No. 17-1301

In The
Supreme Court of the United States

RYAN HARVEY, ROCKS OFF INC.,
AND WILDCAT RENTALS INC.,

Petitioners,

v.

UTE INDIAN TRIBE OF UINTAH
AND OURAY RESERVATION, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Utah

BRIEF OF THE STATE OF UTAH AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether the tribal remedies exhaustion doctrine, which requires federal courts to stay cases challenging tribal jurisdiction until the parties have exhausted parallel tribal proceedings, applies to state courts as well.

2. Whether the tribal remedies exhaustion doctrine requires that nontribal courts yield to tribal courts when the parties have not yet invoked the tribal court's jurisdiction.

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INTEREST OF *AMICUS CURIAE*[1]

"[U]nder our federal system," the State of Utah "possess[es] sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990). Utah thus has a pronounced interest in ensuring that its state courts correctly interpret federal law. State-court decisions that erroneously interpret federal law can diminish Utah's sovereignty.

SUMMARY OF ARGUMENT

Petitioners accurately identify square conflicts in decisions about the tribal remedies exhaustion doctrine. Pet. 15-23. They also correctly describe errors in the Utah Supreme Court's analysis. *Id.* at 28-33. Utah agrees that plenary review is warranted to resolve those conflicts and correct those errors.

But Utah focuses here on a different problem that separately justifies granting the petition – the threats the Utah Supreme Court's rule poses to the State's paramount sovereign interests. For more than 200 years, federal law has tried to reduce tensions between the dual federal- and state-court systems. No more. At least, not if the Utah Supreme Court is correct. Its decision works a seismic shift in that law. It read a

[1] The parties received notice of the State of Utah's intent to file this brief at least ten days before the brief was due. Sup. Ct. R. 37.4.

prudential, court-made federal exhaustion rule (that Congress has not mandated) to require Utah's state courts to shut their doors to *state-law claims*. That outcome directly contravenes the Utah Constitution's guarantee that Utah's state courts will be open.

Given "the fundamental constitutional independence of the States," *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988), it should not be too much for Utah to ask this Court to confirm whether a prudential federal exhaustion rule really requires Utah courts to close their doors to state-law claims. The Court should grant the petition.

ARGUMENT

I. To Reduce Friction Between Dual Sovereigns, Federal Law Prohibits Federal-Court Interference With State-Court Proceedings Except In Vanishingly Rare Circumstances.

A. The States continued to exist "as independent political entities" after they adopted the Constitution. *Printz v. United States*, 521 U.S. 898, 919 (1997). In fact, the Framers designed the Constitution to "preserve[]" the States' "integrity, dignity, and residual sovereignty" specifically to "ensure that States function as political entities in their own right." *Bond v. United States*, 564 U.S. 211, 221 (2011).

Among other sovereign functions, the States created "state judicial systems for the decision of legal controversies." *Atl. Coast Line R. Co. v. Bhd. of*

Locomotive Eng'rs, 398 U.S. 281, 285 (1970). "[N]othing in the Constitution . . . prevent[s] any State from adopting any system of laws or judicature it sees fit for all or any part of its territory." *Missouri v. Lewis*, 101 U.S. 22, 31 (1879). "It is the right of every State to establish such courts as it sees fit, and to prescribe their several jurisdictions as to territorial extent, subject-matter, and amount, and the finality and effect of their decisions" – as long as those rules respect federal constitutional norms. *Id.* at 30; *see also Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 372 (1990) ("The States thus have great latitude to establish the structure and jurisdiction of their own courts.").

"Thus from the beginning we have had in this country two essentially separate legal systems." *Atl. Coast Line*, 398 U.S. at 286. Consistent with Article III, the federal-court system consists of this Court and "such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 1. State-court systems, in turn, vary by State as the people create them. "Each system proceeds independently of the other with ultimate review in this Court of the federal questions raised in either system." *Atl. Coast Line*, 398 U.S. at 286.

B. "[C]onflicts and frictions" were perhaps inevitable in "this dual court system," which "could not function if state and federal courts were free to fight each other for control of a particular case." *Id.* So "to make the dual system work and 'to prevent needless friction between state and federal courts,' " Congress found it "necessary to work out lines of demarcation between

the two systems." *Id.* (quoting *Okla. Packing Co. v. Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1940)). This case's outcome implicates three of those lines of demarcation.

1. State courts "presumpti[vely] . . . enjoy concurrent jurisdiction" over questions of federal law. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981). This Court has "consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990). "This rule is premised on the relation between the States and the National Government within our federal system." *Gulf Offshore*, 453 U.S. at 478. "The two exercise concurrent sovereignty, although the Constitution limits the powers of each and requires the States to recognize federal law as paramount." *Id.*

To be sure, Congress can "affirmatively oust[] the state courts of jurisdiction over a particular federal claim." *Tafflin*, 493 U.S. at 459. Congress does so "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." *Gulf Offshore*, 453 U.S. at 478. But absent such affirmative congressional action, the "deeply rooted presumption in favor of concurrent state court jurisdiction" prevails. *Tafflin*, 493 U.S. at 459.

2. "Due in no small part to the fundamental constitutional independence of the States," the United States has long forbidden federal courts to interfere

with state-court proceedings. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988). Congress's "general policy" is that "state proceedings 'should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court.'" *Id.* (quoting *Atl. Coast Line*, 398 U.S. at 287). This Court's precedents recognize that policy: "'State courts are exempt from all interference by the federal tribunals[.]'" *Morgan v. Sturges*, 154 U.S. 256, 268 (1894) (quoting *Riggs v. Johnson Cty.*, 73 U.S. (6 Wall.) 166, 195 (1867)).

The Anti-Injunction Act starkly manifests Congress's non-interference policy. The Act, "which has existed in some form since 1793," *Chick Kam Choo*, 486 U.S. at 146, "broadly commands" that state courts "shall remain free from interference by federal courts," *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011) (internal quotation marks omitted). "That edict is subject to only three specifically defined exceptions," *id.* (internal quotation marks omitted): A federal court may enjoin state-court proceedings only "where expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. Those exceptions "are narrow and are not to be enlarged by loose statutory construction." *Smith*, 564 U.S. at 306 (internal quotation marks and bracket omitted). In short, "the Act's core message is one of respect for state courts." *Id.*

3. Federal procedural rules do not bind state courts – even when adjudicating federal claims.

Instead, "States may apply their own neutral procedural rules to federal claims, unless those rules are pre-empted by federal law." *Howlett*, 496 U.S. at 372. Hence "[t]he general rule, bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them." *Id.* (internal quotation marks omitted).

This Court's decision in *Johnson v. Fankell*, 520 U.S. 911 (1997), illustrates the point. Plaintiffs sued defendants in Idaho state court, alleging federal constitutional claims under 42 U.S.C. § 1983. When the Idaho district court denied defendants' motion to dismiss based on qualified immunity, defendants filed an interlocutory appeal. The Supreme Court of Idaho dismissed that appeal as improper under Idaho's rules of appellate procedure. *See id.* at 914. Defendants then sought review in this Court, contending that "they had a right to appeal as a matter of federal law" under "the theory that" interlocutory "review is necessary to protect a substantial federal right." *Id.*

This Court unanimously rejected the defendants' contentions. As relevant, it explained that defendants in federal court could seek interlocutory review of decisions denying qualified immunity because of the collateral order doctrine and 28 U.S.C. § 1291. *Id.* at 916-17. Parties in Idaho state-court proceedings, in contrast, must follow Idaho rules – which did not include a similar collateral-order exception to Idaho's final-judgment requirement. *See id.* And "[w]hile some States have adopted a similar 'collateral order' exception when construing their jurisdictional statutes,"

this Court has "never suggested that federal law compelled them to do so." *Id.* at 917. "Idaho could, of course, place the same construction on its" appellate rules as this Court has "placed on § 1291," but "that is clearly a choice for that court to make, not one that [this Court has] any authority to command." *Id.* at 917-18.

II. Applying The Tribal Remedies Exhaustion Doctrine In State Courts Diminishes State Sovereignty.

This Court has never held that – much less considered whether – plaintiffs alleging state-law claims potentially subject to a tribal court's jurisdiction must sue in tribal court before seeking redress in state court. But the Utah Supreme Court thought itself bound by "federal policy" to adopt that exhaustion procedure for Utah state-court cases. Pet. App. 62a. That holding creates irreconcilable tension with the state-sovereignty-protecting federal laws and policies discussed above. It warrants review.

A. As an initial matter, the Utah Supreme Court stretched the tribal remedies exhaustion doctrine beyond its existing bounds. Petitioners correctly explain that "[t]here is no binding federal law that compels state-court plaintiffs to file suit in tribal court." Pet. 14; *see also* Pet. App. 82a (Lee, A.C.J., dissenting) ("It should first be reiterated that there is no controlling authority on this issue. The Supreme Court has never considered the important question presented here."). That conclusion follows from both the procedural

histories and the express reasoning of *National Farmers Union Insurance Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985), and *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9 (1987), this Court's only two cases applying the tribal remedies exhaustion doctrine.

Each case arose from a proceeding in *federal* district court challenging a tribal court's jurisdiction in a parallel proceeding. *See LaPlante*, 480 U.S. at 11-14; *Nat'l Farmers*, 471 U.S. at 847-49. Those cases' holdings about the exhaustion doctrine squarely govern only proceedings in the forum from which they arose – federal district court. *Associated Press v. NLRB*, 301 U.S. 103, 132 (1937) ("Courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances.").

And the language in *LaPlante* and *National Farmers* confirms that those holdings do not impose federal-law requirements on state courts. *National Farmers* reasoned that the tribal exhaustion doctrine would serve "the orderly administration of justice *in the federal court*" and would minimize the "risks" of procedural irregularities "if *the federal court* stays its hand until after the Tribal Court has had a full opportunity to determine its own jurisdiction." 471 U.S. at 856-57 (emphasis added). And *National Farmers*' ultimate "conclusion" was that 28 U.S.C. § 1331 "encompasses the federal question whether a tribal court has exceeded the lawful limits of its jurisdiction, and that exhaustion is required before such a claim may be entertained *by a federal court*." *Id.* at 857 (emphasis added).

LaPlante, in turn, said that the question presented there was "whether *a federal court* may exercise diversity jurisdiction before the tribal court system has an opportunity to determine its own jurisdiction." 480 U.S. at 11 (emphasis added). And in holding that a plaintiff "must exhaust available tribal remedies before instituting suit *in federal court*," this Court reassured nontribal parties that the tribal court's jurisdictional holding "is ultimately subject to review" by federal courts. *Id.* at 19 (emphasis added).

The Utah Supreme Court's conclusion thus proceeds from a false premise. No decision from this Court, or act of Congress, requires States to apply the tribal remedies exhaustion doctrine in state courts. The Utah Supreme Court's contrary conclusion warrants review.

B. Suppose, however, that despite their procedural histories and plain language, *National Farmers* and *LaPlante* could be read to require state courts to follow the tribal remedies exhaustion doctrine as a matter of federal law. If correct, that conclusion would run headlong into the federal laws discussed above, which embody "Congress' considered judgment as to how to balance the tensions" between federal and state courts. *Chick Kam Choo*, 486 U.S. at 146. Each of those laws is at least as important to State sovereignty as the policies behind the tribal remedies exhaustion doctrine are to tribal self-governance. And each cuts against forcing States to apply the tribal remedies exhaustion doctrine in state courts. How to reconcile those squarely conflicting interests is a federal

question of surpassing importance that this Court has not yet considered, but should. Now is the time.

Comparing the laws that embody Congress's policy of non-intervention with the Utah Supreme Court's holding shows the irreconcilable tensions between them. State courts are presumed competent and able to adjudicate federal claims – unless Congress expressly ousts them of jurisdiction. *See* supra § I.B.1. Federal courts may not interfere with state-court proceedings – except for the three narrow, well-defined reasons Congress listed in the Anti-Injunction Act. *See* supra § I.B.2. And state courts remain free to adopt state-specific procedures that deviate from federal ones – unless federal law pre-empts the state's preferred course. *See* supra § I.B.3.

Contrast those laws with the Utah Supreme Court's view that the tribal remedies exhaustion doctrine imposes a flat-out ban on state courts entertaining state claims:

- Congress assumes state courts are competent to decide *federal* claims unless Congress affirmatively ousts state jurisdiction. But the tribal exhaustion doctrine makes state courts incompetent to decide *state-law* claims *even though Congress has been silent*.
- The Anti-Injunction Act prohibits federal courts from enjoining state-court proceedings except in three narrow circumstances. But the tribal exhaustion doctrine effectively reaches that same

result; it's read to implement a federally mandated ban on state-court proceedings in circumstances outside of all three AIA exceptions.

- State courts remain free to adopt their own procedures. Those procedures may follow federal ones, but federal law does not compel that result. Yet the Utah Supreme Court thought itself compelled to adopt the same tribal-remedies-exhaustion procedure applicable in federal court.

Two points about those tensions bear emphasizing. First, the tribal remedies exhaustion doctrine is this Court's creation, not a statutory command; Congress has not mandated this federal interference that would gut state courts of power to hear state-law claims. Second, state courts, unlike federal courts, cannot review a later tribal-court judgment. *See* Pet. App. 81a n.13 (Lee, A.C.J., dissenting) (noting that the majority's rule does not "account for the *inferior* position that [state courts] occupy" vis-à-vis federal courts "by virtue of [state courts'] lack of any direct review authority over tribal court decisions"). The promise to federal-court litigants that a tribal court's ruling won't be the end of the line, *see LaPlante*, 480 U.S. at 19, does not apply to state-court litigants.

In short, the Utah Supreme Court's decision reads federal law to *require* interference with state courts in a way that appears to be unique. Without express congressional authorization, a court-made "exhaustion

requirement, a 'prudential rule' based on comity," *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997) (quoting *LaPlante*, 480 U.S. at 20 n.14), has been read to foreclose state courts from adopting their own procedures for handling state-law civil claims.

That rule's potential to diminish Utah's sovereignty and to abridge Utahns' rights cannot be overstated. Take just one example. The Utah Constitution contains what is known locally as the Open Courts Clause – a guarantee that Utah's citizens can access state courts for redress in civil cases:

> All courts shall be open, and every person, for an injury done to him in his person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Utah Const. art. I, § 11. The Utah Supreme Court's view of the tribal remedies exhaustion doctrine makes quick work of that constitutional provision. In its reading, the exhaustion doctrine is binding federal law that requires Utah state courts to *close* their doors to civil claims involving members of Indian tribes. In effect, that revokes the constitutional guarantee; it "bar[s]" a plaintiff in those cases from "prosecuting" a "civil cause to which he is a party." This erodes Utah's sovereign ability to implement its own constitution. And it deprives Utah's citizens of their state constitutional right

to a state tribunal – a harm compounded by the lack of state-court authority to review any tribal-court jurisdictional decision.

* * *

If a court-made, prudential exhaustion rule that Congress has not mandated really trumps the Utah Constitution, Utah and its citizens deserve to hear this Court say so and explain why. And if the Utah Supreme Court misread what federal law requires, only this Court can correct it. *See Atl. Coast Line*, 398 U.S. at 286 ("Only the Supreme Court was authorized to review on direct appeal the decisions of state courts."). Either way, this case cries out for this Court's plenary consideration.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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