

No. 25-64

In the Supreme Court of the United States

IRON BAR HOLDINGS, LLC, PETITIONER,
v.
BRADLEY CAPE, ET AL., RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT*

**Brief *Amicus Curiae* of United Property
Owners of Montana, Inc. in Support of
Petitioner**

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INTEREST OF *AMICUS CURIAE*¹

United Property Owners of Montana, Inc. (UPOM) is a non-profit coalition of property owners, agricultural businesses, and supporters dedicated to the preservation of private property rights in Montana and other western states. UPOM is a grassroots organization in every sense of the term.

Since its founding in 2008, UPOM has grown into a comprehensive property rights organization, representing nearly two million acres of privately owned land. UPOM's members, like most ranchers and farmers, prefer to concentrate on their businesses, rather than dealing with legal and regulatory battles; therefore, they rely on UPOM to advocate for their interests.

UPOM has participated in various advocacy efforts concerning issues affecting its members, including litigation as a party and as an *amicus curiae*. Notably, UPOM has long focused on the problem of trespassing on private property by "corner crossing." However, UPOM's efforts to oppose corner crossing have been hindered by the decision below. Therefore, UPOM has a direct interest in this Court granting certiorari and reversing the Tenth Circuit.

¹ Pursuant to Rule 37.2, *Amicus Curiae* provided timely notice to all parties of its intent to file this Brief.

Pursuant to Rule 37.6, *Amicus Curiae* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *Amicus*, its counsel, or its members made any monetary contributions intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

In 2020, a group of hunters travelled from Missouri for an elk hunt in Wyoming. Believing that there would be better hunting opportunities on federal property that is only accessible by crossing over Petitioner Iron Bar Holdings, LLC's (Iron Bar) private property, they disregarded "no trespassing" signs and intentionally "corner crossed" Iron Bar's property. Iron Bar contacted the local Sheriff, who declined to enforce Wyoming's trespass law. The hunters returned in 2021, and once again intentionally trespassed across Iron Bar's property.

Iron Bar sought to vindicate its property rights by suing the hunters for trespassing. The Tenth Circuit correctly held that the hunters had trespassed under Wyoming law. Yet the court held that when Congress enacted the Unlawful Inclosures Act (UIA), 43 U.S.C. § 1061, in 1885, it created a federal right to trespass on private property, as long as the individual is trespassing to access federal property that is part of the checkerboard pattern of public and private ownership created by Congress when it granted millions of acres to the Union Pacific Railroad. There is no support for this conclusion in the text of the UIA or the Court's precedent. In fact, the Court has held that a property owner may "obstruct[]" access to federal property without violating the UIA, as long as the landowner does not enclose federal property with a fence or physical barrier.

Tenth Circuit did not find that Iron Bar violated the UIA by enclosing federal property with a fence or physical barrier; it held that Iron Bar's decision to enforce its property rights by filing a trespass lawsuit was "an abatable federal nuisance" because the "effect" of the lawsuit was "to inclose public lands by completely preventing access for a lawful purpose." Pet. App. 38a. The

novel concept that filing a lawsuit to enforce a property right is an abatable nuisance and a violation of the UIA is unsupported by legal authority. Rather, as the Court held in *Leo Sheep Co. v. United States*, 440 U.S. 668 (1979), the UIA is not “of any significance” to the question of accessing checkerboard federal property. 440 U.S. at 683.

The Court should grant certiorari to correct the Tenth Circuit’s mistaken holding that Iron Bar violated the UIA by suing hunters trespassing on private property.

ARGUMENT

I. The decision below is contrary to precedent and the text of the UIA. It also condones an unconstitutional taking of private property without just compensation.

The fundamental flaw in the decision below is the Tenth Circuit’s belief that the UIA “permit[s] limited trespass” and “functionally operates like a limited easement” to access federal property by corner crossing private property. Pet. App. 40a, 46a. The court acknowledged that its interpretation “diminishes a property right a landowner would otherwise have.” *Id.* at 46a. Nevertheless, it concluded that corner crossing was legal, and Iron Bar was not entitled to compensation for the property right that had been taken.

In *Leo Sheep*, the Court rejected the argument that the government possesses “an easement to pass over [private property] in order to reach [public property] held by the Government.” *Leo Sheep*, 440 U.S. at 678. And while the Tenth Circuit believed that the UIA “operates like a limited easement” which allows the hunters to access public property by corner crossing Iron

Bar’s property, in *Leo Sheep*, the Court held that the statute is not “of any significance” to answering whether the government possessed an easement to access checkerboard federal property. Instead of a statute intended to establish access to inaccessible federal property, “[the UIA] was a response to the ‘range wars,’ the legendary struggle between cattlemen and farmers during the last half of the 19th century.” *Id.* at 683. In enacting the UIA, Congress sought to prohibit enclosing public property with a fence, *id.*, not to establish a right for elk hunters to trespass on private property.

Just as the Court said, “we cannot see how the Leo Sheep Co.’s unwillingness to entertain a public road without compensation can be a violation of [the UIA],” *id.* at 685, Iron Bar’s unwillingness to entertain hunters trespassing on private property is not a violation of the UIA either.

The Tenth Circuit trivialized the issue by comparing corner crossing to “the game of checkers,” and it reasoned that Iron Bar had prevented “the opposing player,” *i.e.*, the hunters, “from corner-crossing under the theory that diagonal moves on the checkerboarded land are a trespass.” Pet. App 4a. Property rights are not a game, and the public does not have a right to trespass by corner crossing even if doing so would be a legal move in the game of checkers.

By comparing corner crossing to a board game, the Tenth Circuit undermined Iron Bar’s right to exclude. “The right to exclude is one of the most treasured rights of property ownership.” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021) (quotation omitted). “[T]he very idea of property entails ‘that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.’” *Id.*

(quoting 2 W. Blackstone, Commentaries on the Laws of England 2 (1766)). Thus, the Tenth Circuit’s recognition of a “limited easement” to corner cross private property, Pet. App. 40a, impermissibly conflicts with Iron Bar’s “sole and despotic dominion” over its property.

In *Leo Sheep*, the Court noted that “incursions on private property necessary to reach public land” were an unlawful trespass, but in the 19th century, trespassing “to reach public land was not such an interference that litigation would serve any motive other than spite.” 440 U.S. at 686–87. “Nonetheless, the present times are litigious ones,” *id.*, and Iron Bar has the right to exercise its right to exclude by filing a civil trespass action, and it did not violate the UIA by doing so.

The Court should grant Iron Bar’s Petition so it may definitively answer whether the UIA creates a right to trespass on private property that trumps state property laws.

II. The Court should grant certiorari for several additional reasons.

A. The outcome of this case affects 150 million acres of public and private land.

In *Leo Sheep*, the Court granted certiorari “[b]ecause [the Tenth Circuit’s] holding affects property rights in 150 million acres of land in the Western United States . . .” 440 U.S. at 678. The identical justification for granting certiorari is presented here. The Tenth Circuit’s decision to legalize corner crossing affects the *same* 150 million acres of land that warranted this Court’s attention in *Leo Sheep*.

B. The Tenth Circuit requested clarification concerning the scope of *Leo Sheep* and *Cedar Point Nursery* as applied to the issue of corner crossing.

The Tenth Circuit struggled to apply *Leo Sheep* to the issue of corner crossing, and it invited the Court to “reconsider the scope of *Leo Sheep* as it applies to this case.” Pet. App. 47a.

The Tenth Circuit also acknowledged the “doctrinal inconsistencies” between its belief that the UIA created an “access right [which] functionally operates like a limited easement,” *id.* at 40a, with this Court’s holding in *Cedar Point Nursery* establishing that if “the government appropriate[s] a right to invade, compensation [is] due.” 594 U.S. at 156.

The Court should grant certiorari to answer the Tenth Circuit’s request for clarification regarding the scope of *Leo Sheep* as applied to corner crossing, and to resolve the doctrinal inconsistencies created by an interpretation of the UIA which establishes a right to cross private property without just compensation.

C. There is a need for a nationwide rule addressing corner crossing, and this case may be the only opportunity for the Court to consider the issue.

If Iron Bar’s Petition is denied, property owners, people seeking to access public lands, the federal government, and state officials will be left in limbo concerning the legality of corner crossing to access public property located *outside* the Tenth Circuit. Thus, it is appropriate for the Court to grant Iron Bar’s Petition and establish a nationwide precedent addressing the legality of corner crossing.

As the Court noted in *Leo Sheep*, “It is some testament to common sense that the present case is virtually unprecedented, and that in the 117 years since the grants [to the Union Pacific Railroad] were made, litigation over access questions generally has been rare.” 440 U.S. at 686–87. It has now been over 160 years since the railroad grants were made, and it appears this is the first time the Court has been asked to decide whether the public may cross private property to access inaccessible federal property.

Even though litigation concerning corner crossing is rare, that does not mean the legal issue is insignificant. The legality of corner crossing has been a topic of hot debate in the West for decades. Yet, litigation concerning corner crossing requires both a party willing to corner cross, and risk a civil liability for trespassing, and a property owner who (1) learns of the trespass, (2) is willing to expend the time and resources necessary to file a civil lawsuit, and (3) is willing to incur public condemnation from the special interest groups promoting corner crossing.

For example, before this case, hunters would intentionally trespass at property corners, hoping to be charged criminally or sued civilly to establish a legal precedent in favor of corner crossing. See Andrew McKean, *Is Corner Crossing Landlocked Public Property Trespassing?*, <https://www.petersenshunting.com/editorial/is-corner-crossing-landlocked-public-property-trespassing/365140> (“[he] longs to get ticketed for trespassing [while corner crossing] in order to test what he considers one of the central injustices of the West [*i.e.*, checkerboard federal property].”) (last visited August 16, 2025). But prosecutors have been reluctant to charge individuals with criminal trespass for corner crossing, and after the Tenth Circuit’s decision,

prosecutors will be even more reluctant to do so. Civil litigation is also infrequent because few property owners have concrete proof that an identifiable individual trespassed by corner crossing, even fewer are willing to spend the time and money required to file a trespass lawsuit, and, to date, Iron Bar is the only property owner willing to pursue the issue all the way to the highest court in the land.

Traditionally, the Court would allow the issue to percolate through other courts to see if a split of authority develops. Yet the question of corner crossing is exceptional, and the Court should not wait for a split of authority. If the Court denies certiorari in this case, it may never have another opportunity to consider the legality of corner crossing. And as a result, property owners, recreationalists, and government officials outside the Tenth Circuit will be left without binding precedent on this important issue of federal law.

D. Corner crossing is an imperfect remedy that will damage efforts to establish public access in better-suited locations.

The Tenth Circuit failed to consider the impacts that legalized corner crossing will have on federal and state efforts to establish access to inaccessible public property in locations best suited for public access. As a practical matter, corner crossing is difficult as an individual must locate the infinitesimally small location where four tracts of land intersect (which is often unmarked or not clearly marked) and then carefully step over the corner without touching private property. Corner crossing can also be dangerous as many section corners are located in difficult-to-access locations, such as rivers, mountain tops, or cliffs. While the motivated hunters in this case were able to corner cross without

touching the surface Iron Bar's property, disabled individuals, the elderly, and even the average hunter may be unable to do so. When establishing access to public property, it is important to consider the needs of the public in general, not just the interests of a few hunters. That is why government agencies and public access advocates generally seek to establish access at a location *other* than a section corner.

The decision below, however, will impair efforts to establish access in locations better suited for use by the public, as funding to create public access is often tied to establishing access to "landlocked" public property. For example, as part of the Federal Land Policy Management Act of 1976 (FLPMA), Congress included a provision that allowed the Department of the Interior to use eminent domain "to secure access to public lands." 43 U.S.C. § 1715(a). Likewise, Western states have adopted laws and policies to compensate property owners for providing public access to checkerboard public property. Montana has adopted a law that compensates property owners for allowing corner crossing. *See* Mont. Code Ann. § 87-1-294(5)(a)(ii) (West. 2023) (compensating property owners "who own land adjacent to the point where the corners of two parcels of public land meet" and who agree to "grant access through the landowner's land to establish a corridor between the two parcels of public land."). Under the rule adopted by the Tenth Circuit, there is no longer a need for the federal government or states to compensate property owners for allowing public access by corner crossing.

In *United States v. 82.46 Acres of Land, More or Less, Situate in Carbon Cnty., Wyo.*, 691 F.2d 474, 475 (10th Cir. 1982), the Tenth Circuit held that the United States may use the eminent domain power contained in FLPMA to establish access to federal property that was

inaccessible because of the checkerboard pattern of land ownership. The key difference between *82.46 Acres of Land* and this case is that in the former case, the federal government actively participated in the process, selected the location for public access, and the property owner received compensation. With corner crossing, however, the federal government is cut out of the process, and the property owner does not receive compensation.

The Tenth Circuit's recognition of a right to corner cross which "functionally operates like a limited easement," Pet. App. 40a, calls into question the federal government's ability to use FLPMA to establish access to public property in the future. Since the Secretary of the Interior "may exercise the power of eminent domain *only if necessary* to secure access to public lands," 43 U.S.C. § 1715(a) (emphasis added), if public property can be accessed by corner crossing, eminent domain is no longer "necessary to secure access."

The imperfect remedy of corner crossing will harm legitimate efforts to establish access to public property in locations best suited for use by the public, not just a handful of adventurous hunters interested in corner crossing.

E. Corner crossing opens previously inaccessible federal property without the government's permission or consent.

The federal government has long benefited from the fact that corner crossing was generally understood to be illegal, and very few individuals risked criminal or civil liability to access federal property by doing so. As a result, federal property surrounded by private property has functioned as *de facto* wildlife preserves. The Tenth Circuit's decision, however, will likely result in

thousands of hunters accessing millions of acres of public property that were previously inaccessible.

With legalized corner crossing, at least in the Tenth Circuit, the federal government will face new and increased issues related to poaching, littering, wildfires, and other crimes on previously inaccessible public property. Yet the Tenth Circuit established an unlimited and unregulated right to access federal property through a judicial process in which the federal government was not a party or even invited to participate as an *amicus*.

Granting certiorari will allow the federal government to participate either as an *amicus* or through an invitation for the Solicitor General to submit a brief expressing the views of the federal government.

F. Corner crossing deprives property owners of a valuable right: the right to receive compensation for public access.

All the sticks in the bundle that make up private property have economic value, including the right to exclude. Corner crossing, thus, denies property owners the right to negotiate for compensation in exchange for providing public access. Many ranchers across the West, including UPOM members, are in the situation of being “land rich, cash poor,” meaning they own a significant amount of land, but the land does not generate a significant amount of income. Negotiating compensation for public access can be the difference between a successful family ranching operation and one that fails.

As the Supreme Court for the Territory of Wyoming noted over 130 years ago, the UIA did not establish access to checkerboard federal property, and the solution to the lack of access is providing just compensation to property owners:

When reduced to its last and its true legal analysis, the point in controversy is, shall the United States have a way over defendant's land? . . . Unquestionably the way may be obtained, but not by invoking the police power of the government [or the UIA]. It must be bought and paid for in the manner and according to the methods prescribed for the condemnation of lands.

Douglas-Willan Sartoris Co., 22 P. 92, 97 (Wyo. 1889).

This Court also noted the need to compensate property owners to establish access to inaccessible federal property:

In 1887 the Secretary of the Interior recommended that Congress enact legislation providing for a public road around each section of public land to provide access to the various public lots in the checkerboard scheme. The Secretary also recommended that to the extent building these roads required the taking of property that had passed to private individuals, "the bill should provide for necessary compensation."

Leo Sheep, 440 U.S. at 688, n. 25.

In *82.46 Acres of Land*, the property owner was displeased with the government's use of eminent domain, but at least he was offered over \$15,000 in compensation. 691 F.2d at 475. Iron Bar has been deprived of the same property right, yet it received no compensation. Granting certiorari will allow the Court to consider whether property owners are entitled to compensation in the event the Court finds the UIA created a right to corner cross.

CONCLUSION

“For every complex problem there is an answer that is clear, simple, and wrong.” — H. L. Mencken.

The lack of access to federal property due to the checkerboard pattern of public and private ownership created by Congress is a complex problem, and corner crossing is, superficially, a clear and simple solution to establishing access. Unfortunately, corner crossing is wrong as a matter of law and policy. For the above reasons and those stated in Iron Bar’s Petition, the Court should grant certiorari and then reverse the Tenth Circuit’s decision.

Respectfully submitted,

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