No. 23-525

In The
Supreme Court of the United States

MURPHY COMPANY, et al.,

Petitioners,

v.

JOSEPH R. BIDEN, JR., et al.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF PUBLIC LANDS COUNCIL AND NATIONAL CATTLEMEN'S BEEF ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

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.

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IDENTITY AND INTEREST OF AMICI CURIAE

Under Supreme Court Rule 37, the Public Lands Council ("PLC") and the National Cattlemen's Beef Association ("NCBA"), submit this amicus brief supporting the Petitioners in *Am. Forest Res. Council v. United States*, 77 F.4th 787 (D.C. Cir. 2023) and *Murphy Co. v. Biden*, 65 F.4th 1122 (9th Cir. 2023).[1]

PLC and NCBA, representing stakeholders in the ranching and agricultural sectors, assert a direct interest in the outcome of these cases. Their concern centers on the legal implications of presidential powers to designate extensive tracts of public lands as national monuments. This concern is highlighted by the expansion of the Cascade-Siskiyou National Monument, indicative of executive overreach under the Antiquities Act. This act of expansion of an already existing national monument poses significant risks to the economic well-being of PLC and NCBA members who rely on access to federal lands for their livelihoods. The amici advocate for the establishment of a reliable and equitable regulatory environment that supports the continuous operation of ranches on both private and public lands.

[1] Pursuant to this Court's Rule 37.2, counsel of record for all listed parties received notice at least 10 days prior to the due date of the Amici Curiae's intention to file this brief. Pursuant to Rule 37.6, Amici Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

PLC advocates for ranchers who use public lands and strive to conserve the natural resources and heritage of the Western United States. As a Colorado nonprofit corporation, PLC's membership includes a broad spectrum of state and national cattle, sheep, and grassland associations, as well as individual ranchers who collectively own approximately 120 million acres of productive private land in the West. These members are also responsible for managing extensive public land and national forest areas through grazing allotments secured via permits and leases from federal agencies such as the Bureau of Land Management and the U.S. Forest Service, with a notable presence in Oregon.

Similarly, NCBA serves cattle producers of varying scales across all states. This Colorado nonprofit organization counts around 30,000 direct members and, via affiliated associations, represents close to 140,000 producers. Many members hold permits and leases for livestock grazing on federal lands, including those in Oregon.

The legal ramifications of these two cases are of great significance to PLC and NCBA members, with the potential to set a precedent on the presidential authority to unilaterally designate vast public lands as national monuments. Such a legal precedent has the capacity to shift the dynamics of land use and management in the country, with direct consequences for the economic and operational practices of PLC and NCBA members. These individuals and entities, firmly established in the ranching and farming industries,

maintain a strong interest in ensuring that executive decisions, like the expansion of national monuments, are judiciously balanced and consider the varied interests and rights of land users. The participation of PLC and NCBA in these cases underlines their dedication to protecting the interests of their members and to promoting the responsible use of public lands, thereby highlighting the significance of these legal challenges in determining the future of federal land management and property rights in America.

SUMMARY OF ARGUMENT

In the cases of *Am. Forest Res. Council*, 77 F.4th 787 and *Murphy Co.*, 65 F.4th 1122, the Supreme Court is positioned to address a pivotal conflict between legislative directives and environmental conservation efforts. This tension is exemplified by the interaction between the Oregon and California Railroad Revested Lands Act of 1937 ("O&C Act") and the expansive application of the Antiquities Act to countermand timber production and other uses for O&C Act lands. The broader concern is whether the Antiquities Act and other environmental statutes, like the Endangered Species Act ("ESA") and the Clean Water Act ("CWA"), are being applied too broadly, encroaching on existing direction of more specific laws, like the O&C Act.

A crucial point of contention in both cases is the expansion of the Cascade-Siskiyou National Monument, which epitomizes executive overreach and raises substantial constitutional questions, particularly concerning the erosion of the separation of powers. In *Am. Forest Res. Council*, Plaintiffs also dispute the Bureau of Land Management's ("BLM") 2016 Resource Management Plans ("RMPs") for O&C lands, which prioritize species preservation over the O&C Act's directive to manage such lands for permanent timber production. This questions the congruence of government actions with Congressional intent and the degree of power granted to executive agencies, especially concerning the reservation of extensive O&C land areas for conservation.

At the heart of these legal battles is the necessity to apply the Antiquities Act and other environmental laws in a way that respects the original intent of Congress. The Supreme Court's role in these cases is crucial for understanding the limits of executive power under laws like the Antiquities Act.

The challenges from groups like the American Forest Resource Council, Murphy Company, and others against the expansion of the Cascade-Siskiyou National Monument highlight a deep conflict. The increasing use of the Antiquities Act to create large national monuments, often against local preferences, brings into focus concerns about the President overstepping their authority. The Supreme Court's review is essential to prevent this overreach and to maintain the balance of power as established in the

Constitution. The outcomes of these cases will significantly influence how power is divided within the federal government and will shape the future of environmental and natural resource law in the United States.

ARGUMENT

I. THE LOWER COURT'S HOLDING EFFECTIVELY ALLOWS A PRESIDENT TO OVERRIDE CONGRESSIONAL DIRECTION FOR PUBLIC LAND

The Antiquities Act does not serve as *carte blanche* for the President to unilaterally negate existing federal land designations. This Court's review will resolve escalating tension between the expansive application of the Antiquities Act and the specific mandates of dominant use statutes, particularly the O&C Act.[2] This

[2] While these cases primarily deal with the tension between the Antiquities Act and the O&C Act, it is important to note that other dominant use statutes are also implicated in the broader context of this legal analysis. These include the Mineral Leasing Act of 1920, which governs the leasing of public lands for mineral development; the Federal Land Policy and Management Act of 1976, which sets out the procedures for managing public lands; the Multiple Use-Sustained Yield Act of 1960, which mandates that national forests be managed for multiple uses and sustained yields of products and services; the Taylor Grazing Act of 1934, which provides for the regulation of grazing on public rangelands to improve rangeland conditions; the Outer Continental Shelf Lands Act of 1953, which governs the activities on the outer continental shelf of the United States; and the Geothermal Steam Act

clash presents a unique opportunity for the Court to reaffirm the separation of powers doctrine, a fundamental principle of American constitutional governance. Resolution of this specific legal conflict will also help clarify the boundaries of executive authority in public lands management, which has significant national and regional implications for public land users. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (limiting executive power in matters of national importance).

The turn of the millennium marked a noticeable increase in monument designations under the Antiquities Act.[3] This trend, coupled with legal challenges that follow such designations, underscores the urgency of an opinion from this Court clarifying that the President has no authority to override Congressional land management decisions. This Court noted the severity of executive overreach in designating monuments in *Mass. Lobstermen's Ass'n v. Raimondo*, 141 S. Ct. 979 (2021) (statement of Roberts, C.J.). *See also Murphy Co. v. Biden*, 65 F.4th 1122, 1138 (9th Cir. 2023) (Tallman, J., dissenting). Those observations reinforce the need for this Court's intervention. To that end, this Court should assess the Antiquities Act's application with scrutiny like that applied in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022).

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of 1970, which governs the leasing of public lands for geothermal steam and associated geothermal resources.

[3] Since 2000, the President has enlarged eight national monuments and has created fifty-nine. *See* https://www.nps.gov/subjects/archeology/national-monument-facts-and-figures.htm.

The Cascade-Siskiyou National Monument was originally established in 2000 under Proclamation 7318. 65 Fed. Reg. 37,249–50 (Jun. 9, 2000). Proclamation 7318 reserved the lands for the primary purpose of protecting the area's "spectacular biological diversity" and prohibited use of the lands for various resource development purposes, including timber harvest and mining. *Id.* The reservation also directed the Secretary of the Interior to study livestock grazing and phase out grazing permits within the monument's boundaries where incompatible with its purposes. In 2017, the monument was expanded via Proclamation 9564, to be managed largely "under the same laws and regulations that apply to the rest of the monument." 82 Fed. Reg. 6,145 (Jan. 12, 2017).

The expansion, occurring just eight days before President Obama's term expired, presents significant issues of statutory interpretation and constitutional concerns of executive overreach. The monument includes lands governed by the O&C Act, 43 U.S.C. §§ 2601 *et seq.*, lands intended mainly "for timber production to be managed in conformity with the provision of sustained yield." *O'Neal v. United States*, 814 F.2d 1285, 1287 (9th Cir. 1987) (per curiam). The O&C Act "envisions timber production as a dominant use." *Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.2d 1174, 1184 (9th Cir. 1990). Proclamation 9564 prohibits both timber production and the use of such lands as part of the sustained yield calculation for O&C lands. 82 Fed. Reg. 6,145. This conflict between the monument designation and the mandates of the O&C Act

upends Congress's intention for such lands to be used for sustained-yield timber production and other compatible resource uses, such as livestock grazing, to provide revenue for local communities. *See* 43 U.S.C. § 2601. Similar to *Clinton v. City of New York*, 524 U.S. 417 (1998), expansion of the monument exhibits executive overreach given the President's act directly contradicts the statutory directives of the O&C Act.

The O&C Act, a state-specific statute, mandates sustained-yield timber production and revenue-sharing with local communities. 43 U.S.C. § 2601. Through the O&C Act, Congress identified a strong public interest in providing for sustained-yield timber harvest on O&C lands. Congress mandated that O&C lands designated as timberlands "shall be managed . . . for permanent forest production," 43 U.S.C. § 2601, and the Ninth Circuit characterized sustained-yield timber production as the "dominant use" of timberlands under the O&C Act. *Headwaters, Inc.*, 914 F.2d at 1184; *see also O'Neal*, 814 F.2d at 1287 (per curiam) ("[T]imber production to be managed in conformity with the provision of sustained yield."). Despite this mandate, Proclamation 9564 prohibits commercial timber harvest on these lands countermanding the O&C Act. The direct conflict between Proclamation 9564 and the O&C Act's mandate presents this Court with a distinct chance to determine the extent to which executive discretion can supersede the explicit provisions of statutory language.

Executive actions that overstep clear statutory guidelines are a definitive case of executive overreach.

In 2014, the Court made clear that agencies "may not rewrite clear statutory terms to suit [their] own sense of how the statute should operate." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 328 (2014). That case considered whether the Environmental Protection Agency ("EPA") had authority to regulate greenhouse emissions of smaller stationary sources under the Clean Air Act, such as shopping centers, apartment buildings, and schools. *Id.* at 311, 328. The Court's decision confirmed that EPA exceeded its jurisdiction by neglecting the specific limits set by Congress. Such actions by agencies were criticized as they compromise the foundational principle of separation of powers. The Court recognized that the purported authority of the EPA could disrupt the constitutional balance of powers, wherein the legislative body is tasked with creating laws, and the executive, often through its agencies, is entrusted with their faithful execution. *Id*. That case demonstrates that extending monument designations beyond what is stipulated by the Antiquities Act represents a similar trend of executive overreach.

The issues presented in the cases at hand transcend abstract debates on the bounds of executive authority; the designation made under Proclamation 9564 carries weighty and escalating socio-economic consequences for the affected localities. The tangible economic effects of limiting land use, for instance, by barring timber harvesting through the Antiquities Act, will profoundly impact communities that have relied on such activities, formerly safeguarded by federal laws. The O&C Act's revenue-sharing model is an

economic lifeline for many localities in the region. Overlooking these impacts, the sweeping application of the Antiquities Act risks the long-term economic well-being of these communities. Judicial review and the establishment of boundaries will produce a predictable application of the Antiquities Act that respects both environmental and economic needs.

Extensive application of the Antiquities Act, especially in areas regulated by dominant use statutes such as the O&C Act, inverts the principles of our Constitution, transforming our Republic from a system grounded in laws to one dictated by individual discretion. *See Bond v. United States*, 564 U.S. 211, 222–23 (2011). As Justice Holmes once noted, “We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.” *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922).

The Supreme Court’s clarification on the scope of executive authority under the Antiquities Act and reaffirmation of the separation of powers principle is crucial. The Court’s decision will establish a vital precedent for public land management and the balance of power between the executive and legislative branches, guiding future policy development in a direction that benefits both the environment and society.

II. A GATEWAY TO PRESIDENTIAL NULLIFICATION OF PUBLIC LAND USE, BYPASSING CONGRESSIONAL INTENT

The Antiquities Act, established in response to looting of Pueblo ruins in the Southwest, grants Presidents the discretion to designate national monuments on federal lands to preserve historical or scientific objects. Dept. of Interior, Nat. Park Serv., R. Lee, The Antiquities Act of 1906, at 33, 48 (1970); 54 U.S.C. § 320301(a). This Act, however, represents a markedly distinct approach to land and marine conservation compared to other legislative measures. Unlike the National Marine Sanctuaries Act, which requires comprehensive consultations and evaluations for establishing marine sanctuaries, 16 U.S.C. § 1433(b), or the creation of National Parks, which needs explicit Congressional authorization, 54 U.S.C. § 100101 *et seq.*, the Antiquities Act vests unilateral discretion in the President.

This discretion is cabined by the Antiquities Act's requirement that the land designated as a national monument must be limited to the smallest area necessary to protect the objects of interest. *Id*. § 320301(b). Despite this stipulation, the Antiquities Act has increasingly been used to protect expansive, often vaguely defined areas, creating significant concerns about presidential overreach, undermining the Antiquities Act's original intent and threatening the separation of powers. This trend justifies Supreme Court intervention to ensure adherence to the Antiquities Act's original intent and uphold separation of powers

principles, as delineated in *Youngstown Sheet & Tube Co.*, 343 U.S. 579, which emphasized the necessity of Congressional authorization in curbing executive power.

Proclamation 9564 stands in stark opposition to the objectives of the O&C Act. It imposes new restrictions on lands earmarked by Congress for timber production, thereby ceasing commercial timber harvesting and sustainable yield assessments in these areas. This action effectively removes these lands from the collective pool of timberlands intended to adhere to the O&C Act's mandates. This not only neglects the legislative purpose of the O&C Act, which is to ensure consistent yield calculations across all designated timberlands, but also represents an encroachment of executive power.

The discord between the O&C Act and Proclamation 9564 is unmistakable. The O&C Act mandates a continuous yield of timber, yet Proclamation 9564 removes O&C timberlands within the monument boundaries from this requirement. While the Antiquities Act allows the President broad leeway to create national monuments, this latitude does not include the authority to override or suspend federal statutes. By explicitly barring sustained yield calculations, the proclamation mandates the Secretary of the Interior to ignore statutory responsibilities under the O&C Act, which are crucial for the continued provision of timber to communities that economically rely on it.

The obligation of the Secretary to conduct sustained yield analyses for all O&C lands, as required by the O&C Act, is not a matter left to executive discretion but a specific statutory duty. As established in *Marbury v. Madison*, such responsibilities are ministerial and must be executed in accordance with the law, irrespective of executive decrees. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). The Constitution further directs the President to ensure that the laws are faithfully executed, a duty that includes adhering to and enforcing statutory requirements like those set forth in the O&C Act. Rather than execute the law as intended, this Proclamation effectively amends it.

This situation mirrors executive overreach as addressed in *Clinton v. City of New York*, where this Court invalidated the line-item veto as an unconstitutional expansion of executive power. *Clinton*, 524 U.S. at 445–47. In both instances, the executive branch canceled a duly enacted statute, violating the principles of separation of powers and the checks and balances system integral to our constitutional framework. The Court in *Clinton* held that "'[r]epeal of statutes, no less than enactment, must conform with Art. I.' There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Id.* at 438 (internal citation omitted). Proclamation 9564, by overriding statutory requirements of the O&C Act, is simply a unilateral amendment to an existing statute. The D.C. District Court recognized the Proclamation's conflict with the O&C Act as *ultra vires*. Yet the D.C. Circuit's reversal, proposing harmonization, effectively

sidesteps the critical constitutional issue at the core of this designation. The interpretation by the D.C. Circuit suggests that the Antiquities Act grants an executive officer the authority to disregard responsibilities imposed by another act of Congress, a concept that this Court disavowed in *Marbury v. Madison*. The precedent set by *Marbury* is that executive measures cannot supersede obligations that are legally mandated. *Id*. at 138–39 ("The President cannot authorize a secretary . . . to neglect the execution of duties mandated by law.").

The Court's review has important implications beyond the scope of the Antiquities Act and the O&C Act. Review of this decision will instruct lower courts on the interpretation and application of executive power in the context of land management and beyond, ensuring that presidential actions remain within the bounds of Congressional and constitutional mandates.

III. PIVOTAL BATTLE AGAINST EXECUTIVE OVERREACH IN THE FACE OF LEGISLATIVE SILENCE

The Supreme Court's interpretation of the Antiquities Act, juxtaposed against the O&C Act, is key, particularly considering the perils of courts interpreting Congressional silence. The D.C. Circuit's decision to harmonize these two statutes, despite their apparent conflict, creates dangerous precedent for other Congressional land management mandates. This interpretive approach signals endorsement of executive

overreach by default, which this Court cautioned against in decisions like *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984).

The historical importance of the separation of powers warrants Supreme Court scrutiny when executive actions under the Antiquities Act conflict with explicit legislative directives, like those in the O&C Act. Heightened in an era of noticeable executive overreach, the issue is ripe for review. Maintaining the separation of powers, as reinforced in *Mistretta v. United States*, 488 U.S. 361 (1989), helps prevent any branch from gaining undue control or undercutting the authority of another coequal branch. The Supreme Court's intervention in this conflict is crucial to demarcate the limits of executive authority and preserve the integrity of our constitutional framework.

When legislative texts are ambiguous or silent, the Supreme Court's role in interpretation is essential. Congressional silence should not be interpreted as *carte blanche* for executive discretion, especially when it results in conflicts with other legislative mandates. The judiciary's responsibility in interpreting these ambiguities is central to upholding the legislative structure and intent, thereby ensuring the constitutional system's balance. Here the executive branch, via the Antiquities Act, invades the legislative domain, specifically in terms of land management as directed by Congress in the O&C Act.

The interpretation by the D.C. Circuit Court, equating Congressional silence to an implicit endorsement

of unrestricted Presidential authority under the Antiquities Act, is inconsistent with several fundamental canons of statutory construction. The legal maxim of *generalia specialibus non derogant* dictates that specific statutory provisions override more general ones. This legal tenet, as highlighted in *Perez-Guzman v. Lynch*, 835 F.3d 1066 (9th Cir. 2016), and by Judge Richard Leon in *Am. Forest Res. Council v. Hammond*, 422 F. Supp. 3d 184, 192 (D.D.C. 2019), suggests that the Antiquities Act, being less specific, does not negate the mandates of the more specific O&C Act. Additionally, the doctrine that later statutes generally supersede earlier ones further supports the precedence of the O&C Act, both more recent and more specific than the Antiquities Act. *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153–54 (1976).

The stance of the D.C. Circuit Court starkly contrasts with fundamental constitutional principles and misinterprets the role of courts within our tripartite system of government. As Alexander Hamilton explained in The Federalist No. 78, the Judiciary's duty is not to defer to potential legislative action but to actively check unlawful executive actions. Deducing Congressional intent from inaction, a concern echoed in *Cleveland v. United States*, 329 U.S. 14 (1946), calls for judicial intervention to uphold the rule of law and respect the explicit text of statutes such as the O&C Act.

A decision by this Court in these cases will set a crucial precedent that affects the administration of public lands and the delineation of authority between

the executive and legislative branches. The Court's decision will clarify the constitutional tenets applicable to public land governance. It will not only define the boundaries of the Antiquities Act but also fortify the principle of separation of powers, affirming that executive measures are meant to implement, not establish, policy. The significance of this case transcends land administration, bearing upon the very pillars of our republic's governance.

The unchecked actions of the executive branch have produced a conflict that is systematically weakening the legislative branch's authority, thereby disrupting the constitutional balance of power. Such a scenario, warned against in *INS v. Chadha*, 462 U.S. 919 (1983), where the Court invalidated a legislative veto as unconstitutional, could disrupt the constitutional framework. The Supreme Court's decision here will influence not just the interpretation of the Antiquities Act but also broader constitutional law and governance. It is imperative that this Court endorse a balanced approach that honors both the letter and spirit of our laws, thereby preserving the fundamental tenets of our constitutional democracy.

IV. "NO TOUCH" RESERVES CONFLICT WITH THE TEXT AND PURPOSE OF THE O&C ACT

The O&C Act requires that timberland subject to the act be managed for "permanent forest production" and that timber be sold, cut, and removed according to

the principle of "sustained yield." 43 U.S.C. § 2601. The O&C Act directs the Secretary of the Interior to declare the "annual productive capacity" of O&C timberland and offer timber commensurate with that capacity for sale each year. *Id*. Along with providing for "a permanent source of timber supply," the O&C Act recognizes other purposes served by forest production on O&C lands, including "protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities." *Id*.

Economic development for local community stability is the driving purpose of the O&C Act—meant to benefit those areas of western Oregon with large amounts of land in federal management and subject to additional constraints due to the complex checkerboard of public, private, and state land ownership of the area.[4] Together with mandating permanent forest production on lands governed by the O&C Act, it also provides for payments to O&C counties to compensate for counties that had lost some of their tax base.[5]

To fulfill this primary purpose, the O&C Act sets a minimum harvest of 500 million board feet or the

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[4] U.S. Dept. of the Interior, BLM, O&C Sustained Yield Act: the Land, the Law, the Legacy (1937-1987) at 5, *available at*: https://www.blm.gov/or/files/OC_History.pdf (discussing re-vestment of former Oregon and California Railroad lands to federal government).

[5] *See id.* § 2605; CRS Rep. R42951, *The Oregon and California Railroad Lands (O&C Lands): in Brief*, at 4–7 (May 25, 2023), *available at*: https://crsreports.congress.gov/product/pdf/R/R42951.

annual sustained yield capacity. *Id*. To the fullest extent such timber will be sold, BLM must meet these targets—full stop. *Id*. Many other unique tools are provided to the Secretary of the Interior to manage O&C lands, including authority to enter into cooperative forest management agreements among diverse landholders; offer grazing leases where compatible with O&C purposes; and engage in consultation and collaborative agreements for wildfire protection purposes among federal, state, and local governments. *Id.* §§ 2602–03.

Nowhere in the statute did Congress provide any substantive direction in considering effects on water quality or flow, or on species listed under the ESA, when determining productive capacity. Rather, the O&C Act merely authorizes the Secretary of the Interior to issue rules and regulations to carry out the purposes of the O&C Act. *Id*. § 2604. To the extent the government relies on either "past practice" or other sources of authority to devote O&C Act lands to conservation purposes, such as the ESA or CWA, this Court has emphasized that such duties do not apply when, as here, an agency is *required* by statute to undertake a particular action. *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 669 (2007).

Considering this context, it becomes evident that BLM's 2016 RMPs conflict with both the letter and the spirit of the O&C Act. The RMPs effectively restrict sustained yield management on almost 80% of BLM lands and BLM anticipates a sustained yield harvest of just 205 million board feet from the remaining areas. This approach contradicts the O&C Act, as the Act does

not authorize the creation of areas that are completely exempt from resource management or harvesting. The O&C Act specifically addresses the subdivision of O&C lands in a limited context, stating only as follows:

> If the Secretary of the Interior determines that such action will facilitate sustained-yield management, he may subdivide such revested lands into sustained-yield forest units, the boundary lines of which shall be so established that a forest unit will provide, insofar as practicable, a permanent source of raw materials for the support of dependent communities and local industries of the region. . . .

43 U.S.C. § 2604. Subdivisions for the purpose of ESA species protection or other environmental purposes do not fulfill the primary purpose of the O&C Act of providing a permanent source of raw materials that support dependent communities and industry in western Oregon.

Thus, the establishment of such vast "no touch" reserves by the 2016 RMPs contradicts the clear text of the O&C Act. Lacking any basis in sustained yield, the reserves actively undermine the O&C Act's primary purpose, which is to sustain the livelihoods of local communities that depend on the sustained yield of timber and other resources from these lands for jobs and revenue. *See Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281 (1974) (noting importance of interpreting statutes within their unique legal and historical contexts); *DOT v. Pub. Citizen*, 541 U.S. 752

(2004) (discussing importance of considering wider impact of environmental policies).

The Court should grant the writ because this case presents an opportunity to restore the management of O&C lands to their original purpose.

V. IMPLICATIONS FOR AGENCY OVERREACH IN PUBLIC LANDS MANAGEMENT

As the Court considers whether to grant *certiorari*, it also must weigh the broader implications of these cases for federal land use planning outside the context of the O&C Act. Congress, not the President or executive agencies, has the primary authority to designate or modify uses for public lands.

Congress's power to manage the public lands generally derives from Article IV, Section 3 of the Constitution, which states, in part, "Congress shall have the 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. Congress delegated some, but not all, of this authority to the Department of the Interior, and the BLM, to manage the public lands via statutory authorities that include the Federal Land Policy and Management Act ("FLPMA")[6] and other use-specific statutes that

[6] FLPMA designates principal uses and provides for "multiple use" and "sustained yield" of those natural resources to meet the nation's need for domestic sources of minerals, food, timber, and fiber from the public lands. 43 U.S.C. § 1701(a)(7), (12); *id.* § 1702(l) ("The term 'principal or major uses'" of public lands

pre- or post-date FLPMA.[7] While agencies have some measure of discretion to implement these statutes, such discretion is bounded by statutory text. The mandate of the O&C Act for sustainable timber production stands firm, not to be superseded barring an unequivocal directive from Congress. Should agencies aim to diverge from these statutory land use provisions, they are required to demonstrate "clear congressional authorization" for such deviation. *West Virginia v. EPA*, 142 S. Ct. 2587, 2621 (2022); *see also FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Sackett v. EPA*, 598 U.S. 651 (2023). This Court is positioned to ensure that agency actions do not exceed the bounds set by legislation.

To allow the President to unilaterally restrict existing land uses on vast areas of lands and "ecosystems" under the Antiquities Act also risks, by implication, endorsing agency action to implement such designations that contradicts existing statutory

"includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.").

[7] A comparable approach was taken with the Department of Agriculture and its land management agency, the U.S. Forest Service, via the Organic Act of 1897, 16 U.S.C. §§ 473 *et seq*.; the National Forest Management Act of 1976, *id.* §§ 1600 *et seq*., and the Multiple-Use Sustained-Yield Act of 1960, *id.* § 528. Examples of use-specific statutes specifying management of the public lands and National Forest System include, but are not limited to, the Taylor Grazing Act, 43 U.S.C. §§ 315 *et seq.*, the Mining Law of 1872, 30 U.S.C. §§ 21 *et seq.*, and the Surface Use Act, 30 U.S.C. § 612(b).

direction. As framed by the dissent in *Murphy Co. v. Biden*:

> Indeed, the far-reaching implications of the majority's interpretive rule are sobering: every federal land management law that does not expressly shield itself from the Antiquities Act is now subject to executive nullification by proclamation.

Murphy Co., 65 F.4th at 1141–42 (Tallman, C.J., concurring).

For public land use planning under FLPMA, the primary authorities delegated to the Secretary of the Interior are the general planning authority and the general leasing and permitting authority. *See* 43 U.S.C. §§ 1712, 1732(b). Yet Congress was clear to cabin the Secretary's authority by focusing on achieving multiple use and sustained yield of the major or principal uses identified in Section 1702. *Id.* § 1702(l). Congress has otherwise generally retained its authority to designate new uses (or withdraw uses) of the public lands, with some exceptions. *See id.* § 1701(b) ("The policies of [FLPMA] shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation.").

Relevant to these cases, Congress has generally reserved to itself the power to designate particular lands for conservation purposes.[8] Statutes including

[8] BLM's sole statutory authority to designate areas of existing public lands for protection is through the designation of areas of critical environmental concern in areas needing "special

the Wilderness Act, National Parks Act, and the others guiding designations as National Conservation Lands, are primary examples.[9] These laws and designations vary in scope and intent and they offer a framework that empowers the Secretary of the Interior to manage those lands for a variety of conservation purposes and compatible uses.

To sanction monument designations that contradict Congress's intent to retain authority to designate lands for conservation purposes flouts separation of powers principles and sets the stage for agency overreach in the development of land use plans. Moreover, focusing narrowly on single issues like species protection under the ESA may neglect comprehensive land management strategies that consider the conservation benefits of existing uses of public lands. For instance, grazing activities on public lands generate $1.439 billion annually and support more than 2 million jobs

management attention." *See* 43 U.S.C. §§ 1712(c)(3), 1702(a). However, the Department of the Interior has also used land exchanges for the purpose of establishing wildlife refuges pursuant to the National Wildlife Refuge System Administration Act and other authorities. *See* Solicitor Memorandum, M-37078, National Wildlife Refuge Land Exchanges (May 31, 2023). *But see* Bureau of Land Mgmt., Proposed Rule, *Conservation and Landscape Health*, 88 Fed. Reg. 19,583 (Apr. 3, 2023) (recent BLM proposal arguably exceeding its limited authority under FLPMA), *available at*: https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health.

[9] National Conservation Lands under BLM management include over 37 million acres to conserve particular features and include designations such as Wilderness and Wilderness Study Areas; Wild and Scenic Rivers; National Scenic and Historic Trails; National Conservation Areas; and National Monuments.

across the West but are also responsible for more than \$8.5 billion in ecosystem services each year.[10]

The Supreme Court's involvement is vital in ensuring land management policies respect legislative boundaries. Consistent land management practices should align with legal frameworks and Congressional mandates. This case presents an opportunity for the Court to endorse balanced, sustainable land management that adheres to Congressional frameworks.

[10] Bureau of Land Mgmt., *Socioeconomic Impact Report 2022*, https://www.blm.gov/about/data/socioeconomic-impact-report-2022; Maher, A., Ashwell, N., Maczko, K., Taylor, D., Tanaka, J., & Reeves, M. (2021), *An economic valuation of federal and private grazing land ecosystem services supported by beef cattle ranching in the United States*, Translational Animal Science, https://doi.org/10.1093/tas/txab054. *See also Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687 (1995) (stressing the importance of considering a broader ecological context in ESA interpretations).

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

DATED: December 13, 2023.

Respectfully submitted,

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