No. 23-524

IN THE
Supreme Court of the United States

AMERICAN FOREST RESOURCE COUNCIL, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented, Pet. i, is whether the President can use an Antiquities Act Proclamation to override Congress's plain text in the O&C Act to repurpose vast swaths of O&C timberlands as a national monument where sustained-yield timber production is prohibited.*

* This petition covers four consolidated cases. The public interest respondents intervened below in only the two cases that implicate petitioners' first question presented. Pet. App. 37a n.1. This brief addresses only that first question.

RELATED PROCEEDINGS

To counsel's knowledge, there are no related proceedings beyond those included in petitioners' Rule 14.1(b)(iii) statement.

CORPORATE DISCLOSURE STATEMENT

Under Supreme Court Rule 29.6, Soda Mountain Wilderness Council, Klamath Siskiyou Wildlands Center, and Oregon Wild state they have no parent companies, subsidiaries, or affiliates that have issued shares to the public in the United States and that no publicly held corporation owns 10% or more of their stocks because they have never issued any stock or other security.

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BRIEF IN OPPOSITION

INTRODUCTION

This is a case about the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937. As its name implies, the O&C Act's focus is local—it addresses forest management on only a small portion of federal lands in western Oregon. Petitioners ask this Court to review whether a presidential proclamation that reserves an even smaller portion of those O&C lands as part of an existing national monument is invalid *if* the proclamation's management directives conflict with those in the O&C Act.

Further review of that question is not needed. There is no split. Two circuits have addressed the question,

and both rejected petitioners' reading of the O&C Act.[1] Nor is the issue so important as to warrant review in the absence of a split. Petitioners' challenge concerns the contours of forest management in an area of federal land that is smaller than Washington, D.C., and any resolution of this challenge by this Court will be limited to that area. And both appellate courts got it right. They applied settled statutory interpretation principles to conclude that the O&C Act contains broad, multi-purpose management directives, and that the monument proclamation's provisions fit comfortably alongside those directives.

There is a clear tell that petitioners understand that this O&C Act issue is not certworthy. They spend much of the petition pretending that it raises an entirely different issue—the general scope of the President's delegated authority under the Antiquities Act. The misdirection starts with the first pages of the petition and peaks with an unfounded claim that it "provides an excellent vehicle" to address the metes and bounds of the Antiquities Act. Pet. 2–3, 22.

But the truth is, petitioners declined to challenge the monument proclamation at issue here on those Antiquities Act grounds. Instead, as they put it: The case turns on whether the proclamation "directed that those timberlands be managed in a manner wholly incompatible with" the O&C Act.[2] Or, as the court

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[1] The plaintiffs in that second case, *Murphy Co. v. Biden*, 65 F.4th 1122 (9th Cir. 2023), simultaneously filed a petition for certiorari, *see* No. 23-525 (filed Nov. 15, 2023). For ease of reference, this brief cites to the panel opinion in *Murphy* as reproduced in the appendix to that petition (*Murphy* Pet. App.).

[2] Plaintiffs/Appellees Final Br. at 3, *Am. Forest Res. Council v. United States*, No. 20-5008 (D.C. Cir. filed Oct. 6, 2022).

below put it: Petitioners claimed the monument expansion "was inconsistent with an independent statute"—the O&C Act. Pet. App. 19a. Because petitioners declined to raise a separate argument that this monument expansion violates any provision of the Antiquities Act itself, this is not a case that tests the bounds of that Act.

The petition should be denied.

STATEMENT

A. Statutory and Regulatory Background

The Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937. The O&C Act covers a checkerboard of 2.4 million acres of federal lands in western Oregon. *See* Pub. L. No. 75-405, 50 Stat. 874 (codified at 43 U.S.C. § 2601). The lands have moved between federal and private ownership over time. In the 1800s, the government granted them to a private railroad company, but the railroad violated the terms of that grant. That led Congress to revest the land in the early 1900s. Pet. App. 3a–4a.

Congress's first strategy to manage the timber on those lands was to hold a clearance sale. It "directed the Secretary [of the Interior] to sell the timber" on the revested lands " 'as rapidly as reasonable prices can be secured.' " *Id.* at 4a (quoting Act of June 9, 1916, Pub. L. No. 64-86, ch. 137, 39 Stat. 218, 220). Congress sent a percentage of those proceeds to local governments whose tax base shrunk when the lands revested. This strategy failed to satisfy either Congress or the local governments, and a second statute designed to shift the local governments' debt to the U.S. Treasury also proved unworkable. *Id.* at 4a–5a.

The O&C Act, enacted in 1937, reflected a different strategy, one of permanent forest production under sustained yield principles. The goal was to "provide conservation and scientific management" to replace the prior focus on "liquidation . . . ." *Id.* at 27a (quoting H.R. Rep. No. 75-1119 at 2 (1937)). As relevant, its directives apply to revested lands "which have heretofore or may hereafter be classified as timberlands." 43 U.S.C. § 2601. Interior "shall" manage timberlands "for permanent forest production." *Id.* And timber "shall be sold, cut, and removed in conformity with the princip[le] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facil[i]ties." *Id.*

Interior has long read the Act as requiring it to give effect to the specified purposes of sustained yield management. In the Act's first promulgated regulations, Interior stated that those purposes "are to be conserved by the new plan of management."[3] Interior also explained that it would conduct "partial or selective logging" as to "tree, group, and area selection" and would reserve some O&C lands from logging altogether for public purposes like recreation.[4] Since then, Interior, through the Bureau of Land Management (BLM), has continued to exercise its discretion under the O&C Act to manage the lands to meet all the specified sustained yield purposes, not solely the timber supply purpose. *Murphy* Pet. App. 53a. In line with this understanding, BLM has, for example,

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[3] 3 Fed. Reg. 1795, 1796 (July 13, 1938).

[4] *Id.* at 1796, 1798–799.

continued to restrict timber harvest on some O&C lands. *Id.* at 59a.

Today, several statutes address the local governments originally affected by the revestment. Half of the proceeds from the sale of timber on O&C lands go to those governments. 43 U.S.C. § 2605(a), (b). Congress has also enacted separate supplemental aid programs that grant money directly to the counties. In 1993, it created a payment program that spanned a decade. *See* 1993 Omnibus Budget Reconciliation Act, Pub. L. No. 103-66, §§ 13982–13983, 107 Stat. 681–682. That program was replaced with a broad funding scheme that remains in place. *See generally* Secure Rural Schools and Community Self-Determination Act of 2000, Pub. L. No. 106-393, 114 Stat. 1607–628.

The Antiquities Act. Through the Antiquities Act of 1906, Congress "empowered" the President "to establish reserves" as national monuments. *Cameron v. United States*, 252 U.S. 450, 455 (1920). This authority is circumscribed. Only "land owned or controlled by the Federal Government" may be reserved. 54 U.S.C. § 320301(a). These lands may be reserved only to protect "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." *Id.* And reserved lands must "be confined to the smallest area compatible with the proper care and management of the objects to be protected." *Id.* § 320301(b). Within these bounds, the President may use his "discretion" to execute the Act and must do so through a "public proclamation." *Id.* § 320301(a). In 1950, Congress amended the Antiquities Act to exempt federal lands in the state of Wyoming from the Act entirely. *See* Act of September 14, 1950, Pub. L. No. 81-787, 64 Stat. 849, 849 (codified at

54 U.S.C. § 320301(d)). More recently, Congress narrowed the application of executive branch land withdrawals on some federal lands in Alaska. *See* 16 U.S.C. § 3213 (setting a default expiration date for withdrawals over a threshold acreage).

B. Procedural History

1. In 2000, President Clinton determined that an area of federal land in southwestern Oregon contained unique geological, historical, and ecological objects that warranted protection under the Antiquities Act. *See* Proc. No. 7318, 65 Fed. Reg. 37,249, 37,249 (June 13, 2000). Pilot Rock, a volcanic plug, offers "an outstanding example of the inside of a volcano." *Id.* Portions of the historic Oregon/California Trail cross the area. *See id.* And it lies at "a biological crossroads—the interface of the Cascade, Klamath, and Siskiyou ecoregions"—that is home to "a spectacular variety of rare and beautiful species of plants and animals." *Id.*

And so the President reserved these lands as the Cascade-Siskiyou National Monument, finding that the smallest area that would protect these objects amounted to "approximately 52,000 acres" of federal lands. *Id.* at 37,250. Around 40,000 acres of the reserved lands were O&C lands. Pet. App. 12a. Under the proclamation, the Secretary of the Interior continued to manage the monument lands through BLM. *See* 65 Fed. Reg. at 37,250. And it directed the Secretary to prepare a "management plan" for the monument within three years. *Id.*

The proclamation addressed how various resources within the monument were to be managed. It withdrew the reserved lands from sale or other disposition "under the public land laws." *Id.* The proclamation permitted motorized vehicles on designated roads

within the monument. *See id.* And it directed the Secretary to study whether livestock grazing was consistent with the protective purpose of the monument—allowing existing grazing permits and leases to continue, subject to revisitation based on the results of that study. *See id.* at 37,251.

The proclamation also addressed the management of the forests on the reserved lands. It prohibited "[t]he commercial harvest of timber or other vegetative material" unless "part of an authorized science-based ecological restoration project aimed at meeting protection and old growth enhancement objectives." *Id.* at 37,250. It also stated that reserved lands "shall" not "be considered to be suited for timber production" or "used in a calculation or provision of a sustained yield of timber." *Id.* But trees could be logged when "clearly needed for ecological restoration and maintenance or public safety." *Id.*[5]

In 2009, Congress made three specific changes to the monument's management. It authorized federal land exchanges "[f]or the purpose of protecting and consolidating Federal land within the Monument." Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, §§ 1403–404, 123 Stat. 991, 1208–1030. It designated nearly half of the original monument lands as the Soda Mountain Wilderness, which requires

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[5] After the original proclamation issued, several plaintiffs challenged it on the grounds that because other statutes (not including the O&C Act) furthered certain environmental and preservation goals, the Antiquities Act could not be used to further those same goals. The D.C. Circuit rejected that challenge as based on a misconception that federal laws "do not providing overlapping sources of protection." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1138 (D.C. Cir. 2002).

BLM to preserve the area's wild state and leave it unimpaired by commercial and other activities. *See id.* § 1405(a), 123 Stat. 1030 (referencing the Wilderness Act, 16 U.S.C. § 1131 *et seq.*). And it amended the discretion that the proclamation had originally granted the Secretary over grazing by requiring the Secretary to accept and retire donated grazing leases and prohibiting new leases on lands covered by those donations, subject to exceptions. *See id.* § 1402, 123 Stat. 1207–208.

Over the years, calls to expand the monument grew. Ecological studies showed that the monument boundaries did not sufficiently protect many of the objects of scientific interest that were the basis for the monument designation. *See Murphy* Pet. App. 54a. More than 500 people attended the public meeting on proposed expansion in Ashland, Oregon (the closest town to the Monument), with the vast majority expressing support for the proposal. Oregon Senator Merkley's office reported an almost four to one ratio of public support for expansion. *See id.*

In 2017, President Obama expanded the Cascade-Siskiyou National Monument to "bolster protection of the resources within the original . . . monument" and "protect the important biological and historic resources within the expansion area." Proc. No. 9564, 82 Fed. Reg. 6145, 6145 (Jan. 18, 2017). This added "approximately 48,000 acres" of federal lands to the monument, reflecting "the smallest area compatible with the proper care and management of the objects to be protected." *Id.* at 6148. Around 39,800 acres of the newly reserved lands were O&C lands. Pet. App. 13a. There are 9.7 million acres of federal land in western Oregon, so monument expansion amounted

to approximately 0.5% of these public lands. The expansion did not "change the management" of the originally reserved lands, and it directed the Secretary to manage the newly reserved lands "under the same laws and regulations" as the rest of the monument, subject to potentially allowing some snowmobile and other off-road use. 82 Fed. Reg. at 6148–149.[6]

2. Petitioners challenged the expansion. They did not question the President's general authority under the Antiquities Act or "claim that the Monument swept beyond the" smallest area necessary to protect the objects within it. *Massachusetts Lobstermen's Ass'n v. Raimondo*, 141 S. Ct. 979, 981 (2021) (Roberts, C.J., statement respecting the denial of certiorari). Indeed, they "conce[ded]" that the President "was authorized by the Antiquities Act to expand the Monument." Pet. App. 14a. Instead, they claimed that the timber-related management directives that govern the expansion "violated the O&C Act's directive that O&C timberland 'shall be managed . . . for permanent forest production.' " *Id.* (quoting 43 U.S.C. § 2601)).

The district court accepted this claim. In an earlier portion of its opinion, the court had addressed petitioners' separate challenge to BLM's 2016 management plans for BLM's districts in western Oregon that contain O&C lands. *See id.* at 43a–48a. Consistent with prior practice, BLM's plan divided O&C lands

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[6] The monument now covers about 114,000 acres, as approximately 14,000 acres were added through congressionally funded acquisitions from willing sellers of private lands within the monument. *See supra* at 7 (discussing 2009 authorizations); *see also* 54 U.S.C. § 320301(c) (authorizing the federal government to accept relinquished inholdings).

into several categories and restricted timber harvesting for some of those categories. *See id.* at 41a. The district court accepted that the O&C Act grants BLM discretion. *Id.* at 46a. But it concluded that the O&C Act did not allow BLM to "reserve timberlands," apparently referring generically to BLM acts that limit timber harvests. *Id.* at 45a–46a. Based on this conclusion, the district court concluded that the timber-related directives that govern the monument expansion "similar[ly]" conflicted with the O&C Act. *Id.* at 50a.

3. A unanimous D.C. Circuit panel reversed.

The panel started with this Court's clear directives to lower courts that are faced with two statutes that "allegedly touch[] on the same topic." *Id.* at 21a. Courts may not choose a favored statute but "must instead strive 'to give effect to both.' " *Id.* at 22a (quoting *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018)). Those who—like petitioners—claim that two statutes cannot be reconciled bear a "heavy burden" on that claim in light of the "strong presumption" against implied repeals. *Id.* (quotations omitted).

Reviewing the statutes as directed by this Court's precedents, the panel unanimously concluded that the O&C Act "can reasonably be read in a manner that renders the statutes harmonious." *Id.* In doing so, the panel aligned itself with the Ninth Circuit, which had rejected the same challenge to the same monument expansion a few months earlier. *Murphy* Pet. App. 7a.

The panel first found that the text of the O&C Act did not subject all O&C lands to its forest production management directives. Pet. App. 25a n.15 (noting that petitioners "do not seriously dispute that land may be reclassified or that only land classified as

timberland is subject to the . . . timber-production mandate" and that they had "provide[d] no evidence" about whether O&C lands within the monument expansion were classified as timberlands). Those directives apply only to lands that "have heretofore or may hereafter be classified as timberlands." 43 U.S.C. § 2601. The Act grants "considerable discretion" over this classification and reclassification. Pet. App. 23a. This language allows O&C lands to be "reclassified" and confirms that any given parcel's "classification is not fixed." *Id.* The panel reasoned that the monument expansion had the same practical effect of an action reclassifying a small portion of O&C lands as non-timberlands. *Id.* at 24a.

The panel next rejected petitioners' rigid interpretation of the O&C Act. The Act replaced a "clear-cutting regime" with "sustained yield" management to ensure permanent forest production. *Id.* at 25a–26a (quotation omitted). The panel explained that this management principle requires BLM to address all the specified purposes in the Act of "providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facil[i]ties." 43 U.S.C. § 2601. As a result, even on timberlands where that management principle governs, the Act grants "discretion to decide how to best to implement and balance these objectives." Pet. App. 25a.

The panel held that the monument proclamation was consistent with the O&C Act's multi-pronged sustained yield management directive. For example, the proclamation furthers the purposes of "protecting watersheds" and "regulating stream flow" because it

expressly protects hydrologic features that are key to the entire watershed's integrity. *Id.* at 27a (quotation omitted). And it furthers the purpose of "providing a permanent source of timber supply" by protecting wildlife species and water sources that are "essential to maintaining a forest's vitality." *Id.* (quotation omitted). And it provides "recreational opportunities" because it protects areas frequented by visitors. *Id.*

In sum, the O&C Act's "layers of discretion"—both to classify lands and to carry out the multi-purpose management directives—allow it to sit comfortably alongside the use of the Antiquities Act to expand the Cascade-Siskiyou National Monument. *Id.* at 28a.

4. Petitioners did not seek review en banc.

This petition followed.

REASONS TO DENY THE PETITION

I. The Question Presented Does Not Warrant Certiorari.

1. Petitioners spill much ink over an issue their petition does not implicate, making it necessary to start by making clear what issue the petition actually does implicate.

Petitioners' choice to tell this Court that their case "provides an excellent vehicle to curtail the . . . Antiquities Act" is a strange one. Pet. 22a. From the first pages of their petition (at 2–3) on (at 12–13) and on (at 23–24), petitioners criticize past uses of the Antiquities Act. Perhaps they do so because Chief Justice Roberts has expressed interest in "the Antiquities Act's smallest area compatible requirement." *Raimondo*, 141 S. Ct. at 981 (Roberts, C.J., statement respecting denial of certiorari) (internal quotation

marks omitted). But this case does not test that requirement.

That is because petitioners have never claimed that the monument expansion proclamation is invalid because it reserved too much federal land. Instead, they have raised only a much narrower claim: that the monument expansion "violates the O&C Act and the Antiquities Act by mandating that O&C Lands be managed for a purpose other than sustained yield timber production."[7] Both courts below recognized the limited nature of petitioners' claim. Pet. App. 49a (distinguishing the case from one that involves "review only of "the limits on Presidential authority that derive from the Antiquities Act" (alterations and quotations omitted)); *id.* at 19a (explaining that petitioners challenged the monument expansion as "inconsistent with an independent statute"—the O&C Act).

Despite all of this, petitioners refer to statements in a prior petition for certiorari suggesting that this case was one of five that concern the Antiquities Act's smallest area compatible requirement. Pet. 3; *see also Raimondo* Pet. 34 (providing case numbers). But two of those five—this case and the parallel petition in Murphy—undisputably *never* involved a challenge based on the smallest area requirement or on the objects included within the monument. *See supra* at 9; *Murphy* Pet. App. App. 56a–57a. That petitioners here point to those overstatements warrants a cautionary approach to claims by those seeking this Court's review.

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[7] Compl. at 16, *Am. Forest Res. Council v. United States*, No. 1:17-cv-00441-RJL (D.D.C. filed Mar. 10, 2017).

This would have been a very poor case to have raised such a challenge, which likely explains why petitioners have not. This monument expansion protects the same kinds of objects that presidents have protected from the earliest days of the Antiquities Act.[8] And it reserves a smaller amount of land than presidents have reserved since those early days.[9] Nor do petitioners' general criticism (at 22–24) that monument designations inexorably increase in size have merit.[10]

2. The actual claim that petitioners did raise below, and the only claim that this petition does offer a vehicle to address, is not certworthy. That claim turns on the timber-related management provisions that apply to the monument expansion. The proclamation expanding the monument subjected the newly reserved lands to the same four sentences that addressed

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[8] *See, e.g.*, Proc. No. 793, 35 Stat. 2174, 2175 (Jan. 9, 1908) (establishing Muir Woods National Monument to protect "an extensive growth of redwood trees . . . of extraordinary scientific interest and importance"); Proc. No. 695, 34 Stat. 3264, 3265 (Dec. 8, 1906) (establishing El Morro National Monument and protecting a landmark along historic East-West trail); Proc. No. 658, 34 Stat. 3236, 3236–237 (Sept. 24, 1906) (establishing Devils Tower National Monument and protecting a unique geographical feature).

[9] *See, e.g.*, Proc. No. 794, 35 Stat. 2175, 2176 (Jan. 11, 1908) (reserving more than 800,000 acres as the Grand Canyon National Monument); Proc. No. 697, 34 Stat. 3266, 3266 (Dec. 8. 1906) (reserving 60,776 acres as the Petrified Forest National Monument).

[10] Over the last decade, four monuments measured less than an acre, and three others less than twenty. *See* Nat'l Park Serv., National Monument Facts and Figures (last updated Oct. 30, 2023), bit.ly/npsfig. The best reading of this data is that presidents tailor a monument's size to its protective needs, as Congress intended and as the Antiquities Act requires.

timber harvesting in the original proclamation. Petitioners claim that, to the extent that those sentences are inconsistent with managing those lands under the O&C Act, the monument expansion is invalid. The two circuits to address this claim both rejected it; the issue is of limited importance; and answering it would require this Court to wade into an "abstruse" statute without the usual level of lower court consideration that it prefers. Pet. App. 11a.

To start, the circuit courts are aligned, not split, in rejecting petitioners' claim. As petitioners challenged this monument expansion within the D.C. Circuit, companies that petitioners' trade association represent did the same within the Ninth Circuit. Both circuit courts rejected the challenge. *See supra* at 10; *Murphy* Pet. App. 20a. Petitioners do not contest (or even acknowledge) this lack of a split. *See* Sup. Ct. R. 10 (indicating that an absence of a split indicates the absence of "compelling reason[s]" for certiorari).

Nor does this petition implicate any question so important as to warrant review absent a split. The answer turns, as petitioners admit, on how the court below applied "this Court's instructions" about how to interpret statutes. Pet. 23. Petitioners seek review only to correct an "alleged misapplication of" settled statutory interpretation rules below. Sup. Ct. R. 10. Requests to correct these kinds of "asserted error[s]" are "rarely granted," and this Court should follow that course here. *Id.*

Going through this statutory interpretation exercise would have limited consequences on the ground. Resolving petitioners' claim affects—at most—the application of the forest-management provisions of a geographically-limited statute (the O&C Act) to a small

area of land (the less than 40,000 acres of O&C lands within the monument expansion). It would be unusual, to say the least, for this Court to take a case that would affect no more than 0.007% of federal land.

And the question is not even "outcome-determinative" as to timber management on the limited area at issue. Even if the monument expansion did not exist, logging on over half of the land at issue had already been limited by separate discretionary actions by BLM. This question presented does not implicate, and so cannot affect, those agency actions. Petitioners' request for this Court to review both their challenge to the proclamation and the separate challenge to the BLM actions (at i) confirms that this question presented does not independently merit review.

To try and give this question presented greater significance, petitioners pretend their narrow statutory interpretation question is a constitutional one. They state that if the monument expansion conflicts with the O&C Act, then the expansion would also violate the President's Take Care Clause obligations or undermine congressional authority under the Property Clause. Pet. 22 (citing U.S. Const. art. II, § 3 and art. IV, § 3, cl. 2). As a formal matter, petitioners did not raise a constitutional claim, *see supra* at 13 n.7. As a practical matter, their characterization would apply to every challenge to an action under a federal land management statute. "There is no reason to constitutionalize" ordinary statutory interpretation "in this way." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 56 (2009).

Petitioners also state without support (at 25) that the monument expansion will harm communities who depend on timber revenue. As the court below noted,

petitioners did not show, and the record does not establish, that the O&C lands within the monument expansion were not previously reserved from logging. Pet. App. 25a n.15. Moreover, the timber-related provisions petitioners challenge first appeared in the 2000 monument proclamation. If these provisions caused harm, one would expect evidence of that to have emerged over the last 24 years and for petitioners to point to it. But they have not. The reality is that the monument and expansion had little adverse impact in part because Congress separately funded county services for these communities. *See supra* at 5.

3. Finally, this petition is not an "excellent vehicle" (at 25) for review because granting review would require this Court to address an "abstruse" statute with very little guidance from the lower courts. Pet. App. 11a. To decide whether the monument expansion conflicts with the O&C Act, this Court will need to answer many preliminary questions about the meaning and operation of the O&C Act. These include, among other things, the meaning of "timberlands," "permanent forest production," and "sustained yield" in the Act and the scope of discretion to prohibit or restrict logging under the Act.

This Court would be wading into this "statutory thicket" without the benefit of thorough consideration by the lower courts. *Murphy* Pet. App. 7a. Litigation over the meaning of the O&C Act is rare. The few cases that do discuss the portions of the O&C Act that this case implicates are decades old and offer only cursory analysis. *See Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705, 709 (9th Cir. 1993) (one paragraph); *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.2d

1174, 1183–184 (9th Cir. 1990) (five paragraphs); *see also Seattle Audubon Soc'y v. Lyons*, 871 F. Supp. 1291, 1313–314 (W.D. Wash. 1994). This Court is generally reluctant to decide issues "without the benefit of thorough lower court opinions to guide [its] analysis of the merits." *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012). That counsels against certiorari here.

II. The Decision Below Is Correct.

As both the D.C. Circuit and Ninth Circuit panels recognized, the statutory text and history all refute petitioners' claim of an inexorable conflict between the timber-related management directives that apply in the expanded monument and the O&C Act.

Both courts applied this Court's implied-repeal canon precedents. That was correct. Petitioners' claim is that there is a "conflict between the O&C Act and Proclamation 9564." Pet. 22 (quotation omitted). That is, they claim that the O&C Act impliedly repealed the President's authority to subject O&C timberlands to the forest management provisions applicable to the Cascade-Siskiyou National Monument.

Under this Court's precedents, such arguments are disfavored. Instead, when two statutes "'allegedly touch[] on the same topic,'" courts "'must instead strive to give effect to both.'" Pet. App. 22a (quoting *Epic Sys. Corp.*, 584 U.S. at 502) (internal quotation marks omitted)). Petitioners did not identify clear evidence that Congress, when enacting the O&C Act, intended to prohibit the president from protecting timberlands as part of a national monument.

As both circuit courts recognized, petitioners' primary evidence—the O&C Act's non-obstante clause—just raises the same question as their implied-repeal theory. That clause repeals statutes or provisions "in

conflict with [the O&C] Act . . . to the extent necessary to give full force and effect to [the] Act." 50 Stat. 876. By its terms, that clause applies only if there is a statutory conflict. Pet. App. 22a.

Carrying out their "duty to interpret Congress's statutes as a harmonious whole rather than at war with one another," both courts correctly read the Antiquities Act and the O&C Act as co-existing. *Epic Sys. Corp.*, 584 U.S. at 502.

To start, the O&C Act's forest management provisions apply only on timberlands, and they do not require all O&C lands to be classified as timberlands. Instead, its text "necessarily implies that land may be classified as timberland or not" and that timberlands "may be reclassified in the future." Pet. App. 23a. The O&C Act envisions and allows "dynamic, scientific decisions about which parcels should or should not be logged." *Murphy* Pet. App. 25a.

Even on timberlands, both courts recognized that the O&C Act does not require maximum logging, or even any logging at all, on any given acre of land. It "permits the BLM to consider conservation values in making timber harvest decisions." Pet. App. 20a. The Act's management aim is "permanent forest production," not maximum timber sales. 43 U.S.C. § 2601. And it directs timber to be harvested under a "sustained yield" principle to achieve five purposes: "providing a permanent source of timber supply," "protecting watersheds," "regulating stream flow," "contributing to the economic stability of local communities and industries," and "providing recreational facil[i]ties." *Id.* These multiple specified purposes for sustained yield management authorize O&C

timberlands to be managed "for uses other than the production of timber." Pet. App. 25a; *Murphy* Pet. App. 25a.

Consistent with that reading, BLM has long limited timber harvesting on O&C lands. BLM has placed some of those lands in reserves where logging is limited to, for example, protect streamside riparian areas or old-growth forests. Pet. App. 9a–11a; *Seattle Audubon Soc'y*, 871 F. Supp. at 1313 (discussing the designation of reserves in the management plan in place in 1994). On others where BLM's balancing of the multiple sustained yield factors tips towards timber harvesting, BLM has not restricted logging. Pet. App. 9a–11a.

The O&C Act's statutory history further supports this reading. The Act replaced prior statutes aimed solely at logging that did not include provisions for the management of forest resources so that they would remain available in the future. *Id.* at 26a; *Murphy* Pet. App. 28a. The Act's approach, in contrast, imposed "conservation and scientific management for" lands that had previously "receive[d] no planned management." Pet. App. 27a (quotation omitted).

Finally, Congress's century-long history of engagement under the Antiquities Act further supports this reading. For over a century, Congress has responded to monument designations. It has abolished some,[11]

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[11] *See, e.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, tit. VI, § 619, 136 Stat. 4459, 5606–607 (redesignating the Pullman National Monument, Proc. No. 9233, 80 Fed. Reg. 10,313 (Feb. 19, 2015), as a national park and declaring that the proclamation "shall have no force or effect"); Act of Aug. 24, 1937, Pub. L. No. 75-343, ch. 741, 50 Stat. 746, 746–47 (transferring

moved others into different statutory schemes,[12] adjusted the size of many,[13] and addressed the management of others.[14]

Congress did exactly that here, devoting significant attention to the Cascade-Siskiyou National Monument and making multiple changes to the monument. Pet. App. 25a n.16. It authorized land exchanges within the monument, required a portion to be managed under the protections of the Wilderness Act, and limited grazing within the monument. *See supra* at 7–8. Congress's decision to buy and add land to the monument, revise some of its management directives, and leave the timber-related provisions unchanged, strongly signals that those provisions are consistent with the O&C Act.

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lands in the Lewis and Clark Cavern National Monument, Proc. No. 807, 35 Stat. 2187 (May 11, 1908), to the State of Montana for use as a park); Act of Aug. 3, 1950, Pub. L. No. 81-652, ch. 534, 64 Stat. 405, 405 (abolishing Wheeler National Monument, Proc. No. 60, 35 Stat. 2214 (Dec. 7, 1908), and directing that the lands be administered as part of the Rio Grande National Forest).

[12] *See, e.g.*, Grand Canyon National Park Establishment Act, ch. 44, § 2, 40 Stat. 1175, 1177 (1919) (placing the Grand Canyon National Monument within the National Park System).

[13] *See, e.g.*, Pub. L. No. 104-333, § 205, 110 Stat. 4093, 4106 (1996) (revising the boundaries of the Craters of the Moon National Monument "to add approximately 210 acres and to delete approximately 315 acres"); Pub. L. No. 96-607, § 701, 94 Stat. 3539, 3540 (Dec. 28, 1980) (expanding the Mound City Group National Monument, Proc. No. 1653, 42 Stat. 2298 (Mar. 2, 1923))

[14] *See, e.g.*, Consolidated Appropriations Act, 2023, tit. IV, § 408, 136 Stat. at 4821–822 (prohibiting the use of funds for leasing-related activities within the boundaries of certain national monuments "except where . . . allowed under the Presidential proclamation establishing such monument").

Given all of this, both circuit courts found that the Antiquities Act authority exercised in the monument expansion could co-exist with the O&C Act. Pet. App. 28a; *Murphy* Pet. App. 23a. The monument expansion was based on presidential findings that it would "provide[] vital habitat connectivity, watershed protection, and landscape-scale resilience" and protect many objects "that capture the interest of visitors." 82 Fed. Reg. at 6145, 6147. The O&C Act's multi-pronged sustained yield management purposes include "protecting watersheds" and "providing recreational facil[i]ties." 43 U.S.C. § 2601. The monument expansion limited, but did not prohibit, logging on the newly reserved lands. *See supra* at 6–7. And the O&C Act does not require that O&C lands be logged to the maximum extent possible.

Petitioners claim that this result does not align with "Congress's policy objectives in the O&C Act." Pet. 25. They seem to suggest that because some proceeds from timber sales under the Act go to counties whose tax base was affected by the revestment, any reading that does not maximize logging undermines that purpose. But the terms of the O&C Act do not support that reading: It includes a broad, multi-purpose definition of sustained yield management for forest production. *See supra* at 4. Given that definition, BLM has long reserved some O&C lands from logging and limited logging on other O&C lands. *See supra* at 4–5. And the O&C Act was not Congress's final word on financial assistance to these counties. As timber sales on O&C lands declined over time due to conditions unrelated to the monument or expansion, Congress enacted a series of separate funding statutes to address assistance to these counties. *See supra* at 5.

CONCLUSION

The petition for a writ of certiorari should be denied.

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