No. 23-525

IN THE

Supreme Court of the United States

MURPHY COMPANY, ET AL.,
Petitioners,

v.

JOSEPH R. BIDEN, JR., IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

KIRTI DATLA
EARTHJUSTICE
1001 G St. NW, Ste. 1000
Washington, DC 20001

SUSAN JANE M. BROWN
SILVIX RESOURCES, INC.
4107 NE Couch St.
Portland, OR 97232

KRISTEN L. BOYLES
Counsel of Record
ASHLEY BENNETT
EARTHJUSTICE
810 Third Ave., Ste. 610
Seattle, WA 98104
(206) 413-9872
kboyles@earthjustice.org

Counsel for Respondent-Intervenors Soda Mountain Wilderness Council, Klamath-Siskiyou Wildlands Center, Oregon Wild, and The Wilderness Society

QUESTION PRESENTED

The question presented, Pet. i, is whether the Antiquities Act authorizes the President to declare federal lands part of a national monument where a separate federal statute reserves those specific federal lands for a specific purpose that is incompatible with national-monument status.

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, Oregon Wild, and The Wilderness Society 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 sentences of the petition (at 1–2) and peaks with an unfounded warning that this Court should act now or risk forever having to hold its peace (at 31).

But the truth is, petitioners expressly declined to challenge the monument proclamation at issue here on those Antiquities Act grounds. As they put it: "[T]his case is *unlike* . . . cases" about "whether a proclamation involved objects of historic or scientific

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[1] The plaintiffs in that second case, *Am. Forest Res. Council v. United States*, 77 F.4th 787 (D.C. Cir. 2023), simultaneously filed a petition for certiorari, *see* No. 23-524 (filed Nov. 15, 2023). For ease of reference, this brief cites to the panel opinion in *American Forest Resource Council* as reproduced in the appendix to that petition (*AFRC* Pet. App.).

interest or was sufficiently limited in geographic scope."[2] Or, as the court below put it: Whatever the . . . concerns with the Antiquities Act writ large, this is not a case that tests the bounds of the Act." Pet. App. 33a.

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 is a federal land management statute that applies only on 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 private railroad companies, but the railroads violated the terms of that grant. That led Congress to revest the land in the early 1900s. Pet. App. 10a.

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.* (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

[2] Opening Br. at 1, *Murphy Co. v. Biden*, No. 19-35921 (9th Cir. filed Feb. 16, 2022) (emphasis added).

designed to shift the local governments' debt to the U.S. Treasury also proved unworkable. *Id.* at 10a–11a.

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 . . . ." *AFRC* Pet. App. 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

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

[4] *Id.* at 1796, 1798–799.

under the O&C Act to manage the lands to meet all the specified sustained yield purposes, not solely the timber supply purpose. Pet. App. 53a. In line with this understanding, BLM has, for example, 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. *AFRC* 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

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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).

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 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* 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. *AFRC* Pet. App. 13a. For context, there are 9.7 million acres of federal land in western Oregon; 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 then challenged the expansion. They did not "challenge[] the President's general authority . . . under the Antiquities Act." Pet. App. 20a. Nor did they "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); *see also* Pet. App. 57a (noting the lack of a dispute over whether "the President acted within his congressionally delegated authority under the Antiquities Act"). Instead, petitioners claimed only "that the O&C Act's directive of 'permanent forest production' circumscribed the scope of presidential authority over these specific lands." Pet. App. 20a; *see also id.* at 6a–7a.

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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 7–8 (discussing 2009 authorizations); *see also* 54 U.S.C. § 320301(c) (authorizing the federal government to accept relinquished inholdings).

The district court rejected this claim. *Id.* at 49a (adopting the report and recommendation of the magistrate judge, with a modification). Because the O&C Act does not expressly limit the application of the Antiquities Act, the district court applied this Court's precedents governing repeals by implication. *Id.* at 57a. These precedents instruct that "there must be an irreconcilable conflict—not simply tension—between the two acts." *Id.* (citing *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976)).

The district court found that the O&C Act gave BLM discretion when carrying out its mandate for permanent forest production. *Id.* at 58a. The Act's directive to manage O&C timberlands for "permanent forest production," using the principles of sustained yield did not require *maximum* timber production. *Id.* at 58a–59a. Instead, BLM could limit or prohibit harvesting on O&C lands to comply with its concurrent conservation and recreational mandates. *Id.* at 59a. Moreover, the monument expansion at issue here "does not entirely prohibit the commercial harvest of timber in the" monument. *Id.* at 49a.

3. A divided Ninth Circuit panel affirmed.

The panel majority began with petitioners' reliance on the O&C Act's non-obstante clause. The clause repeals statutes or provisions that are "in conflict with" the O&C Act "to the extent necessary to give full force and effect to this Act." 50 Stat. 876. Because the clause requires a "conflict" between the O&C Act and the Antiquities Act, it requires the same showing as this Court's implied-repeal precedents. Pet. App. 21a.

Applying those precedents, the majority found that the Acts are " 'capable of co-existence.' " *Id.* (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)).

Examining the statutes, it rejected the argument that monument designations cannot coexist with the congressional mandates in the O&C Act. *Id.* at 23a. As a result, the non-obstante clause did not exempt O&C Act lands from the phrase "land owned or controlled by the Federal Government" in the Antiquities Act. 54 U.S.C. § 320301(a).

The majority then addressed the claim that the O&C Act implicitly repealed the President's authority to address timber harvesting when O&C lands are reserved for a national monument. Pet. App. 23a.

Relying on the text of the O&C Act, it rejected a reading that would require the Secretary to maximize logging on every acre of O&C lands. Under the Act, O&C lands classified as "timberlands . . . shall be managed . . . for permanent forest production" and timber from those lands must be harvested "in conformity with the princip[le] of sustained yield." 43 U.S.C. § 2601. That sustained yield management is "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.*

The panel majority read the O&C Act to grant discretion to limit timber harvesting on O&C lands to meet the Act's other enumerated purposes.

First, the Act's management directive applies only to "timberlands." As a result, the Act does not require the Secretary to "treat[] every parcel" of O&C lands as timberland. Pet. App. 25a (noting that "Murphy concedes as much"). Instead, it contemplates that the Secretary will "determine *which portions* of the land

should be set aside for logging and which should" not be logged. *Id.* (emphasis in original).

Next, even on timberlands, the Act does not require the Secretary to maximize logging to comply with its management directive of "permanent forest production" under "sustained yield" principles. Ensuring that O&C timberlands, when assessed as a whole, provide a permanent timber supply is primary, but those same lands must also be managed to further the specified sustained yield management purposes. *See id.* Those additional purposes are to provide watershed protection, stream flow regulation, local economic stability, and recreational facilities. *See id.* The O&C Act provides "latitude to reserve O&C Act land from logging" given those competing directives. *Id.* at 27a. As a result, the timber-related sentences in the proclamation are "consistent with the O&C Act's flexible land-management directives, which incorporate conservation uses." *Id.* at 7a.

Judge Tallman dissented in part. He did not disagree with the majority's conclusion that the O&C Act and Antiquities Act "can coexist." *Id.* at 35a (Tallman, J., dissenting). He did disagree as to "whether Proclamation 9564 . . . conflicts with the O&C Act." *Id.* Using the specific-versus-the-general canon and the principle that later-in-time statutes control over earlier ones, he concluded that "the O&C Act supersedes" the proclamation. *Id.* at 37a–39a. As a result, he would have held the proclamation expanding the monument "void as to O&C timberland." *Id.* at 37a.

4. Petitioners sought rehearing en banc. No judge requested a vote on the rehearing petition, and it was denied. *Id.* at 61a–62a.

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.

First, petitioners' choice to tell this Court that their case offers a "cleanly presented Antiquities Act challenge" is a strange one. Pet. 31a. From the first paragraph (at 1–2) on (at 14, 25–26) and on (at 30–31), petitioners criticize past Antiquities Act proclamations as reserving more land, or covering different objects, than the Act allows. Perhaps the reason for this is that 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 is just "not a case that tests the bounds of the Act." Pet. App. 33a.[7]

That is because petitioners have never argued that the monument expansion is invalid because the Antiquities Act, "considered in isolation" does not authorize it. Pet. 14. Instead, they disclaimed that argument with striking clarity. As petitioners described their own case: It "is *unlike* other Antiquities Act

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[7] As for petitioners' generalized criticisms (at 25) that national monument designations are inexorably increasing in size, they lack merit. 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) (cited at Pet. 25), 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.

cases" that turn on "whether a proclamation involved objects of historic or scientific interest or was sufficiently limited in geographic scope."[8] Both courts below took petitioners at their word. Pet. App. 20a (noting that petitioners "did not "challenge[] the President's general authority . . . under the Antiquities Act"); *id.* at 56a–57a ("Plaintiff never contends that the President abused his statutory authority in making these findings.").

Indeed, this would be a very poor case to raise 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.[9] And it reserves a smaller amount of land than presidents have reserved since those early days.[10]

Second, even petitioners' question presented is not actually at issue here. Petitioners ask this Court to resolve whether, under the Antiquities Act, a

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[8] Opening Br. at 1, *Murphy Co. v. Biden*, No. 19-35921 (9th Cir. filed Feb. 16, 2022) (emphasis added).

[9] *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 a 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).

[10] *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).

President may reserve lands as a national monument if "a separate federal statute reserves those . . . lands for a specific purpose that is incompatible with national-monument status." Pet. i. But petitioners have not argued that merely giving O&C lands "national-monument status" is intrinsically "incompatible" with managing those lands under the "separate" O&C Act.

The panel below recognized as much when prefacing its discussion of petitioners' actual claim. Pet. App. 20a; *see also id.* at 35a (Tallman, J., dissenting) (not disagreeing with this conclusion). And the panel identified a "good reason" why petitioners had not raised that broad claim: It is obviously incorrect. *Id.* A president's Antiquities Act authority "is not inconsistent with the scope of the O&C Act." *Id.* Put differently, the mere act of reserving lands as a national monument is not "incompatible" (at i) with any part or purpose of the O&C Act.[11] There is no reason, or need, for this Court to grant review of a question that was not raised below and for which the answer is so clear that the panel below dismissed it out of hand.

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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[11] Indeed, Petitioners conceded that the monument expansion is valid on some O&C lands. *See* Reply Br. at 13 n.8, *Murphy Co. v. Biden*, No. 19-35921 (9th Cir. filed June 8, 2022) (clarifying that the "appeal concerns only O&C Act *timberlands*" in the expanded monument, not O&C Act lands that are "not subject to the [Act's] sustained-yield timber production mandates").

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 "a statutory thicket" without the usual level of lower court consideration that it prefers. Pet. App. 7a.

To start, and as petitioners concede (at 29), the circuit courts are aligned, not split, in rejecting petitioners' claim. As petitioners challenged this monument expansion within the Ninth Circuit, the trade association that represents them did the same within the D.C. Circuit. Both circuit courts rejected the challenge. *See supra* at 10; *AFRC* Pet. App. 35a.

Petitioners' claim that "the absence of a circuit split does not counsel against certiorari" is wrong. Pet. 31. The absence of a split indicates the absence of "compelling reason[s]" for certiorari. Sup. Ct. R. 10. Petitioners suggest (at 31) that this Court should relax the certiorari standard for them because the two circuit courts with jurisdiction to hear their claim have now done so. But that just confirms that there is no conflict, present or future, for which review is "urgently needed." Pet. 31–32.

Nor does this petition implicate any question so important as to warrant review absent a split. *See* Sup. Ct. R. 10(c). The answer turns, as petitioners admit, on "[o]rdinary principles of statutory interpretation." Pet. 15. Petitioners seek review only to correct an "alleged misapplication of" those principles 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 would affect—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 was already limited by separate discretionary agency actions not at issue here. Pet. App. 59a; Pet. 8 n.3 (acknowledging reserves established by BLM management plan).

To try and give the question greater significance, petitioners assert that "dozens of statutes" govern the management of federal lands, so "every exercise of Antiquities Act authority is likely to implicate" at least one. Pet. 32. But they point to no decision adopting a challenge analogous to theirs. That is strong evidence that the monument proclamation does not clash with federal land management statutes, that this question is unlikely to arise again, and that there is no threat to "the balance of powers . . . call[ing] out for this Court's review." *Id.* at 18.

Petitioners also assert that this Court's review is needed because the expansion caused adverse "economic consequences" for nearby communities. *Id. at* 28a. But they do not offer any reason to believe them. The timber-related provisions petitioners challenge

here first appeared in the 2000 monument proclamation. If those provisions have caused harm, one would expect evidence of that to have emerged over the last 24 years. But there is none. The reality is that the monument, and its expansion, had little adverse impact in part because Congress has separately funded county services for these communities. *See supra* at 5.[12]

3. Finally, this petition is not an "ideal candidate" (at 32) for review because granting review would require this Court to address an "abstruse" statute with very little guidance from the lower courts. *AFRC* 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

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[12] Petitioners also claim (at 28–29), again without support, that national monument designations cause harm in general. A study of the monument that they criticize found no evidence of harm. *See* John Lynham, *Fishing activity before closure, during closure, and after reopening of the Northeast Canyons and Seamounts Marine National Monument*, 12 Nature 917 at 2 (2022) ("The economic arguments made against the 2016 commercial fishing prohibition and in favor of the 2020 re-opening do not appear to be supported by data on landings and vessel movements"), bit.ly/csmstudy. Indeed, a strong correlation exists between national monument designations, including this one, and positive economic growth. *See* Margaret Walls, *et al.*, *National monuments and economic growth in the American West*, 6 Science Advances at 1 (2020), bit.ly/sanatmon; Headwaters Economics, *Cascade-Siskiyou National Monument: A Summary of Economic Performance in the Surrounding Communities* (Spring 2017), bit.ly/hecsnatmon.

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. 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 Ninth Circuit and D.C. 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 the President lacked authority" under the Antiquities Act "to expand the Monument" on O&C timberlands because the O&C Act requires those lands to be managed for "a different and wholly incompatible purpose." Pet. 9. That is, they claim that the O&C Act impliedly repealed the President's authority to address forest management in national monument

proclamations under the Antiquities Act on O&C timberlands.

Under this Court's precedents, such arguments are disfavored. Instead, " 'when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.' " Pet. App. 21a (quoting *Mancari*, 417 U.S. at 551). 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. 21a.[13]

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 coexisting. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).

To start, the O&C Act's forest management provisions apply only on timberlands, and they do not

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[13] Petitioners suggest (at 15) that the specific-versus-the-general canon is dispositive here. But that canon also requires an actual conflict between two statutes. *See Varity Corp. v. Howe*, 516 U.S. 489, 511 (1996) ("This Court has understood the present canon . . . as a warning against applying a general provision when doing so would *undermine* limitations created by a more specific provision." (emphasis added)).

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." *AFRC* Pet. App. 23a. The O&C Act envisions and allows "dynamic, scientific decisions about which parcels should or should not be logged." 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. A court "cannot ignore the conservation principles of the Act." *Id.* at 24a. 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 timber production." Pet. App. 25a; *AFRC* 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. 59a; *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. 59a.

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 28a; *AFRC* Pet. App. 26a. The Act's approach, in contrast, imposed "conservation and scientific management for" lands that had previously "receive[d] no planned management." Pet. App. 28a (quotation omitted).

Given all of this, both circuit courts found that the Antiquities Act authority exercised in the monument expansion could coexist with the O&C Act. *Id.* at 23a; *AFRC* Pet. App. 27a–28a. 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 7, 10. And the O&C Act does not require that O&C lands be logged to the maximum extent possible.

Petitioners are wrong to claim (at 20) that any presidential management directive under the Antiquities Act conflicts with the O&C Act merely because that Act tells the Secretary (and not the President) to manage O&C lands. All federal land is managed by a presidential subordinate under a congressional statute. *See, e.g.*, Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 *et seq.* (BLM); National Forest Management Act, 16 U.S.C. §§ 1600 *et seq.* (U.S.

Forest Service). And all Antiquities Act proclamations withdraw federal land and direct one of those land managers to manage the reserved land in line with the protective purpose of the monument designation. That is the result of Congress's choice to delegate authority to the President under the Antiquities Act. It is not a sign of a statutory conflict in need of resolution.

Finally, petitioners fault the court below (at 16) for discussing Congress's history of responding to presidential actions under the Antiquities Act, but that history provides relevant context. For over a century, Congress has responded to monument designations. It has abolished some,[14] moved others into different

[14] *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 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).

statutory schemes,[15] adjusted the size of many,[16] and addressed the management of others.[17]

Congress did exactly that here, devoting "significant congressional attention," Pet. 4, to the Cascade-Siskiyou National Monument and making multiple changes to the monument. 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, though not "the bellwether for interpretation," certainly strongly signals that those provisions are "not contrary to the text of the O&C Act." Pet. App. 32a.

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[15] *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).

[16] *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))

[17] *See, e.g.*, Consolidated Appropriations Act, 2023, tit. IV, § 408, 136 Stat. 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").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

KRISTEN L. BOYLES
Counsel of Record
ASHLEY BENNETT
EARTHJUSTICE
810 Third Ave., Ste. 610
Seattle, WA 98104
(206) 413-9872
kboyles@earthjustice.org

KIRTI DATLA
EARTHJUSTICE
1001 G St. NW, Ste. 1000
Washington, DC 20001

SUSAN JANE M. BROWN
SILVIX RESOURCES, INC.
4107 NE Couch St.
Portland, OR 97232

Counsel for Respondent-Intervenors Soda Mountain Wilderness Council, Klamath-Siskiyou Wildlands Center, Oregon Wild, and The Wilderness Society

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