

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AMERICAN FOREST RESOURCE COUNCIL, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents,

SODA MOUNTAIN WILDERNESS COUNCIL, ET AL.,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioners state that the Association of O & C Counties is an unincorporated Oregon association and a trade association; the American Forest Resource Council is an Oregon-based nonprofit corporation and a trade association; Carpenters Industrial Council, now known as Pacific Northwest Regional Council of Carpenters, is an Oregon-based nonprofit corporation; Douglas Timber Operators, Inc. is an Oregon-based nonprofit corporation and a trade association; C & D Lumber Co., now known as C & D Partners, Inc., is an Oregon-based, family-owned corporation; Freres Lumber Co. Inc., now known as Freres Engineered Wood, is an Oregon-based, family-owned corporation; Seneca Sawmill Company, now known as Sierra Pacific Industries, is a California corporation; Starfire Lumber Co. is an Oregon-based, family-owned corporation; Swanson Group Mfg. LLC is an Oregon family-owned limited liability company that is a wholly-owned subsidiary of Swanson Group, Inc., an Oregon corporation; Josephine County, Oregon is a municipal subdivision of the State of Oregon; Gahlsdorf Logging, Inc., is an Oregon-based corporation; Young's Trucking, Inc. is an Oregon-based corporation; Oregon Forest and Industries Council is an Oregon-based nonprofit corporation and a trade association; D & H Logging Co. is an Oregon-based, family-owned logging corporation; Oregon Small Woodlands Association is an Oregon-based nonprofit corporation; Mountain Western Log Scaling and Grading Bureau is an Oregon-based nonprofit corporation; and Rough and Ready Lumber LLC, a plaintiff in the underlying district court case but not an appellee, was an Oregon-based, family-owned limited liability company that ceased being a going concern during the course of the district court

litigation. To the best of undersigned counsels' knowledge and belief, except for Swanson Group Mfg. LLC, which has a parent corporation as indicated above, none of the foregoing petitioners have parent corporations; no publicly held companies own 10% or more of petitioners' stock.

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*To the Honorable Chief Justice John G. Roberts, Jr., as Circuit Justice for the
United States Court of Appeals for the District of Columbia Circuit:*

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, petitioners American Forest Resource Council; Association of O & C Counties; Carpenters Industrial Council, now known as Pacific Northwest Regional Council of Carpenters; Douglas Timber Operators, Inc.; C & D Lumber Co., now known as C & D Partners, Inc.; Freres Lumber Co. Inc.; Seneca Sawmill Company, now known as Sierra Pacific Industries; Starfire Lumber Co.; Swanson Group Mfg. LLC; Josephine County, Oregon; Gahlsdorf Logging, Inc.; Young's Trucking, Inc.; Oregon Forest and Industries Council; D & H Logging Co.; Oregon Small Woodlands Association; and Mountain Western Log Scaling and Grading Bureau respectfully request a 30-day extension of time, to and including Wednesday, November 15, 2023, within which to file a petition for a writ of certiorari in this case.

The United States Court of Appeals for the District of Columbia Circuit entered its judgment on July 18, 2023. Unless extended, the time for filing a petition for a writ of certiorari will expire on October 16, 2023. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254. The opinion of the District of Columbia Circuit is attached and published at 77 F.4th 787.

In 1937, Congress passed the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (O & C Act), 43 U.S.C. § 2601, *et seq.* That Act

set aside nearly 2.8 million acres of forest lands in Oregon as a permanent trust for the local county governments to fund schools, roads, hospitals, and the justice system. Congress instructed the Secretary of Interior that these lands “shall” be managed for permanent forest production, and that the timber thereon “shall be sold, cut, and removed in conformity with the princip[le] of sustained yield,” with the proceeds provided to the counties. 43 U.S.C. § 2601.

In 2016, the Bureau of Land Management (BLM) issued two Resource Management Plans (Plans) governing federal land within the range of the northern spotted owl, including O & C land. Notwithstanding the clear mandates of the O & C Act, the Plans dedicate nearly 1,000,000 acres of O&C timberlands to species preservation “reserves” rather than to permanent forest production, prohibiting sustained-yield timber harvest in these areas.

Separately, claiming authority under the Antiquities Act of 1906, 54 U.S.C. § 320301(a), President Obama on January 12, 2017 issued Proclamation 9564, which expanded the boundaries of the Cascade-Siskiyou National Monument in southwestern Oregon (Monument) by an additional 48,000 acres, about 35,000 acres of which are O & C timberlands. 82 Fed. Reg. 6,145 (Jan. 12, 2017). Under the proclamation, sustained-yield timber production is now expressly prohibited on these lands.

The questions to be presented in the forthcoming petition are:

1. Can the President, under the authority of the Antiquities Act, override Congressional instruction in the O & C Act and designate O & C timberlands as a monument where timber harvest is prohibited?

2. Can the Secretary of the Interior under the Endangered Species Act and the Clean Water Act, override Congressional instruction in the O & C Act, and designate 80 percent of the O & C timberlands as “reserves” where little or no harvest may occur?

The District of Columbia Circuit below answered both questions in the affirmative and, in so doing, eviscerated the will of Congress in the O & C Act’s express mandates. First, the court held that with Antiquities Act Proclamation 9564, the President had “by implication” permissibly reclassified O & C lands as non-timberland, thereby immediately removing them from the statutory permanent forest production mandate. Slip op. at 24. Second, the court held that the land reservations in the Plans were permissible under the O & C Act because, despite no mention of the authority or invocation of the relevant standards, the reservations could “reasonably be viewed as” a reclassification of the lands. *Id.* at 28.

These questions of federal law are exceptionally important, not only with respect to the million acres of western timberlands directly affected by the Monument and Plans but also settled and binding Supreme Court precedent about statutory reconciliation and the critical separation of powers between the President and Congress. The conflict between Antiquities Act Proclamation 9564 and the Plans, and the management required by Congress in the O & C Act is absolute and irreconcilable. The court’s decision below represents a complete displacement of Congress’s intent and an unavoidable conflict that only this Court can resolve.

Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. Undersigned counsel has recently retained the assistance of new

Supreme Court counsel, Timothy S. Bishop, of Mayer Brown LLP. Given the number of petitioners and underlying cases implicated, and the voluminous administrative record at hand, additional time is needed for new counsel to familiarize himself with existing materials and prepare the forthcoming petition.

In addition, undersigned counsel is engaged in several other pending matters, including that Per A. Ramfjord is currently engaged in a multi-week, out-of-state federal hearing before an administrative law judge, and counsel of record, Jason T. Morgan, has several other matters with proximate deadlines next month, including extensive depositions and trial preparation.

For the foregoing reasons, the application for a 30-day extension of time, to and including Wednesday, November 15, 2023, within which to file a petition for a writ of certiorari should be granted.

September 26, 2023

Respectfully submitted.



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