

No. 25-64

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IN THE  
**Supreme Court of the United States**

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IRON BAR HOLDINGS, LLC,

*Petitioner,*

*v.*

BRADLEY H. CAPE, *et al.*,

*Respondents.*

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

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**BRIEF OF WYOMING STOCK GROWERS  
ASSOCIATION, WYOMING WOOL  
GROWERS ASSOCIATION AND MONTANA  
STOCKGROWERS ASSOCIATION AS *AMICI  
CURIAE* IN SUPPORT OF PETITIONER**

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**STATEMENT OF IDENTITY  
AND INTEREST OF *AMICI***

The Wyoming Stock Growers Association (WSGA) is a nonprofit corporation organized on April 4, 1872 to advance and protect the interest of the state’s livestock producers. The WSGA was the second state cattlemen’s organization created in the United States and the first association formed in the Wyoming territory. The WSGA is the primary organization in the state focused on serving the needs of the cattle industry, which is the largest segment of Wyoming’s agricultural production. The mission of the WSGA is to serve the livestock business and families by protecting their economic, legislative, regulatory, judicial, environmental, custom, and cultural interests. The WSGA advocates for the protection of private property rights from overburdensome regulatory interference. The WSGA’s membership ranges from those who own or lease private sections in the “railroad checkerboard”<sup>2</sup> to others who face the prospect of being

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1. On August 5, 2025, and pursuant to Supreme Court Rule 37.2, *Amici* counsel notified all known parties of their intent to file an amicus brief supporting Plaintiff’s Motion for Certiorari in the above captioned matter. In accordance with Supreme Court Rule 37, this brief was not authored by counsel for any party in this action. No party or person not related to *Amici* made any kind of monetary contribution to the preparation or submission of this brief. All funding for this brief came from the *Amici* or their members.

2. See *Iron Bar Holdings, LLC v. Cape*, 131 F.4th 1153, 1158–1159 (10<sup>th</sup> Cir. 2025). (Explaining through legislation, Congress aimed to resolve economic issues of the transcontinental railroad by implementing a checkerboard land-grant scheme—Congress granted odd-numbered section squares to railroad companies and retained even-numbered section squares for the federal government.)

impacted by corner-crossing to access small parcels of federal land interspersed with private lands.

The Wyoming Wool Growers Association (WWGA) is a nonprofit entity whose mission is to protect, promote, and preserve the lamb and wool industries and the ranching community lifestyle. The WWGA's membership includes individuals and businesses that support the production of the lamb and wool industry in Wyoming. The WWGA works with others to protect, preserve and enhance the lamb and wool industry and the ranching community and lifestyle of Wyoming and the West. The WWGA works alongside the legislatures at the state and national levels, governmental officials and the general public to provide accurate information about the industry itself, private property rights, and other important issues. The WWGA also works to educate their members on the latest production practices and state and federal laws that impact their livelihoods.

The Montana Stockgrowers Association (MSGa) is a grassroots non-profit membership organization with a 140-year history of advocating on behalf of Montana cattle ranchers to ensure cattle ranching remains relevant, safe, and a sustainable way of life for generations to come. Membership in MSGa consists of cattle ranchers of all ages, ranching operations large and small, feedlot operators, affiliate businesses, private property owners, and supporters and friends of Montana ranchers whose livelihood and identity are tied to the Montana cattle industry. The MSGa is the trusted voice of cattle ranchers and private property owners. The MSGa believes corner-crossing is a serious threat to the integrity of private landownership, undermines long-standing property

boundaries, and may set a harmful precedent that erodes the ability of landowners to manage and protect their property. MSGA has a long history of advocating for clear, consistent laws that uphold the rights of landowners while supporting access solutions that respect both public and private interests.

Combined, these *Amici* represent hundreds of agricultural producers owning thousands of acres of private land in Wyoming and Montana. Many of these private lands share adjoining boundaries, including corners, with federal or public lands. Accordingly, the *Amici* offer a unique perspective in light of the impact the outcome of this case will have on their community and lifestyle.

### SUMMARY OF ARGUMENT

The *Amici Curiae* urge the grant of Petitioner's petition for writ of certiorari, and the reversal of the decision of the Tenth Circuit Court of Appeals. Certiorari should be granted in this present case because the issues presented are of vast national implication and importance. The number of landowners and the amount of acres potentially affected by the Tenth Circuit's interpretation of the Unlawful Inclosures Act (UIA) is enormous. For over one hundred years, corner-crossing has never been an accepted means of accessing federal lands. Allowing corner crossing now will create an administrative and resource burden on the states and federal government that previously did not exist.<sup>3</sup> The Tenth Circuit's

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3. For the purpose of this brief, corner-crossing means the act of traversing the corner of a piece of private land to access federal or state lands. *See Iron Bar Holdings, LLC*, 131 F.4th at 1156.

judgment leaves private property owners and agricultural operations at risk and legally vulnerable to liability they previously did not have.

Certiorari is warranted to determine the overruling authority of *Leo Sheep Co. v. United States* compared to the other UIA cases. Following the Supreme Court's decision in *Leo Sheep*, it is less clear whether previous reasoning essential to UIA cases is still reliable. *Leo Sheep* marks a turning point in caselaw as the Court associated "public throughfares" in public lands with the principles of implied easements and compensation, instead of common-law nuisance principles, as done in *Camfield*. While *Leo Sheep* specifically addresses government access rights to public lands through private parcels, *Camfield* addresses enclosures impacting public lands. This case expressly calls into question whether the reasoning and principles from *Leo Sheep* should be applied. Currently, the failure to apply *Leo Sheep* brings into question the continued reliance on *Camfield*. Yet, existing ambiguity surrounds whether *Leo Sheep* overrules or limits *Camfield* and requires further clarification by this Court. Due to the national implications of the Tenth Circuit's judgment and legal ambiguity this Court should grant the Petitioner's petition for writ of certiorari.

## ARGUMENT

### **I. Certiorari is Warranted as the Issues Presented are of Vast National Implication and Importance.**

The Amici emphasize the Tenth Circuit's declaration from the beginning of its opinion in the above captioned case: "While the dispute may seem trivial, at its core, it

implicates centuries of property law and the settlement of the American West.” *Iron Bar Holdings, LLC v. Cape*, 131 F.4th 1153, 1156 (10th Cir. 2025). The number of landowners and the amount of acres potentially affected by the Tenth Circuit’s interpretation of the UIA is enormous. In Wyoming there are 4.19 million acres of landlocked public lands. *Molly Stoecklien, New Report from onX Reveals Scale of Corner-Locked Public Land Issue, onX*, (Apr. 8, 2022), <https://www.onxmaps.com/blog/new-corner-locked-report-from-onx> (last visited Aug. 11, 2025). Of the 4.19 million acres that are landlocked, 2.4 million acres are corner locked behind 8,159 property corners. *Id.* Each of those corners are shared with 1,200 unique landowners. *Id.* In Montana there are 1.52 million acres of federal lands that are landlocked. *The Corner-Locked Report, onX* (Apr. 2022), <https://www.onxmaps.com/onx-access-initiatives/corner-crossing-report> (last visited Aug. 11, 2025). Of those 1.52 million acres, approximately 871,000 acres are corner locked. *Id.* In total, there are 8.3 million acres locked behind 27,120 corners and 11,000 unique landowners across the West. *Id.* Because of that impact and the ambiguities from the Tenth Circuit’s opinion, this Court should grant certiorari so landowners and the general public are not left in limbo as to the scope and breadth of UIA.

The Tenth Circuit’s judgment determining the prevention of trespass on private land amounts to a “proscribable nuisance” under federal law casts a cloud of uncertainty for property owners and western agriculture that must be resolved in order to prevent nationwide harms. *See Iron Bar Holdings, LLC*, 131 F.4th at 1174. First, corner-crossing has traditionally not been an allowed. Allowing corner crossing now will create an

administrative and resource burden on the states and federal government that previously did not exist. Second, the Tenth Circuit's judgment leaves private property owners and agricultural operations at great risk from an operational standpoint. Finally, the Tenth Circuit's judgment leaves private property owners and agricultural owners legally vulnerable to liability they previously did not have prior to the lower court's opinion.

**A. In the Eyes of the Federal Government and the States, Corner-crossing Has Never Been an Accepted Means to Access Federal Lands.**

Corner-crossing has never been an accepted means of accessing federal lands. Both the federal government and the states have traditionally considered corner-crossing as an illegal means to access federal lands. By changing this longtime doctrine to allow for corner-crossing, the states and federal government will be forced to shift resources to both protect the public and enforce state and federal laws on lands that were generally not accessible to the public for over a century.

Most checkerboard lands are associated with the land grants that occurred in the mid-1800s which provided land for the development of transcontinental railroads. Congress gave the odd numbered sections within ten (and sometimes twenty) miles on either side of a rail line to the railroad companies in order to aid in the development of this important infrastructure. The Pacific Railroad Act, 12 Stat. 489 (1862). The even sections were reserved to the federal government. *Id.* at § 3. Importantly, Congress never reserved an access right in these grants. In granting those lands to private companies, Congress

never considered the possibility that these lands could inhibit future access to public lands because it anticipated that the reserved lands would be sold into private hands or commercial and social intercourse would voluntarily create access in the future. *See Leo Sheep Co. v. United States*, 440 U.S. 668, 686 (1979).

In fact, there are other land grant acts in which Congress did reserve specific rights to access. In contrast to each of the “checkerboard” land grants, Congress specifically did reserve access rights in the 1916 Stock-Raising Homestead Act. 43 U.S.C. § 299(a). Unlike the original Homestead Act and other preceding acts that granted lands to settlers across the West, the 1916 Stock-Raising Homestead Act specifically reserved all minerals to those lands for the federal government. *Id.* Additionally, the act specifically granted the federal government, and those developing the reserved minerals, the right to “reenter and occupy” as much of the surface as needed for purposes “reasonably incident” to the mining of minerals beneath. *Id.* This explicit, rather than implied right to access, allows a mineral developer to not only enter the land to develop the minerals on that land, but to also cross that land in order to develop federal minerals on neighboring lands. *Entek GRB, LLC v. Stull Ranches, LLC*, 763 F.3d 1252, 1253, 55-56 (10th Cir. 2014) (Gorsuch, J. writing the opinion). Thus, while Congress did not explicitly reserve access (to the public or otherwise) when dispersing those earlier “checkerboard” grants, it clearly did make access reservations for other grants.

This contrast between the two grants must be meaningful. *Corley v. United States*, 556 U.S. 303, 314 (2009) (“[a] statute should be construed so that effect

is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ....”). The absence of a specific access reservation (to the general public or otherwise) in each of the “checkerboard” grants in contrast to a specific reservation of access in the 1916 Stock-Raising Homestead Act shows that the Court cannot read a reserved right to access that was not explicitly reserved in the grant without making such a reservation in the 1916 act meaningless. However, while it is true that Congress never considered this possibility when granting “checkerboard” land grants, it is not the Court’s role to amend the law to fit what the Court thinks Congress may have intended had Congress known what we do today. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 76 (1996) (stating that “[n]or are we free to rewrite the statutory scheme in order to approximate what we think Congress might have wanted had it known...”).

In turn, neither the Bureau of Land Management (BLM) nor the U.S. Forest Service (USFS) believe that they have the jurisdiction and authority to authorize trespass across private lands to access federal lands. According to a pamphlet published by the Wyoming State Office of the BLM, even in the areas containing checkerboard lands, the federal government does not authorize trespass across private lands, including in the “airspace.” Brief for Wyo. Stock Growers Ass’n & Wyo. Wool Growers Ass’n as Amici Curiae Supporting Appellant at Ex. 2, *Iron Bar Holdings, LLC v. Cape*, 131 F.4th 1153 (10th Cir. 2025) (No. 23-8043). Access to the public lands across private lands can only be provided pursuant to the Federal Land Policy Management Act (FLPMA) or by the willingness of private landowners to voluntarily allow public access. *See id.*

Neither the legislative history of the UIA nor any federal statute evidence Congress's intent to repeal state property law by implication. *U.S. v. Barrett*, 837 F.2d 933, 934 (10<sup>th</sup> Cir. 1988).

So too do the Wyoming state statutes limit the manner in which access can be acquired across private land to public lands for recreational purposes. In 2021 the Wyoming State Legislature passed HB 122 which imposed an additional \$9.00 fee on the purchase of conservation stamps by each sportsman to specifically fund the Wyoming Access Yes Program. H.B. 0122, 66th Leg., 2021 Gen. Sess. (Wyo. 2021). The Wyoming Access Yes Program is a program used by the Wyoming Game and Fish Commission “for the purposes of purchasing access easements or other agreements to provide public access to private, federal and state lands that are difficult to access or inaccessible by the public for hunting and fishing purposes.” *Id.* Since that program was created by the Wyoming legislature, some of the funds have been used to purchase access to “checkboard” lands that did not otherwise have public access. *See Carbon County Walk In Area 1*, Wyo. Game & Fish Dep’t, <https://wgfd.wyo.gov/Public-Access/Walk-In-Hunting/Carbon-County/Carbon-County-Walk-In-Area-1> (last visited Aug. 11, 2025); *Carbon County Walk-In Area 6*, Wyo. Game & Fish Dep’t, <https://wgfd.wyo.gov/Public-Access/Walk-In-Hunting/Carbon-County/Carbon-County-Walk-In-Area-6> (last visited Aug. 11, 2025). If landowners did not have a property right on those adjoining property corners, then the Wyoming Legislature, through the Wyoming Game and Fish Department, would not have made it a priority to acquire access in those areas that could be otherwise accessed through corner-crossing.

Similar to Wyoming, corner crossing is viewed as a trespass in Montana. *Frequently Asked Questions from Montana Hunters*, Mont. Fish, Wildlife & Parks, at p. 18 (2023), <https://fwp.mt.gov/binaries/content/assets/fwp/hunt/faqs-from-montana-hunters-2023.pdf> (last visited Aug. 11, 2025). In a frequently asked questions document published by the Montana Fish, Wildlife, and Park, the agency stated that “[c]orner crossing, such as at section corners, in checkerboard land patterns (mix of public and private land) is illegal without permission form adjacent landowner(s).” *Id.*

With the allowance of corner-crossing now, the Tenth Circuit essentially created rights-of-way to federal lands across 27,120 property corners accessing 8.3 million acres of corner locked lands. *The Corner-Locked Report*, onX (Apr. 2022), <https://www.onxmaps.com/onx-access-initiatives/corner-crossing-report> (last visited Aug. 11, 2025). This would now require state and federal resources to be made available to service these lands that were previously not utilized by the public. Emergency services will now need to find a means to access these otherwise inaccessible lands should a recreationist be injured. Both state and federal law enforcement may be called upon to enforce state or federal laws. Federal land management agencies such as the USFS and the BLM will now have to analyze the suitability of recreation and other uses that the agencies previously ignored due to accessibility issues. *See e.g.* 16 U.S.C. § 1604(g). Without a systemic and strategic method to acquire access to corner locked federal lands, the public will have access to lands that the state and federal government may not regulate or maintain.

Perhaps the greatest impacted agencies will be state wildlife agencies who now have an increased burden in

enforcing state wildlife laws on lands either previously not used for hunting and fishing or lands that were used on a controlled and limited basis. For example, in 2024 in the State of Wyoming, the Wyoming Game and Fish Department had 3,102 law enforcement actions across 626,375 miles in the state. *2024 Annual Law Enforcement Report*, Wyo. Game & Fish Dep’t, <https://wgfd.wyo.gov/sites/default/files/2025-04/2024%20LE%20Report%20Final.pdf> (last visited Aug. 11, 2025). These enforcement actions and area of coverage are currently being manned by a staff of less than 80 law enforcement officers. *Id.* at p. 7-9. If recreationists were to have unfettered access via corner-crossing, that would open an additional 2.4 million acres of land in Wyoming (an area larger than the entirety of Yellowstone National Park) that the agency would have to patrol. *Molly Stoecklien, New Report from onX Reveals Scale of Corner-Locked Public Land Issue, onX*, (Apr. 8, 2022), <https://www.onxmaps.com/blog/new-corner-locked-report-from-onx> (last visited Aug. 11, 2025).

This Court should grant certiorari to resolve the conflict between the Tenth Circuit’s judgment and the traditional understanding concerning corner-crossing so that the states and the federal government do not have to divert important resources to service lands that have traditionally not been made open to the general public.

**B. The Tenth Circuit’s Judgment Leaves Private Property Owners and Agricultural Operations at Great Risk.**

The Tenth Circuit’s judgment prohibiting landowners from enforcing trespass laws in corner-crossing cases will significantly and negatively impact members of the Amici organizations and western agriculture.

Due to the interminglement of federal and private lands in these checkboard areas, allowing public access via corner-crossing greatly limits a rancher’s right to exclude others from his property, having potentially dire consequences on a ranching operation. The inability to control activity by members of the public while cattle or sheep are in the vicinity can cause great stress to livestock. Increased stress to livestock could result in decreased weight gains, poor breeding rates, and damage to both private and public land from the excessive movements of stressed livestock.<sup>4</sup> Interactions with the public in these intermingled lands may disrupt their regular grazing routines and cause livestock to congregate on private and state lands, causing degradation of these parcels and removing the balance found in cooperative management of public and private lands.

The Tenth Circuit’s judgment opens the gate to access across private lands beyond some “temporary incursion into a minimal portion of its airspace” that occurs with a corner-crossing. *See Iron Bar Holdings, LLC*, 131 F.4<sup>th</sup>

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4. Stress has direct effects on reproductive performance, such as hormone secretion, and consequently, the pregnancy rates in cattle. Moreover, it was demonstrated that stress impairs the maintenance of pregnancy, affecting the uterine environment, embryo development, and maternal recognition of pregnancy. *David Wolfenson, Zvi Roth, Impact of heat stress on cow reproduction and fertility*, Animal Frontiers, Volume 9, Issue 1, January 2019, at 32–38. Thus, stress is considered one of the most important factors of pregnancy retention in cattle. *See Angela Gonella-Diaza, How Stress Impacts Cattle Reproduction, IFAS Extension University of Florida (Mar. 15, 2024), <https://nwdistrict.ifas.ufl.edu/phag/2024/03/15/how-stress-impacts-cattle-reproduction/> (last visited Aug. 13, 2024).*

1153 at 1179. In Wyoming there are 4.19 million acres of landlocked public lands. *Molly Stoecklien, New Report from onX Reveals Scale of Corner-Locked Public Land Issue, onX*, (Apr. 8, 2022), <https://www.onxmaps.com/blog/new-corner-locked-report-from-onx> (last visited Aug. 11, 2025). Of the 4.19 million acres that are landlocked, 2.4 million acres are corner locked behind 8,159 property corners. *Id.* Each of those corners are shared with 1,200 unique landowners. *Id.* It is unclear what happens when there is no corner to cross, either because of some natural obstruction or because federal land is surrounded by private lands and only shares corners with said private lands.

Regardless of the limited scope the Tenth Circuit attempted to address, the court’s opinion does not foreclose the possibility that its decision could expand beyond corner-crossing. In its opinion, the court essentially ruled so long as the government did not install a permanent road or improvement across private property to access federal lands, any action taken by a landowner to prevent a person from crossing their private property to access federal lands amounts to a nuisance. *See Iron Bar Holdings, LLC*, 131 F.4<sup>th</sup> 1153 at 1176 (distinguishing the present case from *Leo Sheep* by opining “corner-crossing does not rise to the level of ‘an implied easement to build a road across land that was originally granted to the Union Pacific Railroad’” because corner-crossing is a “momentary” occurrence).

In turn, a private landowner will now encounter burdens other members of the public do not have who are not neighbors to federal lands. Those burdens include the burden to catch trespassers who wander off intermingled federal lands; the burden to determine how

the trespassers reached the checkerboard lands; the burden to absorb the costs to their livestock operation if livestock are disturbed or livestock is lost to an errant hunter's shot (which certainly happens); the burden to clean up the public lands intermingled with their private lands from trash, empty cartridges, plastic water bottles, gut piles and waste which can attract predators that may also choose to prey on livestock.

The Tenth Circuit's decision does not require the government to compensate the landowners for the access it purports to give because either burden on private property is a "background restriction" or the taking occurred when the UIA was passed or *Camfield* was decided so a landowner is left giving a license to the public without ever receiving compensation for the license. *Id.* at 1179. This precedent will harm private landowners such as the Amicis' members, who will bear the brunt of this decision. Given the effects *Iron Bar* could have against landowners, the Tenth Circuit acknowledged its decision left landowners in a bad place. *Id.* The Court stated that the issue could be better addressed if the government used its right to eminent domain for access easements to landlocked checkerboard lands. *Id.* The Tenth Circuit also requested that this Court reconsider (or perhaps better define the scope of *Leo Sheep*). *Id.*

**C. The Tenth Circuit's Judgment Leaves Private Property Owners and Agricultural Operators Vulnerable to Liability They Did Not Previously Possess.**

In its opinion, the Tenth Circuit acknowledged that their ruling "leaves open questions for landowners and the

public alike, including who might be liable during a corner-crossing incident, and what duty of care each party owes the other.” *Id.* The Court’s observations ring true. With the ability to corner-cross, the public and landowners are now in a legal gray area not knowing what each party’s legal relationship is with each other moving forward.

Landowners across the West are particularly concerned about the potential liability corner-crossing may bring to their property. In Wyoming, landowners hold a duty of care to a licensee or invitee who enters their property, but they generally do not owe one to a trespasser. *See Clarke v. Beckwith*, 858 P.2d 293, 296 (Wyo. 1993) (stating “[w]e are persuaded that the third rule—trespassers will be treated as a distinct group but the rule of ‘reasonable care under the circumstances’ will be applied to all others—should be and hereby is adopted by this Court.”). Montana statutorily limits a property owner’s duty of care for a trespasser compared to a licensee or invitee. Mont. Code Ann. § 27-1-708 (2021). Except for a minority of states, there is generally a different standard of care expected of a property owner for a licensee compared to a trespasser. *See* Vitauts M. Gulbis, Annotation, *Modern Status of Rules Conditioning Landowner’s Liability upon Status of Injured Party as Invitee, Licensee, or Trespasser*, 22 A.L.R.4th 294 (1983 & 1992 Supp.); 3 Stuart M. Speiser et al., *The American Law of Torts* § 14:3 (1986).

By allowing corner-crossing—but not going as far as stating that the UIA created an implied easement—landowners and the public are left not knowing if the corner-crosser is considered a trespasser or a licensee. Since there are 8.3 million acres of land locked behind

27,120 corners and 11,000 unique landowners across the West, liability implications are vast. *See The Corner-Locked Report*, onX (Apr. 2022), <https://www.onxmaps.com/onx-access-initiatives/corner-crossing-report> (last visited Aug. 11, 2025). Consequently, many landowners may potentially be open to new forms of liability that their operations and properties have not been exposed to in over a century. For this reason alone, this Court should grant Certiorari to clarify whether, despite *Leo Sheep*, the UIA implies an easement or general right to cross private property to access federal lands. Determining the applicability of *Leo Sheep* will help to clarify the duty of care each party is owed in a corner-crossing situation. *See Iron Bar Holdings, LLC*, 131 F.4<sup>th</sup> 1153 at 1179.

## **II. Certiorari is Warranted to Determine the Overruling Effect of *Leo Sheep Co. v. United States*.**

*Leo Sheep Co. v. United States* is the Supreme Court’s most recent case reviewing the UIA. *See Leo Sheep Co. v. United States*, 440 U.S. 668 (1979) (holding the government has no implied easement to build a dirt road for public access across private checkerboard lands). However, the U.S. Court of Appeals for the Tenth Circuit determined that a previous case which relied on the UIA—*Camfield v. United States*—is controlling in this matter. *See Iron Bar Holdings, LLC*, 131 F.4<sup>th</sup> 1153 at 1174 (*see also Camfield v. United States*, 167 U.S. 518 (1897) (establishing federal authority to prevent private fencing of public lands under common-law nuisance principles). Petitioner and Amici assert that *Leo Sheep* is the binding authority regarding the UIA and access to public lands. The overruling effect of *Leo Sheep* on previous UIA Supreme Court precedent is unclear. As the Tenth Circuit stated, “[c]ourts have

analyzed similar fact patterns under both a nuisance law approach, such as in *Camfield*, and a no-implied-easement approach, such as in *Leo Sheep*.” *Iron Bar Holdings, LLC*, 131 F.4<sup>th</sup> 1153 at 1174. Certiorari must be granted to provide necessary clarity on the application of existing legal reasoning and *Leo Sheep*’s effect on precedent under the UIA.

Following the Supreme Court’s decision in *Leo Sheep*, it is less clear whether previous reasoning essential to UIA cases is persuasive. *Leo Sheep* marks a turning point in caselaw as the Court associated “public thoroughfares” in public lands with the principles of implied easements and compensation, instead of common-law nuisance principles, as done in *Camfield*. See *Iron Bar Holdings*, 131 F.4<sup>th</sup> at 1175 (“[w]e are unwilling to upset settled expectation to accommodate some ill-defined power to construct public thoroughfares without compensation.”). While *Leo Sheep* specifically addresses government access rights to public lands through private parcels, *Camfield* addresses enclosures impacting public lands. See *Camfield*, 167 U.S. at 522. The circumstances of this case question why the reasoning and principles from *Leo Sheep* should not be applied. Currently, the failure to apply *Leo Sheep* brings into question the continued reliance on *Camfield*. The Tenth Circuit concluded that *Camfield* and the UIA were left intact because both were not of any significance in the *Leo Sheep* controversy. *Iron Bar Holdings LLC. v. Cape*, 131 F.4<sup>th</sup> 1153, 1173 (10th Cir. 2025). Yet, existing ambiguity continues to surround whether *Leo Sheep* overrules, or limits *Camfield*.

**A. *Camfield* Grounds Public Land Access in Common-law Nuisance Jurisprudence.**

In *Camfield*, the Supreme Court addresses whether the UIA permitted the government to order abatement of a fence excluding access to public lands. *Camfield*, 167 U.S. at 524. In that decision, a rancher had enclosed about 20,000 acres of public land with fence for their exclusive use. *Id.* at 519. In addressing this enclosure, the Court applied principles of common-law nuisance stating that in the passing of the UIA, “[C]ongress exercised its constitutional right of protecting the public lands from nuisance erected upon adjoining property.” *Id.* at 528. The Court provided a landowner with a right to fence his own land, regardless of any detriment to his neighbors, unless by inclosing his land he intends to enclose the lands of the government, in which case he is guilty of an unwarrantable appropriation. *Id.* Coming to this conclusion, the Court relied on principles of nuisance law. *Id.* at 523. The Court provided that no person in maintaining a nuisance can shelter himself behind the sanctity of private property. *Id.* at 523. This holding established private property rights may be limited when used as a means to exclude access to public lands—anchoring the UIA’s enforcement in common-law nuisance.

The application of common-law nuisance in *Camfield* set precedent for subsequent UIA cases. However, in addressing public and government access issues in *Leo Sheep*, the Court applied easement and compensation principles.

**B. *Leo Sheep* Grounds Public Land Access in Implied Easement Doctrine.**

In *Leo Sheep* the Supreme Court addressed public access to the Seminole Reservoir, an area used by the public for fishing and hunting. *Leo Sheep Co.*, 440 U.S. at 677-678; *see also Iron Bar Holdings LLC.*, 131 F.4th at 1172. Due to the checkerboard configuration on these lands, it was physically impossible to enter the Seminole Reservoir without some physical intrusion on private land. *Leo Sheep Co.*, 440 U.S. at 675. Landowners in *Leo Sheep* began denying access over their lands to the reservoir or requiring the payment of access fees. *Id.* In response, the government “cleared a dirt road extending from a local county road to the reservoir across both public domain lands and fee lands of the Leo Sheep Co.” *Id.* In framing *Leo Sheep*, the Supreme Court posed the issue as whether the government has an implied easement to build a road across land that was originally granted to the United Pacific Railroad under the Union Pacific Act of 1862. *Id.* at 669. The Court addresses the principles established in *Camfield* and fails to find them dispositive in *Leo Sheep*, all while determining that landowners possess a right to compensation and the “unwilling[ness] to upset settled expectations to accommodate some ill-defined power to contrast public thoroughfares without compensation.” *Id.* at 687-688. Thus, while acknowledging *Camfield*, the Court in *Leo Sheep* rejected the existence of an implied easement to access public lands. *Id.*

While *Camfield* and *Leo Sheep* address public and government access on railroad checkerboard lands, they differ factually, and the underlying jurisprudence between the cases has created a legal gray area for the application of the law moving forward.

**C. Uncertainty Surrounds *Leo Sheep*'s Effect on *Camfield* and Governing Jurisprudence.**

The vastly differing legal principles applied in *Camfield* and *Leo Sheep* to confront railroad checkerboard access issues create ambiguity in the law to be applied. It must be recognized that no special language is necessary to overrule a prior decision under the principles of overruling by implication.<sup>5</sup> However, it is critical that this Court provide clear guidance to expressly inform courts and the public whether prior precedent is good law, and just what precedent applies here. Guidance on whether *Leo Sheep* has, in fact, overruled or limits the doctrine established in *Camfield*, and whether the two coexist is essential. In *Iron Bar*, the Tenth Circuit “held that *Leo Sheep* was limited in its application to the government’s assertion of an implied easement, which is a permanent, physical intrusion on private property. Outside of that context, *Camfield* controls.” *Iron Bar Holdings, LLC*, 131 F.4th at 1173 (citation omitted). However, Amici believe the public should be held to the same standards as set forth in *Leo Sheep*.

The allowance of public access in *Camfield* is a stark contrast to the subsequent denial of government, and in turn public, access in *Leo Sheep*. *Leo Sheep* indicates

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5. Michael J. Gerhardt, *The Role of Precedent in Constitutional Decisionmaking and Theory*, 60 GEO. WASH. L. REV. 68, 98 n.119 (1991) (“Implicit overrulings and distinguishing cases differ in their respective practical effects: an implicitly overruled precedent no longer controls even the fact situation it initially purported to resolve, while a distinguished precedent at least retains sufficient vitality to resolve a fact situation identical to that which it originally settled.”).

that the government may not utilize private lands for access without due process and just compensation if the government did not reserve an easement in said lands. *Leo Sheep Co*, 440 U.S. at 687-688. The differing principles allowing public access rights in *Camfield* must be addressed by this Court. The checkerboard land pattern affects millions of acres and thousands of stakeholders in the West. See *The Corner-Locked Report*, onX (Apr. 2022), <https://www.onxmaps.com/onx-access-initiatives/corner-crossing-report> (last visited Aug. 11, 2025). Without clear direction, courts, federal agencies, and private landowners are unsure whether principles in *Leo Sheep* require compensation or if *Camfield* applies. If governing principles shift depending on whether an obstruction takes form of a fence, a road, or whether the government, instead of the public, are accessing checkerboard public lands, this Court must delineate that. Only through direct and explicit guidance can the Court ensure whether public access through railroad checkerboard lands is predictable.

## CONCLUSION

For the reasons recited above, Certiorari should be granted in this present case because the issues presented are of vast national implication and importance that the Court must provide an answer to these important questions. For over one hundred years, corner-crossing has never been an accepted means of accessing federal lands. Allowing corner crossing will create an administrative and resources burden on the states and federal government that previously did not exist. The Tenth Circuit's judgment greatly harms Western agriculture, and leaves private property owners and agricultural owners legally vulnerable to liability they previously did not have prior to the Tenth Circuit's opinion. Certiorari is also warranted to determine the overruling or distinguishing authority of *Leo Sheep Co. v. United States* compared to the other UIA cases and correct the Tenth Circuit's interpretation of the existing UIA cases.

Respectfully submitted,

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