to divest the State of Idaho of all authority and ownership over submerged lands"); *Hollywood Mobile Ests. Ltd*. v. *Cypress*, 415 F. App'x 207, 210–11 (11th Cir. 2011) (distinguishing *Coeur d'Alene* on the ground that the "requested injunction would merely affect the [defendant's] possessory rights" and "not remove the land from the [defendant's] jurisdiction").

But there is widespread agreement on one thing: the contours of the doctrine are unclear. See, e.g., Pet. App. 12a (suggesting that reconciling *Ex parte Young* with *Coeur d'Alene* and *VOPA* is "not an easy" task); *Elephant Butte*, 160 F.3d at 608 (stating that "[t]he struggle to define the limits of *Ex parte Young* doctrine is evident from … *Coeur d'Alene*"); *id*. at 612 (noting the difficulty of finding "a principled means of distinguishing the real property interest at stake in *Coeur d'Alene Tribe* with New Mexico's asserted right to income under the assignment provision of the lease in the present case"); *Hill*, 478 F.3d at 1257 n.25 (citing law review articles describing *Coeur d'Alene* as "[t]he most unsettled aspect" of Eleventh Amendment case law). This Court should grant the petition to establish a uniform rule that would eliminate this confusion and provide clear guidance to the lower courts.

## III. The Sixth Circuit's decision is wrong.

The Sixth Circuit's two necessary conditions for state sovereign immunity from suit over sovereign lands—requested relief that would "divest the State of *full* ownership" and that would "*eliminate* the State's regulatory power over the land," Pet. App. 20a—also conflict with *Coeur d'Alene*, this Court's other cases, and basic principles of property and sovereign immunity.

This Court has repeatedly emphasized that *Young* is a "narrow exception" to state sovereign immunity. *Whole Woman's Health*, 595 U.S. at 39; accord *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 76 (1996); *Pennhurst*, 465 U.S. at 114 n.25. Because "[t]he real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleading," *Coeur d'Alene*, 521 U.S. at 270, courts must resist "reflexive reliance on an obvious fiction," *id.*, and consider whether "the *effect* of the relief sought" makes the State—and not its officers—the real, substantial party in interest, *VOPA*, 563 U.S. at 256 (quoting *Pennhurst*, 465 U.S. at 107).

That test is equally satisfied when a party seeks relief that would *diminish* a State's rights in sovereign lands as when it would *extinguish* them. Here, Enbridge seeks a declaration that essential terms and conditions of the 1953 easement are unenforceable, such that the State's revocation and termination of the easement was unlawful. But the grantor of the easement was *the State*, which owns the land and has a sovereign duty to manage its possession and use—not any state official. A federal court ruling that Enbridge may continue to occupy sovereign land without the State's consent and without complying with the terms of a land-use contract to which the State is a party would operate against the State itself. See, e.g., *Bd. of Comm'rs of Lowndes Cnty.* v. *Mayor & Council of Valdosta*, 848 S.E.2d 857, 858 (Ga. 2020) (stating that the State is the real party in interest where "the claimed relief would control or take the State's real property or interfere with contracts to which the State is a party"); *id.* at 861–62 (citing cases applying sovereign immunity where private parties sued state officials regarding the use and occupation of state land).

The Supreme Court of Georgia's reference in *Board of Commissioners of Lowndes County* v. *Mayor & Council of Valdosta* to the taking of state land is instructive. See *id.* This Court has long held that when federal law divests a landowner of the right to exclude and compels it to accept an easement on its land, "the appropriation of an easement constitutes a physical taking" even if the landowner's rights in the land are not completely extinguished. *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 150–52 (2021) (discussing cases). And here, it is sovereign land that would be encumbered by Enbridge's perpetual physical occupation. Just as the Fifth Circuit correctly held in *Baker Farms*, *Inc*., 2002 WL 31687704, at *1, the State itself is the real party in interest to such a suit, so sovereign immunity applies.

The Sixth Circuit reasoned that "the State [of Michigan] would still retain the right to exclude entities and individuals *other than Enbridge* from the parcel." Pet. App. 16a (emphasis added). But the relevant consideration is the extent to which the requested relief would allow *Enbridge* to exclude all others—including and especially the State—from the disputed lands and, therefore, to deprive the State of its rights to possess the lands and to exclude Enbridge (the occupier). In this case, Enbridge's occupancy is exclusive: There is simply no way for the State—or any other entity, for that matter—to occupy or possess land that is already physically occupied by an oil pipeline. See *Loretto* v. *Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 435 (1982) ("[A] permanent physical occupation of another's property … is perhaps the most serious form of invasion of an owner's property interests. … [T]he owner has no right to possess the occupied space himself, and also has no power to exclude the occupier from possession and use of the space.").

The Sixth Circuit's ruling also has the troubling result of putting state and federal governments on unequal footing. See *Sossamon* v. *Texas*, 563 U.S. 277, 285 n.4 (2011) (discussing the close analogy between state and federal sovereign immunity). It has long been understood that claims "asserting title to *or the right to possession* of lands claimed by the United States" are barred by sovereign immunity. *Block* v. *North Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 282 (1983) (emphasis added). Federal sovereign immunity is not limited to claims that would completely extinguish the United States' ownership and authority over land; it extends to any action "asserting a 'right, title, or interest' in real property that conflicts with a 'right, title, or interest' the United States claims"—the ordinary understanding of a quiet title action. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians*, 567 U.S. at 215 (quoting 28 U.S.C. § 2409a(d)). There is no good reason why state sovereign immunity should be construed more restrictively.

In any event, Enbridge's suit is "close to the functional equivalent" of an action asserting title because it would subject the State's fee ownership and control over its sovereign lands to a perpetual easement that the State has decided to renounce, divesting the State of its contract and property rights, and preventing it from ending an unauthorized physical occupation of its sovereign territory. *Coeur d'Alene*, 521 U.S. at 282. "The dignity and status of its statehood allow [the State of Michigan] to rely on its [sovereign] immunity and to insist upon responding to these claims in its own courts." *Id*. at 287–88.

Finally, because "the *effect* of the relief sought," *VOPA*, 563 U.S. at 256, would be to undo the State's prior revocation and termination of the 1953 easement, Enbridge's suit impermissibly seeks "retrospective relief," *Coeur d'Alene*, 521 U.S. at 288 (O'Connor, J., concurring in part and concurring in the judgment) (citing *Edelman* v. *Jordan*, 415 U.S. 651, 668 (1974)). The State's revocation and termination of the easement was "effective 180 days after the date of [the] Notice," which issued on November 13, 2020. Dist. Dkt. 1-1:21. There has been no restraining order or injunction preventing that occurrence. Accordingly, under state law, the easement was revoked and terminated on May 12, 2021. Enbridge asks a federal court to set aside the State's completed action and to restore an easement that no longer exists. That relief is impermissibly retrospective because it seeks to remedy past rather than future wrongs. See *Verizon Md. Inc.* v. *Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002) (citing *Coeur d'Alene*, 521 U.S. at 296 (O'Connor, J., concurring in part and concurring in the judgment)).

## IV. This case is an ideal vehicle to resolve the question presented.

This case presents an ideal vehicle for clarifying the scope of States' immunity from suit over sovereign lands. The facts of the case are undisputed and touch on the "special sovereignty interests" discussed in *Coeur d'Alene*, providing an opportunity for this Court to resolve the confusion created by the fractured opinions in that case.

The Sixth Circuit's resolution of the issue turned on its view that under *Coeur d'Alene*, state sovereign immunity applies only where the requested relief would "divest the State of full ownership" and "eliminate the State's regulatory power over the land." Pet. App. 20a. That issue was outcome-determinative and departs from decisions of other circuits. This Court should weigh in to ensure that the dignity and sovereignty of States are respected uniformly nationwide.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dana Nessel
Michigan Attorney General

Ann M. Sherman
Solicitor General
*Counsel of Record*
P.O. Box 30212
Lansing, Michigan 48909
ShermanA@michigan.gov
(517) 335-7628

Keith D. Underkoffler
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division

Spencer D. Smith
Special Assistant Attorney General

Attorneys for Petitioners

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