No. 20-97

In The
# Supreme Court of the United States

MASSACHUSETTS LOBSTERMEN'S ASSOCIATION, ET AL.,

*Petitioners,*

v.

WILBUR ROSS, ET AL.,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The D.C. Circuit**

## BRIEF FOR *AMICI CURIAE* UTAH COUNTIES AND UTAH REPRESENTATIVES IN SUPPORT OF PETITIONERS

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## LIST OF *AMICI* ON THIS BRIEF

Kane County, Utah

Garfield County, Utah

Beaver County, Utah

Duchesne County, Utah

Uintah County, Utah

Rep. Carl Albrecht, Utah House District 70

Rep. Walt Brooks, Utah House District 75

Rep. Kay Christofferson, Utah House District 56

Rep. Bradley Daw, Utah House District 60

Rep. Brad Last, Utah House District 71

Rep. Norm Thurston, Utah House District 64

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## INTEREST OF *AMICI CURIAE*[1]

Garfield County and Kane County are two counties in southern Utah. The Grand Staircase-Escalante National Monument ("Grand Staircase"), established pursuant to the Antiquities Act in 1996 as a nearly 1.9-million-acre national monument, falls entirely within the boundaries of Garfield and Kane Counties.

Before its boundaries were modified, Grand Staircase covered approximately 45% of Garfield County's 5,208-square-mile land area and 49% of Kane County's 4,109-square-mile land area. Including Grand Staircase, approximately 93% of Garfield County is now made up of federally owned or controlled land, while approximately 85% of the land in Kane County is now federally managed.

Grand Staircase's immense size—established with no meaningful input from (or notice to) local government or congressional representatives—has damaged the local economies and cultural heritages of Garfield and Kane Counties, and has eviscerated local control over local lands, in contravention of basic federalism principles. Accordingly, Garfield County and Kane

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[1] Pursuant to Supreme Court Rule 37.6, the Counties state that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution intended to fund this brief's preparation or submission. Counsel of record for all parties received timely notice of *amici*'s intention to file, and counsel of record for the parties provided written consent to *amici curiae*'s submission of this brief.

County—as well as other similarly-situated, nearby Utah counties and the Utah congresspeople who represent them, joining as *amici*—have an interest in application of the Antiquities Act's "smallest area" requirement. To further that interest, Kane and Garfield Counties have intervened to be parties to pending litigation on this issue. *See Wilderness Soc'y et al. v. Trump*, No. 1:17-cv-2587 (D.D.C.).

## SUMMARY OF THE ARGUMENT

The Antiquities Act delegated to the President the power to designate, through public proclamation, "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest," so long as the President's designation is "confined to the smallest area compatible with the proper care and management of the objects to be protected." *See* 54 U.S.C. § 320301. The "smallest area" requirement protects state and local government authority by ensuring that the President's exercise of this power does not unnecessarily encroach on local lands.

Unfortunately, lower courts have all but written the "smallest area" requirement out of the Act, allowing a President to insulate designations from judicial review simply by referenceing "resources," "ecosystems," or other broad or amorphous terms. The decision below amplifies the problem of lower courts' failure to recognize the meaning of the Act's plain terms.

When lower courts nullify the Act's "smallest area" requirement, state and local governments (and those who represent them) are denied a key protection embedded in the Act. Given that designations under the Act commonly occur with no notice to—or input from—local interests, state and local governments rely on the "smallest area" requirement to ensure that designations in their area do not needlessly reach too far. Otherwise, overbroad designations upend basic notions of federalism and impair state and local governments' ability to ensure the health, safety, and welfare of the people who live in and around their lands.

Review is warranted to restore balance to designations made under the Act and to ensure that courthouse doors remain open to litigants seeking to challenge the size and scope of designations that run afoul of the Act's plain terms.

## ARGUMENT

In 1906, Congress passed the Antiquities Act and thereby delegated to the President the power to designate, through public proclamation, "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest," so long as the President's designation is "confined to the smallest area compatible with the proper care and management of the objects to be protected." *See* 54 U.S.C. § 320301. The limitation embedded in the Act—that designations cover only the "smallest area"

necessary—protects state and local government authority by ensuring that the President's exercise of this power does not unnecessarily encroach on local lands (and thereby eviscerate local control).

But in recent years, Presidents have wielded their power under the Act to designate not just specific "landmarks," "structures," and "other objects of . . . interest," but also the "resources and ecosystems" surrounding them. But designating "resources and ecosystems" for protection under the Act cannot nullify the Act's "smallest area" requirement. In fact, sweeping designations with broad and amorphous terms do not satisfy this provision, a problem this case aptly demonstrates.

Faced with judicial challenges to massive designations under the Act, federal courts are abdicating their obligation to enforce the "smallest area" requirement by closing the courthouse doors to any challenge under this provision. Under the test employed in the decision below, no "smallest area" challenge could ever stand to any designation, no matter how large or disconnected from the central "object[] to be protected." So long as a President declares land (or sea) to be a necessary "resource" or "ecosystem," its designation is insulated from legal challenge and meaningful judicial review.

State and local governments and those who represent them—including *amici* here—are suffering the brunt of these broad overdesignations, which often occur with no local input. The Court should review the

decision below to restore balance to designations made under the Act, to clarify that the "smallest area" clause means what it says, and to ensure that future litigants may challenge the size and scope of designations when they run afoul of the Act's plain terms.

## I. Review Is Warranted Because Courts Are Writing The "Smallest Area" Requirement Out Of The Act.

The Antiquities Act is neither long nor complicated. *See* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 Ga. L. Rev. 473, 476 (2003) ("Perhaps the most remarkable feature of the Antiquities Act of 1906 is its brevity."). It grants broad authority to the President to designate a monument for protection (and, thus, preservation), subject to an important limitation: The designation must be "confined to the smallest area compatible with the proper care and management of the objects to be protected." 54 U.S.C. § 320301(b). The meaning of this "smallest area" requirement should be obvious and its application straightforward: the President must make monument designations as small as possible.

1. Courts evaluating a "smallest area" challenge to a Presidential designation should apply the words of the statute as written. It is "the most basic of all canons of statutory construction that statutes mean what they plainly say." *Watt v. Alaska*, 451 U.S. 259, 285 (1981) (Stewart, J., dissenting). "The plain meaning of legislation should be conclusive, except in the rare

cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *United States v. Ron Pair Enters., Inc*., 489 U.S. 235, 242 (1989) (citation omitted).

The decision below violates this basic rule of statutory construction because it renders the "smallest area" requirement in the statute a nullity. Instead of enforcing the Act's text, the decision below affirms dismissal of this case at the outset—holding that no challenge to a Presidental designation can stand on the basis that it ignores the "smallest area" requirement, so long as the President makes a designation in broad and sweeping terms to protect "resources and ecosystems" surrounding an area deserving of protection. Not only are monuments protected, but any "resource or ecosystem" that touches them, however broad, may likewise be designated for protection under the Act.

Specifically, the Presidential designation here, which established the Northeast Canyons and Seamounts Marine National Monument, expands the scope of its protection not only to the canyons and seamounts themselves, but to "the natural resources and ecosystems in and around them." Pet.App.A-5–6 (quoting 3 C.F.R. 262, 262 (2017)). The result of this sweeping designation is the reservation of an enormous area of "roughly 5,000 square miles of ocean" 130 miles off the coast of Cape Cod. *Id.* at A-5.

The designation is remarkable in its own right because it sets aside such a vast amount of territory,

approximately the size of the State of Connecticut. Pet.App.D-4. But even more shocking is the government's theory, revealed at oral argument, underlying such a large designation. In response to the court's question whether the President could "declare an Atlantic coast monument that would be the whole [Exclusive Economic Zone] [that is, the entire area from 12–200 miles off a nation's coast]" by including in the proclamation that it is "an ecosystem," the government—astoundingly—said yes. Oral Argument at 21:22–22:41.[2]

In other words, according to the government, the President can invoke the Antiquities Act to sweep aside the entire "belt of ocean between 12 and 200 nautical miles" off the Atlantic coast with a simple, unexplained reference to "an ecosystem." Pet.App.A-6. Adopting this unlimited principle, the D.C. Circuit held that Petitioners failed to state a claim under the statute's "smallest area" requirement because they could not perform the impossible feat of identifying a portion of the monument that lacked a "natural resource[]" or an "ecosystem." Pet.App.A-20. Under this test, no spot on this planet could be meaningfully challenged.

The court's analysis rubberstamps the Proclamation in a way that destroys the Act's "smallest area" requirement. Under the D.C. Circuit's reasoning, a President's unadorned reference to "natural resources" or "an ecosystem" will be sufficient for a court to kill

[2] https://bit.ly/2QBt2XC.

any challenge under the "smallest area" requirement before a challenger can even access discovery.

2. This case is the latest to apply a tautological approach to reviewing a "smallest area" challenge. The "courts have largely refused to enforce" this provision of the Act. *See* James McElfish et al., *Antiquities Act: Legal Implications for Executive & Congressional Action*, 48 Envtl. L. Rep. News & Analysis 10187, 10192 (2018) (noting that "courts have given presidents broad discretion," "[a]lthough the Antiquities Act says that monuments must be the smallest area compatible with the protection of the object").

In a previous case, the D.C. Circuit likewise dismissed a similiar "smallest area" challenge out of the gate. There, President Clinton used the Act to designate 327,769 acres of sequoia groves and surrounding "habitats," notwithstanding that the groves sought to be protected were not contiguous and no one in the Clinton Administration "made any meaningful investigation or determination of the smallest area necessary to protect any specifically identified objects of genuine historic or scientific interest." *Tulare Cty. v. Bush*, 306 F.3d 1138, 1142 (D.C. Cir. 2002). In *Tulare*, the D.C. Circuit squarely held that the Act "does not impose upon the President an obligation to make any particular investigation" as to the size of the area designated for protection. *Id.*

Astoundingly, the *en banc* D.C. Circuit affirmed dismissal in *Tulare* and, in a one-paragraph order,

went further: The *en banc* court held that "[t]he allegation that Sequoia groves comprise only six percent of the Monument might well have been sufficient if the President had identified only Sequoia groves for protection, but he did not; the Proclamation covered *natural resources present throughout the Monument area*." *See Tulare Cty. v. Bush*, 317 F.3d 227, 227 (D.C. Cir. 2003) (en banc) (emphasis added). Here again, where a President broadly designated an amorphous habitat or ecosystem of natural resources surrounding an area of particular interest, his designation was totally insulated from a challenge on the basis of the designation's size.

Other cases have likewise uniformly granted dismissal of a "smallest area" challenge to a Presidential designation under the Act. *See*, *e.g.*, *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1137 (D.C. Cir. 2002) (upholding proclamations for six national monuments in Arizona, Colorado, Oregon, and Washington, including on the grounds that the Canyons of the Ancients proclamation stated the 164,000-acre area was the "smallest area compatible"); *Murphy Co. v. Trump*, No. 1:17-cv-285-CL, 2019 WL 2070419, at *2–3 (Apr. 2, 2019) (recommending summary judgment against plaintiff's challenge to President Obama's 48,000-acre expansion of Cascade-Siskiyou National Monument), *modified on other grounds & adopted*, 2019 WL 4231217 (D. Or. Sept. 5, 2019); *Utah Ass'n of Counties v. Bush*, 316 F. Supp. 2d 1172, 1182, 1186 (D. Utah 2004) (dismissing challenge to designation of 1.7 million acres as Grand Staircase and noting that there

was "virtually no advance consultation with Utah's federal or state officials, which may explain the decision to make the announcement in Arizona"); *Wyoming v. Franke*, 58 F. Supp. 890, 894–96 (D. Wyo. 1945) (upholding proclamation setting aside 221,610 acres for Jackson Hole National Monument over Wyoming's "smallest area" objections). As these decisions make clear, lower courts are not countenancing challenges to broad designations under the Act. But the "smallest area" language in the Act should have meaning, and courts should enforce it.

3. Of course, large designations may sometimes be permissible under the Act. For example, President Theodore Roosevelt designated the entire Grand Canyon an "object of . . . scientific interest" under the Act (in one of its very first uses). *See* https://bit.ly/2YmCO42. This Court later spoke approvingly of that deisgnation. *See Cameron v. United States*, 252 U.S. 450 (1920). But, in that designation, the entire Grand Canyon was itself the area of interest to be protected. It would be another thing entirely, and virtually impossible to comply with the "smallest area" requirement, had President Roosevelt designated the Grand Canyon and millions of surrounding acres of related "ecosystem." *Cameron* says nothing about the Act's "smallest area" requirement (and this Court has had no other occasion to weigh in on the issue). Given the lower courts' repeated failure to police this limitation on Presidental power, review of this case is warranted.

Congress plainly delegated to the President broad authority to designate monuments under the Act, but

the President's exercise of this authority also must be limited by the plain terms of the "smallest area" requirement the Act imposes. The lower courts are abdicating their responsibility to police the bounds of this limitation on Presidental authority by reflexively dismissing challenges under the "smallest area" requirement for failure to state a claim. In doing so, courts are holding litigants who seek to enforce the terms of the statute to an impossible task. So long as a President includes broad language in a designation (like a "habitat," "ecosystem," or "resource"), courts will hold that no litigant can challenge it, because they cannot credibly allege that land within the designation is not a "habitat," "resource," or "ecosystem."

If *this* designation does not violate the "smallest area" requirement, it is hard to imagine one that would. Given the misguided trend in lower courts to ignore the "smallest area" requirement in the Act and dismiss challenges to a designation under these terms, this Court should step in. Lower courts, litigants, and the President need to know that the text of the statute limits the President's authority under the Act.

## II. Ignoring The "Smallest Area" Requirement Undercuts Federalism.

The "smallest area" requirement is a crucial limiting principle on the President's delegated authority to establish national monuments. Local governments like Garfield and Kane Counties rely on this check, and the

failure to enforce this limitation imposes significant harm on them.

This harm comes in two forms, both of which implicate important federalism concerns. First, state and local governments are often surprised by designations that occur without any local input. Local leaders find themselves facing broad federal designations about which they are not consulted. Designations entered without any local feedback often run roughshod over local economic concerns. Second, imposition of monument designations over broad swaths of land offends basic principles of federalism and upends local control over local lands. When Presidents wield their power under the Act without respect to the "smallest area" requirement, they amplify these concerns (and the constitutional harms underpinning them).

### A. When Presidents Ignore The "Smallest Area" Requirement, They Wreak Havoc On Local Governments By Enabling Broad Designations With No Local Input And No Political Recourse.

The Counties know all too well that Presidents rarely consult local stakeholders in exercising their Antiquities Act powers. The establishment of Grand Staircase in Garfield and Kane Counties is a prime example of all that can go wrong in a broad designation of land without local input. When President Clinton declared this designation under the Act, he did not even notify—much less work with—local stakeholders.

Utah Governor Mike Leavitt referred to the Grand Staircase's proclamation as a "stealth proposal" undertaken in "complete secrecy" with "no notice and no collaboration" with the state or local governments that would soon see their land turn into a monument. *Utah State of the State Address*, CSPAN (Jan. 28, 2002), *available at* https://www.c-span.org/video/?168563-1/utah-state-state-address ("With little advance warning to Utah's governor and congressional delegation, President Clinton designated . . . the Grand Staircase-Escalante National Monument. . . . [I]t set the stage for an unprecedented expansion of the national monument system."); *see also* Squillace, 37 Ga. L. Rev. at 538–39; James R. Rasband, *Utah's Grand Staircase: The Right Path to Wilderness Preservation?*, 70 U. Colo. L. Rev. 483, 484 (1999) ("[T]he President was subjected to heavy criticism by a furious Utah congressional delegation, . . . which had only learned of the President's intentions in a *Washington Post* story eleven days before the proclamation.").

Without the benefit of the State's and Counties' input, Grand Staircase suffered from "clumsy boundary errors" that reveal a disregard for the Act's "smallest area" requirement. Rasband, 70 U. Colo. L. Rev. at 546. Indeed, the original proclamation mistakenly included within the monument's boundaries "a producing oil field, acreage where one town had planned to expand its high school athletic field, the wells and water storage facilities of another town, and part of one property owner's driveway to his ranch." *Id*. at 546 n.581.

Clumsy errors aside, failure to give meaning to the Act's "smallest area" requirement has impacted the Counties in more profound ways. Garfield County saw immediate job losses resulting from Grand Staircase's overreach. In the proclamation's aftermath, a 400-employee sawmill and a 65-employee products mill were shuttered, and an additional 80 jobs in ranching and grazing were lost, resulting in over $9 million in lost output. *See* Decl. of Leland F. Pollock ¶¶ 7–9, *Wilderness Soc'y v. Trump*, No. 1:17-cv-02587 (TSC) (D.D.C. May 1, 2018), ECF No. 33-4 ("Pollock Decl."). Local job losses in the mining, ranching, and timber industries and the resulting exodus of families from the area have in turn led to a 300-student reduction in the school district's enrollment. *Id.* ¶ 10. In turn, this means that the school district receives even fewer resources, and the local high school (down to 51 students) can no longer offer foreign-language classes, upper-level math, or Advanced Placement courses. *Id.* Due to the seismic shift in demographics and the resulting loss of resources after Grand Staircase's establishment, Garfield County was forced to declare a state of emergency for its local school district. *Id.* ¶ 11.

Similarly, Kane County has had to navigate the President's closure of three-quarters of that area's regularly used roads, which provided access to trailheads and picnic areas and necessary thoroughfares for ranchers, residents, and tourists. *See* Decl. of Dirk Clayson ¶ 6, *Wilderness Soc'y v. Trump*, No. 1:17-cv-02587 (TSC) (D.D.C. May 1, 2018), ECF No. 33-5 ("Clayson Decl."). The President's proclamation has

also made it more difficult for Kane County to use land-management strategies necessary for ensuring healthy landscapes, avoiding erosion and wildfires, and sustaining livestock and wildlife feed for the ranching industry that is vital to its economy. *Id.* ¶ 9. The President's designation also blocked areas of local cultural significance, including those that traditionally had been used as sustainable campsites for youth scouting groups. *Id.* ¶¶ 11, 13. Worse still, the United States has prohibited the County from placing trail signs and other necessary infrastructure to ensure visitors' safety, which has caused deaths—all under the guise of monument protection. *Id.* ¶ 12.

Given the harm that has resulted from such a disruption, one may wonder: "Why in the case of the Grand Staircase did the Clinton administration fail to involve the local communities in considering the potential impact on them? Presumably because under the Antiquities Act it was not obligated to do so." Rasband, 70 U. Colo. L. Rev. at 547.

In response to these actions, representatives of state and local interests have appealed to the federal government to fix the problem of executive overreach under the Antiquities Act. But successful legislative fixes have been rare. *See*, *e.g.*, 16 U.S.C. § 3213(a) (imposing additional requirements for executive withdrawals of areas over 5000 acres); 54 U.S.C. § 320301(d) ("No extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress"). It is, perhaps, no surprise that localized concerns about

federal overreach are not redressed through federal legislation. Why would federal legislators representing other states devote time and resources to problems in rural Utah, particularly when the plain text of the Act already appears to incorporate precisely the limitation that would solve this problem? *See* James R. Rasband, *The Future of the Antiquities Act*, 21 J. Land Resources & Envtl. L. 619, 629–30 (2001) (While "there is no question of Congress' power to revoke or modify a national monument designation . . . political realities suggest that such a course is unlikely"). Faithful implementation of the Act's text as written would obviate the need for a legislative fix.

Because the lower courts decline to give meaning to the "smallest area" requirement and political realities impede congressional action, the only recourse for local governments like Garfield and Kane Counties is to appeal to the voluntary discretion of federal bureaucrats and administrators. In other words, the Counties are left to hope that the executive checks itself.

There are historical examples of this happening. For example, in the aftermath of "criticism . . . focused on the Administration's failure to consult" state and local interests in proclaiming Grand Staircase, then-Secretary of the Interior Bruce Babbitt established what "he often described as a 'no surprises' policy." Squillace, 37 Ga. L. Rev. at 539. This approach makes sense, as state and local officials are best situated to understand the land and communities in the area. *See* Rasband, 70 U. Colo. L. Rev. at 537 ("Soliciting input from those connected to the land . . . makes it more

likely that unforeseen benefits and detriments of any withdrawal will be taken into consideration."). Similarly, President Trump recently reduced the size and restrictions over Grand Staircase and the Bear's Ears National Monument to correct the executive's prior errors, and that correction is the subject of pending litigation to which the Counties are parties. *See Wilderness Soc'y et al. v. Trump*, No. 1:17-cv-2587 (D.D.C.).

But with the passage of time, such voluntary reforms are rare and, often, "illusory." *See* Rasband, 21 J. Land Resources & Envtl. L. at 624 ("The act is likely to remain unamended and aggressively employed, and local participation will remain minimal and largely illusory."). States should not be forced to rely on federal largess to protect their interests and enforce the Act's "smallest area" requirement. Worse still, even when a State is able to make its voice heard and successfully petitions the executive to reduce the size of a designation, it is not clear that such a de-designation will be upheld by the courts. In fact, this issue is pending in the Counties' *Wilderness Society* litigation before the United States District Court for the District of Columbia.

With no reliable recourse to enforce the limitations of the Act in the legislative or executive branches, local communities should be able to rely on the courts to give plain meaning to the Antiquities Act's text. While the text of the Act includes no obligation to consult local governments, it does include a requirement that any land set aside must be the "smallest area" necessary—and that, of course, inures to the benefit of

the state and local governments that control surrounding areas.

The D.C. Circuit's test precludes local governments from stating a claim under the "smallest area" requirement whenever a proclamation makes the slightest reference to "natural resources" or "an ecosystem." This renders the statutory text meaningless, and the promises of federalism and separation of powers ring hollow.

### B. Limitless Designations Upset Basic Notions Of Federalism.

Significant chunks of many Western states are comprised of federally-controlled land. *See* Statistical Abstract of the United States 228 tbl.369 (117th ed. 1997) (noting that 64.7% of Utah is federal land). This breakdown can appear even starker at the local level. Two of the *amici* here are counties comprised almost entirely of federally-controlled land: approximately 93% of Garfield County is federally owned or controlled land, and approximately 85% of Kane County is federally managed.

Where the federal government properly holds land within the borders of a state or county, the Constitution's Property Clause dictates the powers Congress may exercise over that land. *See* Const. Art. IV, Sec. 3, Cl. 2. In most instances, the federal government exercises control over the property it owns within the states cooperatively with local leaders, such that state and local governments retain the ability to exercise

significant authority over land within their geographic boundaries, even when the federal government owns it. *See Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 580 (1987); *Kleppe v. New Mexico*, 426 U.S. 529, 542–43 (1976). This means that local towns and communities can continue to utilize federal lands for economic, community-development, and tourism purposes.

Such cooperation accords with the basic principles of federalism that underlie the constitution. A cooperative system leaves room in the joints for significant local input and control over land with the geographic boundaries of a state. Particularly for counties like Kane and Garfield that are almost exclusively federally-controlled, local input and local land use is vital to ensure the success of these communities, and to maintain a balance of power between Western states and the federal government.

Indeed, this Court has recognized the "relationship between the Federal Government and the States under our Constitution" as a "background principle" for construing actions undertaken pursuant to federal statute. *Bond v. United States*, 572 U.S. 844, 857–58 (2014). This Court's concern with upsetting the balance of federalism "is heightened" where executive action "alters the federal-state framework by permitting federal encroachment upon a traditional state power," such as the "States' traditional and primary power over land and water use." *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 173–74 (2001).

The decision below—and any broad and unchecked designation under the Act—threatens to upset this delicate balance and eliminate the ability of local governments to exercise any authority or control over federally-owned land within their political jurisdictions. When Presidents designate "natural resources" and "ecosystems" that surround otherwise protectable "objects" under the Act, they foreclose local control over those areas.

In many cases, that completely shuts off from local activity and development huge chunks of land on which local communities depend. As a result, local economies suffer, local tax bases dry up, and the ability of local governments to provide necessary services for local communities recedes.

Overly broad designations have an immediate and significant impact on local communities. As noted above, the wide-ranging designation of Grand Staircase shuttered significant economic activity in Garfield County (resulting in over $9 million in lost output). Pollock Decl. ¶¶ 7–9. Job loss (and associated unemployment) in the mining, ranching, and timber industries dried up a critical tax base and impacted the ability of the County to provide essential services to residents—a core police power reserved for state and local governments. *Id.* ¶¶ 7–11. *See New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (recognizing state and local governments' "wide latitude . . . under their police powers" to regulate local economies); *Sailors v. Bd. of Educ. of Kent Cty.*, 387 U.S. 105, 110–11 (1967) (recognizing that "[v]iable local governments may need . . .

great flexibility" to be able to provide for the needs of local residents).

In Kane County, federal restrictions flowing from the Grand Staircase designation also impacted the ability of that community to maintain local hiking trails, trail signs, and other important infrastructure that allows the community to access the land surrounding it. Clayson Decl. ¶¶ 11–13. Ironically, this makes it *harder* for tourists to visit and appreciate the natural beauty that monument designations might otherwise be designed to protect. The overreach of Grand Staircase has thus impeded Kane County's ability to exercise the core police powers afforded to state and local governments. *See*, *e.g.*, *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984) (recognizing the "well settled . . . police powers" to regulate signs for safety and aesthetic concerns); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) ("The promotion of safety of persons . . . is unquestionably at the core of the State's police power.").

It is not difficult to imagine that overly-broad federal designations could eliminate small Western communities that find themselves overtaken by a designation that precludes access to the land and resources on which they depend for their survival. In turn, local governments (stripped of a tax base and many of their citizens) will fade away. The impact this could have on Western states more broadly is hard to fathom, but the outcome is not bright.

At base, *amici* here seek the Court's review of the underlying decision with the hope that the Court can breathe life into the "smallest area" requirement in the statute, and thereby restore balance to the Antiquities Act. Doing so will go a long way to redressing the harms that state and local governments—particularly those in the West—suffer from excessively broad designations under the Act.

## CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari to review and reverse the decision below.

Respectfully submitted,

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