Nos. 23-524, 23-525

In the
Supreme Court of the United States

AMERICAN FOREST RESOURCE COUNCIL, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

MURPHY COMPANY, *et al.*,
Petitioners,

v.

JOSEPH R. BIDEN, JR., IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, *et al.*,
Respondents.

On Petitions for Writs of Certiorari to the United States Courts of Appeals for the Ninth and District of Columbia Circuits

BRIEF OF *AMICI CURIAE* MEMBERS OF CONGRESS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are Representative Cliff Bentz and 28 other members of the United States Congress, which the Constitution gives plenary power to regulate lands owned by the federal government. As elected members of Congress, *Amici* have strong institutional interests in protecting Congress's power to enact legislation governing federal land management. *Amici* also have strong institutional interests in ensuring a stable background of clear interpretive rules to legislate against, and ensuring that the judiciary serves as an appropriate check on the Article II executive.

Amici include members of Congress who represent areas where the federal government has significant landholdings, including states that have been subject to national monument designations removing extensive areas of federal land and resources from uses benefiting local communities who steward and depend on them. For example, Congressman Bentz represents Oregon's Second Congressional District, which includes counties whose economies and abilities to provide public services depend on the production of timber from federal lands. The executive actions at issue convert vast areas of federal timberlands in these counties to non-timber harvest uses, even though Congress mandated that these timberlands "shall" be managed for "permanent forest production" and that timber

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of *amici's* intention to file this brief.

thereon be cut and sold under "the princip[le] of sustained yield" to generate revenue for the affected counties. 43 U.S.C. §§ 2601, 2605.

The members of Congress who join this brief are:

Representative Cliff Bentz of Oregon

Representative Glenn Thompson of Pennsylvania

Representative Scott Perry of Pennsylvania

Representative Ken Buck of Colorado

Representative Mariannette Miller-Meeks, M.D. of Iowa

Representative Chuck Fleischmann of Tennessee

Representative Doug Lamborn of Colorado

Representative Harriet M. Hageman of Wyoming

Representative Andy Biggs of Arizona

Representative John Rose of Tennessee

Representative Bruce Westerman of Arkansas

Representative Thomas Tiffany of Wisconsin

Representative Lauren Boebert of Colorado

Representative Matthew Rosendale of Montana

Representative Douglas LaMalfa of California

Representative Dan Newhouse of Washington

Representative Cathy McMorris Rodgers of Washington

Representative Pete Stauber of Minnesota

Representative Tom McClintock of California

Representative Lori Chavez-DeRemer of Oregon

Representative Derrick Van Orden of Wisconsin

Representative Ryan Zinke of Montana
Representative Ben Cline of Virginia
Representative Ken Calvert of California
Representative Eli Crane of Arizona
Representative Russ Fulcher of Idaho
Senator Mike Crapo of Idaho
Senator Steven Daines of Montana
Senator James Risch of Idaho

INTRODUCTION AND SUMMARY OF ARGUMENT

The Constitution vests Congress, not the President, with authority to regulate federal lands. U.S. Const. art. IV, § 3, cl. 2. Sometimes, Congress delegates part of its authority to the President, as it did in the Antiquities Act. Other times, it regulates federal lands more directly. In all cases, though, Congress explains itself in statutory text.

Here, with little reference to the statutory text, the President claims that the Antiquities Act gives him near-limitless power to transform federal lands into national monuments. Using that purported power, President Obama added about 48,000 acres in southwest Oregon to the Cascade-Siskiyou National Monument. Because timber production is not allowed within that Monument, the sustained yield harvesting that had been occurring there for decades was stopped.

The problem with the President's stopping timber production on these lands is that Congress had already designated them for "permanent forest production" in another act. And no matter how much power the President may think the Antiquities Act gives him, it cannot give him the power to override another, later, and more specific act of Congress. Nor can the President get around Congress's permanent forest production mandate by redefining which lands are subject to that mandate.

Because the President's unauthorized actions have usurped Congress's authority, the Court should grant certiorari and reverse.

ARGUMENT

The Court should not let the executive branch usurp Congress's power over federal lands.

The Constitution separated the legislative, executive, and judicial powers "to assure, as nearly as possible, that each Branch of government would confine itself to its assigned responsibility." *INS v. Chadha*, 462 U.S. 919, 951 (1983). But that formal separation does not relieve the "hydraulic pressure inherent within" each branch "to exceed the outer limits of its power." *Id.* Thus, it often falls to this Court to enforce Constitutional boundaries. *See, e.g.*, *id.* at 958–59. The more egregious the trespass, the more vigilant the Court must be. So when the President claims authority under one statute to override another, later, more specific statute, this Court must act.

A. The Constitution gives Congress plenary authority to manage federal lands.

The Constitution assigns Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . ." U.S. Const. art. IV, § 3, cl. 2. To exercise this power, Congress legislates. *See Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 580–81 (1987). Apart from such legislation, neither the President nor anyone else in the executive branch can regulate the use of federal lands. The power belongs to Congress alone.

Congress's power over federal lands is also plenary. *Id.* at 581. This is in part because when Congress regulates federal lands, it enjoys "the powers both of a proprietor and of a legislature." *Kleppe v. New Mexico*, 426 U.S. 529, 540 (1976). So when Congress passes laws concerning federal lands, it has broad discretion to

"control their occupancy and use." *Id.* (quoting *Utah Power & Light Co. v. United States*, 243 U.S. 389, 405 (1917)).

Given the breadth of its power and the vast amount of federal lands it controls, it is no surprise that Congress regulates different lands differently. Indeed, multiple titles within the U.S. Code address Congress's regulation of federal lands. Those titles include generally applicable laws like the Federal Land Policy and Management Act of 1976, which instructs the executive branch to develop specific plans for federal lands "on the basis of multiple use and sustained yield unless otherwise specified by law," 43 U.S.C § 1701(a)(7), and targeted laws like the one directing construction of the Trans-Alaska Pipeline, *id.* §§ 1651–56. This case turns on a targeted law: the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937—called the O&C Act, for short.

B. Congress set aside the timberland in this case for permanent forest production.

The O&C Act grew out of a failed attempt at federal land management. That attempt began in 1866, when Congress authorized a land grant for construction of a railroad connecting Portland, Oregon to California's Sacramento Valley. *See* Act of July 25, 1866, Pub. L. No. 39, ch. 242, § 1, 14 Stat. 239. When the railroad was not built, and the railroad company declined to sell the land, Congress passed the Chamberlain-Ferris Act to take back federal title. *See* 39 Stat. 218.

Once the Chamberlain-Ferris Act returned railroad land to federal ownership, the tax base of timber-dependent counties shriveled up. But Congress devised a way to repair that damage. The Chamberlain-Ferris Act directed the executive branch to classify as

"timberlands" all lands with more than 300,000 board feet of timber per 40 acres, and to sell timber from those lands for the benefit of the counties where the timber was harvested. 39 Stat. 219–23.

Despite Congress's direction, local revenue from the Chamberlain-Ferris Act timber sales proved paltry. So Congress passed a new, more prescriptive law governing the same lands: the O&C Act. The O&C Act decreed that all lands "heretofore" or "hereafter . . . classified as timberlands" must "be managed . . . for permanent forest production," consistent with the principle of "sustained yield."43 U.S.C. § 2601. But the O&C Act does not stop there. It directs the executive branch to calculate the "annual productive capacity" for these timberlands and then to sell that amount of timber "at reasonable prices." *Id.* Proceeds from those sales, the Act specifies, must be "distributed annually" to the counties where the timber is located. *Id.* § 2605. And so they have been, for nearly ninety years.

Congress has not changed the O&C Act's instructions to the executive branch. But in 2017, the executive branch stopped applying the O&C Act's timber production mandate on more than 10,000 acres of O&C timberlands. Why? Because the President declared that those acres were now part of the Cascade-Siskiyou National Monument, where commercial timber harvesting is prohibited. *See* Presidential Proclamation No. 9564, 82 Fed. Reg. 6145 (Jan. 12, 2017). That declaration brought the Antiquities Act into conflict with the O&C Act. The Bureau of Land Management compounded the problem by issuing resource management plans that placed 80% of all O&C timberlands—well over a million acres—into reserves where sustained-yield timber harvest is banned.

C. The executive cannot use the Antiquities Act to override the O&C Act.

The people whose lives depend on timber harvested under the O&C Act objected to these executive branch actions by challenging them in court. But both the Ninth Circuit and D.C. Circuit Courts of Appeals upheld the executive branch's evisceration of the O&C Act. *See Murphy Co. v. Biden*, 65 F.4th 1122 (9th Cir. 2023); *Am. Forest Res. Council v. United States*, 77 F.4th 787 (D.C. Cir. 2023). As Judge Tallman's dissenting opinion in the Ninth Circuit case explained, these decisions ignored a basic "conflict" between the O&C Act's "permanent forest production" mandate and the executive's use of the Antiquities Act to stop forest production. *Murphy Co.* 65 F.4th at 1139 (Tallman, J., dissenting in part). Such a conflict should have been resolved using bedrock rules of statutory construction, each of which shows that the O&C Act should control. The failure to apply these rules is a compelling reason for Supreme Court review because Congress must "be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts." *Finley v. United States*, 490 U.S. 545, 556 (1989). But the need for Supreme Court review is even more pressing here. Interpreting the Antiquities Act to allow the President to override land-management mandates imposed by Congress would give the President plenary power to decide how federal lands are managed. The Constitution expressly commits such power to Congress, not the President.

1. The O&C Act's specificity controls the Antiquities Act's generality.

First, "[i]t is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted

statute covering a more generalized spectrum." *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976). Indeed, this specific-over-general rule of construction is true "regardless of the priority of enactment." *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974). An earlier-enacted, specific statute should control over a later, more general one because "the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 183 (2012).

Here, the O&C Act's sustained-yield mandate is more specific than the Antiquities Act's general delegation to the President of authority to create national monuments. So when the O&C Act requires specific lands to be managed in a specific way, *see* 43 U.S.C. § 2601, that requirement cannot be "submerged" by the Antiquities Act's general authority to designate national monuments on federal land, 54 U.S.C. § 320301(a). It follows that Congress's specific commitment of O&C lands to sustained-yield timber production cannot be "controlled or nullified by" a proclamation issued under the President's general Antiquities Act authority. *See Morton*, 417 U.S. at 550. Thus, Proclamation 9564's contrary management mandate for O&C lands must yield to the O&C Act. *See Chamber of Commerce v. Reich*, 74 F.3d 1322, 1333, 1339 (D.C. Cir. 1996) (invalidating the President's use of broad authority under a general statute to trump a right established in a more specific statute).

2. The O&C Act controls because it was passed after the Antiquities Act.

Second, later statutes take priority over earlier-enacted ones. *See Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2462 (2019). This is because

the more recent law is presumed to control the interpretation of—or even impliedly repeal a conflicting part of—the earlier law. *See Posadas v. Nat'l City Bank of New York*, 296 U.S. 497, 504 (1936) ("[A] former statute is impliedly repealed, so far as the provisions of the subsequent statute are repugnant to it, or so far as the latter statute, making new provisions, is plainly intended as a substitute for it."). And where a statute is both later in time and more specific, the "specific policy embodied in a later federal statute should control . . . construction of the [earlier] statute." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) (quoting *United States v. Estate of Romani*, 523 U.S. 517, 530–31 (1998)).

Congress passed the O&C Act in 1937, over thirty years after the Antiquities Act. *See* O&C Act, Pub. L. No. 75-405, ch. 876, 50 Stat. 874 (1937); An Act for the Preservation of American Antiquities, Pub. L. No. 59-209, ch. 3060, 34 Stat. 225 (1906). And, again, the O&C Act's sustained-yield mandate is more specific than the Antiquities Act's general delegation of authority to designate national monuments. Since the O&C Act is both more recent and more specific than the Antiquities Act, its requirements for managing O&C lands must take priority over declarations made under the earlier-enacted Antiquities Act.

3. The O&C Act contains a non-obstante clause.

Third, Congress used language in the O&C Act that expressly repeals any prior, conflicting law—a provision known as a "non-obstante" clause. It said, "[a]ll Acts or parts of Acts in conflict with this [O&C] Act are hereby repealed to the extent necessary to give full force and effect to this Act." O&C Act, Pub. L. No. 75-405, ch. 876, 50 Stat. 874, 876 (1937) (uncodified

provision located at end of Title II). That provision leaves no doubt: Congress meant to commit O&C Act timberlands to sustained-yield timber production providing a stable, permanent flow of funds to local counties, notwithstanding any other laws. If the Antiquities Act can be used in a way that conflicts with these intentions, the Antiquities Act must yield.

In construing a statute, including the O&C Act, courts "are obliged to give effect, if possible, to every word Congress used." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979); *see Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 128-29 (2018) ("Absent clear evidence that Congress intended [] surplusage, the Court rejects an interpretation of [a] statute that would render an entire subparagraph meaningless."). Yet the Ninth and D.C. Circuits both failed to give any effect to the O&C Act's non-obstante clause. That failure violates another canon of statutory construction, underscoring the need for this Court's review.

4. Unlike some laws, the O&C Act does not give the executive branch discretion to prioritize other land uses.

Finally, in drafting a statute, Congress knows that expressing one thing generally excludes others. *See, e.g.*, *United Dominion Indus. v. United States*, 532 U.S. 822, 836 (2001) ("The logic that invests the omission with significance is familiar: the mention of some implies the exclusion of others not mentioned."). So when Congress subjected the O&C Act's sustained-yield mandate to only two exceptions—(1) a subsequently repealed "except[ion] as provided in section 1181c of this title," which allowed the Secretary to reclassify lands for agricultural use if they are more suitable for that use than "for the production of trees"; and (2) an exception for "the use and development of power sites as may

be authorized by law"—it implicitly rejected any other exceptions. 43 U.S.C. § 2601. Put differently, that the O&C Act included these exceptions but not others shows that Congress did not intend to allow the President or the Secretary to commit O&C lands to other purposes under other laws, including the Antiquities Act.

The specific exceptions in the O&C Act contrast with other land management statutes, where Congress has expressly left room for the President and agencies to modify generally applicable land management mandates, consistent with the requirements of other laws. For example, the Federal Land Management Policy Act (FLPMA) directs the Secretary of the Interior to "manage the public lands under principles of multiple use and sustained yield, . . . *except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law*." 43 U.S.C. § 1732(a) (emphasis added).[2] In other words, the Secretary must manage public lands subject to FLPMA pursuant to "principles of multiple use and sustained yield" *except* when a tract has been dedicated to another use under another law, such as by the President in declaring a national monument under the Antiquities Act.

As FLPMA shows, Congress knows how to allow agencies to modify land management mandates when it wants to. It just chose not to do so in the O&C Act. FLMPA and other broad land management laws like

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[2] FLPMA also provides that in the event of any conflict between its requirements and the O&C Act, the latter takes precedence. Pub. L. No. 94-579, tit. VII, § 701, 90 Stat. 2743, 2786 (1976) (uncodified note to 43 U.S.C. § 1701).

the National Forest Management Act (NFMA) also show that Congress knows how to allow agencies to balance sustained yield resource management against other uses of federal lands. *Id.*; 16 U.S.C. § 1604(e)(1) (requiring National Forest System lands to be managed to "provide for multiple use and sustained yield of the products and services obtained therefrom"). By providing for a balance of multiple, competing uses, Congress left room for the President to designate objects and associated parcels occurring on FLMPA and NFMA lands as national monuments—within the limits of the Antiquities Act and consistent with the requirements of other, more specific laws. The O&C Act, on the other hand, does not allow the sustained-yield mandate it imposes on O&C timberlands to be balanced against other, competing land uses.

The differences between the O&C Act and statutes like FLPMA and NFMA show that Congress did not authorize the executive branch to prohibit the specific use of O&C timberlands required under the O&C Act.

D. The executive branch cannot reclassify land that qualifies as timberland under the O&C Act.

Despite this clear evidence of Congressional intent, the courts of appeals found that the government has "considerable discretion regarding the classification and reclassification of O&C land" subject to the O&C Act's sustained-yield mandate, both in declaring national monuments and issuing plans to manage those lands. *Am. Forest Res. Council*, 77 F.4th at 800; *see Murphy*, 65 F.4th at 1131–32. They based this finding in part on their conclusion that the executive branch can define "timberlands" under the O&C Act as whatever O&C lands that the President or Secretary may decide should be managed for timber production. This

definition conflicts with contemporaneous understanding of the term "timberlands," the term's definition in the O&C Act's predecessor law, and the O&C Act's express purposes.

1. The O&C Act used the plain meaning of the term timberlands.

A statute's words must be given their contemporary, everyday meaning unless context indicates that they were intended to have a different, technical meaning. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993) ("Courts properly assume, absent sufficient indication to the contrary, that Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning." (internal quotations omitted)). The meaning of "timberlands" when the O&C Act was passed was a "[w]ooded or forested land, esp. when consisting of marketable timber." Webster's New Int'l Dictionary 2159 (1930). This common-sense understanding of "timberlands" must control over the courts of appeals' contrary interpretation, which lets the executive branch decide which O&C lands will be managed for timber, regardless of whether that land has commercially viable timber resources.

2. The O&C Act adopts an earlier act's definition of timberlands.

The dictionary understanding of "timberlands" as land with marketable quantities of timber is consistent with the statutory definition of the term in the Chamberlain-Ferris Act, on which the O&C Act was built. *See, e.g., Headwaters, Inc. v. Bureau of Land Mgmt., Medford Dist.*, 914 F.2d 1174, 1183 (9th Cir. 1990) (explaining that the O&C Act amended the Chamberlain-Ferris Act to provide a "stream of revenue [to local

counties] which had been promised but not delivered by" the earlier Act). The Chamberlain-Ferris Act defined "timberlands" as any lands growing "not less than three hundred thousand feet board measure on each forty-acre subdivision." Chamberlain-Ferris Act, Pub. L. No. 86, ch. 137, § 2, 39 Stat. 218, 219 (1916). Because the O&C Act did not contain a new definition of "timberlands," and because Congress passed the O&C Act to extend and improve the Chamberlain-Ferris Act, the meaning of "timberlands" was "transplanted" to the O&C Act. *See George v. McDonough*, 142 S. Ct. 1953, 1959 (2022); *see also Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184–85 (1988) ("We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts.").

3. The executive has admitted before that the Antiquities Act cannot override the O&C Act.

The courts of appeals' interpretation of "timberlands" as allowing the President unfettered discretion to remove timberlands from the O&C Act's sustained-yield mandate also runs afoul of contemporaneous agency interpretation of the O&C Act and the Antiquities Act. *See FDIC v. Philadelphia Gear Corp.*, 476 U.S. 426, 437 (1986) (interpreting a word to accord with "the longstanding [agency] interpretation" of the word in a predecessor statute).

Shortly after the O&C Act was passed, the Solicitor of the Interior had "no doubt that the administration of the lands for national monument purposes would be inconsistent with the utilization of the O & C lands as directed by Congress." U.S. Dep't of the Interior, Office of the Solicitor, Opinion M. 30506, 3-4 (Mar. 9, 1940). The agency repeatedly reaffirmed that understanding in the years that followed. *See* U.S. Dep't of the

Interior, Memorandum from Deputy Solicitor to Director, Bureau of Land Mgmt. at 9 (June 1, 1977).

The executive's recent reversal of this longstanding view spotlights the conflict with the O&C Act created by the national monument proclamation and resource management plans.

E. The executive branch's actions defeat the purpose of the O&C Act.

The courts of appeals' interpretation of the term "timberlands" in the O&C Act is inconsistent with the contemporaneous common and agency understanding of the term, as well as the definition of that term in a predecessor act. But even if the term were ambiguous, that ambiguity should be resolved to further the O&C Act's express purpose, not defeat it. *Sullivan v. Hudson*, 490 U.S. 877, 890 (1989) (rejecting an agency's interpretation of a statute that would "oust . . . the most reasonable interpretation of the statute in light of its manifest purpose.").

"[T]he O&C Act was intended to provide the counties in which O&C Act land was located with the stream of revenue which had been promised but not delivered by the Chamberlain-Ferris Revestment Act . . . ." *Headwaters*, 914 F.2d at 1183. To realize that purpose, Congress mandated that O&C timberlands "shall" be managed for "permanent forest production" and that timber thereon be cut and sold under "the princip[le] of sustained yield" to generate revenue for the affected counties. 43 U.S.C. §§ 2601, 2605. And Congress required that 50 percent of the revenues from timber sales be paid directly to the counties where the timberlands are located. *See id.* § 2605(a), (b). For almost 90 years, this land management regime has successfully provided a stable source of income to rural

communities that funds essential public services. *See* U.S. Dep't of the Interior, Bureau of Land Mgmt., O&C Sustained Yield Act: the Land, the Law, the Legacy, 1937-1987, at 14-15 (1987), *available at* https://www.blm.gov/or/files/OC_History.pdf.

The courts of appeals' interpretation of timberlands defeats Congress's intent to provide a stable, permanent source of income for timber-dependent O&C counties. Worse, their interpretations allow the President under the Antiquities Act or the Secretary under other authority to remove productive timberlands from the O&C Act's sustained-yield mandate altogether. As Judge Tallman explained, the national monument proclamation thus has a "devastating economic impact" on areas that depend on "logging and wood product sales to sustain them." *Murphy Co.*, 65 F.4th at 1138 (Tallman, J., dissenting in part).

The O&C Act's reference to "protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities" does not, as the courts of appeals suggested, recognize a competing statutory purpose. This language references reasons—in addition to "providing a permanent source of timber supply"—for timber to be "sold, cut, and removed" on a sustained-yield basis, not allowances for timber resources to be set aside from harvest. 43 U.S.C. § 2601.

In recognizing these additional benefits of sustained-yield timber management, Congress did not give the executive branch discretion to remove O&C timberlands from management for sustained-yield timber harvests. Rather, Congress recognized the significant ecological benefits of sustained-yield timber harvests. Indeed, in addition to acknowledging the benefits of active, sustained-yield forest management

to watersheds, the O&C Act recognizes the importance of active management to wildfire prevention. *Id.* § 2604. Prohibiting sustained-yield timber harvests on O&C timberlands exacerbates the risk of catastrophic wildfires that are increasingly caused by massive buildups of fuels on federal forests where timber harvests have been limited. *See* S. Comm. on Energy and Natural Resources (2023) (testimony of Kelly Norris, Interim Wyoming State Forester, Wyoming Forestry Division) (stating that active management, including "intentional harvesting" and fuel treatment, can protect against wildfire); *Infrastructure Needs, Western Water and Public Lands, and the Discussion Draft of the Energy Infrastructure Act* (2021) (testimony of Christopher French, Deputy Chief, National Forest System, U.S. Forest Service) ("In the United States, there are over a billion acres at risk of wildland fire. This is, in part, a result of 110 years of fire suppression policies that have led to unhealthy forests . . . Forest Service research indicates we need to dramatically increase the extent and impact of fuels treatments such as thinning, harvesting, planting, and prescribed burning across all landscapes."). Restricting timber harvests and increasing fuel loads thus harms forest health, in addition to having catastrophic consequences on the economies and safety of forest-dependent communities.

F. The executive branch's actions usurp Congress's power over federal lands and lead to other absurd results that must be avoided.

Under the courts of appeals' decisions, the President has unbridled power under the Antiquities Act to decide how to manage federal lands, even lands that Congress has committed to specific uses in passing

statutes like the O&C Act. This interpretation of the Antiquities Act as a limitless delegation must be rejected to avoid usurping Congress's Property Clause power and violating constitutional separation powers. *See Mistretta v. United States*, 488 U.S. 361, 373 n.7 (1989) (explaining the need "to giv[e] narrow constructions to statutory delegations that might otherwise be thought to be unconstitutional" due to nondelegation concerns).

Such a broad interpretation must also be rejected to avoid other "absurd consequences." *Fleischmann Constr. Co. v. United States*, 270 U.S. 349, 360 (1926). For example, as Judge Tallman explained, "President Roosevelt could have lawfully obstructed the clear will of Congress by issuing an Antiquities Act proclamation prohibiting sustained yield logging on some or all of the timberland the very next day" after enactment of the O&C Act over his veto. *Murphy Co.*, 65 F.4th at 1139 (Tallman, J., dissenting in part). Presidents could also use the Antiquities Act to subvert conservation mandates imposed by Congress. For example, a President could effectively override Congress's designation of federal lands as wilderness by issuing an Antiquities Act proclamation recognizing the historic importance of the area for gold mining and requiring the lands to be managed to allow unfettered mining. To avoid these absurd outcomes, the Antiquities Act should be interpreted to not allow national monument proclamations that override land-management mandates imposed by other statutes.

G. Congress should not have to act every time the executive branch oversteps.

Both courts of appeals that addressed the President's national monument proclamation under the Antiquities Act suggested that if Congress had

disapproved of the President's actions, it could have said so. *See Am. Forest Res. Council*, 77 F.4th at 799-800; *Murphy*, 65 F.4th at 1132. But that way of thinking gets it backward. It is not Congress's job to police the executive branch's actions, passing new laws whenever the executive misreads or ignores an existing one. To the contrary, the executive is duty-bound to apply the laws as written. U.S. Const. art. II, § 3, cl. 5 (requiring the President to "take Care that the Laws be faithfully executed"). When the executive branch misapplies the law, it is the courts, not Congress, that must correct the error.

Here, the courts of appeals have failed to correct the executive's misinterpretations of the Antiquities Act and the O&C Act. And the executive branch is poised to continue expanding its aggressive reading of the Antiquities Act that disregards Congress's plenary authority over federal lands, *Granite Rock Co.*, 480 U.S. at 581. But this case presents an important opportunity to weigh the executive's expansive reading of the Antiquities Act against a contrary expression of Congress's Property Clause power in the O&C Act. *Amici*, as sitting members of Congress, urge the Court to take this opportunity to clarify the scope of the two acts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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