No. 25-382

IN THE

Supreme Court of the United States

ALICIA STROBLE,
Petitioner,

v.

OKLAHOMA TAX COMMISSION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Oklahoma

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

The Oklahoma Tax Commission is right about one thing: This case is "important," "very important," and even "undeniably important." Br. in Opp. 7, 16, 18. But the Commission is wrong to contend that Oklahoma has the power to tax the income of tribal citizens who live and work in their Tribes' Indian country. An unbroken line of this Court's precedents rejects that contention. This Court should grant review to correct the Oklahoma Supreme Court's mistaken decision—which conflicts with the rulings of other courts and is already leading to serious disruption in Oklahoma's Indian country.

Numerous cases of this Court recognize a "categorical" and "*per se*" rule that "a State is without power to tax reservation lands and reservation Indians"

absent Congress's consent. *Cnty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 258 (1992). And this Court has applied that rule to all Indian country that "Congress has defined" in "18 U.S.C. § 1151." *Okla. Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993). Thus, Oklahoma may not tax the income of petitioner Alicia Stroble, who lives and works within the Indian country recognized in *McGirt v. Oklahoma*, 591 U.S. 894 (2020).

Like the court below, the Commission cannot reconcile its argument with this Court's precedents. It denigrates (at 15) the "purported categorical rule" but never acknowledges that the "categorical" language comes directly from this Court. Rather than addressing the income-taxation doctrine that controls this case, the Commission misreads far-afield cases. And in apparent recognition that it cannot win under the current law, the Commission ultimately urges the Court to overrule or illogically cabin *McGirt*. In short, the Commission's arguments provide no sound defense of the decision below.

Apart from its merits contentions, the Commission offers no reason to deny certiorari. The Commission contests that there is a split but presses arguments that conflict with a recent Seventh Circuit decision, with the Tenth Circuit's jurisprudence on Indian country in Oklahoma, and with other rulings applying this Court's categorical approach to state taxation of tribal citizens. The Commission fails to engage with the serious concerns raised in the petition and by the amici Tribes about the consequences of the decision for Indian country in Oklahoma and elsewhere—including the significant disruption already resulting from

the decision. And the Commission effectively acknowledges that this case is an ideal vehicle to review the concededly important question presented. As the Commission's counsel acknowledged below, "there is a very good chance that the federal law issues that are presented in this case are ultimately going to have to be resolved by the United States Supreme Court." Rec. of Oral Arg., No. 120,806, at 1:30:43 (Okla.), https://vimeo.com/908698272/cc602f4c97. The Court should grant review.

REASONS FOR GRANTING THE PETITION

I. The Commission Offers No Sound Defense of the Decision Below.

1. The Commission fails to deflect an unbroken line of precedent that is incompatible with the decision below.

This Court's cases categorically hold that a State cannot "assert tax jurisdiction" over "tribal members living and working on land set aside for those members" absent congressional approval. *Sac & Fox Nation*, 508 U.S at 124; *see* Pet. 14-16. Those cases further hold that this *per se* rule applies in all "Indian country" defined in 18 U.S.C. § 1151. *Sac & Fox Nation*, 508 U.S. at 123; *see* Pet. 16-17. Thus, when a State seeks to tax income earned by Indians who live and work in their Tribes' Indian country, the Court does not "balance" state and tribal interests. *Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 457 (1995); *see* Pet. 15. The Court instead applies a "categorical approach" and invalidates the tax unless

Congress "has authorized state taxation." *Yakima*, 502 U.S. at 258.[1]

Remarkably, the Commission simply ignores this taxation doctrine. It never acknowledges that this Court has "repeatedly addressed the issue of state taxation of tribes and tribal members" and has categorically held that "such taxation is not permissible absent congressional consent." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 n.17 (1987). Instead, the Commission criticizes petitioner for urging a "purported categorical rule," Br. in Opp. 15, while ignoring that the Court itself has repeatedly dictated this "categorical approach." *Chickasaw Nation*, 515 U.S. at 458; *Yakima*, 502 U.S. at 258; *see Cabazon*, 480 U.S. at 216 n.17 ("*per se* rule").

The Commission (like the decision below) also disregards this Court's cases setting the geographical scope of the categorical rule. The Commission errs in claiming (at 11-12) that the Court has not addressed "whether [a State] could have taxed the income of a tribal member who lived on private fee land" within Indian country. In fact, the Court expressly rejected the argument—previously raised by the Commission itself—that "Oklahoma's taxes are different" because "the Sac and Fox live on scattered allotments, and not on a reservation." *Sac & Fox Nation*, 508 U.S. at 128. The Court explained that it had "never drawn the distinction Oklahoma urged," instead "ask[ing] only whether the land is Indian country" within the

[1] The Commission is mistaken to insist (at 7) that petitioner "identify a[] federal statute or treaty that preempts the State's exercise of its taxing authority here." Under the "categorical approach," the Commission must identify "express authority" permitting taxation. *Yakima*, 502 U.S. at 258.

meaning of "18 U.S.C. § 1151." *Id.* at 123, 125. The Commission thus cannot duck Section 1151's text, which states that "Indian country" includes all reservation land "notwithstanding the issuance of any patent." 18 U.S.C. § 1151; *see McGirt*, 591 U.S. at 906 ("[T]he relevant statute expressly contemplates private land ownership within reservation boundaries."). In short, this Court has already rejected the Commission's suggestion that different income-taxation rules should apply to tribal members who live on "unrestricted, non-trust, private fee land" within Indian country. Br. in Opp. 12.[2]

This Court's taxation precedents, together with *McGirt*, dictate the outcome of this case. *McGirt* holds that the Muscogee (Creek) Reservation is "Indian country." 591 U.S. at 935. *Sac & Fox Nation* holds that the Court's taxation rulings apply throughout "Indian country." 508 U.S. at 125. And those taxation rulings announce a "categorical approach" that Oklahoma "is without power to tax" petitioner absent congressional consent. *Yakima*, 502 U.S. at 258. The Commission has no answer to that chain of logic, which is presumably why it says virtually nothing about the critical precedents.

2. Instead of engaging with the decisive case law, the Commission advances four arguments to defend the decision below. Each lacks merit.

a. The decision in *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), did not overturn the Court's many taxation precedents. *Contra* Br. in Opp. 7-10. *Castro-*

[2] While the Commission quotes (at 2) this Court's statement that a State has "well-established" authority to "tax all the income of its residents," it omits the statement's critical qualifier: "outside Indian country." *Chickasaw Nation*, 515 U.S. at 462-63.

Huerta recognized that *McGirt* determined that the Muscogee (Creek) Reservation was "Indian country" for all purposes. 597 U.S. at 647. It then held that States may prosecute "crimes committed by non-Indians against Indians in Indian country," including because "a state prosecution of a non-Indian does not involve the exercise of state power over any Indian or over any tribe." *Id.* at 638, 650.

That holding does not cast doubt on the Court's taxation cases. Those cases distinguish "criminal . . . jurisdiction over non-Indians located on reservation lands" from "the area of state taxation" of Indians. *Yakima*, 502 U.S. at 258; *see* Pet. 20-21. And *Castro-Huerta* cited *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164 (1973) as an example of "a separate principle of federal law that . . . precludes state interference with tribal self-government." 597 U.S. at 639 n.2. That is why the Seventh Circuit concluded that *Castro-Huerta* did not upset "the framework articulated in the Court's sizeable body of Indian tax cases." *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisc. v. Evers*, 46 F.4th 552, 558 (7th Cir. 2022).

b. Nor does the 1943 decision in *Oklahoma Tax Comm'n v. United States*, 319 U.S. 598, render the categorical taxation rule inapplicable in eastern Oklahoma. *Contra* Br. in Opp. 8-11. Notably, the Commission unsuccessfully pressed the same argument in *Sac & Fox Nation*, repeatedly citing *Oklahoma Tax Commission* to assert that "the reservation decisions" adopting the categorical taxation rule "do not fit the situation of the Oklahoma Indians." Brief for Petitioner at 17, *Oklahoma Tax Comm'n v. Sac & Fox Nation*, No. 92-259 (U.S. Dec. 17, 1992); *see id.* at 6, 16,

18, 24, 27. Despite those arguments, this Court held "that the *McClanahan* presumption against state taxing authority applies to all Indian country"—including in Oklahoma. *Sac & Fox Nation*, 508 U.S. at 125. It is therefore unsurprising that the majority and concurring decisions below did not rely on *Oklahoma Tax Commission*—and that the Commission itself cited the case only in passing.

Moreover, *Oklahoma Tax Commission* assumed that the Creek Nation had no sovereignty over the lands in question, in part because "[t]heir lands are held in fee." 319 U.S. at 603; *cf. id.* at 603 & n.5 (stating that "these Indians have no effective tribal autonomy," although "some progress has been made in the restoration of tribal government"). But the enactment of Section 1151 five years later eviscerated that assumption by providing that fee lands can be "Indian country." And *McGirt* confirms that the Muscogee (Creek) Nation exercises "self-governance" over the "reservation" lands in question in this case. 591 U.S. at 909, 911. Thus, this case does not involve "Indians who have left or never inhabited reservations set aside for their exclusive use or who do not possess the usual accoutrements of tribal self-government." Br. in Opp. 11 (quoting *McClanahan*, 411 U.S. at 167-68).

c. The Commission's reliance (at 12-13) on *City of Sherrill v. Oneida County Nation*, 544 U.S. 197 (2005), cannot be squared with the holding of *McGirt*. *See* Pet. 21-23. As the Commission notes, *Sherrill* holds that Tribes cannot unilaterally "rekindl[e] embers of sovereignty that long ago grew cold." Br. in Opp. 13 (quoting *Sherrill*, 544 U.S. at 214). But as the Commission recognizes four pages later, "[u]nder the current state of the law," the Nation retains—and never

lost—"sovereignty" over its "reservation." *Id.* at 17; *see McGirt*, 591 U.S. at 909-11. And while the Commission claims that "the State's exercise of civil jurisdiction" creates governmental "reliance interests" justifying taxation, Br. in Opp. 13, *McGirt* rejected that very argument, holding that "[u]nlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law," 591 U.S. at 937-38. The Commission's attempt to invoke *Sherrill* is thus just another attempt to evade *McGirt*.

d. Finally, in apparent recognition that it cannot prevail under *McGirt* as written, the Commission asks the Court (at 14) to rework or overturn that decision. The Court should do neither.

McGirt cannot be "limited to 'the narrow issues of criminal jurisdiction under the Major Crimes Act,'" Br. in Opp. 14 (quoting Pet. App. 9a), because the Court explicitly recognized that *McGirt*'s holding would affect "many federal civil laws and regulations" that apply in "Indian country." 591 U.S. at 935. The Commission does not explain how the Court's Section 1151 ruling could be limited to just one context. Nor would it make sense for *McGirt*'s recognition of the Creek Reservation to apply only to the Major Crimes Act—which, far from codifying tribal authority, "sought to curtail [Tribes'] traditional sovereign tribal powers"—and not to contexts like taxation. *Veneno v. United States*, 607 U.S. __, 2025 WL 3131791, at *1 (2025) (Gorsuch, J., joined by Thomas, J., dissenting from the denial of certiorari).

Meanwhile, the Commission never develops its request to overturn *McGirt*. It does not even assert that principles of statutory *stare decisis* could justify overruling such a recent decision. After all, Congress

could change the jurisdictional rules that apply in eastern Oklahoma at any point—but has not done so. In addressing the question presented, the Court should take *McGirt* as settled law. And the fact that the Commission seeks to eliminate *McGirt* or relegate it to irrelevance confirms that settled law is not on the Commission's side.

II. The Commission Fails To Undercut the Divide in Authority.

The Commission also errs in disputing (at 14-16) that the decision below creates a conflict of authority. There is no way to reconcile the argument that *Castro-Huerta* upended the Court's taxation precedents with the Seventh Circuit's explicit statement that *Castro-Huerta* did not alter that line of cases. *Compare* Pet. App. 9a (citing *Castro-Huerta* for the proposition that *McGirt* is "limited" to "the narrow issue of criminal jurisdiction under the Major Crimes Act"), *with Lac Courte Oreilles Band*, 46 F.4th at 558.

More broadly, the Commission has next to nothing to say about the many lower-court precedents that apply the Court's "categorical" taxation rule. *See* Pet. 26. Those opinions are irreconcilable with the Commission's insistence that Oklahoma can tax the income of tribal citizens who live and work within their Tribes' Indian country.

Finally, the Commission is mistaken to deny that the decision below conflicts with rulings of the Tenth Circuit. The Commission claims it has "authority to tax the income of a member of the Creek Nation who lives on unrestricted, non-trust, private fee land" within the Creek Reservation. Br. in Opp. 10. But in another case involving the Commission and the Creek Nation, the Tenth Circuit rejected "the State's

suggestion that Indian fee title and 'reservation' status under section 1151(a) are somehow inconsistent." *Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Okla. Tax Comm'n*, 829 F.2d 967, 975 (10th Cir. 1987). And on remand in *Sac & Fox Nation*, the Tenth Circuit recognized that this Court's "presumption against state taxing authority applies to all 'Indian country,'" citing 18 U.S.C. § 1151. *Sac & Fox Nation v. Oklahoma Tax Comm'n*, 7 F.3d 925, 926 (10th Cir. 1993). The Oklahoma Supreme Court's decision cannot be squared with this Tenth Circuit precedent.

III. The Commission Agrees That the Question Is Exceptionally Important.

There is a single point of common ground between the parties: The Commission thrice acknowledges that the question presented is "important." Br. in Opp. 7, 16, 18.

But in assessing importance, the Commission overplays its interests while undervaluing the interests of petitioner, the Nation, and Tribes throughout the country. The Commission insists (at 16) that a ruling for petitioner would "deprive the State of much needed revenue," but never acknowledges that Oklahoma's governor has proposed a much larger revenue reduction. *See* Pet. 24. The Commission also declares (at 16) that its taxation of Creek Nation citizens is necessary to provide "myriad services." But it ignores that Oklahoma's tribal governments provide extensive services to Indians and non-Indians, as five Oklahoma Tribes describe in amicus filings. *See* Muscogee (Creek) Nation Br. 17-24; Cherokee, Chickasaw & Choctaw Nations Br. 10-14; Seminole Nation Br. 29-31.

On the other side of the ledger, the Commission fails to reckon with the serious harms to tribal sovereignty that the decision below will produce. Because "the power to tax involves the power to destroy," *Yakima*, 502 U.S. at 258 (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819)), allowing the Commission to tax tribal citizens cannot "be reconciled with tribal self-determination," *McClanahan*, 411 U.S. at 179; *see* Pet. 15-16, 29. And amici powerfully demonstrate that allowing Oklahoma to tax petitioner would threaten tribal economies in Oklahoma and across the United States. *See* Muscogee (Creek) Nation Br. 22-23; Cherokee, Chickasaw & Choctaw Nations Br. 13; Seminole Nation Br. 29-30; NCAI Br. 11-18.

The importance of this case in Oklahoma has only increased since the petition's filing. In October, the Oklahoma Department of Wildlife Conservation announced that it would enforce state hunting and fishing regulations against tribal members on tribal land in lieu of the Tribes' own comprehensive regulatory schemes, claiming that "[t]he Stroble v. Oklahoma Tax Commission case . . . has provided clear legal confirmation that McGirt is limited to prosecuting crimes under the federal Major Crimes Act only." Okla. Dep't of Wildlife Conserv., *ODWC Reaffirms Enforcement of Oklahoma's Wildlife Laws* (Oct. 8, 2025), https://perma.cc/MJ5H-9LPB. The State's attorney general then announced that he would dismiss such prosecutions because he would "not allow Native American hunters to be prosecuted by the state for hunting in Indian Country." Okla. Att'y Gen., *Drummond To Dismiss Native American Hunting Case* (Oct. 30, 2025), https://perma.cc/XMG8-SF9T. Oklahoma's governor responded by purporting to appoint a

"special prosecutor" to circumvent the attorney general's prosecutorial discretion. Okla. Governor, *Governor Stitt Defends Equal Enforcement of State Hunting Laws, Appoints Special Prosecutor* (Nov. 13, 2025), https://perma.cc/94YN-2B3H. That the decision below is causing internecine conflict within Oklahoma's government, upending tribal regulatory authority, and creating grave uncertainty for tribal hunters and fishers is a further reason to grant review. *See* Muscogee (Creek) Nation Br. 16; Cherokee, Chickasaw & Choctaw Nations Br. 14.

Nor is the Commission right to doubt that this case will "have consequences 'beyond Oklahoma.'" Br. in Opp. 17 (quoting Pet. 29). The National Congress of American Indians supports certiorari because "[a]llowing the decision below to stand risks emboldening states to encroach on Tribal authority by seeking to extract revenue from Tribal citizens in Indian Country, just as Oklahoma did here." NCAI Br. 24. And even the Commission is uncertain whether its proposed rule applies only to "the Five Tribes of Oklahoma" or "more generally." Br. in Opp. 10. The Court should not permit Oklahoma to create a roadmap for other incursions on tribal self-governance.

IV. The Commission Does Not Dispute That This Case Is an Ideal Vehicle.

Finally, the Commission tacitly concedes that this case is an ideal vehicle. *See* Pet. 31-32. The Commission identifies neither factual nor procedural barriers to review. Thus, this case is the perfect one to answer the "undeniably important" question presented. Br. in Opp. 18.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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December 15, 2025