No. 25-165

IN THE

Supreme Court of the United States

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,

Petitioner,

v.

STATE OF MICHIGAN, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT TRIBAL BRIEF IN OPPOSITION

RIYAZ A. KANJI
Counsel of Record
DAVID A. GIAMPETRONI
KANJI & KATZEN, P.L.L.C.
P.O. Box 3971
Ann Arbor, MI 48106
(734) 769-5400
rkanji@kanjikatzen.com
Counsel for Respondent Tribes

[Additional Counsel Listed on Inside Cover]

ADDITIONAL COUNSEL

KATHRYN L. TIERNEY
REBECCA LIEBING
12140 W. Lakeshore Dr.
Brimley, MI 49715

Counsel for Bay Mills Indian Community

JAMES A. BRANSKY
9393 Lake Leelanau Dr.
Traverse City, MI 49684

Counsel for Little Traverse Bay Bands of Odawa Indians

ELISE MCGOWAN-CUELLAR
2608 Govt. Center Dr.
Manistee, MI 49660

Counsel for Little River Band of Ottawa Indians

WILLIAM RASTETTER
REBECCA MILLICAN
OLSON & HOWARD, P.C.
520 S. Union St.
Traverse City, MI 49684

Counsel for Grand Traverse Band of Ottawa and Chippewa Indians

QUESTION PRESENTED

Whether the court of appeals correctly upheld the district court's entry of the 2023 Great Lakes Fishing Decree where it found that the Decree is not an injunction and is appropriately tailored to the circumstances that gave rise to the litigation.

LIST OF DIRECTLY RELATED PROCEEDINGS

United States v. Michigan, No. 2:73-cv-26, W.D. Mich., May 7, 1979

United States v. Michigan, Nos. 79-1414, 79-1527, and 79-1528, 6th Cir., July 10, 1981

United States v. Michigan, No. 2:73-cv-26, W.D. Mich., May 31, 1985

United States v. Michigan, No. 2:73-cv-26, W.D. Mich., Aug. 24, 2023

United States v. Michigan, No. 23-1931, 6th Cir., Mar. 13, 2025

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INTRODUCTION

The Petition presents no basis for this Court's review. It sets forth a narrative of an Indian tribe excluded from a process by which its treaty rights were traded away, with that outcome then blessed by lower courts acting beyond their equitable powers. However, the record demonstrates Petitioner's robust participation in the negotiations over the 2023 Great Lakes Fishing Decree ("2023 Decree"); and the conflicts it posits with this Court's precedents addressing courts' equitable powers are illusory. Ultimately, Petitioner's fact-bound claims have no resonance beyond this case and are not the stuff of certiorari.

This litigation involves a commercial, subsistence, and sport fishery encompassing portions of Lakes Michigan, Huron, and Superior. The four undersigned tribes ("Respondent Tribes") and Petitioner Sault Ste. Marie Tribe of Chippewa Indians ("Sault Tribe") enjoy fishing rights in those waters under the 1836 Treaty of Washington, Mar. 28, 1836, 7 Stat. 491, Pet. App. 307a–316a, which "continue to the present day as … federally protected rights," *United States v. Michigan*, 653 F.2d 277, 278 (6th Cir. 1981). Yet those rights are "not absolute," *id.* at 279, and the fishery is a shared resource, lawfully enjoyed by numerous user groups. The State of Michigan bears public trust responsibilities to preserve it for its citizens, *see Glass v. Goeckel*, 473 Mich. 667 (2005), and the United States bears obligations to preserve it for the people of the United States at large, *see* 16 U.S.C. §§ 742a–754e.

Balancing these sovereign rights and obligations has never been easy. The era of super-abundance resides in the distant past, and in modern times chronic fragility, stress, and scarcity have characterized the fishery. For nearly forty years, the seven sovereign parties to this case have accommodated this reality through compromise and cooperation under a co-management framework established by decree of the district court in 1985 and continued in a successor decree in 2000. That framework allocates harvest opportunities among tribal and non-tribal fishers to preserve the fishery, protect the tribal treaty right, and minimize the role of the district court. In the years leading up to the 1985 Decree, the fishery was beset by intense competition, resulting in social conflict and widespread overfishing to the particular detriment of tribal fishers and requiring frequent intervention by the district court, *see, e.g.*, *United States v. Michigan*, 520 F. Supp. 207, 211 n.5 (W.D. Mich. 1981). The court entered the 1985 Decree "to allocate a fishery in order to effectuate a treaty" and "to keep the management [of the fishery] … out of the court where it does not belong." *United States v. Michigan*, 12 Indian L. Rep. 3079, 3080, 3085 (W.D. Mich. 1985).

When one tribe, the Bay Mills Indian Community ("Bay Mills"), objected to the proposed plan to allocate the fishery under a co-management framework in 1985, the Sault Tribe—directly contrary to the arguments it makes here—urged the district court that it could "impose the preferred plan upon all parties," D. Ct. Dkt. 829 at 2, "pursuant to its equitable power," *id.* at 11, and "[n]otwithstanding the lack of consent," *id.* at 12. After the district court

"agreed with the Sault Tribe" and "affirmed its broad jurisdiction" to allocate the fishery "over a party's objections," Pet. App. 17a, Bay Mills acquiesced in that ruling and the parties thereafter endorsed the 1985 Decree. They understood that Decree to be "the best opportunity to preserve and protect the resource, their respective rights and interests and initiate the cooperative efforts required to manage a common resource for differing user groups." *Michigan*, 12 Indian L. Rep. at 3089.

Time proved them correct. Under the co-management framework adopted in the 1985 Decree and continued in the 2000 Decree, the rampant overfishing that had imperiled the fishery and the Tribes' treaty right prior to 1985 became a thing of the past; and during the more than twenty years of co-management under the 2000 Decree, the parties did not once require judicial resolution of a dispute.

However, roughly halfway through the twenty-year term of the 2000 Decree, it became clear that the fishery is the subject of an unfolding environmental catastrophe. An as-yet uncontrollable proliferation of invasive mussels is devouring the foundation of the food web, sending critical fish populations into unprecedented spirals of decline and, in some areas, effective collapse. It was against this fraught backdrop that the parties began negotiations in 2019 to renew the 2000 Decree.

The ensuing process, facilitated by the Honorable Michael Cavanagh, former Chief Justice of the Michigan Supreme Court, yielded the 2023 Decree that is the subject of the Sault Tribe's Petition. It included scores of virtual and in-person negotiations

attended by all parties, including the Sault Tribe; thousands of pages of proposals and counterproposals exchanged between the parties, again including the Sault Tribe; the close collaboration of teams of experienced fisheries biologists from the U.S. Fish and Wildlife Service, the Michigan Department of Natural Resources, and the Tribes' own natural resources departments, again including that of the Sault Tribe; and the continuous reassessment by each sovereign of its interests, obligations, and priorities. None of this involved easy solutions or painless compromise, particularly with the specter of declining fish populations looming large over the bargaining table. Yet with the understanding that the fishery is shared as a matter of law and that no party has a monopoly on knowledge, compromise the parties did over the course of three years.

Late in 2022, with the drafting of the new Decree nearly complete, the Sault Tribe, unsatisfied with certain positions of the State of Michigan, asserted that the district court lacked the equitable authority to adopt the Decree absent unanimous consent. The courts below disagreed and, under the very reasoning the Sault Tribe pressed and prevailed on in 1985, adopted the 2023 Decree over the Sault Tribe's objections.

The Sault Tribe now brings the matter to this Court, advancing two principal contentions.

First, it argues that the district court was required "to tailor its new decree," Pet. 21, to the ills sought to be remedied when the case was initiated, *id.* at 17–21. Yet the Sault Tribe acknowledges that the court of appeals invoked that very rule of law, and

simply contends that the court misapplied it, *id.* at 21. Certiorari, of course, "is rarely granted when the asserted error consists of … the misapplication of a properly stated rule of law," Sup. Ct. R. 10. In any event, the court of appeals applied the rule correctly.

Second, the Sault Tribe argues that the 2023 Decree is an injunction and that the district court erred in adopting it without applying the four-factor test required by *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006). Pet. 21–23. This is a patently uncertworthy plea for error correction. The court of appeals held that the 2023 Decree is *not* an injunction, Pet. App. 26a, and could therefore be issued pursuant to equitable principles other than the four-factor injunction test, *id.* at 12a, 19a–22a. Nothing about that holding contradicts *eBay*, which undisputably involved an injunction and which accordingly did not address what makes a judicial order injunctive. The Sault Tribe's disagreement with the court of appeals, then, is over whether the 2023 Decree qualifies as an injunction in the first instance. That is on its face a request for error correction concerning a question that is unlikely to recur, with no implications beyond the detailed terms and provisions of a sui generis sixty-two-page decree involving seven sovereigns with shared interests in a common resource. Nothing about these circumstances would afford this Court the opportunity to pronounce broadly applicable principles of law. In any event, the Sault Tribe's arguments that the court of appeals erred lack merit.

Moreover, as addressed below, the Sault Tribe's primary arguments are directly contrary to arguments it pressed and prevailed on in earlier

phases of this litigation, rendering this case a poor vehicle to resolve the questions presented given the clear judicial estoppel implications.

Finally, the Respondent Tribes vigorously disagree with the Sault Tribe's claims regarding the alleged violations of its treaty rights. But what is important is that the contentions are of the highly specific, fact-bound variety that this Court leaves to the lower courts to adjudicate, as happened here. The Petition should be denied.

STATEMENT OF THE CASE

I. The 1979 Decree

The United States sued the State of Michigan in 1973 seeking a declaration that the 1836 Treaty secured tribal rights to fish in the Great Lakes waters subject to that treaty, and an injunction prohibiting the State from regulating tribal fishing in those waters. *See United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979) ("1979 Decree").[1]

In its 1979 Decree, the court confirmed the Tribes' fishing rights under the 1836 Treaty and held that "[t]o the extent that any laws or regulations of Michigan are inconsistent with the treaty…, such laws and regulations are void Ab initio and of no force and effect as to the plaintiff tribes and their members." *Id.* at 281.

The court did not issue the requested injunction but "retain[ed] jurisdiction of this case for the life of this decree to take evidence, to make rulings

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[1] "Bay Mills and the Sault Tribe intervened as plaintiffs …. The remaining [Respondent Tribes] … later intervened as plaintiffs when they became federally recognized." Pet. App. 3a.

and to issue such orders as may be just and proper upon the facts and law, and in the implementation of this decree." *Id.*

II. The Sixth Circuit's 1981 Modification of the 1979 Decree

On appeal, the court of appeals modified the district court's 1979 Decree. It affirmed the Tribes' 1836 Treaty right, *Michigan*, 653 F.2d at 278, but held that the right is "not absolute" and that the State can lawfully regulate tribal fishing subject to the requirements set forth in *People v. LeBlanc*, 248 N.W.2d 199 (Mich. 1976), *id.* at 279. Those requirements (the "*LeBlanc* standard") are specific to the 1836 Treaty and permit Michigan to regulate tribal fishers under certain conditions, including where necessary to prevent irreparable harm to the fishery. The court of appeals, noting that "the essential question is now whether these standards have been satisfied," remanded to the district court to assess the State's existing regulations of tribal fishers under those standards. *Id.* However, the legality of those regulations was never tested because the State withdrew them as against tribal fishers. *Michigan*, 520 F. Supp. at 211.

III. The 1985 Decree

The 1979 Decree "had settled the issue of the treaty rights of the affected tribal fishers, but it had not … ended the controversy. Indeed, increase of tribal harvests, while legally anticipated, exacerbated the tensions of the users, and the preservation of the resource." *Michigan*, 12 Indian L. Rep. at 3079. Accordingly, in 1983, the Tribes, including the Sault Tribe, moved the district court to allocate the fishery

between tribal and non-tribal fishers "based on (i) the court's express reservation of continuing jurisdiction under the 1979 Decree, (ii) the court's inherent power to implement and modify its prior declaratory judgment, and (iii) the Declaratory Judgment Act, which provides for 'further necessary or proper relief based on a declaratory judgment or decree.' 28 U.S.C. § 2202." Pet. App. 6a.

The United States agreed that the district court could equitably allocate the fishery:

> The Indian and non-Indian fishermen are in competition for the same resource. If the non-Indians catch too many fish, they may frustrate the treaty right of the Indians. If the Indians take too many fish, they may frustrate the just interest of non-Indians in the fishery. The question is essentially one of fact and of equity…. In that sense, this Court has power to allocate the fishery.

D. Ct. Dkt. 634 at 6.

The State objected to the Tribe's motion to allocate the fishery as not within the court's "equitable powers," D. Ct. Dkt. 642 at 2, and Bay Mills thereafter "withdrew its consent" to the Tribes' proposed allocation plan and proposed an alternative plan of its own, Pet. App. 7a. The Sault Tribe urged the district court to "impose the preferred plan upon all parties," D. Ct. Dkt. 829 at 2, "pursuant to its equitable power," *id.* at 11, "[n]otwithstanding the lack of consent" of Bay Mills, *id.* at 12; *see also* Pet. App. 26a n.11 ("[T]he Sault Tribe argued before the district court that the proposed 1985 Decree …

'should be imposed upon Bay Mills[.]'" (quoting D. Ct. Dkt. 881 at 465)).

The district court thereafter "agreed with the Sault Tribe [and] affirmed its broad jurisdiction" to allocate the fishery "over a party's objections." Pet. App. 17a. After a hearing at which Bay Mills presented its objections, the Court adopted the Tribes' initial allocation framework (which became the 1985 Decree), asserting its "powers as a court of equity" to "allocate a fishery in order to effectuate a treaty[.]" *Michigan*, 12 Indian L. Rep. at 3080 (citing *Washington v. Wash. State Com. Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979)).

The district court did so partly to mitigate the "racehorse fishery" then operating to the particular disadvantage of tribal fishers:

> In a "racehorse fishery" everyone is out to get what they can and as fast as they can. Such a fishing competition is currently taking place … [as] state trap-net fishers are racing tribal gillnetters. The former will catch most of the [permissible harvest] before tribal fishers even get the opportunity to fish.

Id. at 3086. The 1985 Decree would "eliminate this unnecessary race" and "allocate the resource among the various users with each managing its own, together with joint management." *Id*. at 3087.

Finally, the court noted the provisions in the 1985 Decree designed to minimize the role of the court. Under the Decree,

> [t]he state would manage recreational fishers, the tribes theirs, and importantly an executive council is created to manage, plan, implement and assist in enforcement…. Court review in the past has, unfortunately, been an impediment to fishery management. The executive council, and the [subsequently added] dispute resolution techniques will serve to keep the management [of the fishery] … out of the court where it does not belong.

Id. at 3085.

IV. The 2000 Decree

"In 1998, all seven parties began negotiating a successor to the 1985 Decree … [and] the district court exercised its continuing jurisdiction to provide oversight and hold hearings on proposals and objections." Pet. App. 8a. The parties reached agreement, and the 2000 Decree took effect for a twenty-year term in August 2000. *Id*.

The 2000 Decree continued the co-management framework of the 1985 Decree, including the dispute resolution provisions designed to minimize involvement of the district court. Those provisions have stood the test of time. The parties have regularly and without controversy agreed to amendments on matters such as harvest limits when necessary to ensure the preservation of the resource, which have required only ministerial approval by the district court.[2] Indeed, during the more than twenty-year

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[2] *See, e.g.*, D. Ct. Dkt. 1844.

lifespan of the 2000 Decree, the parties did not once require judicial intervention to resolve a dispute.

V. The 2023 Decree

A. The State of the Fishery at the Onset of Negotiations for the 2023 Decree

When the parties negotiated the 1985 and 2000 Decrees, they did so with substantial challenges but in the context of a relatively healthy fishery. By the time they negotiated the 2023 Decree, they faced a fishery in crisis. Invasive mussels have decimated the microorganisms on which whitefish, the key commercial species, depend, sending populations into historic rates of decline,[3] a pattern that continues today.[4] These realities made compromise and

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[3] *See, e.g.*, Kurt Williams, *Invasive Mussels Challenge Commercial Whitefish Fishing in the Great Lakes*, Great Lakes Echo (May 30, 2019), https://bit.ly/Invasive_Mussels_Challenge_Commercial_Whitefish_Fishing; Ronald Kinnunen, *Great Lakes Prey Fish Populations Declining*, Mich. State Univ. Extension (Feb. 28, 2017), https://bit.ly/Great_Lakes_Prey_Fish_Populations_Declining; Kelly House, *Invasive Mussels Now Control Key Great Lakes Nutrients, Threatening Fish*, Mich. Pub. (Feb. 16, 2021), https://bit.ly/Invasive_Mussels_Control_Key_Nutrients.

[4] *See, e.g.*, Mich. Nat. Res. Comm'n, *Status of Lake Whitefish in the Upper Great Lakes* (July 10, 2025), https://bit.ly/Status_Of_Lake_Whitefish_In_The_Upper_Great_Lakes; Kelly House, *Iconic Whitefish on Edge of Collapse as Great Lakes Biodiversity Crisis Deepens*, Bridge Mich. (June 22, 2025), https://bit.ly/Iconic_Whitefish_On_Edge_Of_Collapse; Centre for Ecosystem Mgmt., *Whitefish in Decline: A Warning Sign for Great Lakes Biodiversity* (July 23, 2025), https://bit.ly/Whitefish_In_Decline_A_Warning_Sign; Griffin Weinberg, *Whitefish Population Declining by Millions of Pounds in Upper Great Lakes*, msn (last visited Nov. 28, 2025),

cooperation between the parties both more challenging and more imperative than ever before.

B. Negotiation of the 2023 Decree

The parties retained the Honorable Michael Cavanagh, former Chief Justice of the Michigan Supreme Court, to facilitate the negotiations. Those negotiations ranged from all-party meetings attended by government leaders, attorneys, and the parties' fisheries biologists, to meetings attended by attorneys only, and included separate meetings between individual parties to address issues specific to them.

The seven sovereigns, including the Sault Tribe, worked through scores of issues, including the quantitative, temporal, and geographic allocation of harvest opportunities; permissible fishing methods; recordkeeping and information sharing; compliance and enforcement; and the scientific methods to be used to monitor the fishery over time. They exchanged hundreds of proposals, counterproposals, and draft provisions, backed by scientific data and the analysis of their subject matter experts.

By mid-September 2022, the parties' efforts had "resulted in a *near final successor decree as negotiations come to a close*," D. Ct. Dkt. 2009 at 2 (emphasis added), with six of them seeking a forty-five-day extension of the existing Decree to "secure formal government approval" of a new one, *id*. at 1. At that "near final" juncture, *id*. at 2, the Sault Tribe, which had filed separately for a ninety-day extension

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https://bit.ly/Whitefish_Population_Declining_By_Millions; Ellie Katz, *"A Crisis": Lake Whitefish Survey Paints an Even More Dire Picture*, Interlochen Pub. Radio (Jan. 20, 2025), https://bit.ly/A_Crisis_Lake_Whitefish_Survey.

to work out "specific outstanding issues" remaining between it and the State, D. Ct. Dkt. 2006 ¶ 2, at 2, reported that the parties "have been working diligently through in-person negotiations," *id.* ¶ 1, at 1 with the Sault Tribe having "continually negotiated in good faith with all parties," *id.* ¶ 2, at 2. The Sault Tribe indeed attested to "its attendance at all negotiations meetings since the Court's June 28, 2022 extension of the [2000] Consent Decree—three multi-day in-person meetings, eight all-party Decree drafting sessions, and six tribal-federal attorney meetings," *id*. ¶ 4.

These statements contradict the Sault Tribe's assertions that the other parties "excluded the Sault Tribe … from negotiations over a replacement decree," Pet. 2–3. The Sault Tribe's claims in this regard notably cite only the unsubstantiated assertions of its own counsel in the proceedings below. *See id*. at 11 (citing D. Ct. Dkt. 2006 at 2 and D. Ct. Dkt. 2077 at 1 n.1). In fact, the record includes twenty-one reports of all-party negotiation sessions between June 2020 and August 2022, with each report referencing two days of negotiations. The Sault Tribe is listed as attending all of them. *See* D. Ct. Dkts. 1981, 1960, 1958, 1952, 1949, 1947, 1946, 1935, 1927, 1922, 1917, 1913, 1908, 1906, 1905, 1904, 1900, 1899, 1896, 1895, 1885.

C. The Terms of the 2023 Decree

The 2023 Decree continues the co-management framework of the 1985 and 2000 Decrees, under which the tribes regulate tribal fishers and the State regulates non-tribal fishers. *See* D. Ct. Dkt. 2132 § VI, at 23–28. The 2023 Decree accordingly forbids state

regulation of tribal fishers. *See id.* § XVI(A), at 51. ("The State shall not enforce its fishing laws and regulations against Tribal Citizens engaged in Fishing Activity within the 1836 Treaty Waters.").

The 2023 Decree provides for party dispute resolution on largely the same terms as the 2000 Decree. All disputes are subject to its dispute resolution provisions, which include procedures for informal negotiation and mediation between the parties. *See id.* § XVIII(A), (B), at 56. Only if those procedures do not resolve a dispute may a party file a pleading requesting judicial relief in accordance with the Federal Rules of Civil Procedure. *Id.* § XVIII(C), at 56–57.

These are the same dispute resolution provisions the utilization of which allowed the parties to never once require judicial resolution of a dispute during the more than twenty-year duration of the 2000 Decree.

The 2023 Decree also contains several notable differences from the 2000 Decree. First, the 2000 Decree provided for penalties for any party that exceeded its annual harvest limits in the form of automatic reductions in the exceeding party's harvest allocation the following year. *See, e.g.*, D. Ct. Dkt. 1458 §§ VII(B)(4), (5), at 47–48; *id.* § VIII A(1)(g)(4), (5), at 55–58. The 2023 Decree omits those provisions and contains no penalties for any violations of its terms.

Second, while continuing to allocate the harvest of whitefish—the species most important to tribal fishers—heavily in the Tribes' favor, *see* D. Ct. Dkt. 2084-1 ¶ 4, at 3 (estimating tribal whitefish

allocation under 2023 Decree at ">90%"), the 2023 Decree substantially increases the geographic areas where the Tribes, including the Sault Tribe, are permitted to fish. *See, e.g.*, Pet. App. 176a ("Under the Proposed Decree, the Tribes will be allowed to use gill nets in more zones and more frequently throughout the year."); *id.* at 138a ("Gill net fishing—a core Treaty right—is … greatly expanded in the Proposed Decree[.]").[5]

The Sault Tribe is the primary beneficiary of these expanded fishing opportunities. The five Tribes share co-equal rights under the 1836 Treaty. *See Michigan*, 471 F. Supp. at 271 ("The fishing right reserved by the Indians in 1836 … is the communal property of the [signatory] tribes[.]"). Yet the "Sault Tribe commercial fishers … harvest more fish than the other tribes." D. Ct. Dkt. 2031 ¶ 9, at 2. According to its own calculations, the Sault Tribe's "average annual treaty fishing harvest since 2010 amounts to 67% of the treaty fishing share (and has reached up to 78% of particular species under the [2000] Consent Decree)." D. Ct. Dkt. 1889 ¶ 3, at 2.[6]

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[5] *See also id*. at 141a ("The Proposed Decree expands Tribal fishing opportunities for the Sault and Little Traverse Tribes by allowing commercial fishers to use large mesh gill nets in Big Bay de Noc[.]"); *id.* at 71a ("[T]he Proposed Decree greatly expands Tribal opportunity to target and harvest walleye[.]"); *id.* at 90a ("[T]he Proposed Decree actually expands [tribal] subsistence fishers' opportunities compared to the 2000 Decree").

[6] The Respondent Tribes set forth in detail for the district court how the 2023 Decree provides expanded fishing opportunities for the Tribes, including the Sault Tribe specifically, over the 2000 Decree. *See* D. Ct. Dkt. 2095 at 8–15.

VI. The District Court Adoption of the 2023 Decree

The Respondent Tribes, the State, and the United States submitted the Proposed 2023 Decree to the district court on December 11, 2022. D. Ct. Dkt. 2042. The district court allowed the Sault Tribe and an amicus curiae coalition of sport-fishing groups to submit objections. D. Ct. Dkt. 2052. The Sault Tribe's objections consisted of a general objection to the court's authority to adopt the Decree absent the Sault Tribe's consent, and 137 specific objections targeting individual provisions of the Proposed Decree. D. Ct. Dkt. 2077. Those specific objections were wholly conclusory. The Sault Tribe cited no legal authority and provided no expert or other scientific substantiation for any of them. *See id*. at 5–18.

The other sovereigns submitted responses demonstrating that the proposed Decree both enhances the treaty right and protects the fishery, and set forth the legal, scientific, and factual bases for those propositions. *See* D. Ct. Dkts. 2095, 2103, and 2104. And while those parties and the amicus sport-fishers "filed multiple affidavits from asserted expert and fact witnesses—and other documentary evidence—supporting their positions on the objections … [o]nly the Sault Tribe chose not to file expert/fact witness affidavits." Pet. App. 43a n.3. The Sault Tribe likewise declined the court's invitation (at the conclusion of the two-day objections hearing) to expand the record with additional expert testimony in support of its objections, *id*. at 42a–43a; *see also* D. Ct. Dkt. 2114 at 3 n.2 ("[A]t the objections hearing, the Sault Tribe did not accept the Court's invitation to

schedule an evidentiary hearing with expert testimony.").

As to the Sault Tribe's general objection to the district court's equitable authority, the court concluded that it "has retained jurisdiction over the case for the purpose of allowing the Court to issue orders to protect the resource," stemming from the 1979 Decree; which "allow[s] this Court to issue orders necessary to protect the resource and the Treaty rights"; and that the Court "has previously exercised its continuing jurisdiction and equitable powers to enter orders regulating the fishery," including "to modify the existing decree, or enter a new decree, over a party's objection after providing the objecting party with due process (*see* ECF No. 2076-1); *Michigan*, 12 [Indian L. Rep. 3079]." Pet. App. 56a, 57a.

As to the Sault Tribe's 137 specific objections, the court addressed each objection in exhaustive detail, *see id*. at Pet. App. 60a–168a, and concluded:

> In sum, none of the Sault Tribe's objections show that the Proposed Decree is unreasonable or inconsistent with the Treaty or the law of the case. However, the Stipulating Parties have established that the Proposed Decree is in the best interest of the fishery and all the Parties, including the Sault Tribe. The Sault Tribe's objections represent what the Sault Tribe's preferred decree, with no compromise from the other Parties, would provide. Such an outcome is not feasible, nor in the best interest of

> the resource. Memorializing the good faith efforts (over a period of 3 years) during mediation under the leadership of retired Michigan Supreme Court Justice Michael Cavanagh, the Proposed Decree represents compromise among the seven Parties where not one Party's needs dominate over another's. After careful consideration of the Sault Tribe's objections, the Court will enter the Proposed Decree over the objections of the Sault.

Id. at 167a–168a.

VII. The Sixth Circuit Decision

The court of appeals rejected the Sault Tribe's first principal argument that the district court erroneously failed "to tailor its new decree," Pet. 21, to the ills sought to be remedied when the case was initiated, *see id*. at 17–21. As addressed in more detail below, the court of appeals applied the tailoring principle and concluded:

> The 2023 Decree implements a regulatory framework that protects the Tribes' federal treaty rights from the "racehorse" environment in 1973, when the United States first brought suit. The district court did not abuse its discretion because the 2023 Decree remains appropriately "tailored" to address the original conditions that offended the Tribes' federal treaty rights in 1973.

Pet. App. 36a (quoting *Milliken v. Bradley*, 433 U.S. 267, 267 (1977)).

The court of appeals also rejected the Sault Tribe's second principal argument, namely that the district court erred in not applying the traditional four-factor injunction test, Pet. 21–26, which the Sault Tribe debuted on appeal. It first rejected as inapposite the Sault Tribe's argument that "the prospective provisions of a consent decree operate as an injunction," Pet. App. 22a (quoting Ct. App. Dkt. 30 at 21), because "the 2023 Decree is not a 'consent decree,'" *id.* at 23a. It further rejected the Sault Tribe's "attempt to stylize the district court's entry of [the 2023 Decree] as a permanent injunction," *id.* at 24a, and concluded that "[t]he district court did not abuse its discretion by entering the 2023 Decree without applying the injunction factors," *id.* at 26a.

The court of appeals instead endorsed the district court's application of a multi-factor set of equitable considerations first established by the district court in its 1985 Decree. *See* Pet. App. 21a. Those considerations treat the preservation of "the tribal right to fish" and "preservation of the resource" as "paramount," while accounting for the interests of other users in the "shared" fishery, the "feasibility … of implementation," and the "reduction of social conflict," *Michigan*, 12 Indian L. Rep. at 3081.[7]

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[7] This approach—which the Sault Tribe describes as "legal error," Pet. 23—mirrors that urged upon the district court in 1985 by the Sault Tribe, which argued that the court should consider the treaty right and the preservation of the resource as "primary considerations" while "the Court may consider other factors in its exercise of its equitable powers," such as "the conflicting interests of the parties, including those of the State and its licensees," the "reduction of conflict," and "the feasibility of implementation," D. Ct. Dkt. 829 at 10–11. Under this

Finally, the court of appeals did not address the Sault Tribe's argument that the district court erred in not applying the *LeBlanc* standard. The Sault Tribe abandoned that argument by omitting it from its opening brief and reply brief on appeal. *See* Ct. App. Dkts. 30, 47.

REASONS FOR DENYING THE PETITION

The Petition does not claim any circuit conflict. It asserts a writ should issue because the court of appeals' decision contradicts this Court's precedents (1) requiring a court "to tailor its new decree," Pet. 21, to the ills sought to be remedied when the case was initiated, *see id.* at 17–21; and (2) requiring a court "to apply the traditional test governing permanent injunctions," *id.* at 21–22. In neither respect does the court of appeals' decision contradict any precedent of this Court.

I. The Court of Appeals' Decision Comports with This Court's Precedents Requiring Courts to Tailor Their Equitable Decrees to the Circumstances Giving Rise to a Case.

A. The Court of Appeals Applied the Very Rule of Law Advocated by the Sault Tribe.

The Sault Tribe contends that the decision below "clash[es] with this Court's precedents," Pet. 19, in *Salazar v. Buono*, 559 U.S. 700 (2010), *Freeman v. Pitts*, 503 U.S. 467 (1992), and *United States v.*

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equitable framework, the Sault Tribe successfully argued, the court could allocate the fishery "[n]otwithstanding the lack of consent" of Bay Mills, *id.* at 12.

Swift & Co., 286 U.S. 106 (1932), Pet. 19–21. Not only does this claim fall far short of stating grounds for a grant, but it is incorrect.

In *Buono*, the Court, characterizing the holding in *Swift*, explained that "[a] court must find prospective relief that fits the remedy to the wrong or injury that has been established." 559 U.S. at 718 (citing *Swift*, 286 U.S. at 114). Therefore, "[t]he relevant question is whether an ongoing exercise of the court's equitable authority is supported by the prior showing of illegality" that served as the basis for its earlier equitable order. *Id*. In *Freeman*, it held that a court may modify an earlier decree "only insofar as [the modification] advances the ultimate objective of alleviating the initial" harm that the earlier decree was entered to address. 503 U.S. at 489.

These cases rest on the principle that a court's exercise of equitable powers in an ongoing case must be tailored to the original condition that its initial exercise of equitable power was aimed at addressing. The court of appeals applied this very rule of law, detailing how the district court's latest decree comports with the original decree's goal of safeguarding the Tribes' treaty rights:[8]

> A federal court decree must "further the objectives of the law upon which the [initial] complaint was based." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004). Contrary to the Sault Tribe's assertion, the 2023 Decree directly

[8] The court of appeals did not cite *Buono*, *Freeman*, or *Swift* for this analysis because the Sault Tribe did not rely on those cases for its argument on this point in the court of appeals.

furthers the objectives of the 1836 Treaty by enabling the Tribes to exercise their treaty rights more fully through a system of cooperative management between the other tribes, the State, and the United States. In 1973, the United States brought this suit to protect the Tribe's right to fish in the Great Lakes under the 1836 Treaty. *Michigan*, 471 F. Supp. at 203.… The 2023 Decree furthers the objectives of the 1836 Treaty for three key reasons.

First, the 2023 Decree avoids the kind of unilateral state regulation that this suit was initially brought to enjoin. The State plays no role with respect to how each Tribe implements the 2023 Decree; each individual Tribe determines for themselves how to implement it.

Second, the 2023 Decree protects the Tribes' fishing rights by establishing geographical zones for its exclusive use. It carves out twelve different fishing zones across Lake Michigan, Lake Huron, and Lake Superior for the Tribes' use and specifically excludes all forms of state commercial fishing in those twelve zones. The 2023 Decree states that "State-licensed or -permitted Commercial Fishing shall be prohibited in all 1836 Treaty Waters," apart from a few geographical units … and the 50-mile radii of Marquette, Munising, Muskegon, Ludington, and Leland.

> *Third*, in those areas that are shared between the State and the Tribes, the 2023 Decree generally reserves a substantially greater share of the total annual harvest in Whitefish and Lake Trout—the two primary commercial species harvested in the Great Lakes—for the Tribes than for the State.

Pet. App. 30a–31a (brackets in original) (citation omitted).

Taken together, these features led the court of appeals to conclude:

> The 2023 Decree implements a regulatory framework that protects the Tribes' federal treaty rights from the "racehorse" environment in 1973, when the United States first brought suit. *The district court did not abuse its discretion because the 2023 Decree remains appropriately "tailored" to address the original conditions that offended the Tribes' federal treaty rights in 1973.*

Id. at 36a (emphasis added).

The court of appeals, then, applied the very rule the Sault Tribe invokes in its Petition. The Sault Tribe in fact concedes this and simply contends that the court of appeals applied that rule incorrectly:

> The original exercise of judicial power in this case was based on a determination that Michigan's regulatory overreach infringed tribal treaty rights. The district court was therefore required to

> tailor its new decree to "eliminate the conditions or redress the injuries caused by [that] unlawful action." *Freeman*, 503 U.S. at 487. Only by subverting the district court's original finding—and declaring, remarkably, that insufficient regulation of treaty waters was "the original condition[] that offended the Tribes' federal treaty rights," App.36a—did the court of appeals affirm the decree.

Pet. 21 (brackets in original).

This is a textbook example of a petitioner objecting to a lower court's alleged misapplication of a properly stated rule of law. Such an objection provides no basis for certiorari. "A petition for a writ of certiorari is rarely granted when the asserted error consists of … the misapplication of a properly stated rule of law." *Stanley v. City of Sanford*, 145 S. Ct. 2058, 2075 (2025) (Thomas, J., concurring in part) (quoting Sup. Ct. R. 10). As addressed next, the court of appeals in fact applied the rule correctly.

B. The Court of Appeals Applied the Relevant Rule Correctly.

The Sault Tribe contends that the district court initially "derived its authority to oversee the prospective conduct of the United States, Michigan, and the tribes from its conclusion that Michigan had violated the tribes' treaty rights[.]" Pet. 17. Thus, the original condition that any subsequent equitable order is limited to addressing is "the violation of treaty rights that motivated the underlying litigation and the 1979 Decree." *Id.* at 19; *see also id.* at 20

(stating that the original condition was "Michigan's violation of the Sault Tribe's treaty rights" and "Michigan's infringement on the tribes' rights").

This is incorrect. In 1979, the district court held that "[t]o the extent that any laws or regulations of Michigan are inconsistent with the treaty rights of the Michigan Indians, such laws and regulations are … [invalid] as to the plaintiff tribes and their members." *Michigan*, 471 F. Supp. at 281. But the court of appeals subsequently *modified* the district court's 1979 Decree and held that the Tribes' treaty rights are "not absolute" and are instead "subject to the type of state regulation outlined … in *People v. LeBlanc*, … a decision which we believe accurately states the rule of reason and the principles of federal law applicable to this case." *Michigan*, 653 F.2d at 279.

As the Tribes, including the Sault Tribe, explained to the district court in 1984, while it had ruled in 1979 that "no state regulation whatsoever was allowed, … the court of appeals disagreed and allowed the State to regulate … pursuant to [the *LeBlanc* standard]." D. Ct. Dkt. 635 at 6. The Sixth Circuit remanded for a determination as to whether the State's regulations passed muster under that standard. 653 F.2d at 279. But the parties did not test—*and no court thereafter ruled on*—the legality of the State's regulations because the State withdrew them as to tribal fishers, *see* 520 F. Supp. at 211, and the parties later settled the matter by entering the 1985 Decree.

Thus, the entire premise of the Sault Tribe's argument—that the State was found to have "violated

the tribes' treaty rights," Pet. 17—is incorrect. No such finding survived the Circuit's 1981 modification of the 1979 Decree and the State's withdrawal of its regulations. The court of appeals was therefore correct to focus not only on the fact that the 2023 Decree is tailored to "avoid[] the kind of unilateral state regulation that this suit was initially brought to enjoin," Pet. App. 31a, but also on the additional circumstances giving rise to the litigation—including the harmful competition and conflict that led to the 1985 Decree (as a necessary implementation of the 1979 Decree)—the threat of which, it found, persists today absent a co-management framework.

Indeed, the Tribes, including the Sault Tribe, urged the district court to allocate the fishery in 1983 "pursuant to the Court's inherent powers to implement and modify its prior decree," D. Ct. Dkt. 635 at 1, because allocation was necessary "to implement fully the Court's prior [1979] decree," *id.* at 6. According to the Tribes:

> [T]he Tribes seek allocation as a matter of further relief or remedy…. [T]he fishery resource during the treaty times was abundant…. It was not until more recent times that competition for the resource increased dramatically … [which] has resulted today in an inadequate supply to meet the demand exerted by treaty and non-treaty fishers. This present condition requires the Court to fashion a remedy that allows treaty fishers the full exercise of their federal rights, while at the same time acknowledges that there are other users

> who have a legitimate claim to some portion of that common resource.

Id. at 7. The Tribes, again including the Sault Tribe, argued (successfully) that allocation of the fishery to account for this range of considerations was a matter "*within the four corners of the complaint*" and that the court accordingly possessed the equitable power to order it. *Id*. at 9 (emphasis added). This was precisely the set of circumstances with respect to which the district court allocated the fishery in the 1985 Decree, *see supra* pp. 7–10, and precisely the set of circumstances the court of appeals found the 2023 Decree appropriately tailored to address, *see supra* pp. 21–23.

Finally, the Sault Tribe's contention that the 2023 Decree nevertheless violates its treaty rights—a contention with which the Respondent Tribes strongly disagree and that the Sault Tribe declined every opportunity to support with expert or fact witness testimony in the district court, *see supra* pp. 16–17—is of the highly specific, fact-bound nature that this Court appropriately leaves to the lower courts to adjudicate. They did so with great care here, as exemplified by the district court's painstaking analysis of each of the Sault Tribe's 137 specific objections. The Sault Tribe misunderstands this Court's role in suggesting that it should revisit the detailed conclusions of the courts below.

II. The Court of Appeals' Decision Does Not Contradict This Court's Precedents Addressing the Traditional Test for Injunctive Relief.

A. The Court of Appeals' Decision Does Not Contradict *eBay*.

The Sault Tribe contends that "the 2023 Decree obviously operates as an injunction" because it "'tells someone what to do or not to do.'" Pet. 22 (quoting *Nken v. Holder*, 556 U.S. 418, 428 (2009)). Therefore, it claims, in upholding the 2023 Decree without applying the traditional four-factor injunction test, the court of appeals' decision "conflicts with this Court's [holding in *eBay*] requiring 'a plaintiff seeking a permanent injunction [to] satisfy a four-factor test.'" *Id*. at 22–23 (brackets in original) (quoting *eBay*, 547 U.S. at 391).

On its face, this contention presents no basis for a writ to issue. The suggestion amounts to nothing more than that the court below committed error in failing to apply the well-settled four-factor test. That is hardly the sort of consequential conflict with this Court's precedents that might lead to a grant.

Moreover, the argument does not even identify a conflict with *eBay*. The court of appeals did not find that the 2023 Decree constitutes an injunction and nevertheless declined to apply the four-factor test. Instead, the court expressly concluded that the 2023 Decree is *not* an injunction, Pet. App. 26a, and accordingly concluded that—in accordance with

circuit precedent—it could assess the decree against other equitable considerations. *See id.* at 19a–26a.[9]

Nothing about this conclusion runs counter to *eBay*, which indisputably involved an injunction and hence did not address what makes an order injunctive. The Sault Tribe's disagreement with the court of appeals is simply over whether the specific terms of the 2023 Decree render it an injunction in the first instance. Nothing about this issue presents an important federal question requiring resolution by this Court. The argument is again one for error correction and has no implications beyond the detailed terms of a sui generis sixty-two-page decree governing seven sovereigns and a shared resource.

B. The Sault Tribe's Arguments that the 2023 Decree Is an Injunction Lack Merit.

Even were error correction a cognizable basis for a grant, the Sault Tribe's argument is a logical fallacy. Every injunction "tells someone what to do or not to do," Pet. 22 (citation omitted), but not every judicial order doing so is an injunction and thus subject to the four-factor test. *See, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 365 (2011) (order to disgorge backpay not an injunction). The Sault Tribe makes only two specific arguments that the 2023 Decree is an injunctive order. Neither has merit.

First, it argues that the 2023 Decree unlawfully "restricts the Sault Tribe's treaty rights" in three ways (involving gear usage, the Sault Tribe's

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[9] As noted, the district court adopted those considerations in 1985 at the urging of the Sault Tribe. *See supra* p. 19 n.7.

exclusive zone, and closed fishing areas). Pet. 22. But the district court addressed and rejected those same contentions in great detail, Pet. App. 61a–62a, 64a–65a, 67a–68a, 83a–85a, 145a–151a, and 154a (despite the fact that the Sault Tribe did not support them with legal authority or factual or expert evidence, *see supra* pp. 16–17), and the Sault Tribe has made no effort here to explain how the district court erred in its careful determinations. Nor did it make any such effort in the court of appeals, which accordingly did not address the subject.

Second, the Sault Tribe argues that the 2023 Decree is a "sweeping structural injunction regulating fishing in wide swaths of the Great Lakes for nearly the next quarter century." Pet. 16. But the 2023 Decree bears none of the hallmarks of a structural injunction. As Justice Scalia explained, "[s]tructural injunctions depart from … historical practice, turning judges into long-term administrators of complex social institutions such as schools, prisons, and police departments. Indeed, they require judges to play a role essentially indistinguishable from the role ordinarily played by executive officials." *Brown v. Plata*, 563 U.S. 493, 555 (2011) (Scalia, J., dissenting). But here the role of the district court is negligible. Under the 2023 Decree (like its predecessors), the State regulates its fishers, and the Tribes regulate theirs. D. Ct. Dkt. 2132 § § V and VI, at 22-28. Accordingly, the "Jurisdiction and Enforcement" provisions of the 2023 Decree provide no role for the district court. Enforcement is instead left to the Tribes and the State, *see id.* § XVI, at 51-55, with the joint state and tribal "Law Enforcement Committee" acting "as the primary body for consultation and

collaboration on enforcement issues under this Decree," *id.* § XVI(B)(2)(a), at 52. And the 2023 Decree, like its predecessors, establishes an Executive Council consisting of "the chairpersons of the Tribes, the Director of the [Michigan Department of Natural Resources], and the Secretary of the Interior," to confer regularly "to review the status of the fishery resource, the implementation of this Decree, and any other matters appropriate for consideration by the Parties at the policy level," *id.* § XVII, at 55. Once again, the district court has no role to play in the workings of the Council.

The district court's role is limited to approving the Decree and adjudicating party disputes when the Decree's dispute resolution provisions have failed to yield a satisfactory outcome. As noted above, in *two decades* under the 2000 Decree (which provided the same minimal-by-design role for the district court), the parties never once required judicial resolution of a dispute. As the district court correctly foresaw in 1985, the co-management framework and party dispute resolution procedures would serve "to keep the management [of the fishery] … out of the court where it does not belong." 12 Indian L. Rep. at 3085. The 2023 Decree thus bears no resemblance to a structural injunction.

C. The Court of Appeals Did Not Erroneously Rely on Consent Decree Precedents.

The Sault Tribe contends that the court of appeals' injunction analysis was "made worse" by its "reliance on inapt consent decree precedent." Pet. 24. But the court of appeals addressed consent decree

precedents in response to *the Sault Tribe's* reliance on those precedents and rejected their relevance. *See* Pet. App. 13a ("[T]he 2023 Decree is not a 'consent' decree …. Thus, the cases to which the Sault Tribe cites involving consent decrees … are inapposite."). To the extent the court of appeals addressed those precedents, it did so arguendo. *See, e.g.*, *id.* at 23a ("Even if we assume that the 2023 Decree were a consent decree, Sault Tribe's principal case on this point … lends no support to its argument.").[10]

D. The Court of Appeals Did Not Erroneously Fail To Apply the *LeBlanc* Standard.

The Sault Tribe contends that the court of appeals erroneously "dispense[d] with the *LeBlanc* standard[.]" Pet. 25. This argument fails as a basis for certiorari thrice over.

First, the court of appeals did not address the Sault Tribe's *LeBlanc* argument on the merits because the Sault Tribe did not make the argument in either of its briefs on appeal. *See* Ct. App. Dkts. 30, 47; *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 108–109 (2001) (per curiam) (dismissing writ as improvidently granted because the question at issue was not raised in or considered by the court of appeals, which "requires dismissal of the writ"); *Adams v. Robertson*, 520 U.S. 83, 85 (1997) (per

[10] The court of appeals' unequivocal declaration that "the 2023 Decree is not a 'consent decree,'" Pet. App. 13a, like its rejection of the Sault Tribe's "attempt to stylize the district court's entry of 2023 as a permanent injunction," *id.* at 24a, belie the Sault Tribe's claim that the court of appeals was "unable to decide whether the 2023 Decree is a consent decree" and whether it is "an injunction," Pet. 16.

curiam) (holding that where issues not raised or addressed in court below, "[w]e therefore dismiss the writ as improvidently granted"); *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view[.]").

Second, no precedent of this Court involves the *LeBlanc* standard, which is specific to the five Tribes' rights under the 1836 Treaty, *see Michigan*, 653 F.2d at 279. Whether the court of appeals was required to apply that standard to its review of the 2023 Decree is the very definition of an issue without reach beyond the specifics of this case. As such, it hardly qualifies as an important federal question that should be decided by this Court. *See* Sup. Ct. R. 10(c).

Third, the Sault Tribe offers no explanation as to how the *LeBlanc* standard—which addresses the permissible scope of "state regulations restricting Indian fishing rights under the 1836 treaty," *Michigan*, 653 F.2d at 279—could delimit the court's own authority to approve a decree under which "[t]he State shall not enforce its fishing laws and regulations against Tribal Citizens engaged in Fishing Activity within the 1836 Treaty Waters," D. Ct. Dkt. 2132 § XVI(A), at 51.

III. This Case Is a Poor Vehicle.

This case presents a poor vehicle to resolve the questions presented. The Sault Tribe is judicially estopped from pressing the principal arguments contained in its Petition, as each squarely contradicts an argument it pressed and prevailed on in earlier phases of this litigation. In 1985, the Sault Tribe argued that the district court had authority to enter the 1985 Decree over the objections of a non-

consenting tribe, the court agreed, and Bay Mills acquiesced in that ruling. *See supra* pp. 2–3, 8–9. The Sault Tribe makes the opposite argument to this Court.

The Sault Tribe further argued in 1985 that the district court's modification of the 1979 Decree to provide for co-management and to allocate the fishery between tribal and non-tribal fishers was within the court's equitable authority because doing so was necessary to implement that earlier decree and was "within the four corners of the complaint." Again, the district court agreed and adopted the 1985 Decree on that basis, *see supra* pp. 26–27, and again the Sault Tribe makes the opposite argument to this Court.

And the Sault Tribe successfully argued that the district court could exercise its equitable authority and adopt the 1985 Decree not by considering the four-factor injunction test, but by applying a set of equitable considerations (proposed by the Sault Tribe) that mirrors the considerations the district court applied in 1985 and the courts below applied in adopting the 2023 Decree. *See supra* p. 19 n.7. The Sault Tribe again makes the opposite argument to this Court.

In *New Hampshire v. Maine*, 532 U.S. 742 (2001), a sovereign party asserted a position "contrary to its position in the 1970's litigation," and this Court made clear that "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly

taken by him." *Id.* at 749 (brackets and citation omitted). These principles apply with especial force in cases between sovereigns, "in which each owes the other a full measure of respect." *Id.* at 756. The same principles preclude the Sault Tribe's alterations in position in this litigation and make this case a decidedly problematic vehicle to address the questions presented.

IV. The Sault Tribe's Policy Arguments Provide No Basis for Certiorari Review.

The Sault Tribe contends that the court of appeals' decision "risk[s] encouraging parties to settle resource disputes by ignoring the sovereign rights asserted by inconvenient objectors rather than reaching unanimous consent," Pet. 26, and "to abandon fair negotiations over shared resources in favor of backroom deals," setting off "a race in which sovereigns scramble to be the first in the room, so that they can … cram down the majority's will on the unlucky minority," *id.* at 30.

This rhetoric is undermined by the Sault Tribe's express representations to the district court of its full and extensive participation in the negotiations of the 2023 Decree at a juncture when the other parties reported that negotiations were "com[ing] to a close," D. Ct. Dkt. 2009 at 2. *See supra* pp. 12–13. It is further undermined by the fact that the district court's equitable authority to allocate the fishery to accommodate the rights and interests of multiple sovereigns absent unanimous consent was successfully urged on the court by the Sault Tribe forty years ago, *see supra* pp. 8–9, and *none of the consequences it now posits followed*.

And it overlooks the reality that courts routinely allocate shared resources among sovereigns over the objections of one or more of them. *Florida v. Georgia*, 585 U.S. 803 (2018), the case cited by the Sault Tribe, Pet. 30, is an example. Florida and Georgia had failed to reach agreement over a shared water resource, and Florida sought "an equity-based cap" on Georgia's use of the water. 585 U.S. at 824. While the Court noted its preference that sovereigns resolve such disputes by mutual agreement, it also noted its authority "to equitably apportion" shared resources when they fail to reach agreement. *Id.* at 808–09 (quotation marks omitted). Thus "[t]his Court's authority to apportion interstate streams encourages States to enter into compacts with each other," and they do so "in the shadow of our equitable apportionment power[.]" *Kansas v. Nebraska*, 574 U.S. 445, 455 (2015).

When the State and Bay Mills eventually acquiesced in the district court's entry of the 1985 Decree, they did so "in the shadow" of the district court's ruling that, as successfully argued by the Sault Tribe, it had equitable authority to allocate the fishery absent unanimous consent. The parties here, including the Sault Tribe, entered the negotiations over the 2023 Decree in 2019 with the same understanding based on forty years of experience under the successive decrees.

CONCLUSION

The Respondent Tribes respectfully request that the petition be denied.

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Respectfully submitted,

/s/ Riyaz A. Kanji

RIYAZ A. KANJI
Counsel of Record
DAVID A. GIAMPETRONI
KANJI & KATZEN, P.L.L.C.
P.O. Box 3971
Ann Arbor, MI 48106
rkanji@kanjikatzen.com

Counsel for Respondent Tribes

KATHRYN L. TIERNEY
REBECCA LIEBING
12140 W. Lakeshore Dr.
Brimley, MI 49715

Counsel for Bay Mills Indian Community

JAMES A. BRANSKY
9393 Lake Leelanau Dr.
Traverse City, MI 49684

Counsel for Little Traverse Bay Bands of Odawa Indians

ELISE MCGOWAN-CUELLAR
2608 Govt. Center Dr.
Manistee, MI 49660

Counsel for Little River Band of Ottawa Indians

WILLIAM RASTETTER
REBECCA MILLICAN
OLSON & HOWARD, P.C.
520 S. Union St.
Traverse City, MI 49684

Counsel for Grand Traverse Band of Ottawa and Chippewa Indians